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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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(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

This list includes only rules that were published in the FEDERAL REGISTER after October 1, 1972.

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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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SUBCHAPTER VII—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 724—FIRE-CURED, DARK AIR-CURED, VIRGINIA SUN-CURED, CIGAR-BINDER (TYPES 51 AND 52), AND CIGAR-FILLER AND BINDER (TYPES 42, 43, 44, 53, 54, AND 55) TOBACCO

Subpart—Proclamations, Determinations and Announcements of National Marketing Quotas and Referendum Results

PROCLAMATION OF QUOTAS

Sec.

DETERMINATIONS AND ANNOUNCEMENTS—1973–74 MARKETING YEAR

AUTHORITY: Secs. 301, 312, 313, 52 Stat. 38, as amended, 46, as amended, 66, as amended; 7 U.S.C. 1301, 1312, 1313, 1375.

Basis and purpose. Sections 724.2 through 724.4 are issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, hereinafter referred to as the "Act", to proclaim national marketing quotas for fire-cured and dark air-cured tobacco for each of the three marketing years beginning October 1, 1973, October 1, 1974, and October 1, 1975. Sections 724.12 through 724.15 are issued pursuant to, and in accordance with, the Act to determine the reserve supply level and the total supply of fire-cured, dark air-cured and Virginia sun-cured tobacco for the marketing year beginning October 1, 1972, and to announce for the 1973–74 marketing year the amounts of the national marketing quotas, national acreage allotments, national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (a) new farms and (b) making corrections and adjusting inequities in old farm allotments for fire-cured (type 21), fire-cured (types 22–24), dark air-cured, and Virginia sun-cured tobacco. The material previously appearing in these sections under centerheads Proclamation of Quotas and Determinations and Announcements—1972–73 Marketing Year remain in full force and effect as to the crop to which it was applicable.

The determinations contained in §§ 724.12 through 724.15 have been made on the basis of the latest available statistics of the Federal Government, and after due consideration of data, views, and recommendations received from fire-cured (type 21), fire-cured (types 22–24), dark air-cured, and Virginia sun-cured tobacco producers and others as provided in a notice (37 FR 23843) given in accordance with the provisions of 5 U.S.C. 553.

It is determined that acreage-poundage quotas will not be announced for the 1973–74 marketing year for Virginia sun-cured tobacco.

Since the Act requires the holding of separate referenda of fire-cured tobacco farmers and dark air-cured tobacco farmers within 30 days after issuance of the proclamation of national marketing quotas for such kinds of tobacco to determine whether such farmers favor marketing quotas, since such farmers must be notified, insofar as practicable, of their farm acreage allotments prior to the referenda and since notices of allotments cannot be mailed until the issuance of the proclamation, and since Virginia sun-cured tobacco farmers are now making their plans for producing tobacco in 1973 and need to know, at the earliest possible date, the applicable 1973 tobacco allotments for their farms, it is hereby found that compliance with the 30-day effective date provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest. Therefore, the proclamations, determinations and announcements shall become effective upon the date of filing with the Director, Office of the Federal Register.

Section 312(b) of the Act provides, in part, that the amount of the national marketing quota is the total quantity of a kind of tobacco which may be marketed which will make available during such marketing year a supply of such tobacco equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percentum if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The reserve supply level is defined in the Act as 105 percent of the normal supply. The normal supply is defined in the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports. A normal year's domestic consumption is defined in the Act as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A normal year's exports is defined in the Act as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

FIRE-CURED (TYPE 21) TOBACCO

The yearly average quantity of Fire-cured (type 21) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1972–73 marketing year was about 3 million pounds. The average annual quantity of Fire-cured (type 21) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1972–73 marketing year was 5.6 million pounds (farm-sales weight basis). Taking into account the irregular pattern of both domestic use and exports, and the market demand for the various grades, 3.2 million pounds have been used as a normal year's domestic consumption and 5.5 million pounds have been used as a normal year's exports. Application of the formula prescribed by the Act results in a reserve supply level of 18.8 million pounds.

Manufacturers and dealers reported stocks of Fire-cured (type 21) tobacco held on October 1, 1972, as 8.3 million pounds. The 1972 Fire-cured (type 21) tobacco crop is estimated to be 5.5 million pounds. Therefore, the total supply of Fire-cured (type 21) tobacco for the 1972–73 marketing year is 13.8 million pounds. During the 1972–73 marketing year, it is estimated that disappearance will total about 6.5 million pounds. By deducting this disappearance from the total supply, a carryover of 7.3 million pounds for the 1973–74 marketing year, is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1973, results in a computed national marketing quota for the 1973–74 marketing year of 11.5 million

pounds. Use of the authority of the Secretary in section 312(b) of the Act to increase the computed quota by 20 percent to 13.8 million pounds, is deemed to be justified in order to avoid undue restrictions of marketings. This results in a national marketing quota of 13.8 million pounds.

In accordance with section 313(g) of the Act, the 1973 national marketing quota, divided by the 1968–72, 5-year national average yield of 1,221 pounds per acre, results in a 1973 national acreage allotment of 11,302.21 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1 is determined by dividing the national acreage allotment, less a national reserve of 87.97 acres, by the total of the 1973 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less reserve, to old farms.

FIRE-CURED (TYPES 22–24) TOBACCO

The yearly average quantity of fire-cured (types 22–24) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10-years preceding the 1972–73 marketing year was about 17.8 million pounds. The average annual quantity of fire-cured (types 22–24) tobacco produced in the United States and exported during the 10 marketing years preceding the 1972–73 marketing year was 23.2 million pounds (farm-sales weight basis). Exports of fire-cured (types 22–24) tobacco have trended slightly upward during the 10-year period. During the past 5 years, total disappearance has exceeded production by 20.8 million pounds. Domestic usage during the 1971–72 marketing year, at 16.0 million pounds, was substantially above the previous year. With this in mind, the 10-year average domestic use has been adjusted upward to 18.8 million pounds as a normal year's domestic consumption and the 10-year average exports has been adjusted upward to 27.0 million pounds as a normal year's exports. Application of the formula prescribed by the Act results in a reserve supply level of 101.1 million pounds.

Manufacturers and dealers reported stocks of fire-cured (types 22–24) tobacco held on October 1, 1972, as 56.2 million pounds. The 1972 fire-cured (types 22–24) crop is estimated to be 39.1 million pounds. Therefore, the total supply of fire-cured (types 22–24) tobacco for the marketing year beginning October 1, 1972, is 95.3 million pounds. During the 1972–73 marketing year it is estimated that disappearance will total about 40.0 million pounds. By deducting this disappearance from the total supply, a carryover of 55.3 million pounds for the 1973–74 marketing year, is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1973, results in a computed national marketing quota for the 1973–74 marketing year of 45.8 million pounds. Use of the authority of the Secretary in section 312(b) of the Act to increase the computed quota by 20 percent to 55.0 million pounds is deemed to be justified in order to avoid undue restrictions of marketings. This results in a national marketing quota of 55.0 million pounds.

In accordance with section 313(g) of the Act, the 1973 national marketing quota, divided by the 1968–72 5-year national average yield of 1,841 pounds per acre, results in a 1973 national acreage allotment of 29,875.06 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 289.59 acres, by the total of the 1973 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less reserve, to old farms.

DARK AIR-CURED TOBACCO

The yearly average quantity of Dark air-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10-years preceding the 1972–73 marketing year was about 17.1 million pounds, and the average annual quantity produced domestically and exported during this period was 3.0 million pounds (farm-sales weight basis). Total disappearance of Dark air-cured tobacco has been trending downward for many years, although the average disappearance for the last 5 years of the 10-year period is only 0.6 million pounds less than the 10-year average. Even with the decline, production has been less than disappearance in 6 years of the 10-year base period and in each of the last 3 years. In view of these facts, 18.5 million pounds have been used as a normal year's domestic consumption and 2.9 million pounds as a normal year's exports. Application of the formula prescribed by the Act results in a reserve supply level of 58.5 million pounds.

Manufacturers and dealers reported stocks of Dark air-cured tobacco held on October 1, 1972, as 46.2 million pounds. The 1972 Dark air-cured crop is estimated to be 14.7 million pounds. Therefore, the total supply for the marketing year beginning October 1, 1972, is 60.9 million pounds. During the 1972–73 marketing year, it is estimated that disappearance will total about 19.5 million pounds. By deducting this disappearance from the total supply, a carryover of 41.4 million pounds for the 1973–74 marketing year, is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1973, results in a computed national marketing quota for the 1973–74 marketing year of 17.1 million pounds. Use of the authority of the Secretary in section 312(b) of the Act to increase the computed quota by 20 percent to 20.5 million pounds is deemed to be justified in order to avoid undue restrictions to marketings. This results in a national marketing quota of 20.5 million pounds.

In accordance with section 313(g) of the Act, the 1973 national marketing quota, divided by the 1968–72 5-year national average yield of 1,839 pounds per acre, results in a 1973 national acreage allotment of 11,147.36 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 111.47 acres, by the total of the 1973 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less reserve, to old farms.

VIRGINIA SUN-CURED TOBACCO

The yearly average quantity of Virginia sun-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1972–73 marketing year was about 1,395 thousand pounds, and the average annual quantity produced in the United States and exported during the same period was 291 thousand pounds (farm-sales weight basis). While there has been a downward trend in exports and domestic use during the base period, total disappearance has exceeded production during each of the past 7 years, and 9 years of the 10-year period. With this in mind, 1,390 thousand pounds have been used as a normal year's domestic use and 285 thousand pounds as a normal year's exports. Application of the formula prescribed by the Act results in a reserve supply level of 4,507 thousand pounds.

Manufacturers and dealers reported stocks of Virginia sun-cured tobacco held on October 1, 1972, as 2,999 thousand pounds. The 1972 Virginia sun-cured tobacco crop is estimated to 920 thousand pounds. Therefore, the total supply of Virginia sun-cured tobacco for the 1972–73 marketing year is 3,919 thousand pounds. During the 1972–73 marketing year, it is estimated that disappearance will total about 1,200 thousand pounds. By deducting this disappearance from the total supply, a carryover of 2,719 thousand pounds for the 1973–74 marketing year, is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1973, results in a computed national marketing quota for the 1973–74 marketing year of 1,788 thousand pounds. Use of the authority of the Secretary in section 312(b) of the Act to increase the computed quota by 20 percent to 2,146 thousand pounds is deemed to be justified in order to avoid undue restrictions of marketing. This results in a national marketing quota of 2,146 thousand pounds.

In accordance with section 313(g) of the Act, the 1973 national marketing quota, divided by the 1968–72 5-year national average yield of 1,154 pounds per acre, results in a 1973 national acreage allotment of 1,859.61 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national

acreage allotment, less a national reserve of 18.20 acres, by the total of the 1973 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less reserve, to old farms.

PROCLAMATION OF QUOTAS

§ 724.2 Fire-cured (type 21) tobacco—1973–74, 1974–75, and 1975–76 marketing years.

Since the 1972–73 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed will be in effect for fire-cured (type 21) tobacco, a national marketing quota for such kind of tobacco for each of the 3 marketing years beginning October 1, 1973, October 1, 1974, and October 1, 1975, is hereby proclaimed.

§ 724.3 Fire-cured (types 22–24) tobacco—1973–74, 1974–75, and 1975–76 marketing years.

Since the 1972–73 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed will be in effect for Fire-cured (types 22–24) tobacco, a national marketing quota for such kind of tobacco for each of the 3 marketing years beginning October 1, 1973, and October 1, 1974, and October 1, 1975, is hereby proclaimed.

§ 724.4 Dark air-cured tobacco—1973–74, 1974–75, and 1975–76 marketing years.

Since the 1972–73 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed will be in effect for Dark air-cured tobacco, a national marketing quota for such kind of tobacco for each of the 3 marketing years beginning October 1, 1973, October 1, 1974, and October 1, 1975, is hereby proclaimed.

DETERMINATIONS AND ANNOUNCEMENTS—1973–74 MARKETING YEAR

§ 724.12 Fire-cured (type 21) tobacco.[1]

(a) *Reserve supply level.*[1] The reserve supply level for Fire-cured (type 21) tobacco is 18.8 million pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 3.2 million pounds and a normal year's exports of 5.5 million pounds.

(b) *Total supply.*[1] The total supply of Fire-cured (type 21) tobacco for the marketing year beginning October 1, 1972, is 13.8 million pounds, calculated in accordance with the Act, from a carryover of 8.3 million pounds and estimated 1972 production of 5.5 million pounds.

(c) *Carryover.*[1] The estimated carryover of Fire-cured (type 21) tobacco for the marketing year beginning October 1, 1973, is 7.3 million pounds, calculated in accordance with the Act by subtracting the estimated disappearance for the marketing year beginning October 1, 1973, of 6.5 million pounds from the total supply of such tobacco.

(d) *National marketing quota.*[1] The amount of Fire-cured (type 21) tobacco which will make available during the marketing year beginning October 1, 1973, a supply equal to the reserve supply level of such tobacco is 11.5 million pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 11.5 million pounds would result in undue restriction of marketings during the 1973–74 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for Fire-cured (type 21) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1973, is 13.8 million pounds.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1973–74 marketing year by the 5-year 1968–72 national average yield of 1,221 pounds is 11,302.21 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments is 1.0. It was calculated in accordance with the Act by dividing the national acreage allotment, less the national reserve, by the total of the 1973 preliminary allotments for 1973 old farms.

(g) *National reserve.* The national acreage reserve is 87.97 acres, of which 10.00 acres are made available for 1973 new farms, and 77.97 acres are made available for making corrections and adjusting inequities in old farm allotments.

§ 724.13 Fire-cured (types 22–24) tobacco.

(a) *Reserve supply level.*[1] The reserve supply level for Fire-cured (types 22–24) tobacco is 101.1 million pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 18.8 million pounds and a normal year's exports of 27.0 million pounds.

(b) *Total supply.*[1] The total supply of Fire-cured (types 22–24) tobacco for the marketing year beginning October 1, 1972, is 95.3 million pounds, calculated in accordance with the Act, from a carryover of 56.2 million pounds and estimated 1972 production of 39.1 million pounds.

(c) *Carryover.*[1] The estimated carryover of Fire-cured tobacco (types 22–24) for the marketing year beginning October 1, 1973, is 55.3 million pounds, calculated in accordance with the Act by subtracting the estimated disappearance for the marketing year beginning October 1, 1972, of 40.0 million pounds from the total supply of such tobacco.

(d) *National marketing quota.*[1] The amount of Fire-cured (types 22–24) tobacco which will make available during the marketing year beginning October 1, 1973, a supply equal to the reserve supply level of such tobacco is 45.8 million pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 45.8 million pounds would result in undue restriction of marketings during the 1973–74 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for Fire-cured (types 22–24) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1973, is 55.0 million pounds.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1973–74 marketing year by the 5-year 1968–72 national average yield of 1,841 pounds is 29,875.06 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1973–74 marketing year is 1.0. It was calculated in accordance with the Act by dividing the national acreage allotment, less reserve, by the total of the 1973 preliminary allotments for 1973 old farms.

(g) *National reserve.* The national acreage reserve is 289.59 acres, of which 10.00 acres are made available for 1973 new farms, and 279.59 acres are made available for making corrections and adjusting inequities in old farm allotments.

§ 724.14 Dark air-cured tobacco.

(a) *Reserve supply level.*[1] The reserve supply level for Dark air-cured tobacco is 58.5 million pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 18.5 million pounds and a normal year's exports of 2.9 million pounds.

(b) *Total supply.*[1] The total supply of Dark air-cured tobacco for the marketing year beginning October 1, 1972, is 60.9 million pounds calculated in accordance with the Act, from a carryover of 46.2 million pounds and estimated 1972 production of 14.7 million pounds.

(c) *Carryover.*[1] The estimated carryover of Dark air-cured tobacco for the marketing year beginning October 1, 1973, is 41.4 million pounds, calculated in accordance with the Act by subtracting the estimated disappearance for the marketing year beginning October 1, 1972, of 19.5 million pounds from the total supply of such tobacco.

(d) *National marketing quota.*[1] The amount of Dark air-cured tobacco which will make available during the marketing year beginning October 1, 1973, a supply equal to the reserve supply level of such tobacco is 17.1 million pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 17.1 million pounds would result in undue restriction of marketings during the 1973–74 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for Dark air-cured tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1973, is 20.5 million pounds.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1973–74 marketing year by the 5-year, 1968–72, national average yield of 1,839 pounds, is 11,147.36 acres.

[1] Rounded to the nearest 10th of a million.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1973–74 marketing year is 1.0. It was calculated in accordance with the Act by dividing the national acreage allotment, less reserve, by the total of the 1973 preliminary allotments for 1973 old farms.

(g) *National reserve.* The national acreage reserve is 111.47 acres, of which 15.00 acres are made available for 1973 new farms, and 96.47 acres are made available for making corrections and adjusting inequities in old farm allotments.

§ 724.15 Virginia sun-cured tobacco.

(a) *Reserve supply level.*[2] The reserve supply level for Virginia sun-cured tobacco is 4,507 thousand pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 1,390 thousand pounds and a normal year's exports of 285 thousand pounds.

(b) *Total supply.*[2] The total supply of Virginia sun-cured tobacco for the marketing year beginning October 1, 1972, calculated in accordance with the Act, is 3,919 thousand pounds, consisting of carryover of 2,999 thousand pounds and estimated 1972 production of 920 thousand pounds.

(c) *Carryover.*[2] The estimated carryover of Virginia sun-cured tobacco for the marketing year beginning October 1, 1973, is 2,719 thousand pounds, calculated in accordance with the Act by subtracting the estimated disappearance for the marketing year beginning October 1, 1972, of 1,200 thousand pounds from the total supply of such tobacco.

(d) *National marketing quota.*[2] The amount of Virginia sun-cured tobacco which will make available during the marketing year beginning October 1, 1973, a supply equal to the reserve supply level of such tobacco is 1,788 thousand pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 1,788 thousand pounds would result in undue restriction of marketings during the 1973–74 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for Virgna sun-cured tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1973, is 2,146 thousand pounds.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1973–74 marketing year by the 5-year, 1968–72, national average yield of 1,154 pounds, is 1,859.61 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1973–74 marketing year is 1.0. It was calculated in accordance with the Act by dividing the national acreage allotment, less reserve, by the total of the 1973 preliminary allotments for 1973 old farms.

(g) *National Reserve.* The national acreage reserve is 18.20 acres, of which 5.00 acres are made available for 1973 new farms, and 13.20 acres are made available for making corrections and adjusting inequities in old farm allotments.

Effective date: February 1, 1973.

Signed at Washington, D.C., on January 30, 1973.

GLENN A. WEIR,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.73-2088 Filed 2-1-73;8:45 am]

PART 724—FIRE-CURED, DARK AIR-CURED, VIRGINIA SUN-CURED, CIGAR-BINDER (TYPES 51 AND 52), AND CIGAR-FILLER AND BINDER (TYPES 42, 43, 44, 53, 54, AND 55) TOBACCO

Subpart—Proclamations, Determinations and Announcements of National Marketing Quotas and Referendum Results

Basis and purpose. Sections 724.16 and 724.17 are issued pursuant to, and in accordance with, the Agricultural Adjustment Act of 1938, as amended, hereinafter referred to as the "Act," to (1) determine the reserve supply levels for Cigar-binder (types 51 and 52) tobacco, hereinafter referred to as "Cigar-binder," and Cigar filler and Binder (types 42, 43, 44, 53, 54, and 55) tobacco, hereinafter referred to "Cigar filler and Binder" tobacco, (2) determine the total supply of each of these two kinds of tobacco for the marketing year beginning October 1, 1972, and (3) announce for the 1973–74 marketing year the amounts of the national marketing quotas, national acreage allotments, national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (a) new farms and (b) making corrections and adjusting inequities in old farm allotments for each of these two kinds of tobacco.

The material previously appearing in these sections under centerhead Determinations and Announcements—1972–73 Marketing Year remain in full force and effect as to the crops to which it was applicable.

The determinations contained in §§ 724.16 and 724.17 have been made on the basis of the latest available statistics of the Federal Government. Due consideration has been given to data, views, and recommendations received from Cigar-binder and Cigar-filler and binder tobacco producers and others as provided in a notice (37 FR 23843) given in accordance with the provisions of 5 U.S.C. 553.

It is determined that acreage-poundage quotas will not be announced for Cigar-binder or Cigar-filler and binder tobacco for the 1973–74 marketing year.

Since tobacco farmers are now making their plans for producing tobacco in 1973 and need to know, at the earliest possible date, the applicable 1973 tobacco allotments for their farms, it is hereby found that compliance with the 30-day effective date provision of 5 U.S.C. 553 is impracticable and contrary to the public interest. Therefore, the determinations and announcements shall become effective upon the date of filing with the Director, Office of the Federal Register.

Section 312(b) of the Act provides, in part, that the amount of the national marketing quota is the total quantity of a kind of tobacco which may be marketed which will make available during the marketing year a supply of such tobacco equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The reserve supply level is defined in the Act as 105 percent of the normal supply. The normal supply is defined in the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports. A normal year's domestic consumption is defined in the Act as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A normal year's exports is defined in the Act as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

CIGAR-BINDER TOBACCO

The yearly average quantity of Cigar-binder tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1972–73 marketing year was about 5.0 million pounds. The average annual quantity of Cigar-binder tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1972–73 marketing year was 1.2 million pounds (farm sales weight basis). (In view of downward trends, 4.8 million pounds have been used as a normal year's domestic consumption and 1.0 million pounds as a normal year's exports. Application of the formula prescribed by the Act, results in a reserve supply level of 15.5 million pounds.)

Manufacturers and dealers reported stocks of Cigar-binder tobacco held on October 1, 1972, as 7.4 million pounds. The 1972 Cigar-binder crop is estimated to be 2.5 million pounds. Therefore, the total supply of Cigar-binder tobacco for the 1972–73 marketing year is 9.9 million pounds. During the 1972–73 marketing year, it is estimated that disappearance will total about 2.6 million pounds. By deducting the estimated disappear-

[2] Rounded to the nearest thousand pounds.

ance during the 1972–73 marketing year from the total supply, a carryover of 7.3 million pounds at the beginning of the 1973–74 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1973, results in a computed national marketing quota for the 1973–74 marketing year of 8.2 million pounds. Use of the authority of the Secretary in section 312(b) of the Act to increase the computed quota by 20 percent to 9.8 million pounds is deemed to be justified in order to avoid undue restrictions of marketings. This results in a national marketing quota of 9.8 million pounds.

In accordance with section 313(g) of the Act, the 1973 national marketing quota of 9.8 million pounds, divided by the 1968–72 5-year national average yield of 1,675 pounds per acre, results in a 1973 national acreage allotment of 5,850.74 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 50.72 acres, by the total of the 1973 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national allotment, less reserve, to old farms.

CIGAR-FILLER AND BINDER TOBACCO

The yearly average quantity of Cigar-filler and Binder tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1972–73 marketing year was about 24.8 million pounds. The average annual quantity of Cigar-filler and Binder tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1972–73 marketing year was 0.3 million pounds (farm sales weight basis). The principal domestic use of this tobacco is in the manufacture of loose leaf chewing tobacco. Production of loose leaf chewing tobacco during January-September 1972 was 6 percent above the corresponding months a year earlier, and the highest of record. Further, we expect continued increases. In view of wide fluctuations, and increased potential for use, 26.4 million pounds have been used as a normal year's domestic consumption and 0.3 million pounds have been used as a normal year's exports. Application of the formula prescribed by the Act, results in a reserve supply level of 76.8 million pounds.

Manufacturers and dealers reported stocks of Cigar-filler and Binder tobacco held on October 1, 1972, as 46.2 million pounds. The 1972 Cigar-filler and Binder crop is estimated to be 27.3 million pounds. Therefore, the total supply of Cigar-filler and Binder tobacco for the 1972–73 marketing year is 73.5 million pounds. During the 1972–73 marketing year, it is estimated that disappearance will total about 25.8 million pounds. By deducting this disappearance from the total supply, a carryover of 47.7 million pounds at the beginning of the 1973–74 marketing year, is obtained.

The differences between the reserve supply level and the estimated carryover on October 1, 1973, results in a computed national marketing quota for the 1973–74 marketing year of 29.1 million pounds. Use of the authority of the Secretary in section 312(b) of the Act to increase the computed quota by 20 percent to 34.9 million pounds is deemed to be justified in order to avoid undue restrictions on marketings. This results in a national marketing quota of 34.9 million pounds.

In accordance with section 313(g) of the Act, the 1973 national marketing quota of 34.9 million pounds, divided by the 1968–72 5-year national average yield of 1,933 pounds per acre, results in a 1973 national acreage allotment of 18,054.83 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 138.94 acres, by the total of the 1973 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less reserve, to old farms.

DETERMINATIONS AND ANNOUNCEMENTS—1973–74 MARKETING YEAR

§ 724.16 Cigar-binder (types 51 and 52) tobacco.

(a) *Reserve supply level.*[1] The reserve supply level for cigar-binder (types 51 and 52) tobacco is 15.5 million pounds calculated, as provided in the Act, from a normal year's domestic consumption of 4.8 million pounds and a normal year's exports of 1.0 million pounds.

(b) *Total supply.*[1] The total supply of cigar-binder (types 51 and 52) tobacco for the marketing year beginning October 1, 1972, is 9.9 million pounds, calculated in accordance with the Act from a carryover of 7.4 million pounds and estimated 1972 production of 2.5 million pounds.

(c) *Carryover.*[1] The estimated carryover of cigar-binder (types 51 and 52) tobacco for the marketing year beginning October 1, 1973, is 7.3 million pounds, calculated in accordance with the Act, by subtracting the estimated disappearance for the marketing year beginning October 1, 1972, of 2.6 million pounds from the total supply of such tobacco.

(d) *National marketing quota.*[1] The amount of cigar-binder (types 51 and 52) tobacco which will make available during the marketing year beginning October 1, 1973, a supply equal to the reserve supply level of such tobacco is 8.2 million pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 8.2 million pounds would result in undue restrictions of marketings during the 1973–74 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for cigar-binder (types 51 and 52) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1973, is 9.8 million pounds.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1973–74 marketing year by the 5-year, 1968–72 national average yield of 1,675 pounds is 5,850.74 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1973–74 marketing year is 1.0. It was calculated in accordance with the Act by dividing the national acreage allotment, less reserve, by the total of the 1973 preliminary allotments for 1973 old farms.

(g) *National reserve.* The national acreage reserve is 50.72 acres, of which 40.00 acres are made available for 1973 new farms, and 10.72 acres are made available for making corrections and adjusting inequities in old farm allotments.

§ 724.17 Cigar-filler and Binder (types 42–44, 53–55) tobacco.

(a) *Reserve supply level.*[1] The reserve supply level for Cigar-filler and Binder (types 42–44, 53–55) tobacco is 76.8 million pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 26.4 million pounds and a normal year's exports of 0.3 million pounds.

(b) *Total supply.*[1] The total supply of Cigar-filler and Binder (types 42–44, 53–55) tobacco for the marketing year beginning October 1, 1972, 73.5 million pounds calculated in accordance with the Act, from a carryover of 46.2 million pounds and estimated 1972 production of 27.3 million pounds .

(c) *Carryover.*[1] The estimated carryover of Cigar-filler and Binder (types 42–44, 53–55) tobacco for the marketing year beginning October 1, 1973, is 47.7 million pounds, calculated in accordance with the Act, by subtracting the estimated disappearance for the marketing year beginning October 1, 1972, of 25.8 million pounds from the total supply of such tobacco.

(d) *National marketing quota.*[1] The amount of Cigar-filler and Binder (types 42–44, 53–55) tobacco which will make available during the marketing year beginning October 1, 1973, a supply equal to the reserve supply level of such tobacco is 29.1 million pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 29.1 million pounds would result in undue restriction of marketings during the 1973–74 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for Cigar-filler and Binder (types 42–44, 53–55) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1973, is 34.9 million pounds.

[1] Rounded to the nearest one-tenth of a million.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1973–74 marketing year by the 5-year, 1968–72 national average yield of 1,933 pounds, is 18,054.83 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1973–74 marketing year is 1.0. It was calculated in accordance with the Act by dividing the national acreage allotment, less reserve, by the total of the 1973 preliminary allotments for 1973 old farms.

(g) *National acreage reserve.* The national acreage reserve is 138.94 acres, of which 110.00 acres are made available for 1973 new farms, and 28.84 acres are made available for making corrections and adjusting inequities in old farm allotments.

(Secs. 301, 312, 313, 375, 52 Stat. 38, as amended, 46, as amended, 47, as amended, 66, as amended; 7 U.S.C. 1301, 1312, 1313, 1375)

Effective date: February 1, 1973.

GLENN A. WEIR,
Acting Administrator, Agricultural Stabilization and Conservation Service.

JANUARY 30, 1973.

[FR Doc.73-2090 Filed 2-1-73;8:45 am]

PART 726—BURLEY TOBACCO

Subpart—Proclamations, Determinations and Announcements of National Marketing Quotas and Referendum Results

Basis and purpose. Section 726.11 is issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, hereinafter referred to as the "Act", to determine and announce for burley tobacco the amounts of the national marketing quota and the nation reserve, and the national factor for the 1973–74 marketing year.

Section 319(c) of the Act provides that the national marketing quota determined under such section for burley tobacco for any marketing year shall be the amount produced in the United States which the Secretary estimates will be utilized in the United States and will be exported during such marketing year, adjusted upward or downward in such amount as the Secretary, in his discretion, determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. Any such downward adjustment shall not exceed 5 percent of such estimated utilization and exports. For each marketing year for which marketing quotas are in effect under this section, the Secretary in his discretion may establish a reserve (hereinafter referred to as the "national reserve") from the national marketing quota in an amount not in excess of 1 percent of the national marketing quota to be available for making corrections and adjusting inequities in farm marketing quotas, and for establishing marketing quotas for new farms.

Section 319(e) provides, in part, that the 1973 farm marketing quota shall be determined by multiplying the previous year's farm marketing quota by a national factor obtained by dividing the national marketing quota (less the national reserve) by the sum of the farm marketing quotas for the immediately preceding year for all farms for which burely tobacco marketing quotas will be determined for 1973: *Provided*, That such national factor shall not be less than 95 percent: *Provided further*, That for 1973 the farm marketing quota for any farm shall not be less than the smaller of (1) one-half acre times the farm yield times one-half the sum of the figure 1.00 and the national factor for 1973 or (2) the farm marketing quota for the immediately preceding marketing year times one-half the sum of the figure 1.00 and the national factor for the current year.

The reserve supply level is defined in the Act as 105 percent of the normal supply. The normal supply is defined in the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports. A normal year's domestic consumption is defined in the Act as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A normal year's exports is defined in the Act as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The reserve supply level is 1,612 million pounds, based upon a normal year's domestic consumption of 525 million pounds and a normal years exports of 55 million pounds. The average domestic usage for the past 10 marketing years amounts to 529 million pounds. Domestic use has averaged 518 million pounds during the past 5 marketing years and is expected to be about 528 million pounds for the 1972–73 marketing year. The 10-year average exports amounted to 55 million pounds. Exports have averaged 56 million pounds during the past 3 marketing years and are expected to be about 52 million pounds during the 1972–73 marketing year. In view of these data and estimates, a reserve supply level of 1,612 million pounds appears reasonable.

The total supply of 1,836 million pounds for the 1972–73 marketing year exceeds the reserve supply level by 224 million pounds. The estimated total disappearance of 590 million pounds during the 1973–74 marketing year with the maximum downward adjustment permitted by § 319(c) of the Act, 29.5 million pounds, results in a quota of 560.5 million pounds for the 1973–74 marketing year. The sum of the preliminary farm marketing quotas for the 1973–74 marketing year is 531,508,974 pounds. The quota of 560.5 million pounds, less a national reserve of 1,352,559 pounds results in a national factor of 1.052.

Public notice was given (37 FR 26617) that the Secretary was preparing to determine a national marketing quota for burley tobacco for the marketing year beginning October 1, 1973. Due consideration has been given to views and recommendations received pursuant to the notice.

In view of the fact that farmers are preparing for the production of the 1973 burley crop and need to know as soon as possible the 1973 farm marketing quotas for their farms, it is hereby determined that compliance with the 30 day effective date provision of 5 U.S.C. 553 is impracticable and contrary to the public interest. Therefore, this document shall be effective upon filing with the Director, Office of the Federal Register.

DETERMINATIONS AND ANNOUNCEMENTS—1973–74 MARKETING YEAR

§ 726.11 Burley tobacco.

(a) *National marketing quota.* A national marketing quota for burley tobacco on a poundage basis for the marketing year beginning October 1, 1973, is hereby determined and announced in the amount of 560.5 million pounds, calculated, as provided in the Act, by adjusting the estimated disappearance of 590 million pounds downward by 29.5 million pounds.

(b) *National factor.* The national factor determined to be necessary to apportion the 1973 national quota to farms as provided in § 319(e) of the Act, is 1.052.

(c) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm quotas and for establishing quotas for new farms is 1,352,559 pounds.

(Secs. 301, 319, 375, 52 Stat. 38, as amended, 85 Stat. 23, 52 Stat. 66, as amended; 7 U.S.C. 1301, 1314e, 1375)

Effective date: February 1, 1973.

Signed at Washington, D.C., on January 30, 1973.

GLENN A. WEIR,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.73-2089 Filed 2-1-73;8:45 am]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Lemon Reg. 569]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

Correction

In FR Doc. 73-1428, appearing on page 2169 in the issue of Monday, January 22, 1973, in the fifth line of § 910.869(b)(1), the figure "175,000" should read "225,000".

CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MILK), DEPARTMENT OF AGRICULTURE

[Docket No. AO 319-A20; Milk Order No. 49]

PART 1049—MILK IN THE INDIANA MARKETING AREA

Order Amending Order

FINDINGS AND DETERMINATIONS

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

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

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

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

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

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

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

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

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

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

ORDER RELATIVE TO HANDLING

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

Subpart—Order Regulating Handling

GENERAL PROVISIONS

DEFINITIONS

HANDLER REPORTS

CLASSIFICATION OF MILK

CLASS PRICES

UNIFORM PRICE

PAYMENTS FOR MILK

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

ADVERTISING AND PROMOTION PROGRAM

AUTHORITY: The provisions of this Part 1049 issued under secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

GENERAL PROVISIONS

§ 1049.1 General provisions.

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

DEFINITIONS

§ 1049.2 Indiana marketing area.

"Indiana marketing area" (hereinafter referred to as the "marketing area") means all the territory within the boundaries of each of the Indiana counties listed below, including territory wholly or partly within such boundaries occupied by Government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments:

Adams.
Allen.
Bartholomew.
Blackford.
Boone.
Brown.
Cass.
Clay.
Clinton.
Decatur.
De Kalb.
Delaware.
Elkhart.
Fayette.
Fountain.
Franklin.
Fulton.
Grant.
Hamilton.
Hancock.
Hendricks.
Henry.
Howard.
Huntington.
Jackson.
Jay.
Johnson.
Kosciusko.
Lagrange.
Lake.
La Porte.
Lawrence.
Madison.
Marion.
Marshall.
Miami.
Monroe.
Montgomery.
Morgan.
Noble.
Owen.
Parke.

Porter.	Tipton.
Putnam.	Union.
Randolph.	Vermillion.
Rush.	Vigo.
Shelby.	Wabash.
Steuben.	Warren.
St. Joseph.	Wayne.
Starke.	Wells.
Tippecanoe.	Whitley.

§ 1049.3 Route disposition.

"Route disposition" means a delivery (including that custom-packaged for another person, disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk other than a delivery in bulk form to any milk processing plant.

§ 1049.4 [Reserved]

§ 1049.5 Distributing plant.

"Distributing plant" means a plant approved by any duly constituted health authority for the processing or packaging of milk for fluid consumption in the marketing area and from which there is route disposition during the month in the marketing area.

§ 1049.6 Supply plant.

"Supply plant" means a plant in which some milk approved by any duly constituted health authority for fluid consumption in the marketing area is assembled and shipped in bulk as milk, cream, or skim milk to a distributing plant during the month.

§ 1049.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means a plant specified in paragraph (a) or (b) of this section.

(a) A distributing plant with:

(1) Total route disposition exclusive of packaged fluid milk products received from other plants and filled milk, in an amount not less than 50 percent of Grade A milk received at such plant during the month from dairy farmers (excluding receipts of producer milk by diversion pursuant to § 1049.13) and supply plants, except that a plant meeting such percentage requirement for the preceding month may remain qualified under this subparagraph in the current month; and

(2) Route disposition within the marketing area during the month of at least 10 percent of such receipts, such route disposition to be exclusive of packaged fluid milk products received from other plants and filled milk: *Provided*, That any plant meeting the requirements of this paragraph in each of the months of September through May, inclusive, shall continue to have pool plant status in the months of June, July, and August, immediately following if there is route disposition, except filled milk, from the plant in the marketing area during such month.

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped to plants qualifying for the month pursuant to paragraph (a) of this section. A plant qualified pursuant to this paragraph in each of the immediately preceding months of September through February shall remain so qualified for the months of April through August unless written application is filed with the market administrator on or before the first day of any such month to designate such plant as a nonpool plant for such month and for each subsequent month through August during which it would otherwise not qualify under this paragraph.

(c) The term "pool plant" shall not apply to:

(1) A producer-handler plant;

(2) A distributing plant which the Secretary determines has a greater proportion of route disposition (except filled milk) in another marketing area regulated by another order issued pursuant to the Act and such plant is fully subject to regulation of such other order: *Provided*, That a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition (except filled milk) is made in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated by such other order;

(3) A distributing plant which meets the requirements set forth in paragraph (a) of this section which also meets the requirements of another order on the basis of its distribution in such other marketing area and which the Secretary determines has a greater quantity of route disposition (except filled milk) during the month in this marketing area than in such other marketing area but which plant is nevertheless fully regulated under such other order;

(4) A supply plant which during the month is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraph (b) of this section and a greater volume of fluid milk products (except filled milk) is moved to pool distributing plants qualified on the basis of route sales in this marketing area; and

(5) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

§ 1049.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

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

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

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool supply plant that is not an other order plant or a producer-handler plant, from which fluid milk products are shipped during the month to a pool plant.

§ 1049.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to producer milk diverted for the account of such association pursuant to § 1049.13;

(c) [Reserved]

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person who operates an other order plant described in § 1049.7(c).

§ 1049.10 Producer-handler.

"Producer-handler" means a person who operates a dairy farm and a distributing plant and who receives no fluid milk products from other dairy farmers or from sources other than pool plants, and no milk products other than fluid milk products for reconstitution into fluid milk products: *Provided*, That such person provides proof satisfactory to the market administrator that the care and management of all dairy animals and other resources used in his own farm production and the operation of the processing and distributing business are at the personal enterprise and risk of such person.

§ 1049.11 [Reserved]

§ 1049.12 Producer.

"Producer" means any person, other than a producer-handler as defined in any order (including this part) issued pursuant to the Act, who in compliance with Grade A inspection requirements of a duly constituted health authority, produces milk for distribution as fluid milk products within the marketing area or produces milk acceptable for fluid consumption at Federal, State, or municipal institutions, which milk is received at a pool plant or is diverted pursuant to § 1049.13. "Producer" shall not include any person with respect to milk which is fully subject to the class pricing and producer payment provisions of another order issued pursuant to the Act.

§ 1049.13 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk of any

producer, other than milk received at a pool plant by diversion from a plant at which such milk would be fully subject to pricing and pooling under the terms and provisions of another order issued pursuant to the Act, which is:

(a) Received at one or more pool plants during the month (milk may be diverted during the month by a handler from a pool distributing plant to another pool plant(s) for not more days of production of producer milk than is physically received at the diverting pool plant).

(b) Received at a pool plant at least one day during the month and then diverted by the operator of a pool plant or by a cooperative association to a nonpool plant during the month under any of the following conditions:

(1) During April through August the operator of a pool plant or a cooperative association may divert the milk production of a producer from a pool plant to a nonpool plant (other than that of a producer-handler) on any number of days during the month.

(2) During September through March the milk of a producer diverted by the operator of a pool plant or a cooperative association to a nonpool plant (other than that of a producer-handler) shall be limited to the amounts specified in subdivisions (i) and (ii) of this subparagraph:

(i) The operator of a pool plant may divert the milk of producers (except producer members of a cooperative association which is diverting milk under the percentage limit of subdivision (ii) of this subparagraph) for not more days of production of producer milk than is physically received at the diverting pool plant or he may divert an aggregate quantity not exceeding 40 percent of the milk of all such producers.

(ii) A cooperative association may divert the milk of its individual member producers for not more days of production of producer milk than is physically received at a pool plant or it may divert an aggregate quantity of the milk of member producers not exceeding 40 percent of all such milk either caused to be delivered to pool plants or diverted to nonpool plants by the cooperative association.

(3) When milk is diverted in excess of the limit by a handler who elects to divert on the basis of days-of-production, only that milk of the individual producer which was received at a pool plant or which was diverted to a nonpool plant for not more days of production than is physically received at a pool plant shall be considered producer milk.

(4) When milk is diverted to a nonpool plant in excess of the percentage limit by a handler who elects to divert on a percentage basis, eligibility as producer milk shall be forfeited on a quantity of milk equal to such excess. In such instances the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk. If the handler fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler.

(5) If, notwithstanding the provisions of this paragraph, diverted milk is fully subject to the pricing and pooling provisions of another Federal order, it shall not be producer milk under this order.

(c) Diverted milk shall be deemed to be received by the handler at the pool plant or nonpool plant to which the milk is diverted, unless diverted to a plant located in any part of the marketing area or to a plant at which no location adjustment would apply pursuant to § 1049.52, in which case such diverted milk shall be deemed to be received at the pool plant from which diverted.

§ 1049.14 Other source milk.

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

(a) Receipts during the month of fluid milk products, except: (1) Fluid milk products received from pool plants either by transfer or diversion, (2) producer milk (including own farm production), or (3) inventory of fluid milk products on hand at the beginning of the month;

(b) Products, other than fluid milk products, from any source (including those produced at the plant) which are reprocessed or converted into or combined with another product in the plant during the month; and

(c) Any disappearance of nonfluid milk products not otherwise accounted for.

§ 1049.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, filled milk, buttermilk, milk drinks (plain or flavored), "fortified" products, "dietary" milk products, concentrated milk or skim milk, reconstituted milk, skim milk, or milk drinks (plain or flavored), and cream or any mixture in fluid form of cream, milk or skim milk (except eggnog, yogurt, milk shake mix, frozen dessert mix, sour cream, aerated cream products, evaporated and plain or sweetened condensed milk or skim milk, and sterilized products packaged in hermetically sealed metal or glass containers). This definition shall not include a product which contains 6 percent or more nonmilk fat (or oil).

§ 1049.16 [Reserved]

§ 1049.17 Filled milk.

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

§ 1049.18 Cooperative association.

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

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

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

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

HANDLER REPORTS

§ 1049.30 Reports of receipts and utilization.

On or before the eighth day after the end of each month, each handler for each of his pool plants and a cooperative association with respect to milk for which it is the handler shall report to the market administrator for such month, in the detail and on forms prescribed by the market administrator as follows:

(a) The quantities of skim milk and butterfat contained in:

(1) Receipts of producer milk (including own farm production);

(2) Fluid milk products received by transfer or diversion from pool plants;

(3) Other source milk;

(4) A separate report of producer milk diverted pursuant to § 1049.13: *Provided*, That on or before the day prior to diverting producer milk pursuant to § 1049.13 each handler shall notify the market administrator of his intention to divert such milk, the date or dates of such diversion, and the plant to which such milk is to be diverted; and

(5) Inventories of fluid milk products on hand at the beginning and end of the month;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including separate statements of route disposition, except filled milk, and filled milk inside the marketing area; and

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

§ 1049.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler, except a producer-handler and a handler in his capacity as the operator of a plant specified in § 1049.7(c) (2), (3), or (4), shall report to the market administrator in the detail and on forms prescribed by the market administrator, his producer payroll for that month which shall show for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer and the number of days, if less than the entire month, on

which milk was received from such producer;

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

(4) The net amount of such handlers payment, together with the price paid and the amount and nature of any deductions;

(b) Each handler, except one who elects to make payments pursuant to § 1049.76(a), operating a partially regulated distributing plant shall report to the market administrator on or before the 20th day after the end of the month for each dairy farmer from whom milk was received the same information as required from handlers operating pool plants pursuant to paragraph (a) of this section.

§ 1049.32 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator shall request.

(b) Each handler specified in § 1049.9 (d) who operates a partially regulated distributing plant shall report as required of handlers operating pool plants pursuant to § 1049.30, except that receipts in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include a separate statement showing the quantity of route disposition of reconstituted skim milk in fluid milk products in the marketing area.

(c) Each handler operating a plant described in § 1049.7(c) (2), (3), or (4) shall, with respect to total receipts and utilization or disposition of skim milk and butterfat at such plant, report to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

Classification of Milk

§ 1049.40 Classes of utilization.

Subject to the conditions set forth in §§ 1049.41 through 1049.44, the skim milk and butterfat required to be reported pursuant to § 1049.30 shall be classified as follows:

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

(1) Disposed of from the plant in the form of fluid milk products, other than those classified pursuant to paragraph (b) (2), (3), (4), and (5), of this section, except that fluid milk products which have been fortified by the addition of milk solids shall be Class I only up to the weight of an equal volume of an unmodified fluid milk product of the same nature and butterfat content; and

(2) Not specifically accounted for as Class II milk;

(b) *Class II milk.* Class II milk shall be:

(1) Skim milk and butterfat used to produce any product other than a fluid milk product;

(2) Skim milk and butterfat contained in fluid milk products disposed of for livestock feed or in products which are dumped, if the market administrator has been notified in advance and afforded the opportunity to verify such dumping;

(3) Skim milk and butterfat in fluid milk products delivered in bulk to and used at commercial food establishments devoted exclusively to the manufacture of bakery products, candy, or processed foods packaged in hermetically sealed glass or metal containers;

(4) Skim milk contained in that portion of fortified fluid milk products not classified as Class I milk pursuant to paragraph (a) (1) of this section;

(5) Skim milk and butterfat contained in inventory of fluid milk products on hand at the end of the month; and

(6) Contained in shrinkage of skim milk and butterfat, respectively, prorated pursuant to § 1049.41(b) (2) and (3) for each pool plant, not to exceed the quantities calculated pursuant to subdivisions (i) through (vi) of this subparagraph:

(i) Two percent of receipts of skim milk and butterfat physically received direct from producers and milk received in bulk by diversion from another pool plant pursuant to § 1049.13;

(ii) Plus 1.5 percent of milk or skim milk received by transfer from other pool plants in bulk;

(iii) Plus 1.5 percent of receipts of milk or skim milk in bulk from an other order plant, exclusive of the quantity for which Class II utilization was requested by the operator of such plant and the handler;

(iv) Plus 1.5 percent of receipts of milk or skim milk in bulk from unregulated supply plant, exclusive of the quantity for which Class II utilization was requested by the handler;

(v) Less 1.5 percent of bulk transfers of milk or skim milk to a pool plant of another handler; and

(vi) Less 1.5 percent of bulk transfers of milk or skim milk to nonpool plants.

(7) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1049.41(b) (1).

§ 1049.41 Shrinkage.

The market administrator shall assign shrinkage to each handler's receipts at each pool plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat; and

(b) Prorate the resulting amounts among (1) skim milk and butterfat in other source milk received in bulk fluid form, exclusive of that specified in § 1049.40(b) (6) (ii), (iii), and (iv); (2) skim milk and butterfat in producer milk (excluding milk diverted to other plants pursuant to § 1049.13); and (3) skim milk and butterfat in bulk receipts of milk and skim milk including diversions or transfers from other pool plants, from other order plants and unregulated supply plants, exclusive of the quantities received from other order plants and unregulated supply plants for which Class II utilization was requested by the handlers, in excess of transfers of bulk milk or skim milk to other plants.

§ 1049.42 Classification of transfers and diversions.

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

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

(1) The skim milk or butterfat so assigned to either class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1049.44(a) (8) and the corresponding step of § 1049.44(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1049.44(a) (3), the skim milk and butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1049.44(a) (7) or (8) and the corresponding steps of § 1049.44(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant.

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

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

(1) The transferring or diverting handler claims classification pursuant to the assignment set forth in subparagraph (3) of this paragraph in his report submitted to the market administrator pursuant to § 1049.30 for the month within which such transaction occurred;

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

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

(i) Any route disposition in the marketing area shall be first assigned to the

skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of Grade A milk for such nonpool plant;

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

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred shall be classified as Class II milk.

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

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

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

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

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

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

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1049.40.

§ 1049.43 General classification rules.

In determining the classification of producer milk pursuant to § 1049.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors, the reports submitted by each handler pursuant to this part and compute the total pounds of skim milk and butterfat, respectively, in each class at each of the plants of such handler.

(b) If any of the water contained in the milk from which a product is made, is removed before the product is utilized or disposed of by the handler, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all the water originally associated with the milk solids.

§ 1049.44 Classification of producer milk.

After making the computations pursuant to § 1049.43, the market administrator shall determine the classification of producer milk received at each pool plant each month as follows:

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

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1049.40(b)(6);

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

(i) From Class II milk, the lesser of the pounds remaining or 2 percent of such receipts; and

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

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

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established, and receipts of fluid milk products from unidentified sources;

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

(iv) Receipts of reconstituted skim milk in filled milk from unregulated supply plants; and

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

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to subparagraph (3)(iv) of this paragraph, which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph; and

(c) (1) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, that were not subtracted pursuant to subparagraph (3)(v) of this paragraph, in excess of similar transfer to such plant, but not in excess of the pounds of skim milk remaining in Class II milk if Class II utilization was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

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

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk, in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraphs (3)(iv) and (4) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from another order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraphs, (3)(v) and (4)(iii) of this paragraph pursuant to the following procedure:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk:

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1049.45(a); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from pool plants of other handlers according to the classification assigned pursuant to § 1049.42(a); and

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

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

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

§ 1049.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for purpose of allocating receipts from other order plants pursuant to § 1049.44(a)(8) and the corresponding step of § 1049.44(b) the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(b) Report to the market administrator of the other order as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1049.44 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report;

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

(d) On or before the 14th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association or its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

Class Prices

§ 1049.50 Class prices.

Subject to the provisions of §§ 1049.52 and 1049.55, the class prices for the month per hundredweight of milk containing 3.5-percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.47.

(b) *Class II price.* The Class II price shall be the basic formula price computed pursuant to § 1049.51, but not to exceed an amount computed as follows:

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

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

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

§ 1049.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differenial (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1049.52 Plant location adjustments for handlers.

(a) For producer milk which is received at a pool plant located outside the area for which zero location adjustment is specified in subparagraph (1)(i) of this paragraph, which milk is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, and for other source milk for which a location adjustment is applicable, the price computed pursuant to § 1049.50(a) shall be reduced on the basis of the applicable amount or rate

for the location of such plant pursuant to subparagraph (1) or (2) of this paragraph, respectively. For the purpose of this section and § 1049.75, the distances to be computed shall be on the basis of the shortest hard-surfaced highway distances as determined by the market administrator:

(1) At any plant located within:

		Rate of adjustment per hundredweight (cents)
(i)	The State of Ohio or any Indiana county not specifically named in subdivision (ii) through (iv) of this subparagraph	0
(ii)	Any of the Indiana counties of: Adams, Allen, Blackford, Cass, Carroll, De Kalb, Huntington, Jay, La Grange, Miami, Noble, Steuben, Wabash, Wells, White, Whitley	4
(iii)	Any of the Indiana counties of: Benton, Elkhart, Fulton, Jasper, Kosciusko, Marshall, Newton, Pulaski, St. Joseph, and Berrien and Cass Counties, Mich	8
(iv)	Any of the Indiana counties of: Lake, La Porte, Porter, Starke	12

(2) For any plant at a location outside the territory specified in the preceding subparagraph (1) of this paragraph, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest of the Monument Circle, Indianapolis, Ind., or the main post offices of Fort Wayne, South Bend, or Valparaiso, Ind., and shall be 1.5 cents for each 10 miles or fraction thereof from such point plus the amount of the location adjustment pursuant to subparagraph (1) of this paragraph applicable at the respective point.

(b) For the purpose of calculating adjustments pursuant to this section, transfers between pool plants shall be assigned Class I disposition at the transferee plant, in excess of the receipts at such plant from producers and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor plants at which no location adjustment is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

§ 1049.53 Equivalent price.

If for any reason a price quotation or factor required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price or factor determined by the Secretary to be equivalent to the price or factor which is required.

§ 1049.54 Handler butterfat differentials.

For milk containing more or less than 3.5 percent butterfat, class prices for the month pursuant to § 1049.50 shall be increased or decreased, respectively, for each one-tenth percent butterfat variation at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the Chicago butter price described in § 1049.51 for the preceding month by 0.120.

(b) *Class II price.* Multiply the Chicago butter price described in § 1049.51 for the month by 0.113.

§ 1049.55 Announcement of class prices and handler butterfat differentials.

On or before the fifth day of each month, the market administrator shall announce publicly:

(a) The Class I price for the following month;

(b) The Class I butterfat differential for the current month; and

(c) The Class II price and Class II butterfat differential, both for the preceding month.

UNIFORM PRICE

§ 1049.60 Handler's value of milk for computing uniform price.

The net pool obligation of each pool handler during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1049.44(c), by the applicable class prices (adjusted pursuant to §§ 1049.52 and 1049.55);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1049.44(a)(10) and the corresponding step of § 1049.44(b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(5) and the corresponding step of § 1049.44(b);

(d) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class II price with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1049.44(a)(3) and the corresponding step of § 1049.44(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1049.44 (a)(3)(iv) and (v) and the corresponding step of § 1049.44(b) the Class I price shall be adjusted to the location of the transferor plant; and

(e) Add an amount equal to the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(7) and the corresponding step of § 1049.44(b).

§ 1049.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute a "uniform price" as follows:

(a) Combine into one total the values computed pursuant to § 1049.60 for all handlers who filed the reports prescribed by § 1049.30 for the month and who made the payments pursuant to § 1049.71 (a) for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1049.75;

(c) Subtract, if the average butterfat content of the milk specified in paragraph (f) of this section is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 1049.74 and multiplying the result by the total hundredweight of such milk;

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

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

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1049.60(e);

(g) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price" per hundredweight of milk. For the months of January, February, March, and August, such result also shall be the uniform price per hundredweight of milk of 3.5 percent butterfat content that is received from producers;

(h) For the months of April through July and September through December, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (e) of this section the amount obtained from multiplying the hundredweight of milk specified in paragraph (f)(2) of this section by the weighted average price;

(i) For the months of April through July, subtract the amount obtained from multiplying the hundredweight of producer milk specified in paragraph (f)(1) of this section by 20 cents. The amount so subtracted, and interest subsequently earned thereon (less any money not available for crediting under this paragraph because of insufficient payment by a handler to the producer-settlement fund) shall be credited to the producer-settlement fund and remain as an obligated amount until disbursed pursuant to paragraph (j) of this section;

(j) For the month of September add one-fourth of the total money that has been credited to the producer-settlement fund pursuant to paragraph (i) of this section as of the eighth day of the following month. Similarly, for the months of October and November, add one-third

and one-half, respectively, of the remainder that has been so credited. For the month of December, add the remainder of the money credited to the producer-settlement fund pursuant to paragraph (i) of this section;

(k) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

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

§ 1049.62 Announcement of uniform price and producer butterfat differential.

The market administrator shall publicly announce on or before the 14th day of each month:

(a) The uniform price for the preceding month; and

(b) The producer butterfat differential for the preceding month.

PAYMENTS FOR MILK

§ 1049.70 Producer-settlement fund.

The market administrator shall maintain a separate fund, known as the "producer-settlement fund," which shall function as follows:

(a) All obligated amounts pursuant to § 1049.61(i) and all payments pursuant to §§ 1049.71, 1049.76, and 1049.78 shall be credited to this fund.

(b) Payments pursuant to §§ 1049.72 and 1049.78 shall be debited to this fund.

(c) Any amount due to a handler shall be offset against amounts due from such handler.

§ 1049.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in subparagraph (1) of this section exceed the amounts specified in subparagraph (2) of this section:

(1) The total of the net pool obligation computed pursuant to § 1049.60 for such handler; and

(2) The sum of—

(i) The value of such handler's producer milk at the applicable uniform prices specified in § 1049.73; and

(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 value at the Class II price) with respect to other source milk for which a value is computed pursuant to § 1049.60(e).

(b) Each handler operating a plant specified in § 1049.7(c), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month an amount computed as follows:

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

(2) Compute the value of the quantity assigned in subparagraph (1) of this paragraph to Class I disposition in this area, at the Class I price under this part applicable at the location of the other order plant and subtract its value at the Class II price.

§ 1049.72 Payments from the producer-settlement fund.

On or before the 16th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1049.71(a)(2) exceeds the amount computed pursuant to § 1049.71(a)(1). Should the unobligated balance of the fund be insufficient to make all payments pursuant to this section such payments shall be reduced uniformly and completed on or before the next date for making such payments following the date on which funds become available.

§ 1049.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month at not less than the Class II price for the preceding month; and

(2) On or before the 18th day after the end of each month, for each hundredweight of producer milk received during such month, an amount computed at not less than the uniform price adjusted pursuant to §§ 1049.74, 1049.75 and 1049.86, less any payment made pursuant to subparagraph (1) of this paragraph. If by such date the handler has not received full payment from the market administrator pursuant to § 1049.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

(b) Each handler shall make payment to the cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk, as follows:

(1) On or before the 26th day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 16th day after the end of each month for milk received during such month.

(c) Each handler shall pay to each cooperative association, on or before the 10th day of the following month, for milk the handler receives during the month from a pool plant operated by such association, not less than the minimum prices for milk in each class, subject to the applicable location and butterfat differentials.

(d) In making payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount, or the rate per hundredweight, and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

§ 1049.74 Producer butterfat differential.

The uniform price for producer milk shall be increased or decreased for each one-tenth of 1 percent that the butterfat content of such milk is above or below 3.5 percent, respectively, at the rate determined by multiplying the pounds of butterfat in producer milk allocated to Class I and Class II milk pursuant to § 1049.44 by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat and rounding the resultant figure to the nearest one-tenth cent.

§ 1049.75 Plant location adjustments to producers and on nonpool milk.

(a) The uniform price for producer milk received or which is deemed to have been received at a pool plant shall be reduced according to the location of the pool plant at the rates set forth in § 1049.52; and

(b) For purposes of computations pursuant to §§ 1049.71(a) and 1049.72, the weighted average price shall be adjusted at the rates set forth in § 1049.52 applicable at the location of the nonpool plant from which the milk was received.

§ 1049.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's

election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1049.30 and 1049.32(b) the information necessary to compute the amount specified in paragraph (b) of this section, he shall pay the amount computed pursuant to paragraph (a) of this section:

(a) An amount computed as follows:

(1) Determine the respective route dispositions of skim milk and butterfat made as Class I milk (other than to pool plants) in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants except that deducted under a similar provision of another order issued pursuant to the Act;

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

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(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 or the Class II price, whichever is greater, 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;

(b) Except as a handler may elect the option pursuant to paragraph (a) of this section, an amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1049.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class II price. There shall be included in the obligation so computed a charge in the amount specified in § 1049.60(e) and a credit in the amount specified in § 1049.71(a)(2)(ii) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class II price, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1049.30 and 1049.32(b) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1049.7(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of (i) the gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant and like payments made by the operator of a plant(s) included in the computations pursuant to subparagraph (1) of this paragraph and (ii) any payments made for such month to the producer-settlement fund of another order issued pursuant to the Act due to the plant being a partially regulated distributing plant under such other order.

§ 1049.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due (a) the market administrator from such handler (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1049.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1049.71(a), 1049.76, 1049.77(a), 1049.78, 1049.85, or 1049.86(a) shall be increased three-fourths of 1 percent on the sixth day following the date such obligation is due and on the same day of each succeeding month until such obligation is paid.

Administrative Assessment and Marketing Service Deduction

§ 1049.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

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

(b) Other source milk at a pool plant allocated to Class I pursuant to §§ 1049.44(a)(3) and 1049.44(a)(7) and the corresponding steps of § 1049.44(b); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

§ 1049.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1049.73 shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

Advertising and Promotion Program

§ 1049.110 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 § 1049.121(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.

§ 1049.111 Composition of the Agency.

Each cooperative association or combination of cooperative associations as provided for under § 1049.113(b) with 3 percent or more of the total participating producers (producers who have not requested refunds for the most recent quarter) is authorized one Agency representative plus one additional Agency representative for each additional full 10 percent of the participating member producers it represents. Cooperative associations with less than 3 percent of the total participating producers that have elected not to combine pursuant to § 1049.113(b), and participating

producers who are not members of cooperatives are authorized to select from such group, in total, one Agency representative for the first full 3 percent plus one additional Agency representative for each additional full 10 percent that such producers constitute of the total participating producers. For the purpose of the Agency's initial organization, all persons defined as producers shall be considered as participating producers.

§ 1049.112 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.

§ 1049.113 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 3 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 § 1049.111 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 3 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 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 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.

§ 1049.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and 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.

§ 1049.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1049.110;

(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 §§ 1049.110 and 1049.117.

§ 1049.116 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 §§ 1049.110 and 1049.117;

(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.

§ 1049.117 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.

§ 1049.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1049.121(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.

§ 1049.119 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.

§ 1049.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form 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 start of the next refund notification period as specified in paragraph (b) of this section, 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 period and including the remainder of the calendar quarter involved. 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.

§ 1049.121 Duties of the market administrator.

Except as specified in § 1049.116, 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 § 1049.113(c);

(b) Set aside the amounts subtracted under § 1049.61(d) 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 § 1049.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1049.120. 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 § 1049.61(d) for such calendar quarter, less the amount of any refund otherwise made to be 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 (§§ 1049.110 through 1049.122).

(d) Audit the Agency's records of receipts and disbursements.

§ 1049.122 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 § 1049.70.

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

Effective date: April 1, 1973.

Signed at Washington, D.C., on January 30, 1973.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.73-2031 Filed 2-2-73;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER C—DRUGS

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

Ipronidazole

Correction

In FR Doc. 73-1073, appearing on page 1739 in the issue of Thursday, January 18, 1973, in the second line of § 135e.56 (e), the word "seed" should read "feed".

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS; EXTRAORDINARY EMERGENCY REGULATION OF INTRASTATE ACTIVITIES

[Docket No. 73-506]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

This amendment quarantines an additional portion of Southampton County in Virginia because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to the quarantined area.

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

In § 76.2, paragraph (e)(10) relating to the State of Virginia is amended to read:

(e) * * *

(10) *Virginia.* That portion of Southampton County bounded by a line beginning at the junction of the Virginia-North Carolina State line and State Highway 195; thence, following State Highway 195 in a northeasterly direction to Secondary Road 663; thence, following Secondary Road 663 in a northwesterly direction to Secondary Road 653; thence, following Secondary Road 653 in a northeasterly direction to Secondary Road 658; thence, following Secondary Road 658 in a northeasterly, then southeasterly direction to Secondary Road 675; thence, following Secondary Road 675 in a northeasterly direction to Secondary Road 731; thence, following Secondary Road 731 in a southeasterly direction to Secondary Road 674; thence, following Secondary Road 674 in a northeasterly direction to Secondary Road 680; thence, following Secondary Road 680 in a generally southeasterly direction to Secondary Road 671; thence, following Secondary Road 671 in a northeasterly direction to U.S. Highway 258; thence, following U.S. Highway 258 in a northeasterly direction to U.S. Highway 258, 58; thence, following U.S. Highway 258, 58 in a northeasterly direction to the west bank of the Blackwater River; thence, following the west bank of the Blackwater River in a generally southeasterly direction to the Virginia-North Carolina State line; thence, following the Virginia-North Carolina State line in a westerly direction to its junction with State Highway 195.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 1–4, 33 Stat. 1264, 1265, as amended; sec. 1, 75 Stat. 481; secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 37 FR 28464, 28477)

Effective date. The foregoing amendment shall become effective January 30, 1973.

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

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

Done at Washington, D.C., this 30th day of January 1973.

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

[FR Doc.73-2104 Filed 2-2-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER F—AIR TRAFFIC AND GENERAL OPERATING RULES

[Reg. Docket No. 12535, Amdt. 95-228]

PART 95—IFR ALTITUDES

Miscellaneous Amendments

The purpose of this amendment to Part 95 of the Federal Aviation Regulations is to make changes in the IFR altitudes at which all aircraft shall be flown over a specified route or portion thereof. These altitudes, when used in conjunction with the current changeover points for the routes or portions thereof, also assure navigational coverage that is adequate and free of frequency interference for that route or portion thereof.

As a situation exists which demands immediate action in the interest of safety, I find that compliance with the notice and procedure provisions of the Administrative Procedure Act is impracticable and that good cause exists for making this amendment effective within less than 30 days from publication.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (24 FR 5662), Part 95 of the Federal Aviation Regulations is amended, effective February 1, 1973, as follows:

1. By amending Subpart C as follows:

Section 95.5000 *High altitude RNAV routes.*

From/to; total distance; changeover point distance from geographic location; track angle; MEA; and MAA

J801R is amended to read in part:

Mesquite, Calif., W/P Boulder City, Nev., VORTAC; 40.0; 050/230 to Boulder City; 18,000; 45,000.

Boulder City, Nev., VORTAC, 151.9; Paria, Ariz., W/P; 76.0; Boulder City; 053/233 to COP, 055/235 to Paria; 18,000; 45,000.

Paria, Ariz., W/P, Gypsum, Colo., W/P; 171.0; 65; Paria; 054/234 to COP, 058/238 to Gypsum; 18,000; 45,000.

Gypsum, Colo., W/P, Cabin Creek, Colo., W/P; 98.7; 23; Gypsum; 058/238 to COP, 058/238 to Cabin Creek; 18,000; 45,000.

Cabin Creek, Colo., W/P, Rosemont, Colo., W/P; 84.8; 33; Cabin Creek; 058/238 to COP, 061/241 to Rosemont; 18,000; 45,000.

Rosemont, Colo., W/P, Dresden, Kans., W/P; 214.3; 91; Rosemont; 062/242 to COP, 066/246 to Dresden; 18,000; 45,000.

Dresden, Kans., W/P, Ruskin, Nebr., W/P; 117.2; 58.6; Dresden; 063/243 to COP, 066/246 to Ruskin; 18,000; 45,000.

Ruskin, Nebr., W/P, Garden Grove, Iowa, W/P; 207.9; 95; Ruskin; 066/246 to COP, 072/252 to Garden Grove; 18,000; 45,000.

Garden Grove, Iowa, W/P, Joliet, Ill., VORTAC; 238.1; 119.0; Garden Grove; 072/252 to COP, 080/260 to Joliet; 18,000; 45,000.

Joliet, Ill., VORTAC, Wolverine, Mich., W/P; 199.1; 110; Joliet; 075/255 to COP, 083/263 to Wolverine; 18,000; 45,000.

Wolverine, Mich., W/P, Spot, Ohio, W/P; 136.0; 098/278 to Spot; 18,000; 45,000.

Spot, Ohio, W/P, Ormsby, Pa., W/P; 103.6; 15; Spot; 106/286 to COP, 106/286 to Ormsby; 18,000; 45,000.

Ormsby, Pa., W/P, Sparta, N.J., VORTAC; 190.3; 45; Ormsby; 110/290 to COP, 116/296 to Sparta; 18,000; 45,000.

J813R is amended to read in part:

Bremen, Ga., W/P, Montgomery, Ala., VORTAC; 102.6; 210/030 to Montgomery; 18,000; 45,000.

J814R is amended to read in part:

Montgomery, Ala., VORTAC, Texas, Ga. W/P; 74.8; 46/226 to Texas; 18,000; 45,000.

Section 95.5500 *High altitude RNAV routes.*

From/to; total distance; changeover point distance from geographic location; track angle; MEA; MAA

J913R is amended to read in part:

Sherwood, Oreg., W/P, Pauline, Oreg., W/P; 144.0; 77; Sherwood; 094/274 to COP, 097/277 to Pauline; 18,000; 45,000.

Pauline, Oreg., W/P, Oreana, Idaho, W/P; 162.0; 81; Pauline; 097/277 to COP, 101/281 to Silver City; 18,000; 45,000.

Oreano, Idaho, W/P, Lake Shore, Idaho, W/P; 186.0; 93; Oreana; 101/281 to COP, 105/285 to Lake Shore; 18,000; 45,000.

Lake Shore, Idaho, W/P, Corrington, Utah, W/P; 41.0; 105/285 to Corrington; 18,000; 45,000.

J934R is amended to read in part:

Greater Southwest, Tex., VORTAC, Texarkana, Ark., W/P; 155.2; 77.6; Greater Southwest; 065/245 to COP, 068/248 to Texarkana; 18,000; 45,000.

J951R is amended to read:

Casanova, Va., W/P, Henderson, W. Va., W/P; 183.6; 97.6; Casanova; 279/099 to COP, 274/094 to Henderson; 18,000; 45,000.

Henderson, W. Va., W/P, Minerva, Ky., W/P; 90.6; 45.3; Henderson; 272/092 to COP, 269/089 to Minerva; 18,000; 45,000.

Minerva, Ky., W/P, Borden, Ind., W/P; 97.9; 67.9; Minerva; 269/089 to COP, 262/082 to Borden; 18,000; 45,000.

Borden, Ind., W/P, Centralia, Ill., W/P; 147.5; 112.5; Borden; 262/082 to COP, 260/080 to Centralia; 18,000; 45,000.

Centralia, Ill., W/P, Mounds, Ill., W/P; 42.0; 279/099 to Mounds; 18,000; 45,000.

J969R is added to read:

Shawnee, Colo., W/P, Cabin Creek, Colo., W/P; 82.5; 30; Shawnee; 207/027 to COP, 205/025 to Cabin Creek; 18,000; 45,000.

Cabin Creek, Colo., W/P, Flora, N. Mex., W/P; 121.4; 65; Cabin Creek; 205/025 to COP, 204/024 to Flora; 18,000; 45,000.

Flora, N. Mex., W/P, Shumway, Ariz., W/P; 161.9; 102; Flora; 204/024 to COP, 202/022 to Shumway; 18,000; 45,000.

Shumway, Ariz., W/P, Phoenix, Ariz., W/P; 111.8; 77; Shumway; 217/037 to COP, 216/036 to Phoenix; 18,000; 45,000.

J970R is added to read:

Lamar, Colo., W/P, Ardmore, Okla., W/P; 358.7; 179.4; Lamar; 120/300 to COP, 124/304 to Ardmore; 18,000; 45,000.

J974R is amended to read:

Casanova, Va., W/P, Adolph, W. Va., W/P; 110.1; 80.1; Casanova; 278/098 to COP, 273/093 to Adolph; 18,000; 45,000.

Adolph, W. Va., W/P, Chimney, W. Va., W/P; 74.2; 270/090 to Chimney; 18,000; 45,000.

Chimney, W. Va., W/P, Westport, Ky., W/P; 180.6; 90.3; Chimney; 270/090 to COP, 264/084 to Westport; 18,000; 45,000.

Westport, Ky., W/P, Zell, Mo., W/P; 222.7; 111.4; Westport; 264/084 to COP, 257/077 to Zell; 18,000; 45,000.

Zell, Mo., W/P, Irwin, Mo., W/P; 193.5; 86.8; Zell; 257/077 to COP, 253/073 to Irwin; 18,000; 45,000.

Irwin, Mo., W/P, Tangier, Okla, W/P; 276.8; 100.0; Irwin; 253/073 to COP, 248/068 to Tangier; 18,000; 45,000.

Tangier, Okla., W/P, Canadian, Tex., W/P; 91.0; 25.0; Tangier; 254/074 to COP, 252/072 to Canadian; 18,000; 45,000.

Canadian, Tex., W/P, Wagon, N. Mex., W/P; 141.5; 70.7; Canadian; 252/072 to COP, 248/068 to Wagon; 18,000; 45,000.

Wagon, N. Mex., W/P, Gallup, N. Mex., W/P; 206.7; 84.0; Wagon; 249/069 to COP, 246/066 to Gallup; 18,000; 45,000.

Gallup, N. Mex., W/P, Drake, Ariz., W/P; 183.0; 91.5; Gallup; 247/067 to COP, 246/066 to Drake; 18,000; 45,000.

Drake, Ariz., W/P, Chubbock, Calif., W/P; 114.6; 57.3; Drake; 244/064 to COP, 242/062 to Chubbock; 18,000; 45,000.

Chubbock, Calif., W/P, Morrow, Calif., W/P; 125.1; 90.1; Chubbock; 242/062 to COP, 241/061 to Morrow; 18,000; 45,000.

Section 95.6014 *VOR Federal airway 14* is amended to read in part:

From, to, and MEA

Neosko, Mo. VOR; Plano INT, Mo.; *3,000. *2,700-MOCA.

Plano INT, Mo.; Springfield, Mo., VOR; *2,800, *2,400-MOCA.

Section 95.6015 *VOR Federal airway 15* is amended to read in part:

Andrau INT, Tex., via W alter; Sealy INT, Tex., via W alter; *2,000. *1,600-MOCA.

Section 95.6016 *VOR Federal airway 16* is amended to read in part:

Hope INT, Ark.; Sparkman INT, Ark.; *7,000. *1,800-MOCA.

Sparkman INT, Ark.; Bunn INT, Ark.; *8,000. *1,300-MOCA.

Section 95.6072 *VOR Federal airway 72* is amended to read in part:

Cambridge, N.Y., VOR; *Jamaica, INT, Vt.; 6,000. *5,000-MCA, Jamaica INT, westbound.

Section 95.6076 *VOR Federal airway 76* is amended to read in part:

Sealy INT, Tex.; Andrau INT, Tex.; *2,000. *1,600-MOCA.

Section 95.6132 *VOR Federal airway 132* is amended to read in part:

Walnut INT, Kans.; Nashville INT, Mo.; *2,700. *2,400-MOCA.

Section 95.6170 *VOR Federal airway 170* is amended to read in part:

Hickory INT, Mich.; *Springport INT, Mich.; **4,500. *3,000-MRA. **3,000-MOCA.

Springport INT, Mich.; Leslie INT, Mich.; *4,500. *3,000-MOCA.

Section 95.6173 *VOR Federal airway 173* is amended to read in part:

Kenny INT, Ill.; *Thorp INT, Ill.; 2,500. *6,000-MCA Thorp INT, northeastbound.

Thorp INT, Ill.; Herscher INT, Ill.; *6,000. *2,300-MOCA.

Section 95.6218 *VOR Federal airway 218* is amended to read in part:

Cannon Falls INT, Minn.; Chatfield INT, Minn.; 4,000.

Section 95.6232 *VOR Federal airway 232* is amended to read in part:

Chardon, Ohio, VOR; Hadley, INT, Pa.; 3,300.

Hadley INT, Pa.; Franklin, Pa., VOR; 3,000.

Section 95.6233 *VOR Federal airway 233* is amended to read in part:

Roberts, Ill., VOR; Knox, Ind., VOR; *3,000. *2,200–MOCA.
Litchfield, Mich., VOR; *Springport INT, Mich.; **2,800. *3,000–MRA. **2,400–MOCA.
Springport INT, Mich., Lansing, Mich., VOR; *2,800. *2,400–MOCA.

Section 95.6335 *VOR Federal airway 335* is amended to read in part:

Ellis INT, Ill.; Marion, Ill., VOR; *2,300. *1,800–MOCA.

Section 95.6438 *VOR Federal airway 438* is amended to read in part:

Big Lake, Alaska, VOR; Sunshine INT, Alaska; *7,500. *MEA is established with a gap in navigation signal coverage.

Section 95.6440 *VOR Federal airway 440* is amended to read in part:

*Anchorage, Alaska, VOR; **Martha INT, Alaska; 2,000. *5,000–MCA Anchorage VOR, eastbound. **5,000–MCA Martha INT, westbound.

Section 95.6452 *VOR Federal airway 452* is amended to read in part:

Galena, Alaska, VOR; Horseshoe DME Fix, Alaska, *6,000. *4,000–MOCA.
Horseshoe DME Fix, Alaska; Boney INT, Alaska; *7,000. *4,000–MOCA.

Section 95.6461 *VOR Federal airway 461* is amended to read in part:

Matanuska INT, Alaska; Gulkana, Alaska, VOR; *10,000. *9,100–MOCA.

Section 95.6510 *VOR Federal airway 510* is amended to read in part:

Windy Fork INT, Alaska; Sevenmile INT, Alaska; 10,000.

Section 95.7511 *Jet Route No. 511* is amended to read in part:

From; to; MEA; and MAA

Anchorage, Alaska, VORTAC; Big Lake, Alaska, VORTAC; 18,000; 45,000.
Big Lake, Alaska, VORTAC; Gulkana, Alaska, VOR; 18,000; 45,000.

Section 95.7124 *Jet Route No. 124* is amended to read in part:

Anchorage, Alaska, VORTAC; Big Lake, Alaska, VORTAC; 18,000; 45,000.
Big Lake, Alaska, VORTAC; Gulkana, Alaska, VOR; 18,000; 45,000.

(Secs. 307, 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348, 1510)

Issued in Washington, D.C., on January 24, 1973.

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

[FR Doc.73-2010 Filed 2-2-73;8:45 am]

[Reg. Docket No. 12536, Amdt. 95-229]

PART 95—IFR ALTITUDES

Miscellaneous Amendments

The purpose of this amendment to Part 95 of the Federal Aviation Regulations is to make changes in the IFR altitudes at which all aircraft shall be flown over a specified route or portion thereof. These altitudes, when used in conjunction with the current changeover points for the routes or portions thereof, also assure navigational coverage that is adequate and free of frequency interference for that route or portion thereof.

As a situation exists which demands immediate action in the interest of safety, I find that compliance with the notice and procedure provisions of the Administrative Procedure Act is impracticable and that good cause exists for making this amendment effective within less than 30 days from publication.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (24 FR 5662), Part 95 of the Federal Aviation Regulations is amended, effective March 1, 1973, as follows:

1. By amending Subpart C as follows:

Section 95.1001 *Direct Routes—U.S.* is amended to delete:

From; to; MEA

Natchez, Miss., VOR; El Dorado, Ark., VOR; *6,500. *1,900—MOCA.

Section 95.5000 *High altitude RNAV routes.*

From/to; total distance; changeover point distance from geographic location; track angle; MEA; MAA

J800R is amended to read in part:
Sanford, Colo., W/P, Flora, N. Mex., W/P; 117.6; 57.7; Sanford; 241/61 to COP, 239/59 to Flora; 18,000; 45,000.
Flora, N. Mex., W/P, Cameron, Ariz., W/P; 155.4; 57.9; Flora; 239/59 to COP, 236/56 to Cameron; 18,000; 45,000.

Section 95.5500 *High altitude RNAV routes.*

From/to; total distance; changeover point distance from geographic location; track angle; MEA; MAA

J913R is amended to read in part:
Pauline, Oreg., W/P, Oreana, Idaho, W/P; 162.0; 81; Pauline; 097/277 to COP, 101/281 to Oreana; 18,000; 45,000.
J917R is amended to read in part:
Boulder City, Nev., W/P, Sycamore, Ariz., W/P; 125.8; 62.9; Boulder City; 115/295 to COP, 115/295 to Sycamore; 18,000; 45,000.
J974R is amended to read in part:
Casanova, Va., W/P, Henderson, W. Va., W/P; 183.6; 97.6; Casanova; 279/099 to COP, 274/094 to Henderson; 18,000; 45,000.
Henderson, W. Va., W/P, Westport, Ky., W/P; 169.8; 84.9; Henderson; 268/088 to COP, 261/081 to Westport; 18,000; 45,000.

Section 95.6002 *VOR Federal airway 2* is amended to read in part:

From, to, and MEA

Nodine, Minn., VOR; Lone Rock, Wis., VOR; 3,000.

Section 95.6013 *VOR Federal airway 13* is amended to read in part:

Lydia INT, Minn., via W alter; Minneapolis, Minn., VOR via W alter; 2,500.

Section 95.6014 *VOR Federal airway 14* is amended to read in part:

Oklahoma City, Okla., VOR via S alter; Sapulpa INT, Okla., via S alter; *4,000. *3,700—MOCA.

Section 95.6021 *VOR Federal airway 21* is amended to read in part:

Helena, Mont., VOR; Great Falls, Mont., VOR; 10,000.

Section 95.6041 *VOR Federal airway 41* is amended to read in part:

Calcutta INT, Ohio; Carnes INT, Ohio; 3,100.
Carnes INT, Ohio; Youngstown, Ohio, VOR; 3,500.

Section 95.6043 *VOR Federal airway 43* is amended by adding:

Briggs, Ohio, VOR via E alter; Youngstown, Ohio, VOR via E alter; 3,500.

Section 95.6045 *VOR Federal airway 45* is amended to read in part:

Bentley INT, Mich., via W alter; Sable INT, Mich., via W alter; *5,000. *2,600—MOCA.
Sable INT, Mich., via W alter; Alpena, Mich., VOR via W alter; *3,000. *2,400–MOCA.

Section 95.6067 *VOR Federal airway 67* is amended to read in part:

Waterloo, Iowa, VOR; Waverly INT, Iowa; *2,600. *2,400–MOCA.
Waverly INT, Iowa; New Hampton INT, Iowa; *2,800. *2,400–MOCA.

Section 95.6076 *VOR Federal airway 76* is amended by adding:

Llano, Tex., VOR via N alter; Marble INT, Tex., via N alter; *3,000. *2,500–MOCA.
Marble INT, Tex., via N alter; Austin, Tex., VOR via N alter; 3,000.

Section 95.6092 *VOR Federal airway 92* is amended to read in part:

Goshen, Ind., VOR; Bagel INT, Ind.; *2,700. *2,300–MOCA.
Bagel INT, Ind., Edgarton INT, Ohio; *3,000. *2,300–MOCA.

Section 95.6097 *VOR Federal airway 97* is amended to read in part:

Lone Rock, Wis., VOR; Nodine, Minn., VOR; 3,000.

Section 95.6126 *VOR Federal airway 126* is amended to read in part:

Goshen, Ind., VOR; Bagel INT, Ind.; *2,700. *2,300–MOCA.
Bagel INT, Ind.; Edgerton INT, Ohio; *3,000. *2,300–MOCA.

Section 95.6148 *VOR Federal airway 148* is amended to read in part:

Hatfield INT, Minn.; Redwood Falls, Minn., VOR; *3,500. *3,000–MOCA.

Section 95.6156 *VOR Federal airway 156* is amended to read in part:

Lowell INT, Ill.; Mercyville INT, Ind.; *4,000. *2,200–MOCA.
Mercyville INT, Ind.; Knox, Ind., VOR; *3,000. *2,200–MOCA.

Section 95.6161 *VOR Federal airway 161* is amended to read in part:

Oswego, Kans., VOR; Walnut INT, Kans.; 3,000.

Section 95.6171 *VOR Federal airway 171* is amended to read in part:

Lone Rock, Wis., VOR; Nodine, Minn., VOR; 3,000.

Section 95.6177 *VOR Federal airway 177* is amended to read in part:

Rib Lake INT, Wis.; Union INT, Wis.; *6,000. *2,800–MOCA.
Union INT, Wis.; Duluth, Minn., VOR; *3,500. *3,000–MOCA.

Section 95.6184 *VOR Federal airway 184* is amended to read in part:

Modena, Pa., VOR; Woodstown, N.J., VOR; *2,000. *1,800-MOCA.

Section 95.6191 *VOR Federal airway 191* is amended to read in part:

Rhinelander, Wis., VOR; Cedar INT, Wis.; *3,500. *3,200-MOCA.
Cedar INT, Wis.; Ironwood, Mich., VOR; *3,500. *3,000-MOCA.

Section 95.6198 *VOR Federal airway 198* is amended to read in part:

Taylor, Fla., VOR; Jacksonville, Fla., VOR; *2,000. *1,400—MOCA.

Section 95.6232 *VOR Federal airway 232* is amended to read in part:

Chardon, Ohio, VOR; Hadley INT, Pa.; 3,000.
Hadley INT, Pa.; Franklin, Pa., VOR; 3,300.

Section 95.6249 *VOR Federal airway 249* is amended to read in part:

Monroe INT, N.Y.; Silky INT, N.Y.; 3,000.
Silky INT, N.Y.; Ellenville INT, N.Y.; 4,000.

Section 95.6277 *VOR Federal airway 277* is amended to read in part:

Fort Wayne, Ind., VOR; Bagel INT, Ind.; *2,800. *2,600-MOCA.
Bagel INT, Ind.; Bristol INT, Ind.; *2,700. *2,300-MOCA.

Section 95.6297 *VOR Federal airway 297* is amended to read in part:

Bentley INT, Mich.; Sable INT, Mich.; *5,000. *2,600-MOCA.
Sable INT, Mich.; Pellston, Mich., VOR; *3,000. *2,600-MOCA.

Section 95.6437 *VOR Federal airway 437* is amended to read in part:

Charleston, S.C., VOR via E alter; Florence, S.C., VOR via E alter; *2,400. *1,500-MOCA.

Section 95.6448 *VOR Federal airway 448* is amended to read in part:

Simco INT, Wash.; *Yakima, Wash., VOR, southwestbound; 12,000, northeastbound; 6,300. *9,500-MCA Yakima VOR, southwestbound.

Section 95.6456 *VOR Federal airway 456* is amended to read in part:

Matanuska INT, Alaska; Gulkana, Alaska, VOR; *10,000. *9,100-MOCA.

Section 95.6461 *VOR Federal airway 461* is amended to delete:

Matanuska INT, Alaska; Gulkana, Alaska, VOR; *10,000. *9,100-MOCA.

Section 95.7590 *Jet Route No. 590* is deleted:

(Secs. 307, 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348, 1510)

Issued in Washington, D.C., on January 26, 1973.

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

[FR Doc.73-2009 Filed 2-2-73;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19533; FCC 73-99]

PART 73—RADIO BROADCAST SERVICES

Table of Assignments, FM Broadcast Stations, La Crosse, Wis.

Report and order. In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, La Crosse, Wis.; RM-1845.

1. The Commission, on June 28, 1972, adopted a Notice of Proposed Rule Making (37 FR 13642) proposing to amend the FM Table of Assignments (Section 73.202(b) of the Rules) by adding channel 285A to La Crosse, Wis. The action was based on the petition of La Cross Radio, Inc. (La Crosse Radio), licensee of AM station WLCX, La Crosse.[1] Only La Crosse Radio filed comments in response to the Notice.

2. La Crosse, population 51,153, is the seat of La Crosse County, population 80,468.[2] La Crosse Radio states that La Crosse is the largest city in southwestern Wisconsin and is the economic center for an area of more than 200,000 persons in La Crosse County and the six adjacent counties which surround it. Of the six adjacent counties, four are in Wisconsin (Trempealeau, Jackson, Monroe, and Vernon) and have a total population of 95,178, and two (Houston and Winona) are in Minnesota and have a combined population of 60,858. La Crosse is by far the largest city in the seven-county area. With the exception of Winona (in Winona County) which has a population of 26,438, all other cities in the seven counties are under 6,500. La Crosse points out that La Crosse County had a greater growth rate than any of the six surrounding counties, either on an absolute or a percentage basis, during the period of 1960 to 1970.

3. Presently assigned to La Crosse are channel 240A and class C channel 227. This intermixture was accomplished in Docket No. 18051, 13 Pike and Fischer, R.R. 1503 (1968), in which channel 240A was assigned to La Crosse because although the community and surrounding area merited the addition of a second class C channel, none was available for assignment that would meet our spacing requirements. As we pointed out in the Notice in the present proceeding, our concern over intermixture resulting from assignment of channel 285A to La Crosse is diminished because of the already existing intermixture.

4. Channels 240A and 227 are presently occupied by stations WWLA(FM) and WSPL(FM), respectively. In addition to these FM stations, there are three unlimited-time AM stations in La Crosse—WKBH, WKTY, and WLCX. Stations KWTY and WSPL(FM) are under common ownership. Station WLCX, a class IV station, is licensed to La Crosse Radio, the petitioner in this proceeding.

5. The engineering submission filed with the petition of La Crosse Radio indicated that the proposed assignment of channel 285A could be made, consistent with spacing requirements, if a site were selected at least 4½ miles west of La Crosse. The Notice questioned whether such sites were available, and information submitted in support of La Crosse Radio's comments indicates that there are several. La Crosse Radio shows that one of these, some 5 miles southwest of La Crosse, overlooks the community and that a station operating from this site would provide the requisite 70 dbu signal over La Crosse.

6. The Notice also raised a question about the fact that assignment of channel 285A to La Crosse would preclude use of that channel in Rushford, Minn. (population 1,335), Houston, Minn. (population 1,082), and Caledonia, Minn. (population 2,563). It pointed out that there are no AM stations or FM assignments in these communities, and expressed the necessity of having more data concerning the need for a first local service in these communities as contrasted with the need of La Crosse for a third channel, and concerning the possibility that another channel would be available for use in one or more of these communities.

7. In response to this, La Crosse Radio states that it is highly unlikely that an FM channel assigned to any of these three communities could or would be activated. In support of this statement it presents data to show that insufficient advertising revenues would be present in the communities to make a station viable. Moreover, petitioner points out that there are at least two FM services and a substantial number of AM services presently received in each of the communities that would inhibit the development of new FM service in them.[3] It also states that the population of each of the three communities has remained substantially the same over the past 10 years, that the populations of the counties in which they are located have decreased, and that petitioner knows of no planned or likely economic development that would suggest the possibility of future population growth. In contrast with this, La Crosse Radio points to the information set forth in paragraph 2 above, and further states that the assignment of a third channel to La Crosse would treat that city in a manner similar to that in which other cities of approximately the same size have been treated in its area of the United States.

8. In regard to the question of availability of other channels for use in the aforementioned three communities, La Crosse Radio shows that channel 280A could be assigned to Caledonia, the largest of the three communities, and meet all spacing requirements, although it would be necessary to substitute channel 257A for channel 280A at Waukon, Iowa, which is occupied by station KNEI-FM.[4]

9. On consideration of the issues involved, we find that the public interest,

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[1] La Crosse Radio states that if the channel is assigned it will file an application for a construction permit for its use.

[2] All population figures are from the 1970 Census unless otherwise specified.

[3] La Crosse Radio also states that a station operating on channel 285A at La Crosse would provide service to Caledonia and Houston.

[4] La Crosse Radio also says that channel 272A occupied by station WGBM(FM) at Viroqua, Minn., could be assigned to Caledonia and a channel substituted at Viroqua. (It may be noted that station KNEI-FM's channel is assigned to Decorah, Iowa.) Although no mention is made of this, if either of these actions were proposed, it would be necessary to provide for reimbursement for changes in the frequency of either station KNEI-FM or KGBM(FM).

convenience, and necessity would be served by adding channel 285A to La Crosse. In this respect, it should be noted that, according to our assignment criteria, a community of this size merits two to four channels. (See Further Notice of Proposed Rule Making in Docket No. 14185, adopted July 25, 1962 (FCC 62-867) and incorporated by reference in paragraph 25 of the Third Report, Memorandum Opinion and Order, dated July 25, 1963, 23 Pike and Fischer, R.R. 1859, 1871 (1963)). A site for use of the channel must be at least 4½ miles west of La Crosse.

10. Authority for the action taken herein is contained in sections 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended. In accordance with the foregoing, *It is ordered*, That effective March 9, 1973, the FM Table of Assignments (§ 73.202 (b) of the rules) is amended, with respect to the city listed below, to read as follows:

City	*Channel No.*
La Cross, Wis	227, 240A, 285A

11. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Adopted: January 23, 1973.

Released: January 29, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE,
Secretary.

[FR Doc.73-2157 Filed 2-2-73;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-9969]

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Designation of Control Locations for Foreign Securities

Rule 15c3-3 under the Securities Exchange Act of 1934, Release No. 9856 [37 FR 25224) requires a broker-dealer to promptly obtain possession for control of all fully paid securities and excess margin securities carried for the account of his customers and to act within designated time frames where possession or control has not been established. Paragraphs (c)(4) and (c)(7) of Rule 15c3-3 deem control of customer securities to have been established if such securities are in the custody of a foreign depository, foreign clearing agency, foreign custodian bank or such other location which the Commission upon application shall designate as a satisfactory control location for securities.

CONTROL LOCATION FOR FOREIGN SECURITIES

The Commission has recently received numerous written requests to designate certain entities as control locations for customers' foreign securities in order that broker-dealers may comply with the requirements to reduce such customer securities to their control. The applications are for the designation of foreign banks, foreign depositories and clearing agencies, foreign broker-dealers, domestic registered broker-dealers carrying foreign securities abroad for the customers of other broker-dealers and other entities as satisfactory control locations for such foreign securities.

As these requests were generally received within the 2-week period immediately preceding the effective date of Rule 15c3-3 and as the requested locations aggregated in excess of 100, the Commission staff is still in the process of reviewing them. Additionally, many broker-dealers through inadvertance may not have filed requests for designating entities as control locations for customers' foreign securities. Such broker-dealers should promptly file applications containing the name and a general description of the entity sought to be designated as a control location for foreign securities with Harry Melamed, Special Counsel, Division of Market Regulations, Securities and Exchange Commission, Washington, D.C. 20549.

Irrespective of whether a broker or dealer has filed a request, the Commission has determined that to the extent a broker-dealer has utilized a foreign entity (e.g., a foreign custodian bank) for holding customers' foreign securities in a foreign location, or a domestic entity which holds such broker or dealer's customers' foreign securities in a foreign location, as of January 15, 1973, or at any time within 2 years immediately preceding such date, such broker-dealer shall be permitted to utilize such entity as a satisfactory control location for such foreign securities under Rule 15c3-3 until May 31, 1973. However, the Commission may deem a specific entity as a noncontrol location at a date earlier than May 31 if the Commission determines that it would not be in the public interest or for the protection of investors to permit such entity to continue to be a control location for customers' foreign securities. Any such determination would be made publicly known to the brokerage community so it could take appropriate steps.

After reviewing these requests as well as obtaining such other information as may be necessary, the Commission anticipates that, on or about April 30, 1973, it will publish guidelines for control locations for foreign securities.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

JANUARY 30, 1973.

[FR Doc.73-2093 Filed 2-2-73;8:45 am]

[Release No. 34-9946]

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Maintenance by Broker-Dealers of Basic Reserves; Effective Date

The Commission has received numerous questions with regard to the effective date of Rule 15c3-3 under the Securities Exchange Act of 1934, Release No. 9856 (37 FR 25224). These inquiries have been both by mail and telephone. Because of the impending effectiveness of the rule it is impossible to respond individually to all such inquiries in a timely fashion and the Commission is issuing this release to clarify the questions raised.

Rule 15c3-3, which requires broker-dealers to reduce fully paid and excess margin securities of customers to their possession and control, is effective as stated in Securities Exchange Act Release No. 9856 (37 FR 25226) on Monday, January 15, 1973. The first computation of the reserve formula under the rule for broker-dealers who have a responsibility to make a computation of the formula weekly shall be as of the close of business on Friday, January 19, 1973. For those broker-dealers who are required to compute the reserve formula monthly, the first computation shall be made as of the close of business on the last business day of January.

With regard to specific questions as to the retroactive effect of the rule it should be noted that the rule is not intended to operate retroactively. Specifically, paragraph (m) of the rule which requires the completion of certain sell orders on behalf of customers shall be effective for all transactions executed on or after January 15, 1973.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

JANUARY 12, 1973.

[FR Doc.73-2094 Filed 2-2-73;8:45 am]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER C—FEDERAL CRIME INSURANCE PROGRAM

[Docket No. R-73-109]

PART 1934—CLASSIFICATION OF TERRITORIES

Ratings of SMSA's

The list of Standard Metropolitan Statistical Areas in § 1934.2(b) is being amended to revise the rate classifications for certain territories and to add certain other SMSA's to the list.

Inasmuch as the classification revisions directly reflect those provided in the Crime Insurance Manual and are based on current statistics gathered by

the Federal Bureau of Investigation, public comment is unnecessary.

Accordingly, 24 CFR 1934.2(b) is amended as follows:

1. The rating territory for the following SMSA's reads:

SMSA	Statistical code	Rate territory
* * *	* * *	* * *
Allentown-Bethlehem-Easton, Pa.-N.J. (includes Lehigh and Northampton Counties, Pa., and Warren County, N.J.)	0240	2
* * *	* * *	* * *
Baltimore, Md. (includes Baltimore City and Anne Arundel, Baltimore, Carroll, Howard, and Harford Counties)	0720	2
* * *	* * *	* * *
Bloomington-Normal, Ill. (includes McLean County)	1040	2
* * *	* * *	* * *
Dallas Tex. (includes Collin, Dallas, Denton, Ellis, Kaufman, and Rockwall Counties)	1920	2
* * *	* * *	* * *
El Paso, Tex. (includes El Paso County)	2320	3
* * *	* * *	* * *
Erie, Pa. (includes Erie County)	2360	2
* * *	* * *	* * *
Fall River-New Bedford, Mass. (includes Bristol County)	2480	3
* * *	* * *	* * *
Gainesville, Fla. (includes Alachua County)	2900	3
* * *	* * *	* * *
Gary-Hammond-East Chicago, Ind. (includes Lake and Porter Counties)	2960	3
* * *	* * *	* * *
Green Bay, Wis. (includes Brown County)	3080	1
* * *	* * *	* * *
Jackson, Miss. (includes Hinds and Rankin Counties)	3560	2
* * *	* * *	* * *
Kansas City, Mo.-Kans. (includes Clay, Jackson, Cass, and Platte Counties, Mo., and Johnson and Wyandotte Counties, Kans.)	3760	2
* * *	* * *	* * *
Lansing, Mich. (includes Clinton, Eaton, and Ingham Counties)	4040	3
* * *	* * *	* * *
Louisville, Ky.-Ind. (includes Jefferson County, Ky., and Clark and Floyd Counties, Ind.)	4520	2
* * *	* * *	* * *
Modesto, Calif. (includes Stanislaus County)	5170	3
* * *	* * *	* * *
Montgomery, Ala. (includes Elmore and Montgomery Counties)	5240	2
* * *	* * *	* * *
New Orleans, La. (includes Jefferson, Orleans, St. Bernard, and St. Tammany Parishes)	5560	3
* * *	* * *	* * *
Phoenix, Ariz. (includes Maricopa County)	6200	3
* * *	* * *	* * *
Provo-Orem, Utah (includes Utah County)	6520	1
* * *	* * *	* * *
Reno, Nev. (includes Washoe County)	6720	3
* * *	* * *	* * *
Richmond, Va. (includes Richmond City and Chesterfield, Henrico, and Hanover Counties)	6760	3
* * *	* * *	* * *
Saginaw, Mich. (includes Saginaw County)	6960	3
* * *	* * *	* * *
Salinas-Monterey, Calif. (includes Monterey County)	7120	2
* * *	* * *	* * *
San Antonio, Tex. (includes Bexar and Guadalupe Counties)	7240	2
* * *	* * *	* * *
Santa Rosa, Calif. (includes Sonoma County)	7500	3
* * *	* * *	* * *
Trenton, N.J. (includes Mercer County)	8480	3
* * *	* * *	* * *
Vallejo-Napa, Calif. (includes Solano and Napa Counties)	8720	3
* * *	* * *	* * *
Washington, D.C.-Md.-Va. (includes District of Columbia, Montgomery and Prince Georges Counties, Md., Alexandria, Fairfax, and Falls Church cities and Arlington, Fairfax, Loudoun, and Prince William Counties, Va.)	8840	2
* * *	* * *	* * *
West Palm Beach, Fla. (includes Palm Beach County)	8960	3
* * *	* * *	* * *
Delaware	310	2
* * *	* * *	* * *
Hawaii	915	2
* * *	* * *	* * *
Montana	830	2
* * *	* * *	* * *
New Hampshire	133	2
* * *	* * *	* * *
Puerto Rico	027	1
* * *	* * *	* * *
South Carolina	445	1
* * *	* * *	* * *

2. Each of the following SMSA's is added in its proper alphabetical sequence within the list:

SMSA	Statistical code	Rate territory
* * *	* * *	* * *
Daytona Beach, Fla. (Volusia County)	2020	3
* * *	* * *	* * *
Elmira, N.Y. (Chemung County)	2335	1
* * *	* * *	* * *
Parkersburg-Marietta, W.Va., Ohio (Wood County, W. Va., Washington County, Ohio)	6020	1
* * *	* * *	* * *
Poughkeepsie, N.Y. (Duchess County)	6460	1
* * *	* * *	* * *
Santa Cruz, Calif.	7485	3
* * *	* * *	* * *

(Sec. 306(g), 82 Stat. 540, 12 U.S.C. 1721)

Effective date. This regulation is effective as of February 1, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc. 73-2034 Filed 2-2-73;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7245]

PART 3—CAPITAL CONSTRUCTION FUND

Deposits

Correction

In FR Doc. 72-22443 appearing on page 28898 of the issue for Saturday, December 30, 1972, the following should be inserted between the first and second lines of the first paragraph: "application of section 607 of the Merchant Marine Act (46 U.S.C. 1177)".

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 7256]

PART 53—FOUNDATION EXCISE TAXES

Subpart C—Taxes on Failure To Distribute Income

FAILURE TO DISTRIBUTE INCOME

By notice of proposed rule making appearing in the FEDERAL REGISTER for Tuesday, June 8, 1971 (36 FR 11034), amendments to the Excise Tax Regulations (26 CFR Part 53) were proposed in order to conform the Excise Tax Regulations to section 4942 of the Internal Revenue Code of 1954, relating to taxes on failure to distribute income, as added by section 101(b) of the Tax Reform Act of 1969 (83 Stat. 502). A public hearing with respect to such proposed regulations was held on August 5, 1971. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, certain changes were made, and the proposed amendments of the regulations, subject to the changes indicated below, are adopted by this document.

Section 4942, generally effective for taxable years beginning after December 31, 1969, imposes a tax on private foundations for failure to distribute income. Under this section, a private foundation must distribute at least all of its income currently, and in any case not less than a prescribed percentage of the fair market value of its noncharitable assets, in order to avoid the excise tax on undistributed income. These regulations prescribe rules to implement this statutory directive.

The "distributable amount", the amount which a private foundation is required to distribute annually, is equal to the greater of the foundation's minimum investment return or its adjusted net income. The distributable amount is reduced by the sum of the taxes imposed by section 4940. In determining adjusted net income for purposes of section 4942, generally, all of the gross income of the private foundation (including the excess of exempt interest over the expenses of earning such interest) is taken into account. Ordinary and necessary expenses paid or incurred for the production or collection of the income, including straight-line depreciation and cost depletion where appropriate, are deductible in computing the foundation's adjusted net income subject to this rule.

Regardless of the amount of its adjusted net income, a private foundation must pay out at least a specified percentage of the aggregate of the fair market value of its noncharitable assets. The applicable percentage for foundations organized after May 26, 1969, is 6 percent for 1970 and 1971 and 5½ percent for 1972 and subsequent years unless another percentage is determined and published by the Secretary or his delegate. In the case of foundations which were

organized prior to May 27, 1969, the minimum investment return requirement does not apply for 1970 and 1971, and lesser applicable percentages are prescribed for 1972, 1973, and 1974. Assets which are used or held for use directly in carrying out the foundation's exempt purpose, including administrative assets used directly in the administration of the foundation's exempt purpose, interests in functionally related businesses or in a program related investment, and physical facilities used in such exempt activities, are excluded from the computation of the minimum investment return.

The regulations provide that, in determining the fair market value of a foundation's noncharitable assets for purposes of computing its minimum investment return, a foundation may use any reasonable method to determine the fair market value on a monthly basis of securities for which market quotations are readily available, as long as such method is consistently used. In the case of other noncharitable assets, an annual determination of fair market value is generally required. The fair market value of real property, however, may be determined on a five-year basis if such valuation is made by means of a certified, independent appraisal made in writing by a qualified person who is neither a disqualified person with respect to, nor an employee of, the foundation.

The foundation is to pay out its distributable amount by making qualifying distributions for prescribed charitable purposes. "Qualifying distributions" include distributions to "public charities" and private operating foundations, direct expenditures for charitable purposes, and expenditures for assets to be used for charitable purposes. In addition, an amount set aside for a specific charitable project will be considered to be a "qualifying distribution" if the amount is to be paid out within 5 years and the foundation can establish to the satisfaction of the Commissioner that the project is one which can be better accomplished by a set-aside than by the immediate payment of funds. This provision is intended to apply to those situations where relatively long-term grants must be made in order to assure continuity of particular charitable projects or where the grants are made as part of a matching grant program. A distribution by a foundation to another private nonoperating foundation or to, an exempt organization described in section 501(c)(3) which such foundation controls will be a "qualifying distribution" only if the funds are spent or used for charitable purposes by the donee organization no later than the end of the taxable year following the taxable year of receipt. This required expenditure or use of contributed funds is in addition to, and not in lieu of, the donee organization's otherwise meeting its own minimum payout requirements. The donee organization will not be considered to have properly distributed such funds if such funds are passed through to another private nonoperating foundation or to an exempt organization described in section 501(c)(3) which the donor foundation controls. For purposes of these regulations an organization is "controlled" by a granting foundation and disqualified persons if any of such persons may, by aggregating their votes or positions of authority, require the donee organization to make a distribution, or prevent the donee organization from making a distribution.

The regulations also provide that, if in any taxable year beginning after December 31, 1969, a foundation makes qualifying distributions in excess of its minimum required payout for that taxable year, such excess may be used to reduce the distributable amount in succeeding taxable years, but not in excess of five.

Failure to comply with the minimum payout requirement results first in a tax of 15 percent of the amount that should have been, but was not, paid out. However, to the extent the failure to meet the minimum payout requirement results from an incorrect valuation of the foundation's noncharitable assets and this incorrect valuation is not willful but is due to reasonable cause, then the foundation can avoid the first-level tax by promptly making additional distributions. If the failure to distribute is not the result of an incorrect valuation, the foundation must correct such failure to distribute within 90 days after notification by the Commissioner of such failure to distribute or within any extension of such 90-day period made by the Commissioner. If the necessary distributions are not made within the appropriate period, an additional tax, equal to 100 percent of the amount remaining undistributed at the close of such period, is imposed.

The Excise Tax Regulations (26 CFR Part 53) are amended as follows:

PARAGRAPH 1. Section 53.4942, as set forth in paragraph 1 of the appendix to the notice of proposed rule making, is revised by adding section 4942(j)(3) thereto. This added provision reads as set forth below.

PAR. 2. Sections 53.4942(a)-1 through 53.4942(a)-3, as set forth in paragraph 1 of the appendix to the notice of proposed rule making, are amended to read as set forth below.

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

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

Approved: January 29, 1973.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

The following regulations are prescribed in order to conform the Excise Tax Regulations (26 CFR Part 53) to section 4942 of the Internal Revenue Code of 1954, relating to taxes on failure to distribute income, as added by section 101(b) of the Tax Reform Act of 1969 (83 Stat. 502). Except where otherwise specifically provided, these regulations are applicable for taxable years beginning after December 31, 1969.

PARAGRAPH 1. The following new sections are added immediately before § 53.4945:

Subpart C—Taxes on Failure To Distribute Income

Sec.
53.4942 Statutory provision; taxes on failure to distribute income.
53.4942(a)-1 Taxes for failure to distribute income.
53.4942(a)-2 Computation of undistributed income.
53.4942(a)-3 Qualifying distributions defined.

§ 53.4942 Statutory provisions; taxes on failure to distribute income.

SEC. 4942. *Taxes on failure to distribute income*—(a) *Initial tax.* There is hereby imposed on the undistributed income of a private foundation for any taxable year, which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period), a tax equal to 15 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year. The tax imposed by this subsection shall not apply to the undistributed income of a private foundation—

(1) For any taxable year for which it is an operating foundation (as defined in subsection (j)(3)), or

(2) To the extent that the foundation failed to distribute any amount solely because of an incorrect valuation of assets under subsection (e), if—

(A) The failure to value the assets properly was not willful and was due to reasonable cause.

(B) Such amount is distributed as qualifying distributions (within the meaning of subsection (g)) by the foundation during the allowable distribution period (as defined in subsection (j)(4)),

(C) The foundation notifies the Secretary or his delegate that such amount has been distributed (within the meaning of subparagraph (B)) to correct such failure, and

(D) Such distribution is treated under subsection (h)(2) as made out of the undistributed income for the taxable year for which a tax would (except for this paragraph) have been imposed under this subsection.

(b) *Additional tax.* In any case in which an initial tax is imposed under subsection (a) on the undistributed income of a private foundation for any taxable year, if any portion of such income remains undistributed at the close of the correction period, there is hereby imposed a tax equal to 100 percent of the amount remaining undistributed at such time.

(c) *Undistributed income.* For purposes of this section, the term "undistributed income" means, with respect to any private foundation for any taxable year as of any time, the amount by which—

(1) The distributable amount for such taxable year, exceeds

(2) The qualifying distributions made before such time out of such distributable amount.

(d) *Distributable amount.* For purposes of this section, the term "distributable amount" means, with respect to any foundation for any taxable year, an amount equal to—

(1) The minimum investment return or the adjusted net income (whichever is higher), reduced by

(2) The sum of the taxes imposed on such private foundation for the taxable year under subtitle A and section 4940.

(e) *Minimum investment return.*

(1) *In general.* For purposes of subsection (d), the minimum investment return for any private foundation for any taxable year is the amount determined by multiplying—

(A) The excess of (i) the aggregate fair market value of all assets of the foundation other than those being used (or held for use) directly in carrying out the foundation's exempt purpose over (ii) the acquisition indebtedness with respect to such assets (determined under section 514(c)(1), but without regard to the taxable year in which the indebtedness was incurred), by

(B) The applicable percentage for such year, determined under paragraph (3).

(2) *Valuation.* For purposes of paragraph (1)(A), the fair market value of securities for which market quotations are readily available shall be determined on a monthly basis. For all other assets, the fair market value shall be determined at such times and in such manner as the Secretary or his delegate shall by regulations prescribe.

(3) *Applicable percentage.* For purposes of paragraph (1)(B), the applicable percentage for taxable years beginning in 1970 is 6 percent. The applicable percentage for any taxable year beginning after 1970 shall be determined and published by the Secretary or his delegate and shall bear a relationship to 6 percent which the Secretary or his delegate determines to be comparable to the relationship which the money rates and investment yields for the calendar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1969.

(4) *Transitional rules*—

For special rules applicable to organizations created before May 27, 1969, see section 101(1)(3) of the Tax Reform Act of 1969.

(f) *Adjusted net income*—

(1) *Defined.* For purposes of subsection (d), the term "adjusted net income" means the excess (if any) of—

(A) The gross income for the taxable year (determine with the income modifications provided by paragraph (2)), over

(B) The sum of the deductions (determined with the deduction modifications provided by paragraph (3)) which would be allowed to a corporation subject to the tax imposed by section 11 for the taxable year.

(2) *Income modifications.* The income modifications referred to in paragraph (1)(A) are as follows:

(A) Section 103 (relating to interest on certain governmental obligations) shall not apply;

(B) Capital gains and losses from the sale or other disposition of property shall be taken into account only in an amount equal to any net short-term capital gain for the taxable year; and

(C) There shall be taken into account—

(i) Amounts received or accrued as repayments of amounts which were taken into account as a qualifying distribution within the meaning of subsection (g)(1)(A) for any taxable year;

(ii) Notwithstanding subparagraph (B), amounts received or accrued from the sale or other disposition of property to the extent that the acquisition of such property was taken into account as a qualifying distribution (within the meaning of subsection (g)(1)(B)) for any taxable year; and

(iii) Any amount set aside under subsection (g)(2) to the extent it is determined that such amount is not necessary for the purposes for which it was set aside.

(3) *Deduction modifications.* The deduction modifications referred to in paragraph (1)(B) are as follows:

(A) No deduction shall be allowed other than all the ordinary and necessary expenses paid or incurred for the production or collection of gross income or for the management, conservation, or maintenance of property held for the production of such income and the allowances for depreciation and depletion determined under section 4940(c)(3)(B), and

(B) Section 265 (relating to expenses and interest relating to tax-exempt interest) shall not apply.

(4) *Transitional rule.* For purposes of paragraph (2)(B), the basis (for purposes of determining gain) of property held by a private foundation on December 31, 1969, and continuously thereafter to the date of its disposition, shall be deemed to be not less than the fair market value of such property on December 31, 1969.

(g) *Qualifying distributions defined.*

(1) *In general.* For purposes of this section, the term "qualifying distribution" means—

(A) Any amount (including administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation, except as provided in paragraph (3), or (ii) a private foundation which is not an operating foundation (as defined in subsection (j)(3)), except as provided in paragraph (3), or

(B) Any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in section 170(c)(2)(B).

(2) *Certain set-asides.* Subject to such terms and conditions as may be prescribed by the Secretary or his delegate, an amount set aside for a specific project which comes within one or more purposes described in section 170(c)(2)(B) may be treated as a qualifying distribution, but only if, at the time of the set-aside, the private foundation establishes to the satisfaction of the Secretary or his delegate that—

(A) The amount will be paid for the specific project within 5 years, and

(B) The project is one which can be better accomplished by such set-aside than by immediate payment of funds.

For good cause shown, the period for paying the amount set aside may be extended by the Secretary or his delegate.

(3) *Certain contributions to section 501(c)(3) organizations.* For purposes of this section, the term "qualifying distribution" includes a contribution to a section 501(c)(3) organization described in paragraph (1)(A)(i) or (ii) if—

(A) Not later than the close of the first taxable year after its taxable year in which such contribution is received, such organization makes a distribution equal to the amount of such contribution and such distribution is a qualifying distribution (within the meaning of paragraph (1) or (2), without regard to this paragraph) which is treated under subsection (h) as a distribution out of corpus (or would be so treated if such section 501(c)(3) organization were a private foundation which is not an operating foundation), and

(B) The private foundation making the contribution obtains adequate records or other sufficient evidence from such organization showing that the qualifying distribution described in subparagraph (A) has been made by such organization.

(h) *Treatment of qualifying distributions.*

(1) *In general.* Except as provided in paragraph (2), any qualifying distribution made during a taxable year shall be treated as made—

(A) First out of the undistributed income of the immediately preceding taxable year (if the private foundation was subject to the tax imposed by this section for such preceding taxable year) to the extent thereof,

(B) Second out of the undistributed income for the taxable year to the extent thereof, and

(C) Then out of corpus.

For purposes of this paragraph, distributions shall be taken into account in the order of time in which made.

(2) *Correction of deficient distributions for prior taxable years, etc.* In the case of any qualifying distribution which (under paragraph (1)) is not treated as made out of the undistributed income of the immediately preceding taxable year, the foundation may elect to treat any portion of such distribution as made out of the undistributed income of a designated prior taxable year or out of corpus. The election shall be made by the foundation at such time and in such manner as the Secretary or his delegate shall by regulations prescribe.

(i) *Adjustment of distributable amount where distributions during prior years have exceeded income.*

(1) *In general.* If, for the taxable years in the adjustment period for which an organization is a private foundation—

(A) The aggregate qualifying distributions treated (under subsection (h)) as made out of the undistributed income for such taxable year or as made out of corpus (except to the extent subsection (g)(3) with respect to the recipient private foundation or section 170(b)(1)(E)(ii) applies) during such taxable years, exceed

(B) The distributable amounts for such taxable years (determined without regard to this subsection),

then, for purposes of this section (other than subsection (h)), the distributable amount for the taxable years shall be reduced by an amount equal to such excess.

(2) *Taxable years in adjustment period.* For purposes of paragraph (1), with respect to any taxable year of a private foundation the taxable years in the adjustment period are the taxable years (not exceeding five) beginning after December 31, 1969, and immediately preceding the taxable year.

(j) *Other definitions.* For purposes of this section—

(1) *Taxable period.* The term "taxable period" means, with respect to the undistributed income for any taxable year, the period beginning with the first day of the taxable year and ending on the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212.

(2) *Correction period.* The term "correction period" means, with respect to any private foundation for any taxable year, the period beginning with the first day of the taxable year and ending 90 days after the date of mailing of a notice of deficiency (with respect to the tax imposed by subsection (b)) under section 6212, extended by—

(A) Any period in which a deficiency cannot be assessed under section 6213(a), and

(B) Any othe period which the Secretary or his delegate determines is reasonable and necessary to permit a distribution of undistributed income under this section.

(3) *Operating foundation.* For purposes of this section, the term "operating foundation" means any organization—

(A) Which makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated equal to substantially all of its adjusted net income (as defined in subsection (f)); and

(B) (i) Substantially more than half of the assets of which are devoted directly to

such activities or to functionally related businesses (as defined in paragraph (5)), or to both, or are stock of a corporation which is controlled by the foundation and substantially all of the assets of which are so devoted.

(ii) Which normally makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated in an amount not less than two-thirds of its minimum investment return (as defined in subsection (e)), or

(iii) Substantially all of the support (other than gross investment income as defined in section 509(e)) of which is normally received from the general public and from five or more exempt organizations which are not described in section 4946(a)(1)(H) with respect to each other or the recipient foundation; not more than 25 percent of the support (other than gross investment income) of which is normally received from any one such exempt organization; and not more than half of the support of which is normally received from gross investment income.

(4) *Allowable distribution period.* The term "allowable distribution period" means, with respect to any private foundation, the period beginning with the first day of the first taxable year following the taxable year in which the incorrect valuation (described in subsection (a)(2)) occurred and ending 90 days after the date of mailing of a notice of deficiency (with respect to the tax imposed by subsection (a)) under section 6212 extended by—

(A) Any period in which a deficiency cannot be assessed under section 6213(a), and

(B) Any other period which the Secretary or his delegate determines is reasonable and necessary to permit a distribution of undistributed income under this section

(5) *Functionally related business.* The term "functionally related business" means—

(A) A trade or business which is not an unrelated trade or business (as defined in section 513), or

(B) An activity which is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which is related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exempt purposes of the organization

(Sec. 4942 as added by sec. 101(b), Tax Reform Act 1969 (83 Stat. 502))

PAR. 2. Sections 53.4942(a)–1 through (a)–3, as set forth in paragraph 1 of the appendix to the notice of proposed rule making, are amended to read as follows:

§ 53.4942(a)–1 Taxes for failure to distribute income.

(a) *Imposition of tax*—(1) *Initial tax.* Except as provided in paragraph (b) of this section, section 4942(a) imposes an excise tax of 15 percent on the undistributed income (as defined in paragraph (a) of § 53.4942(a)–2) of a private foundation for any taxable year which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period as defined in paragraph (c)(1) of this section). For purposes of section 4942 and this section, the term "distributed" means distributed as qualifying distributions under section 4942(g). See paragraph (d)(2) of § 53.4942(a)–3 with respect to correction of deficient distributions for prior taxable years.

(2) *Additional tax.* In any case in which an initial excise tax is imposed by section 4942(a) on the undistributed income of a private foundation for any taxable year, section 4942(b) imposes an additional excise tax on any portion of such income remaining undistributed at the close of the correction period (as defined in paragraph (c)(3) of this section). The tax imposed by section 4942(b) is equal to 100 percent of the amount remaining undistributed at the close of the correction period.

(3) *Payment of tax.* Payment of the excise taxes imposed by section 4942(a) or (b) is in addition to, and not in lieu of, making the distribution of such undistributed income as required by section 4942. See section 507(a)(2) and the regulations thereunder.

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

Example (1). M, a private foundation which uses the calendar year as the taxable year has at the end of 1971, $50,000 of undistributed income (as defined in paragraph (a) of § 53.4942(a)–2) for 1971. As of January 1, 1973, $40,000 of such sum is still undistributed and on August 15, 1973, a notice of deficiency with respect to the excise tax imposed by section 4942 (a) or (b) is mailed to M under section 6212 (a). Thus, under the given facts, an initial excise tax of $6,000 (15 percent of $40,000) is imposed upon M.

Example (2). Assume the facts as stated in example (1), except that as of November 13, 1973 (the close of the correction period), there remains undistributed income of $20,000 from 1971. Hence, an additional excise tax of $20,000 (100 percent of $20,000) is imposed by section 4942(b).

Example (3). Assume the facts as stated in example (1), except that the notice of deficiency is not mailed to M until September 1, 1974, and as of January 1, 1974, only $10,000 of the $50,000 of undistributed income with respect to 1971 is undistributed. Therefore, initial excise taxes of $6,000 (15 percent of $40,000, M's undistributed income from 1971, as of January 1, 1973) and $1,500 (15 percent of $10,000, M's undistributed income from 1971, as of January 1, 1974), are imposed by section 4942(a).

Example (4). Assume the facts as stated in example (3) and that at the end of the correction period, November 30, 1974, the $10,000 of undistributed income from 1971 remains undistributed. Thus, an additional tax of $10,000 (100 percent of $10,000, M's undistributed income from 1971, as of November 30, 1974, the last day of the correction period) is imposed by section 4942(b).

(b) *Exceptions*—(1) *In general.* The initial excise tax imposed by section 4942(a) shall not apply to the undistributed income of a private foundation—

(i) For any taxable year for which it is an operating foundation (as defined in section 4942(j)(3) and the regulations thereunder), or

(ii) To the extent that the foundation failed to distribute any amount solely because of incorrect valuation of assets under paragraph (c)(4) of § 53.4942(a)–2, if—

(*a*) The failure to value the assets properly was not willful and was due to reasonable cause.

(*b*) Such amount is distributed as qualifying distributions (within the meaning of paragraph (a) of § 53.4942(a)–3) by the foundation during the allowable distribution period (as defined in paragraph (c)(2) of this section).

(*c*) The foundation notifies the Commissioner that such amount has been distributed (within the meaning of subdivision (ii)(*b*) of this subparagraph) to correct such failure, and

(*d*) Such distribution is treated under paragraph (d)(2) of § 53.4942(a)–3 as made out of the undistributed income for the taxable year for which a tax would (except for this subdivision) have been imposed by section 4942.

(2) *Improper valuation.* For purposes of subparagraph (1)(ii) of this paragraph, failure to value an asset properly shall be regarded as "not willful" and "due to reasonable cause" whenever, under all the facts and circumstances, the foundation can show that it has made all reasonable efforts in good faith to value such an asset in accordance with the provisions of paragraph (c)(4) of § 53.4942(a)–2. If a foundation, after full disclosure of the factual situation, obtains a bona fide appraisal of the fair market value of an asset by a person qualified to make such an appraisal (whether or not such a person is a disqualified person with respect to the foundation), and such foundation relies upon such appraisal, then failure to value the asset properly shall ordinarily be regarded as "not willful" and "due to reasonable cause". Notwithstanding the preceding sentence, the failure to obtain such a bona fide appraisal shall not, by itself, give rise to any inference that a foundation's failure to value an asset properly was willful or not due to reasonable cause.

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

Example. In 1976 M, a private foundation which was established in 1975 and which uses the calendar year as the taxable year, incorrectly values its assets under paragraph (c)(4) of § 53.4942(a) in a manner which is not willful and is due to reasonable cause. As a result of the incorrect valuation of assets, $20,000 which should be distributed with respect to 1976 is not distributed, and as of January 1, 1978, such amount is still undistributed. On March 29, 1978, a notice of deficiency with respect to the excise taxes imposed by section 4942 (a) and (b) is mailed to M under section 6212(a). On May 5, 1978 (within the allowable distribution period), M makes a qualifying distribution of $20,000 which is treated under paragraph (d)(2) of § 53.4942(a)–3 as made out of M's undistributed income for 1976. M notifies the Commissioner of its action. Under the stated facts, an initial excise tax of $3,000 (15 percent of $20,000) would (except for the exception contained in subparagraph (1)(ii) of this paragraph) have been imposed by section 4942(a), but since all of the requirements of this subparagraph are satisfied no tax is imposed by section 4942(a).

(c) *Certain periods.* For purposes of this section—(1) *Taxable period.* (i) The term "taxable period" means, with respect to the undistributed income of a private foundation for any taxable year, the period beginning with the first day of the taxable year and ending on the date of

mailing of a notice of deficiency under section 6212(a) with respect to the initial excise tax imposed under section 4942(a). For example, assume M, a private foundation which uses the calendar year as the taxable year, has $15,000 of undistributed income for 1971. A notice of deficiency is mailed to M under section 6212(a) on March 1, 1973. With respect to the undistributed income of M for 1971, the taxable period began on January 1, 1971, and ended on March 1, 1973.

(ii) Where a notice of deficiency referred to in subdivision (i) of this subparagraph is not mailed because there is a waiver of the restrictions on assessment and collection of a deficiency, or because the deficiency is paid, the date of filing of the waiver or the date of such payment, respectively, shall be treated as the end of the taxable period.

(2) *Allowable distribution period.* (i) The term "allowable distribution period" means the period beginning with the first day of the first taxable year following the taxable year in which the incorrect valuation of foundation assets (described in paragraph (b)(1)(ii) of this section) occurred and ending 90 days after the date of mailing of a notice of deficiency under section 6212(a) with respect to the initial excise tax imposed by section 4942(a). This period shall be extended by any period in which a deficiency cannot be assessed under section 6213(a), and any other period which the Commissioner determines is reasonable and necessary to permit a distribution of undistributed income under section 4942.

(ii) Where a notice of deficiency referred to in subdivision (i) of this subparagraph is not mailed because there is a waiver of the restrictions on assessment and collection of a deficiency, or because the deficiency is paid, the date of filing of the waiver or the date of such payment, respectively, shall be treated as the end of the allowable distribution period.

(3) *Correction period*—(i) The term "correction period" means the period beginning with the first day of the taxable year and ending 90 days after the date of mailing of a notice of deficiency under section 6212(a) with respect to the additional excise tax imposed under section 4942(b).

(ii) The correction period referred to in subdivision (i) of this subparagraph shall be extended by any period in which a deficiency cannot be assessed under section 6213(a). In addition, the correction period shall be extended in accordance with subdivisions (iii), (iv), and (v) of this subparagraph, except that such subdivision (iv) or (v) shall not operate to extend a correction period where a foundation has filed a petition with the Tax Court for redetermination of a deficiency within the time prescribed by section 6213(a).

(iii) The correction period referred to in subdivision (i) of this subparagraph may be extended by any other period which the Commissioner determines is reasonable and necessary to permit a distribution of undistributed income under section 4942. The Commissioner ordinarily will not extend the correction period pursuant to this subparagraph unless the following factors are present:

(*a*) The foundation or an appropriate State officer (as defined in section 6104(c)(2)) is in good faith actively seeking to take adequate corrective action;

(*b*) Adequate corrective action cannot reasonably be expected to result during the unextended correction period; and

(*c*) The failure to distribute appears to have been an isolated occurrence which is unlikely to recur in the future.

(iv) If, within the unextended correction period, the tax imposed by section 4942(a) is paid, then the Commissioner shall extend the correction period to the later of—

(*a*) A period of 90 days after the payment of such tax, or

(*b*) A period determined without regard to this subdivision.

(v) If prior to the expiration of the correction period (including extensions) a claim for refund with respect to a tax imposed by section 4942(a) is filed, the Commissioner shall extend the correction period during the pendency of the claim plus an additional 90 days.

If within such time, a suit or proceeding referred to in section 7422(g) with respect to such claim is filed, the Commissioner shall extend the correction period during the pendency of such suit or proceeding. See § 301.7422–1 of this chapter (Regulations on Procedure and Administration) for rules relating to pendency of such suit or proceeding.

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

Example (1). In 1975 M, a private foundation which uses the calendar year as the taxable year, made an error in valuing its assets which was not willful and was due to reasonable cause. The error caused M not to distribute $25,000 that should have been distributed with respect to 1975. On March 1, 1978, a notice of deficiency with respect to the excise taxes imposed by section 4942 (a) and (b) was mailed to M under section 6212(a). With respect to the undistributed income for 1975, the "taxable period" is the period from January 1, 1975, through March 1, 1978, and the "allowable distribution period" is the period from January 1, 1976, through May 30, 1978 (90 days after the mailing of the notice of deficiency).

Example (2). Assume the facts as stated in example (1), except that the Commissioner determines that it is reasonable and necessary to extend the period for distribution through June 15, 1978. Thus, the "allowable distribution period" is from January 1, 1976, through June 15, 1978.

Example (3). Assume the facts as stated in example (1) and that M has not filed a petition with the Tax Court for a redetermination of the deficiency, nor paid the initial excise tax imposed by section 4942(a). Thus, the "correction period" is from January 1, 1975, through May 30, 1978, unless the Commissioner determines it is reasonable and necessary to extend the correction period to permit M to distribute the undistributed income for 1975.

(d) *Effective date.* Except as otherwise specifically provided, section 4942 and the regulations thereunder shall only apply with respect to taxable years beginning after December 31, 1969.

§ 53.4942(a)–2 Computation of undistributed income.

(a) *Undistributed income.* For purposes of section 4942, the term "undistributed income" means, with respect to any private foundation for any taxable year as of any time, the amount by which—

(1) The distributable amount (as defined in paragraph (b) of this section) for such taxable year, exceeds

(2) The qualifying distributions (as defined in § 53.4942(a)–3) made before such time out of such distributable amount.

(b) *Distributable amount* (1) *In general.* For purposes of paragraph (a) of this section, the term "distributable amount" means an amount equal to the greater of the minimum investment return (as defined in paragraph (c) of this section) or the adjusted net income (as defined in paragraph (d) of this section), reduced by the sum of the taxes imposed on such private foundation for such taxable year under subtitle A of the Code and section 4940, and increased by the amounts received from trusts described in subparagraph (2) of this paragraph.

(2) *Certain trust amounts*—(i) *In general.* The distributable amount shall be increased by the income portion (as defined in subdivision (ii) of this subparagraph) of distributions from trusts described in section 4947(a)(2) with respect to amounts placed in trust after May 26, 1969. If such distributions are made with respect to amounts placed in trust both on or before and after May 26, 1969, such distributions shall be allocated between such amounts to determine the extent to which such distributions shall be included in the foundation's distributable amount. For rules relating to the segregation of amounts placed in trust on or before May 26, 1969, from amounts placed in trust after such date and to the allocation of income derived from such amounts, see paragraph (c)(5) of § 53.4947–1.

(ii) *Income portion of distributions to private foundations.* For purposes of subdivision (i) of this subparagraph, the income portion of a distribution from a section 4947(a)(2) trust to a private foundation in a particular taxable year of such foundation shall be the greater of:

(*a*) The amount of such distribution which is treated as income (within the meaning of section 643(b)) of the trust, or

(*b*) The guaranteed annuity, or fixed percentage of the fair market value of the trust property (determined annually), which the private foundation is entitled to receive for such year, regardless of whether such amount is actually received in such year or in any prior or subsequent year.

(iii) *Limitation.* Notwithstanding subdivisions (i) and (ii) of this subparagraph, a private foundation shall not be required to distribute a greater amount for any taxable year than would have been required (without regard to this subparagraph) for such year had the corpus of the section 4947(a)(2) trust

to which the distribution described in subdivision (ii) of this subparagraph is attributable been taken into account by such foundation as an asset described in paragraph (c)(1)(i) of this section.

(c) *Minimum investment return*—(1) *In general.* For purposes of paragraph (b) of this section, the "minimum investment return" for any private foundation for any taxable year is the amount determined by multiplying—

(i) The excess of the aggregate fair market value of all assets of the foundation, other than those described in subparagraph (2) or (3) of this paragraph, over the amount of the acquisition indebtedness with respect to such assets (determined under section 514(c)(1), but without regard to the taxable year in which the indebtedness was incurred), by

(ii) The applicable percentage (as defined in subparagraph (5) of this paragraph) for such year.

For purposes of subdivision (i) of this subparagraph, the aggregate fair market value of all assets of the foundation shall include the average of the fair market values on a monthly basis of securities for which market quotations are readily available (within the meaning of subparagraph (4)(i)(*a*) of this paragraph), the average of the foundation's cash balances on a monthly basis (less the cash balances excluded from the computation of the minimum investment return by operation of subparagraph (3)(iv) of this paragraph), and the fair market value of all other assets (except those assets described in subparagraph (2) or (3) of this paragraph) for the period of time during the year for which such assets are held by the foundation. Any determination of the fair market value of an asset required pursuant to the provisions of this subparagraph shall be made in accordance with the rules of subparagraph (4) of this paragraph.

(2) *Certain assets excluded.* For purposes of this paragraph, the assets taken into account in determining minimum investment return shall not include the following:

(i) Any future interest (such as a vested or contingent remainder, whether legal or equitable) of a foundation in the income or corpus of any real or personal property until all intervening interests in, and rights to the actual possession or enjoyment of, such property have expired, or, although not actually reduced to the foundation's possession, until such future interest has been constructively received by the foundation, as where it has been credited to the foundation's account, set apart for the foundation, or otherwise made available so that the foundation may acquire it at any time or could have acquired it if notice of intention to acquire had been given;

(ii) The assets of an estate until such time as such assets are distributed to the foundation or, due to a prolonged period of administration, such estate is considered terminated for Federal income tax purposes by operation of paragraph (a) of § 1.641(b)-3 of this chapter (Income Tax Regulations);

(iii) Any present interest of a foundation in any trust created and funded by another person (see, however, paragraph (b)(2) of this section with respect to amounts received from certain trusts described in section 4947(a)(2));

(iv) Any pledge to the foundation of money or property (whether or not the pledge may be legally enforced); and

(v) Any assets used (or held for use) directly in carrying out the foundation's exempt purpose.

(3) *Assets used (or held for use) in carrying out the exempt purpose*—(i) *In general.* For purposes of subparagraph (2)(v) of this paragraph, an asset is "used (or held for use) directly in carrying out the foundation's exempt purpose" only if the asset is actually used by the foundation in the carrying out of the charitable, educational, or other similar purpose which gives rise to the exempt status of the foundation, or if the foundation owns the asset and establishes to the satisfaction of the Commissioner that its immediate use for such exempt purpose is not practical (based on the facts and circumstances of the particular case) and that definite plans exist to commence such use within a reasonable period of time. Consequently, assets which are held for the production of income or for investment (for example, stocks, bonds, interest-bearing notes, endowment funds, or, generally, leased real estate) are not being used (or held for use) directly in carrying out the foundation's exempt purpose, even though the income from such assets is used to carry out such exempt purpose. Whether an asset is held for the production of income or for investment rather than used (or held for use) directly by the foundation to carry out its exempt purpose is a question of fact. For example, an office building used for the purpose of providing offices for employees engaged in the management of endowment funds of the foundation is not being used (or held for use) directly by the foundation to carry out its charitable, educational, or other similar exempt purpose. However, where property is used both for charitable, educational, or other similar exempt purposes and for other purposes, if such exempt use represents 95 percent or more of the total use, such property shall be considered to be used exclusively for a charitable, educational, or other similar exempt purpose. If such exempt use of such property represents less than 95 percent of the total use, reasonable allocation between such exempt and nonexempt use must be made for purposes of this paragraph. Property acquired by the foundation to be used in carrying out its charitable, educational, or other similar exempt purpose may be considered as used (or held for use) directly to carry out such exempt purpose even though the property, in whole or in part, is leased for a limited period of time during which arrangements are made for its conversion to the use for which it was acquired, provided such income-producing use of the property does not exceed a reasonable period of time. Generally, 1 year shall be deemed to be a reasonable period of time for purposes of the immediately preceding sentence. For treatment of the income derived from such income-producing use, see paragraph (d)(2)(viii) of this section. Where the income-producing use continues beyond a reasonable period of time, the property shall not be deemed to be used by the foundation to carry out its charitable, educational, or other similar exempt purpose, but, instead, as of the time the income-producing use becomes unreasonable, such property shall be treated as disposed of within the meaning of paragraph (d)(2)(iii)(*b*) of this section to the extent that the acquisition of the property was taken into account as a qualifying distribution (within the meaning of paragraph (a)(2) of § 53.4942(a)-3) for any taxable year. If, subsequently, the property is used by the foundation directly in carrying out its charitable, educational, or other similar exempt purpose, a qualifying distribution in the amount of its then fair market value, determined in accordance with the rules contained in subparagraph (4) of this paragraph, shall be deemed to have been made as of the time such exempt use begins.

(ii) *Illustrations.* Examples of assets which are "used (or held for use) directly in carrying out the foundation's exempt purpose" include, but are not limited to, the following:

(*a*) Administrative assets, such as office equipment and supplies which are used by employees or consultants of the foundation, to the extent such assets are devoted to and used directly in the administration of the foundation's charitable, educational or other similar exempt activities;

(*b*) Real estate or the portion of a building used by the foundation directly in its charitable, educational, or other similar exempt activities;

(*c*) Physical facilities used in such activities, such as paintings or other works of art owned by the foundation which are on public display, fixtures and equipment in classrooms, research facilities and related equipment which under the facts and circumstances serve a useful purpose in the conduct of such activities;

(*d*) Any interest in a functionally related business (as defined in subdivision (iii) of this subparagraph) or in a program-related investment (as defined in section 4944(c));

(*e*) The reasonable cash balances (as described in subdivision (iv) of this subparagraph) necessary to cover current administrative expenses and other normal and current disbursements directly connected with the foundation's charitable, educational, or other similar exempt activities; and

(*f*) Any property leased by a foundation in carrying out its charitable, educational, or other similar exempt purpose at no cost (or at a nominal rent) to the lessee or for a program-related purpose (within the meaning of section 4944(c)), such as the leasing of renovated apartments to low-income tenants at a low rental as part of the lessor foundation's program for rehabilitating a blighted

portion of a community. For treatment of the income derived from such use, see paragraph (d)(2)(viii) of this section.

(iii) *Functionally related business*—(a) *In general.* The term "functionally related business" means—

(1) A trade or business which is not an unrelated trade or business (as defined in section 513), or

(2) An activity which is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which is related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the charitable, educational, or other similar exempt purpose of the organization.

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

Example (1). X, a private foundation, maintains a community of historic value which is open to the general public. For the convenience of the public, X, through a wholly owned, separately incorporated, taxable entity, maintains a restaurant and hotel in such community. Such facilities are within the larger aggregate of activities which makes available for public enjoyment the various buildings of historic interest and which is related to X's exempt purpose. Thus, the operation of the restaurant and hotel under such circumstances constitutes a functionally related business.

Example (2). Y, a private foundation, as part of its medical research program under section 501(c)(3), publishes a medical journal in carrying out its exempt purpose. Space in the journal is sold for commercial advertising. Notwithstanding the fact that the advertising activity may be subject to the tax imposed by section 511, such activity is within a larger complex of endeavors which makes available to the scientific community and the general public developments with respect to medical research and is therefore a functionally related business.

(iv) *Cash held for charitable, etc. activities.* For purposes of subdivision (ii)(e) of this subparagraph, the reasonable cash balances which a private foundation needs to have on hand to cover expenses and disbursements described in such subdivision will generally be deemed to be an amount, computed on an annual basis, equal to one and one-half percent of the fair market value of all assets described in subparagraph (1)(i) of this paragraph, without regard to subdivision (ii)(e) of this subparagraph. However, if the Commissioner is satisfied that under the facts and circumstances an amount in addition to such one and one-half percent is necessary for payment of such expenses and disbursements, then such additional amount may also be excluded from the amount of assets described in subparagraph (1)(i) of this paragraph. All remaining cash balances, including amounts necessary to pay any tax imposed by section 511 or any section of chapter 42 of the Code except section 4940, are to be included in the assets described in subparagraph (1)(i) of this paragraph.

(4) *Valuation of assets*—(i) *Certain securities.* (a) For purposes of subparagraph (1)(i) of this paragraph, a private foundation may use any reasonable method to determine the fair market value on a monthly basis of securities for which market quotations are readily available, as long as such method is consistently used. For purposes of this subparagraph, market quotations are readily available if a security is:

(1) Listed on the New York Stock Exchange, the American Stock Exchange, or any city or regional exchange in which quotations appear on a daily basis, including foreign securities listed on a recognized foreign national or regional exchange;

(2) Regularly traded in the national or regional over-the-counter market, for which published quotations are available; or

(3) Locally traded, for which quotations can readily be obtained from established brokerage firms.

(b) [Reserved]

(c) In the case of securities described in subdivision (i)(a) of this subparagraph, which are held in trust for, or on behalf of, a foundation by a bank or other financial institution which values such securities periodically by use of a computer, a foundation may determine the correct value of such securities by use of such computer pricing system, provided the Commissioner has accepted such computer pricing system as a valid method for valuing securities for Federal estate tax purposes.

(d) This subdivision may be illustrated by the following examples:

Example (1). U, a private foundation, owns 1,000 shares of the stock of M Corporation. M stock is regularly traded on the New York Stock Exchange. U consistently follows a practice of valuing its 1,000 shares of M stock on the last trading day of each month based upon the quoted closing price for M stock. U's method of valuing its M Corporation stock is permissible under the rules contained in subdivision (i)(a) of this subparagraph.

Example (2). Assume the facts as stated in example (1), except that U consistently follows a practice of valuing its 1,000 shares of M stock by taking the mean of the closing prices for M stock on the first and last trading days of each month and the trading day nearest the 15th day of each month. U's method of valuing its M stock is permissible under the rules contained in subdivision (i)(a) of this subparagraph.

Example (3). Assume the facts as stated in example (1), except that U consistently follows a practice of valuing its M stock by taking the mean of the highest and lowest quoted prices for the stock on the last trading day of each month. U's method of valuing its M stock is permissible under the rules contained in subdivision (i)(a) of this subparagraph.

Example (4). V, a private foundation, owns 1,000 shares of the stock of N Corporation. N stock is regularly traded in the national over-the-counter market and published quotations of the bid and asked prices for the stock are available. V consistently follows a practice of valuing its 1,000 shares of N stock on the first trading day of each month by taking the mean of the bid and asked prices on that day. V's method of valuing its N Corporation stock is permissible under the rules contained in subdivision (i)(a) of this subparagraph.

Example (5). W, a private foundation, owns 1,000 shares of the stock of O Corporation. O stock is locally traded and quotations can readily be obtained from established brokerage firms. W consistently follows a practice of valuing its O stock on the 15th day of each month by obtaining a bona fide quotation of bid and asked prices for the stock from an established brokerage firm and taking the mean of such prices on that day. If a quotation is unavailable on the regular valuation date, W values its O stock based upon a bona fide quotation on the first day thereafter on which such a quotation is available. W's method of valuing its O Corporation stock is permissible under the rules contained in subdivision (i)(a) of this subparagraph.

(ii) *Cash.* In order to determine the amount of a foundation's cash balances, the foundation shall value its cash on a monthly basis by averaging the amount of cash on hand as of the first day of each month and as of the last day of each month.

(iii) *Common trust funds.* If a private foundation owns a participating interest in a common trust fund (as defined in section 584) established and administered under a plan providing for the periodic valuation of participating interests during the fund's taxable year and the reporting of such valuations to participants, the value of the foundation's interest in the common trust fund shall be based upon the average of the valuations reported to the foundation during its taxable year ordinarily will constitute an acceptable method of valuation.

(iv) *Other assets.* (a) Except as otherwise provided in subdivision (iv)(b) of this subparagraph, the fair market value of assets other than those described in subdivisions (i) through (iii) of this subparagraph shall be determined annually. Thus, the fair market value of securities other than those described in subdivision (i) of this subparagraph shall be determined in accordance with this subdivision (a). Such determination may be made by employees of the private foundation or by any other person, without regard to whether such person is a disqualified person with respect to the foundation. A valuation made pursuant to the provisions of this subdivision, if accepted by the Commissioner, shall be valid only for the taxable year for which it is made. A new valuation made in accordance with these provisions is required for the succeeding taxable year.

(b) If the requirements of this subdivision are met, the fair market value of any interest in real property, including any improvements thereon, may be determined on a 5-year basis. Such value must be determined by means of a certified, independent appraisal made in writing by a qualified person who is neither a disqualified person with respect to, nor an employee of, the private foundation. The appraisal is certified only if it contains a statement at the end thereof to the effect that, in the opinion of the appraiser, the values placed on the assets appraised were determined in accordance with valuation principles regularly employed in making appraisals of such property using all reasonable valuation methods. The foundation shall retain a copy of the independent appraisal for its records. If a valuation

made pursuant to the provisions of this subdivision in fact falls within the range of reasonable values for the appraised property, such valuation may be used by by the foundation for the taxable year for which the valuation is made and for each of the succeeding 4 taxable years. Any valuation made pursuant to the provisions of this subdivision may be replaced during the 5-year period by a subsequent 5-year valuation made in accordance with the rules set forth in this subdivision, or with an annual valuation made in accordance with subdivision (iv)(*a*) of this subparagraph, and the most recent such valuation of such assets shall be used in computing the foundation's minimum investment return. In the case of a foundation organized before May 27, 1969, a valuation made in accordance with this subdivision applicable to the foundation's first taxable year beginning after December 31, 1972, and the 4 succeeding taxable years must be made no later than the last day of such first taxable year. In the case of a foundation organized after May 26, 1969, a valuation made in accordance with this subdivision applicable to the foundation's first taxable year beginning after [insert date these regulations are published as a Treasury decision] and the succeeding 4 taxable years must be made no later than the last day of such first taxable year. Any subsequent valuation made in accordance with this subdivision must be made no later than the last day of the first taxable year for which such new valuation is applicable. A valuation, if properly made in accordance with the rules set forth in this subdivision, will not be disturbed by the Commissioner during the 5-year period for which it applies even if the actual fair market value of such property changes during such period.

(c) For purposes of this subdivision, commonly accepted methods of valuation must be used in making an appraisal. Valuations made in accordance with the principles stated in the regulations under section 2031 constitute acceptable methods of valuation. The term "appraisal," as used in this subdivision, means a determination of fair market value and is not to be construed in a technical sense peculiar to particular property or interests therein, such as, for example, mineral interests in real property.

(v) *Definition of "securities".* For purposes of this subparagraph, the term "securities" includes, but is not limited to, common and preferred stocks, bonds, and mutual fund shares.

(vi) *Valuation date.* (*a*) In the case of an asset which is required to be valued on an annual basis as provided in subdivision (iv)(*a*) of this subparagraph, such asset may be valued as of any day in the private foundation's taxable year to which such valuation applies, provided the foundation follows a consistent practice of valuing such asset as of such date in all taxable years.

(*b*) A valuation described in subdivision (iv)(*b*) of this subparagraph may be made as of any day in the first taxable year of the private foundation to which such valuation is to be applied.

(vii) *Assets held for less than a taxable year.* For purposes of this paragraph, any asset described in subparagraph (1)(i) of this paragraph which is held by a foundation for only part of a taxable year shall be taken into account for purposes of determining the foundation's minimum investment return for such taxable year by multiplying the fair market value of such asset (as determined pursuant to this subparagraph) by a fraction, the numerator of which is the number of days in such taxable year that the foundation held such asset and the denominator of which is the number of days in such taxable year.

(5) *Applicable percentage*—(i) *In general.* For purposes of subparagraph (1)(ii) of this paragraph, except as provided in subdivision (ii) or (iii) of this subparagraph, the applicable percentage is:

(*a*) Six percent for a taxable year beginning in calendar years 1970 and 1971; and

(*b*) Five and a half percent for a taxable year beginning in calendar year 1972 and in any subsequent calendar year, unless another percentage has been determined and published by the Secretary or his delegate.

Any determination that a new applicable percentage is to be used for taxable years beginning in a calendar year subsequent to 1972 will be published by May 1st of such calendar year. The latest published percentage shall apply for any taxable year beginning in the calendar year with respect to which publication is made and for any subsequent taxable year. The applicable percentage shall bear a relationship to 6 percent which the Secretary or his delegate determines to be comparable to the relationship which the money rates and investment yields for the calendar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1969. Any adjustment in the applicable percentage shall be made only to the nearest one-fourth of one percent.

(ii) *Transitional rule.* In the case of organizations organized before May 27, 1969 (including organizations deemed to be so organized by virtue of the provisions of paragraph (e)(2) of this section), section 4942 shall, for all purposes other than the determination of the minimum investment return under section 4942(j)(3)(B)(ii), for taxable years—

(*a*) Beginning before January 1, 1972, apply without regard to section 4942(e).

(*b*) Beginning in 1972, apply with an applicable percentage of 4⅓ percent,

(*c*) Beginning in 1973, apply with an applicable percentage which is the lesser of 5 percent or five-sixths of the applicable percentage prescribed in subdivision (i) of this subparagraph for 1973, and

(*d*) Beginning in 1974, apply with an applicable percentage which is the lesser of 5½ percent or eleven-twelfths of the applicable percentage prescribed in subdivision (i) of this subparagraph for 1974.

(iii) *Short taxable periods.* In any case in which a taxable year referred to in this subparagraph is a period less than 12 months, the applicable percentage to be applied to the amount determined under the provisions of subparagraph (1) of this paragraph shall be equal to the applicable percentage for the calendar year in which the short taxable period began multiplied by a fraction, the numerator of which is the number of days in such short taxable period and the denominator of which is 365.

(d) *Adjusted net income*—(1) *Definition.* For purposes of paragraph (b) of this section, the term "adjusted net income" means the excess (if any) of—

(i) The gross income for the taxable year (including gross income from any unrelated trade or business) determined with the income modifications provided by subparagraph (2) of this paragraph, over

(ii) The sum of the deductions (including deductions directly connected with the carrying on of any unrelated trade or business), determined with the deduction modifications provided by subparagraph (4) of this paragraph, which would be allowed to a corporation subject to the tax imposed by section 11 for the taxable year.

In computing the income includible under this paragraph as gross income and the deductions allowable under this paragraph from such income, the principles of subtitle A of the Code shall apply except to the extent such principles conflict with section 4942 and the regulations thereunder (without regard to this sentence). Except as otherwise provided in this paragraph, no exclusions or deductions from gross income or credits against tax are allowable under this paragraph. For purposes of subdivision (i) of this subparagraph, the term "gross income" does not include gifts, grants, or contributions received by the private foundation but does include income from a functionally related business (as defined in paragraph (c)(3)(iii) of this section).

(2) *Income modifications.* The income modifications referred to in subparagraph (1)(i) of this paragraph are as follows:

(i) Section 103 (relating to interest on certain governmental obligations) shall not apply. Hence, interest which would have been excluded from gross income by section 103 shall be included in gross income.

(ii) Capital gains and losses from the sale or other disposition of property shall be taken into account only in an amount equal to any net short-term capital gain (as defined in section 1222(5)) for the taxable year. Long-term capital gain or loss is not included in the computation of adjusted net income. Similarly, net section 1231 gains shall be excluded from the computation of adjusted net income. However, net section 1231 losses shall be included in the computation of adjusted

net income, if such losses are otherwise described in subparagraph (1)(ii) of this paragraph. Any net short-term capital loss for a given taxable year shall not be taken into account in computing adjusted net income for such year or in computing net short-term capital gain for purposes of determining adjusted net income for prior or future taxable years regardless of whether the foundation is a corporation or a trust.

(iii) The following amounts shall be included in gross income for the taxable year—

(*a*) Amounts received or accrued as repayments of amounts which were taken into account as a qualifying distribution within the meaning of paragraph (a)(2)(i) of § 53.4942(a)–3 for any taxable year;

(*b*) Notwithstanding subdivision (ii) of this subparagraph, gross amounts received or accrued from the sale or other disposition of property to the extent that the acquisition of such property was taken into account as a qualifying distribution (within the meaning of paragraph (a)(2)(ii) of § 53.4942(a)–3) for any taxable year; and

(*c*) Any amount set aside under paragraph (b) of § 53.4942(a)–3 to the extent it is determined that such amount is not necessary for the purposes for which it was set aside.

(iv) Any distribution received by a private foundation from a disqualified person in redemption of stock held by such private foundation in a business enterprise shall be treated as not essentially equivalent to a dividend under section 302(b)(1) if all of the following conditions are satisfied:

(*a*) Such redemption is of stock which was owned by a private foundation on May 26, 1969 (or which is acquired by a private foundation under the terms of a trust which was irrevocable on May 26, 1969, or under the terms of a will executed on or before such date which are in effect on such date and at all times thereafter);

(*b*) Such foundation is required to dispose of such property in order not to be liable for tax under section 4943 (relating to taxes on excess business holdings) applied, in the case of a disposition before January 1, 1975, without taking section 4943(c)(4) into account; and

(*c*) Such foundation receives in return an amount which equals or exceeds the fair market value of such property at the time of such disposition or at the time a contract for such disposition was previously executed in a transaction which would not constitute a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law).

(v) If, as of the date of distribution of property for purposes described in section 170(c)(1) or (2)(B), the fair market value of such property exceeds its adjusted basis, such excess shall not be deemed an amount includible in gross income.

(vi) The income received by a private foundation from an estate during the period of administration of such estate shall not be included in such foundation's gross income, unless, due to a prolonged period of administration, such estate is considered terminated for Federal income tax purposes by operation of paragraph (a) of § 1.641(b)–3 of this chapter (Income Tax Regulations).

(vii) Distributions received by a private foundation from a trust created and funded by another person shall not be included in the foundation's gross income. However, with respect to distributions from certain trusts described in section 4947(a)(2), see paragraph (b)(2) of this section.

(viii) Gross income shall include all amounts derived from, or in connection with, property held by the foundation, even though the fair market value of such property may not be included in such foundation's assets for purposes of determining minimum investment return by operation of paragraph (c)(3) of this section.

(ix) Gross income shall include amounts treated in a preceding taxable year as a "qualifying distribution" by operation of paragraph (c) of § 53.4942(a)–3 where such amounts are not redistributed by the close of the donee organization's succeeding taxable year in accordance with the rules prescribed in such paragraph (c). In such cases, such amounts shall be included in the donor foundation's gross income for such foundation's first taxable year beginning after the close of the donee organization's first taxable year following the donee organization's taxable year of receipt.

(3) *Adjusted basis*—(i) *In general.* For purposes of subparagraph (2)(ii) of this paragraph, the adjusted basis for purposes of determining gain from the sale or other disposition of property shall be determined in accordance with the rules set forth in subdivision (ii) of this subparagraph and the adjusted basis for purposes of determining loss from such disposition shall be determined in accordance with the rules set forth in subdivision (iii) of this subparagraph. Further, the provisions of this subparagraph do not apply for any purpose other than for purposes of subparagraph (2)(ii) of this paragraph. For example, the determination of gain pursuant to the provisions of section 341 is determined without regard to this subparagraph.

(ii) *Gain from sale or other disposition.* The adjusted basis for purposes of determining gain from the sale or other disposition of property shall be the greater of:

(*a*) The fair market value of such property on December 31, 1969, plus or minus all adjustments after December 31, 1969, and before the date of sale or other disposition under the rules of Part II, Subchapter O, Chapter 1 of the Code, provided that the property was held by the private foundation on December 31, 1969, and continuously thereafter to such date of sale or other disposition; or

(*b*) The adjusted basis as determined under the rules of Part II, Subchapter O, Chapter 1 of the Code, subject to the provisions of section 4940(c)(3)(B) and the regulations thereunder (and without regard to section 362(c)). With respect to assets acquired prior to December 31, 1969, which were subject to depreciation or depletion, for purposes of determining the adjustments to be made to basis between the date of acquisition and December 31, 1969, an amount equal to straight-line depreciation or cost depletion shall be taken into account. In addition, in determining such adjustments to basis, if any other adjustments would have been made during such period (such as a change in useful life based upon additional data or a change in facts), such adjustments shall also be taken into account.

(iii) *Loss from sale or other disposition.* For purposes of determining loss from the sale or other disposition of property, adjusted basis as determined in subdivision (ii)(*b*) of this subparagraph shall apply.

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

Example (1). A private foundation, which uses the cash receipts and disbursements method of accounting, purchased certain depreciable real property on December 1, 1969. On December 31, 1969, the fair market value of such property was $100,000 and its adjusted basis (determined under the provisions of this subparagraph) was $102,000. The property was sold on January 2, 1970, for $105,000. Because fair market value on December 31, 1969, $100,000, is less than the adjusted basis as determined by Part II, Subchapter O, Chapter 1 of the Code, $102,000, a short-term gain of $3,000 is recognized (*i.e.*, sale price of $105,000 less the greater of the two possible bases) for purposes of subparagraph (2)(ii) of this paragraph.

Example (2). Assume the facts as stated in example (1), except that the sale price was $95,000. Because the sale price was $7,000 less than the adjusted basis for loss ($102,000 as determined by the application of subdivision (iii) of this subparagraph), there is a capital loss of $7,000 which may be deducted against short-term capital gains for 1970 (if any) in determining net short-term capital gain.

Example (3). A private foundation, which uses the cash receipts and disbursements method of accounting, purchased unimproved land on December 1, 1969. On December 31, 1969, the fair market value of such property was $110,000 and its adjusted basis (determined under the provisions of this subparagraph) was $102,000. The property was sold on January 2, 1970, for $105,000. Since the fair market value on December 31, 1969, $110,000, exceeds the adjusted basis as determined by Part II, Subchapter O, Chapter 1 of the Code, $102,000, such fair market value will be used for purposes of determining gain. However, because the adjusted basis for purposes of determining gain exceeds the sale price, there is no gain. Furthermore, because the adjusted basis for purposes of determining loss, $102,000, is less than sale price, there is no loss.

(4) *Deduction modifications*—(i) *In general.* For purposes of computing adjusted net income under subparagraph (1) of this paragraph, no deduction shall be allowed other than all the ordinary and necessary expenses paid or incurred for the production or collection of gross income or for the management, conservation, or maintenance of property held

for the production of such income, except as provided in subdivision (ii) of this subparagraph. Such expenses include that portion of a private foundation's operating expenses which is paid or incurred for the production or collection of gross income. Operating expenses include compensation of officers, other salaries and wages of employees, interest, rent, and taxes. Where only a portion of the property produces (or is held for the production of) income subject to the provisions of section 4942, and the remainder of the property is used for charitable, educational, or other similar exempt purposes, the deductions allowed by this subparagraph shall be apportioned between the exempt and nonexempt uses. Similarly, where the deductions with respect to property used for a charitable, educational, or other similar exempt purpose exceed the income derived from such property, such excess shall not be allowed as a deduction, but may be treated as a qualifying distribution described in paragraph (a)(2)(ii) of § 53.4942(a)-3. Furthermore, this subdivision does not allow deductions which are not paid or incurred for the purposes herein prescribed. Thus, for example, the deductions prescribed by the following sections are not allowable: (*a*) The charitable contributions deduction prescribed under sections 170 and 642(c); (*b*) the net operating loss deduction prescribed under section 172; and (*c*) the special deductions prescribed under Part VIII, subchapter B, chapter 1 of the Code.

(ii) *Special rules.* For purposes of computing adjusted net income under subparagraph (1) of this paragraph: (*a*) The allowances for depreciation and depletion as determined under section 4940(c)(3)(B) and the regulations thereunder shall be taken into account, and (*b*) section 265 (relating to expenses and interest relating to tax-exempt interest) shall not apply.

(e) *Certain transitional rules*—(1) *In general.* In the case of organizations organized before May 27, 1969, section 4942 shall—

(i) Not apply to an organization to the extent its income is required to be accumulated pursuant to the mandatory terms (as in effect on May 26, 1969, and at all times thereafter) of an instrument executed before May 27, 1969, with respect to the transfer of income producing property to such organization, except that section 4942 shall apply to such organization if the organization would have been denied exemption had section 504(a) not been repealed, or would have had its deductions under section 642(c) limited had section 681(c) not been repealed. In applying the preceding sentence, in addition to the limitations contained in section 504(a) or 681(c) before its repeal, section 504(a)(1) or 681(c)(1) shall be treated as not applying to an organization to the extent its income is required to be accumulated pursuant to the mandatory terms (as in effect on January 1, 1951, and at all times thereafter) of an instrument executed before January 1, 1951, with respect to the transfer of income producing property to such organization before such date, if such transfer was irrevocable on such date; and

(ii) Not apply to an organization which is prohibited by its governing instrument or other instrument from distributing capital or corpus to the extent the requirements of section 4942 are inconsistent with such prohibition.

(2) *Certain existing organizations.* For purposes of this section, an organization will be deemed to be organized prior to May 27, 1969, if it is either a testamentary trust created under the will of an individual who died prior to such date or an inter vivos trust which was in existence and irrevocable prior to such date, even though it is not funded until after May 26, 1969. Similarly, a split-interest trust, as described in section 4947(a)(2), which became irrevocable prior to May 27, 1969, and which is treated as a private foundation under section 4947(a)(1) subsequent to such date, likewise shall be treated as an organization organized prior to such date. See section 507(b)(2) and the regulations thereunder with respect to the applicability of transitional rules where there has been a merger of two or more private foundations or a reorganization of a private foundation.

(3) *Limitation.* With respect to taxable years beginning after December 31, 1971, subparagraph (1) (i) and (ii) of this paragraph shall apply only for taxable years during which there is pending any judicial proceeding by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument (as in effect on May 26, 1969) in order to comply with the provisions of section 4942, and in the case of subparagraph (1)(i) of this paragraph for all taxable years following the taxable year in which such judicial proceeding is terminated during which the governing instrument or any other instrument does not permit compliance with such provisions. Thus, the exception described in subparagraph (1)(ii) of this paragraph applies after 1971 only for taxable years during which such judicial proceeding is pending. Accordingly, beginning with the first taxable year following the taxable year in which such judicial proceeding is terminated, such foundation will be required to meet the requirements of section 4942 and the regulations thereunder (and be subject to the taxes provided upon failure to do so) except to the extent such foundation is required to accumulate income as described in subparagraph (1)(i) of this paragraph, even if the governing instrument continues to prohibit invasion of capital or corpus. In any case where a foundation's governing instrument or any other instrument requires accumulation of income as described in subparagraph (1)(i) of this paragraph beginning with the first taxable year following the taxable year in which such judicial proceeding is terminated, the distributable amount (as defined in paragraph (b) of this section) for such foundation shall be reduced by the amount of the income required to be accumulated. Therefore, if the foundation's adjusted net income for any taxable year equals or exceeds its minimum investment return for such year, the accumulation provision will be given full effect. However, if the minimum investment return exceeds the adjusted net income for any taxable year, the foundation will be required to distribute such excess for such year. For purposes of this paragraph, a judicial proceeding will be treated as pending only if the foundation is diligently pursuing its judicial remedies and there is no unreasonable delay in such proceeding for which the private foundation is responsible.

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

Example (1). X, a private foundation organized in 1930, is required by the mandatory terms of its governing instrument to accumulate 25 percent of its adjusted net income and to add such accumulations to corpus. The instrument also prohibits distribution of corpus for any purpose. On July 13, 1971, X instituted an action in the appropriate State court to reform the instrument by deleting the accumulation and corpus provisions described above. If the court's final order reforms the accumulation provision to allow distributions of income sufficient to avoid the imposition of a tax under section 4942, then section 4942 applies to X, regardless of the court's action with respect to the corpus provision. However, if the court rules that the accumulation provision may not be reformed, section 4942 applies to X only to the extent provided for in subparagraph (3) of this paragraph, regardless of the court's action with respect to the corpus provision.

Example (2). Private foundation Y was created by the will of A who died in 1940. Y's governing instrument requires that 40 percent of Y's adjusted net income be added to corpus each year. In an action commenced prior to December 31, 1971, a court of competent jurisdiction ruled that this accumulation provision must be complied with. In Y's succeeding taxable year its adjusted net income is $120,000, and its minimum investment return is $140,000. Thus, Y is required to accumulate $48,000 (40 percent of $120,000) and shall be allowed to do so. Therefore, Y's distributable amount for such taxable year shall be the greater of its adjusted net income ($120,000) or its minimum investment return ($140,000), reduced by the amount of the income required to be accumulated ($48,000) and the taxes imposed by Subtitle A of the Code and section 4940 and increased by any trust distributions described in paragraph (b)(2) of this section. Accordingly, Y's distributable amount for such taxable year is $92,000 ($140,000 reduced by $48,000), before other adjustments. If Y's minimum investment return had been $120,000 instead of $140,000, its distributable amount for such taxable year would have been $72,000 ($120,000 reduced by $48,000), before other adjustments. Similarly, if Y's minimum investment return had been $100,000 instead of $140,000, its distributable amount for such taxable year would also have been $72,000, before other adjustments.

§ 53.4942(a)-3 Qualifying distributions defined.

(a) *In general*—(1) *Distributions generally.* For purposes of section 4942 and the regulations thereunder, the amount

of a qualifying distribution of property (as defined in subparagraph (2) of this paragraph) is the fair market value of such property as of the date such qualifying distribution is made. The amount of an organization's qualifying distributions will be determined solely on the cash receipts and disbursements method of accounting described in section 446(c)(1).

(2) *Definition.* The term "qualifying distribution" means—

(i) Any amount (including program-related investments, as defined in section 4944(c), and reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(1) or (2)(B), other than any contribution to—

(*a*) A private foundation which is not an operating foundation (as defined in section 4942(j)(3)), except as provided in paragraph (c) of this section, or

(*b*) An organization controlled (directly or indirectly) by the contributing private foundation or one or more disqualified persons with respect to such foundation, except as provided in paragraph (c) of this section;

(ii) Any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in section 170(c)(1) or (2)(B). See paragraph (c)(3) of § 53.4942(a)–2 for the definition of "used (or held for use)"; or

(iii) Any amount set aside within the meaning of paragraph (b) of this section.

(3) *Control.* For purposes of subparagraph (2)(i)(*b*) of this paragraph, an organization is "controlled" by a foundation or one or more disqualified persons with respect to the foundation if any of such persons may, by aggregating their votes or positions of authority, require the donee organization to make an expenditure, or prevent the donee organization from making an expenditure, regardless of the method by which the control is exercised or exercisable. "Control" of a donee organization is determined without regard to any conditions imposed upon the donee as part of the distribution or any other restrictions accompanying the distribution as to the manner in which the distribution is to be used, unless such conditions or restrictions are described in paragraph (a)(8) of § 1.507–2 of this chapter (Income Tax Regulations). In general, it is the donee, not the distribution, which must be "controlled" by the distributing private foundation for the provisions of subparagraph (2)(i)(*b*) of this paragraph to apply. Thus, the furnishing of support to an organization and the consequent imposition of budgetary procedures upon that organization with respect to such support shall not in itself be treated as subjecting that organization to the distributing foundation's control within the meaning of this subparagraph. Such "budgetary procedures" include expenditure responsibility requirements under section 4945(d)(4). The "controlled" organization need not be a private foundation; it may be any type of exempt or nonexempt organization including a school, hospital, operating foundation, or social welfare organization.

(4) *Borrowed funds*—(i) *In general.* For purposes of this paragraph, if a private foundation borrows money in a particular taxable year to make expenditures for a specific charitable educational, or other similar purpose, a qualifying distribution out of such borrowed funds will, except as otherwise provided in subdivision (ii) of this subparagraph, be deemed to have been made only at the time that such borrowed funds are actually distributed for such exempt purpose.

(ii) *Funds borrowed before 1970.* (*a*) If a private foundation has borrowed money in a taxable year beginning before January 1, 1970, or subsequently borrows money pursuant to a written commitment which was binding as of the last day of such taxable year, to make expenditures for a specific charitable, educational, or other similar exempt purpose, if such borrowed funds are in fact expended for such purpose in any taxable year, and if such loan is thereafter repaid, in whole or in part, in a taxable year beginning after December 31, 1969, then, at the election of the foundation as provided in subdivision (ii)(*b*) of this subparagraph, a qualifying distribution will be deemed to have been made at such time or times that such loan principal is so repaid rather than at the earlier time that the borrowed funds were actually distributed for such exempt purpose.

(*b*) The election described in subdivision (ii)(*a*) of this subparagraph is to be made by attaching a statement to the form the private foundation is required to file under section 6033 for the first taxable year beginning after December 31, 1969, in which a repayment of loan principal is made. Such statement shall be made a part of such form and shall be attached to such form in each succeeding taxable year in which any repayment of loan principal is made. The statement shall set forth the name and address of the lender, the amount borrowed, the specific use made of such borrowed funds, and the private foundation's election to treat repayments of loan principal as qualifying distributions.

(iii) *Interest.* Any payment of interest with respect to a loan described in subdivision (i) or (ii) of this subparagraph shall be treated as a deduction under paragraph (d)(1)(ii) of § 53.4942(a)–2 in the taxable year in which it is made.

(5) *Changes in use of an asset.* If an asset not used (or held for use) directly in carrying out one or more purposes described in section 170(c)(1) or (2)(B) is subsequently converted to such a use, the foundation may treat such conversion as a qualifying distribution. The amount of such qualifying distribution shall be the fair market value of the converted asset as of the date of its conversion. For purposes of the preceding sentence, fair market value shall be determined by making a valuation of the converted asset as of the date of its conversion in accordance with the rules set forth in paragraph (c)(4) of § 53.4942(a)–2.

(6) *Certain foreign organizations*—(i) *In general.* Distributions for purposes described in section 170(c)(2)(B) to a foreign organization, which has not received a ruling or determination letter that it is an organization described in section 509(a)(1), (2), or (3) or 4942(j)(3), will be treated as a distribution made to an organization described in section 509(a)(1), (2), or (3) or 4942(j)(3) if the distributing foundation has made a good faith determination that the donee organization is an organization described in section 509(a)(1), (2), or (3) or 4942(j)(3). Such a "good faith determination" ordinarily will be considered as made where the determination is based on an affidavit of the donee organization or an opinion of counsel (of the distributing foundation or the donee organization) that the donee is an organization described in section 509(a)(1), (2), or (3) or 4942(j)(3). Such an affidavit or opinion must set forth sufficient facts concerning the operations and support of the donee organization for the Internal Revenue Service to determine that the donee organization would be likely to qualify as an organization described in section 509(a)(1), (2), or (3) or 4942(j)(3).

(ii) *Definition.* For purposes of this subparagraph, the term "foreign organization" means any organization which is not described in section 170(c)(2)(A).

(7) *Payment of tax.* The payment of any tax imposed under chapter 42 of the Code shall not be treated as a qualifying distribution.

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

Example (1). M, a private foundation which uses the calendar year as the taxable year, makes the following payments in 1970: (i) a payment of $44,000 to five employees for conducting a foundation program of educational grants for research and study; (ii) $20,000 for various items of overhead, 10 percent of which is attributable to the activities of the employees mentioned in payment (i) of this example and the other 90 percent of which is attributable to administrative expenses which were not paid to accomplish any section 170(c)(1) or (2)(B) purpose; and (iii) a $100,000 general purpose grant paid to an educational institution described in section 170(b)(1)(A)(ii) which is not controlled by M or any disqualified persons with respect to M. Payments (i) and (ii) of this example are qualifying distributions to the extent of $46,000 ($44,000 of salaries and 10 percent of the overhead, both of which are reasonable administrative expenses paid to accomplish section 170(c)(1) or (2)(B) purposes). Payment (iii) of this example is also a qualifying distribution, since it is a contribution for section 170(c)(2)(B) purposes to an organization which is not described in subparagraph (2)(i) (*a*) or (*b*) of this paragraph. The other 90 percent of payment (ii) of this example may constitute items of deduction under paragraph (d)(1)(ii) of § 53.4942(a)–2 if such items otherwise qualify under such paragraph.

Example (2). On February 21, 1972, N, a private foundation which uses the calendar year as the taxable year, pays $500,000 for real property on which it plans to build hospital facilities to be used for medical care and

education. The real property produces no income and the hospital facilities will not be constructed until 1974 according to the set-aside plan submitted to and approved by the Commissioner pursuant to paragraph (b) of this section. The purchase of the land is a qualifying distribution under subparagraph (2)(ii) of this paragraph. If, however, the property used were to produce rental income for more than a reasonable period of time before construction of the hospital is begun, then as of the time such rental use becomes unreasonable (i) such purchase would no longer constitute a qualifying distribution under subparagraph (2)(ii) of this paragraph, and (ii) the amount of the qualifying distribution would be included in N's gross income. See paragraphs (c)(3)(i) and (d)(2)(iii)(*b*) of § 53.4942(a)–2.

Example (3). In 1971, X, a private foundation engaged in holding paintings and exhibiting them to the public, purchases an additional building to be used to exhibit the paintings. Such expenditure is a qualifying distribution under subparagraph (2)(ii) of this paragraph. In 1975, X sells the building. Under paragraph (d)(2)(iii)(*b*) of § 53.4942(a)–2, all of the proceeds of the sale (less direct costs of the sale) are included in X's adjusted net income for 1975.

Example (4). In January 1969, M, a private foundation which uses the calendar year as the taxable year, borrows $10 million to give to N, a private college, for the construction of a science center. M borrowed the money from X, a commercial bank. M is to repay X at the rate of $1.1 million per year ($1 million principal and $0.1 million interest) for 10 years, beginning in January, 1973. M distributed $5 million of the borrowed funds to N in February 1969 and the other $5 million in March 1970. M files a statement with the form it is required to file under section 6033 for 1973 which contains the information required by subparagraph (4)(ii)(*b*) of this paragraph. Pursuant to M's election, each repayment of loan principal constitutes a qualifying distribution in the year of repayment. Accordingly, the distribution of $5 million to N in March 1970 will not be treated as a qualifying distribution. Each payment of interest ($0.1 million annually) with respect to M's loan from X is treated as a deduction under paragraph (d)(1)(ii) of § 53.4942(a)–2 in the taxable year in which it is made.

Example (5). Private foundation Y engages in providing care for the aged. Y makes a distribution of cash to H, a hospital described in section 170(b)(1)(A)(iii) which is not controlled by Y or any disqualified person with respect to Y. The distribution is made subject to the conditions that H will invest the money as a separate fund which will bear a name commemorating the creator of Y and will use the income from such fund only for H's exempt hospital purposes which relate to care for the aged. Under these circumstances, the distribution from Y to H is a qualifying distribution pursuant to subparagraph (2)(i) of this paragraph.

(b) *Certain set-asides*—(1) *In general.* An amount set aside for a specific project which is for one or more of the purposes described in section 170(c)(1) or (2)(B) may be treated as a qualifying distribution, but only if, at the time of the set-aside, the private foundation establishes to the satisfaction of the Commissioner that—

(i) The amount will actually be paid for the specific project within 60 months from the date of the first set-aside, and

(ii) The project is one which can be better accomplished by such set-aside than by the immediate payment of funds.

(2) *Specific project defined.* For purposes of this paragraph, a "specific project" includes, but is not limited to, situations where relatively long-term grants or expenditures must be made in order to assure the continuity of particular charitable projects or program-related investments, as defined in section 4944(c), or where grants are made as part of a matching-grant program. Such term may include, for example, a plan to erect a building to house the direct charitable, educational, or other similar exempt activity of the foundation (for example, a museum building in which paintings are to be hung), even though the exact location and architectural plans have not been finalized; a plan to purchase an additional group of paintings offered for sale only as a unit which requires an expenditure of more than 1 year's income; or a plan to fund a specific research program which is of such magnitude as to require an accumulation prior to commencement of the research, even though not all of the details of the program have been finalized. For good cause shown, the period for paying the amount set aside may be extended by the Commissioner.

(3) *Approval requirements.* The approval by the Commissioner must be applied for not later than the end of the taxable year in which the amount is to be set aside, and in all cases the Commissioner will either approve or disapprove the set-aside in writing. An otherwise proper set-aside will not be a qualifying distribution under subparagraph (1) of this paragraph with respect to a specific taxable year if approval by the Commissioner is not sought prior to the end of the taxable year in which the amount is actually set aside. To obtain approval by the Commissioner for a set-aside, the foundation must write to Commissioner of Internal Revenue, T:MS:EO, 1111 Constitution Avenue NW., Washington, D.C. 20224, stating specifically—

(i) The nature and purposes of the specific project and the amount of the set-aside for which such approval is requested;

(ii) The amounts and approximate dates of any planned additions to the set-aside after its initial establishment;

(iii) The reasons why the project can be better accomplished by such set-aside than by the immediate payment of funds;

(iv) A detailed description of the project, including estimated costs, sources of any future funds expected to be used for completion of the project, and the location or locations (general or specific) of any physical facilities to be acquired or constructed as part of the project; and

(v) A statement by an appropriate foundation manager (as defined in section 4946(b)) that the amounts to be set aside will actually be paid for the specific project within a specified period of time which ends not more than 60 months after the date of the first set-aside, or a statement showing good cause why the period for paying the amount set aside should be extended (including a showing that the proposed project could not be divided into two or more projects covering periods of no more than 60 months each) and setting forth the extension of time requested.

(4) *Evidence of set-aside.* A set-aside approved by the Commissioner shall be evidenced by the entry of a dollar amount on the books and records of a private foundation as a pledge or obligation to be paid at a future date or dates. Any amount which is set aside shall be taken into account for purposes of determining the foundation's minimum investment return under paragraph (c)(1) of § 53.4942(a)–2, and any income attributable to such set-aside shall be taken into account in computing adjusted net income under paragraph (d) of § 53.4942(a)–2.

(5) *Contingent set-aside.* Except as provided in paragraph (e)(1)(i) or (ii) of § 53.4942(a)–2, with respect to amounts held by, or on behalf of, a foundation which may not be distributed pending the outcome of litigation because of a court order, a foundation may seek and obtain a set-aside for a purpose described in paragraph (a)(2) of this section equal to the amount in controversy, multiplied by the applicable percentage or percentages during the pendency of litigation, with the use of the funds contingent upon a disposition of the controversy favorable to the foundation. In the event that the litigation encompasses more than one taxable year, the foundation may seek additional contingent set-asides. Such amounts must actually be distributed by the last day of the taxable year following the taxable year in which such proceedings are terminated. Amounts not distributed by the close of the appropriate taxable year shall be treated as described in paragraph (d)(2)(iii)(*c*) of § 53.4942(a)–2 for the succeeding taxable year.

(c) *Certain contributions to section 501(c)(3) organizations.*—(1) *In general.* For purposes of this section, the term "qualifying distribution" includes (in the year in which it is paid) a contribution to an exempt organization described in section 501(c)(3) and described in paragraph (a)(2)(i) (*a*) or (*b*) of this section if—

(i) Not later than the close of the first taxable year after the donee organization's taxable year in which such contribution is received, such donee organization makes a distribution equal to the full amount of such contribution and such distribution is a qualifying distribution (within the meaning of paragraph (a) of this section, without regard to this paragraph) which is treated under paragraph (d) of this section as a distribution out of corpus (or would be so treated if such section 501(c)(3) organization were a private foundation which is not an operating foundation); and

(ii) The private foundation making the contribution obtains adequate records or other sufficient evidence from such donee organization (such as a statement by an appropriate officer, director, or

trustee of such donee organization) showing (except as otherwise provided in this subparagraph) (*a*) that the qualifying distribution described in subdivision (i) of this subparagraph has been made by such organization, (*b*) the names and addresses of the recipients of such distribution and the amount received by each, and (*c*) that the distribution is treated as a distribution out of corpus under paragraph (d) of this section (or would be so treated if the donee organization were a private foundation which is not an operating foundation). Where a distribution is for an administrative expense which is part of a section 170(c) (1) or (2)(B) expenditure or is part of another section 170(c) (1) or (2) (B) expenditure that cannot reasonably be separately accounted for, the provisions of subdivision (ii) of this subparagraph may be satisfied by the submission by the donee organization of a statement setting forth the general purpose for which such expenditure was made and that the amount was distributed as a qualifying distribution described in subdivision (ii)(*c*) of this subparagraph.

(2) *Distribution requirements.* (i) In order for a donee organization to meet the distribution requirements of subparagraph (1)(i) of this paragraph, it must, not later than the close of the first taxable year after its taxable year in which any contributions are received, distribute (within the meaning of this subparagraph) an amount equal in value to the contributions received in such prior taxable year and have no remaining undistributed income for such prior taxable year. In the event that a donee organization redistributes less than an amount equal to the total contributions from donor organizations which are required to be redistributed by such donee organization by the close of the first taxable year following the taxable year in which such contributions were received, any distributions of such contributions shall be deemed to have been made pro rata out of all such contributions received in such prior taxable year, regardless of any earmarking or identification made by such donee organization with respect to the source of such distributions. See paragraph (d)(2)(ix) of § 53.4942(a)–2 for the treatment of amounts deemed not to have been so redistributed. For purposes of this paragraph, the term "contributions" means all contributions, whether of cash or property, and the fair market value of contributed property determined as of the date of the contribution must be used in determining whether an amount equal in value to the contributions received has been redistributed.

(ii) For purposes of this paragraph, the characterization of qualifying distributions made during the taxable year (i.e., whether out of the prior year's undistributed income, the current year's undistributed income, or corpus) is to be made as of the close of the taxable year in question, except to the extent that a different characterization is effected by means of the election provided for by paragraph (d)(2) of this section or by subdivision (iv) of this subparagraph. Once it is determined that a qualifying distribution is attributable to corpus, such distribution will first be charged to distributions which are required to be redistributed under this paragraph.

(iii) All amounts contributed to a specific exempt organization described in section 501(c)(3) and in paragraph (a)(2)(i) (*a*) or (*b*) of this section within any one taxable year of such organization shall be treated (with respect to the contributing private foundation) as one "contribution". If subparagraph (1) (i) or (ii) of this paragraph is not completely satisfied with respect to such contribution within the meaning of such subparagraph, only that portion of such contribution which was redistributed (within the meaning of subparagraph (1) (i) and (ii) of this paragraph) shall be treated as a qualifying distribution.

(iv) In order to satisfy distribution requirements under section 170(b)(1)(E)(ii) or this paragraph, a donee organization may elect to treat as a current distribution out of corpus any amount distributed in a prior taxable year which was treated as a distribution out of corpus under paragraph (d)(1)(iii) of this section provided that (*a*) such amount has not been availed of for any other purpose, such as a carryover under paragraph (e) of this section or a redistribution under this paragraph for a prior year, (*b*) such corpus distribution occurred within the preceding 5 years, and (*c*) such amount is not later availed of for any other purpose. Such election must be made by attaching a statement to the return the foundation is required to file under section 6033 with respect to the taxable year for which such election is to apply. Such statement must contain a declaration by an appropriate foundation manager (within the meaning of section 4946(b)(1)) that the foundation is making an election under this subdivision and it must specify that the distribution is made out of the undistributed income of a designated prior taxable year (or years) which was treated under paragraph (d)(1)(iii) of this section as a distribution out of corpus. For purposes of elections made under this subdivision, see § 1.9100–1 of this chapter (Income Tax Regulations) relating to extensions of time for making certain elections.

(3) *Examples.* The provisions of subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples. It is assumed in these examples that all private foundations described use the calendar as the taxable year.

Example (1). In 1972 M, a private foundation, makes a contribution out of 1971 income to X, another private foundation which is not an operating foundation. The contribution is the only one received by X in 1972. In 1973 X makes a qualifying distribution to an art museum maintained by an operating foundation in an amount equal to the amount of the contribution received from M. X also distributes all of its undistributed income for 1972 and 1973 for other purposes described in section 170(c)(2)(B). Under the provisions of paragraph (d) of this section, such distribution to the museum is treated as a distribution out of corpus. Thus, M's contribution to X is a qualifying distribution out of M's 1971 income provided M obtains adequate records or other sufficient evidence from X showing the nature and amount of the distribution made by X, the identity of the recipient, and the fact that the distribution is treated as made out of corpus. If X's qualifying distributions during 1973 had been equal only to M's contribution to X and X's undistributed income for 1972, X could have made an election under paragraph (d)(2) of this section to treat the amount distributed in excess of its 1972 undistributed income as a distribution out of corpus and in that manner satisfied the requirements of this paragraph.

Example (2). Assume the facts stated in example (1), except that X is a private college described in section 170(b)(1)(A)(ii) which is controlled by disqualified persons with respect to M and that the records which X furnishes to M show that the distribution would have been treated as made out of corpus if X were a private nonoperating foundation. Under these circumstances, result is the same as in example (1).

Example (3). Assume the facts stated in example (1), except that X makes a distribution to the museum equal only to one-half of the contribution from M, that the remainder of such contribution is added to X's funds and used to pay charitable administrative expenses, and that the records obtained by M from X are not sufficient to show the amounts distributed or the identities of the recipients of the distributions. The contribution by M to X will be a qualifying distribution only to the extent that M can obtain (i) other sufficient evidence (such as statements from officers or employees of X or from the museum) showing the facts required by subparagraph (1)(ii) (*a*), (*b*), and (*c*) of this paragraph and (ii) a statement from X setting forth that the remainder of the contribution was used for charitable administrative expenses which constituted qualifying distributions described in paragraph (a)(2)(i) of this section.

Example (4). X and Y are private nonoperating foundations. A is an exempt organization which is not described in section 501(c)(3) but which supervises and conducts a program described in section 170(c)(2)(B). Y, but not X, controls A within the meaning of paragraph (a)(3) of this section. In 1972, X and Y each makes a grant to A of $100, specifically designated for use in the operation of A's section 170(c)(2)(B) program. X has made a qualifying distribution to A because the distribution is one described in paragraph (a)(2)(i) of this section. However, because A is controlled by Y, Y's grant of $100 to A does not constitute a qualifying distribution within the meaning of such paragraph (a)(2)(i). Furthermore, because A is not an exempt organization described in section 501(c)(3), Y's grant to A does not constitute a qualifying distribution by operation of the provisions of this paragraph.

Example (5). N, a private nonoperating foundation, had distributable amounts of $100 in 1970 and $125 in 1971. In 1970 N received total contributions of $540: $150 from Y, a public charity; $70 from Z, a private foundation; $140 from Q, a private foundation, subject to the requirement that N earmark the amount and distribute it before distributing Z's contribution; and, $180 from R, also a private foundation. However, R specifically instructed N that such contribution did not have to be redistributed because R already had made enough qualifying distributions to avoid all section 4942 taxes. N is not controlled by Y, Z, Q, or R, and N made no qualifying distributions in 1970. By the close of 1971, N had made qualifying distributions of $420, earmarking $140 as having been a distribution of Q's contribution,

but had made no election under paragraph (d)(2) of this section to have any amount distributed which was in excess of N's 1970 undistributed income treated as distributed out of corpus. Therefore, the first $225 of qualifying distributions made in 1971 (the sum of $100 and $125, N's distributable amounts for 1970 and 1971, respectively) are treated as amounts described in paragraph (d)(1) (i) and (ii) of this section. Since Y's contribution is a contribution from a public charity and does not have to be "redistributed" and since R specifically instructed N that its contribution need not be "redistributed", the remaining $195 of qualifying distributions will be treated as distributed pro rata from Z's and Q's contributions, regardless of N's earmarking. Accordingly, of Z's original qualifying distribution of $70 only $65 ($195 multiplied by $70, Z's contribution, over $210, the total ($70 plus $140) of Z's and Q's contributions) will be treated as redistributed by N. Similarly, of Q's original qualifying distribution of $140 only $130 ($195 multiplied by $140 over $210) will be treated as redistributed by N. Thus, Z's gross income for 1972 will be increased by $5 ($70 less the $65 actually redistributed), and Q's gross income for 1972 will be increased by $10 ($140 less the $130 actually redistributed).

(4) *Limitation.* A contribution by a private foundation to a donee organization which the donee uses to make payments to another organization (the secondary donee) shall not be regarded as a contribution by the private foundation to the secondary donee if the distributing foundation does not earmark the use of the contribution for any named secondary donee and does not retain power to cause the selection of the secondary donee by the organization to which such foundation has made the contribution. For purposes of this subparagraph, a contribution described herein shall not be regarded as a contribution by the foundation to the secondary donee even though such foundation has reason to believe that certain organizations would derive benefits from such contribution so long as the original donee organization exercises control, in fact, over the selection process and actually makes the selection completely independently of such foundation.

(5) *Transitional rule.* (i) For purposes of this paragraph, a contribution to a private foundation which is not an operating foundation and which is not controlled (directly or indirectly) by the distributing foundation or one or more disqualified persons with respect to the distributing foundation will be treated as a contribution to an operating foundation if—

(a) Such contribution is made pursuant to a written commitment which was binding on May 26, 1969, and at all times thereafter.

(b) Such contribution is made for one or more of the purposes described in section 170(c) (1) or (2)(B), and

(c) Such contribution is to be paid out to the donee private foundation on or before December 31, 1974.

(ii) For purposes of this subparagraph, a written commitment will be considered to have been binding prior to May 27, 1969, only if the amount and nature of the contribution and the name of the donee foundation were entered in the records of the distributing foundation, or were otherwise adequately evidenced, prior to May 27, 1969, or notice of the contribution was communicated in writing to such donee prior to May 27, 1969.

(d) *Treatment of qualifying distributions*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, any qualifying distribution made during a taxable year shall be treated as made—

(i) First out of the undistributed income (as defined in paragraph (a) of § 53.4942(a)-2) of the immediately preceding taxable year (if the private foundation was subject to the initial excise tax imposed by section 4942(a) for such preceding taxable year) to the extent thereof;

(ii) Second out of the undistributed income for the taxable year to the extent thereof; and

(iii) Then out of corpus.

(2) *Election.* In the case of any qualifying distribution which (under subparagraph (1) of this paragraph) is not treated as made out of the undistributed income of the immediately preceding taxable year, the foundation may elect to treat any portion of such distribution as made out of the undistributed income of a designated prior taxable year or out of corpus. Such election must be made by filing a statement with the Commissioner during the taxable year in which such qualifying distribution is made or by attaching a statement to the return the foundation is required to file under section 6033 with respect to the taxable year in which such qualifying distribution was made. Such statement must contain a declaration by an appropriate foundation manager (within the meaning of section 4946(b)(1)) that the foundation is making an election under this subparagraph, and it must specify whether the distribution is made out of the undistributed income of a designated prior taxable year (or years) or is made out of corpus. In any case where the election described in this subparagraph is made during the taxable year in which the qualifying distribution is made, such election may be revoked in whole or in part by filing a statement with the Commissioner during such taxable year revoking such election in whole or in part or by attaching a statement to the return the foundation is required to file under section 6033 with respect to the taxable year in which the qualifying distribution was made revoking such election in whole or in part. Such statement must contain a declaration by an appropriate foundation manager (within the meaning of section 4946(b)(1)) that the foundation is revoking an election under this subparagraph in whole or in part, and it must specify the election or part thereof being revoked. For purposes of elections made under this subparagraph, see § 1.9100-1 relating to extensions of time for making certain elections.

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

Example (1). M, a private foundation which was created in 1968 and which uses the calendar year as the taxable year, has distributable amounts and qualifying distributions for 1970 through 1976 as follows:

	1970	1971	1972	1973
Distributable amount	$100	$100	$100	$100
Qualifying distribution	0	100	250	100
	1974	1975	1976	.....
Distributable amount	$100	$100	$100	.....
Qualifying distribution	100	100	100	.....

In 1971 the qualifying distribution of $100 is treated under subparagraph (1)(i) of this paragraph as made out of the $100 of undistributed income for 1970. The qualifying distribution of $250 in 1972 is treated as made: (i) $100 out of the undistributed income for 1971 under subparagraph (1)(i) of this paragraph; (ii) $100 out of the undistributed income for 1972 under subparagraph (1)(ii) of this paragraph; and (iii) $50 out of corpus in 1972 under subparagraph (1)(iii) of this paragraph. The qualifying distribution of $100 in each of the years 1973 through 1976 is treated as made out of the undistributed income for each of those respective years under subparagraph (1)(ii) of this paragraph. See paragraph (e) of this section for rules relating to the carryover of qualifying distributions out of corpus.

Example (2). M, a private foundation which uses the calendar year as the taxable year, has undistributed income of $300 for 1971, $200 for 1972, and $400 for 1973. On January 14, 1973, M makes its first qualifying distribution in 1973 when it sets aside (within the meaning of paragraph (b) of this section) $700 for construction of a hospital. On February 24, 1973, a notice of deficiency with respect to the excise taxes imposed by section 4942 (a) and (b) in regard to M's undistributed income for 1971 is mailed to M under section 6212(a). M notifies the Commissioner in writing on March 20, 1973, that it is making an election under subparagraph (2) of this paragraph, and that its distribution of January 14th (to the extent it exceeds undistributed income for 1972) is to be applied first against undistributed income for 1971. Thus, under these facts and circumstances, an initial excise tax of $45 (15 percent of $300) is imposed under section 4942 (a). Since M made the election described above, the $300 of undistributed income for 1971 is treated as distributed during the correction period (as defined in paragraph (c) (3) of § 53.4942(a)-1), and therefore no additional tax will be imposed. In addition, $200 ($700 minus $500) of the $700 qualifying distribution is treated as made out of undistributed income for 1973.

(e) *Carryover of excess qualifying distributions*—(1) *In general.* If in any taxable year for which an organization is subject to the initial excise tax imposed by section 4942(a) there is created an excess of qualifying distributions (as determined under subparagraph (2) of this paragraph), such excess may be used to reduce distributable amounts in any taxable year of the adjustment period (as defined subparagraph (3) of this paragraph). For purposes of section 4942, including paragraph (d) of this section, the distributable amount for a taxable year in the adjustment period shall be reduced to the extent of the lesser of (i) the excess of qualifying distributions made in prior taxable years to which such adjustment period applies or (ii)

the remaining undistributed income at the close of such taxable year after applying any qualifying distributions made in such taxable year to the distributable amount for such taxable year (determined without regard to this paragraph). If during any taxable year of the adjustment period there is created another excess of qualifying distributions, such excess shall not be taken into account until any earlier excess of qualifying distributions has been completely applied against distributable amounts during its adjustment period.

(2) *Excess qualifying distributions.* An excess of qualifying distributions is created for any taxable year beginning after December 31, 1969, if—

(i) The total qualifying distributions treated (under paragraph (d) of this section) as made out of the undistributed income for such taxable year or as made out of corpus with respect to such taxable year (other than amounts distributed by an organization in satisfaction of section 170(b)(1)(E)(ii) or paragraph (c) of this section, or applied to a prior taxable year by operation of the elections contained in paragraphs (c)(2)(iv) and (d)(2) of this section), exceeds

(ii) The distributable amount for such taxable year (determined without regard to this paragraph).

(3) *Adjustment period.* For purposes of this paragraph, the taxable years in the adjustment period are the 5 taxable years immediately following the taxable year in which the excess of qualifying distributions is created. Thus, an excess (within the meaning of subparagraph (2) of this paragraph) for any 1 taxable year cannot be carried over beyond the succeeding 5 taxable years. However, if during any taxable year in the adjustment period an organization ceases to be subject to the initial excise tax imposed by section 4942(a), any portion of the excess of qualifying distributions, which prior to such taxable year has not been applied against distributable amounts, may not be carried over to such taxable year or subsequent taxable years in the adjustment period, even if during any of such taxable years the organization again becomes subject to the initial excise tax imposed by section 4942(a).

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

Example (1). (i) F, a private foundation which was created in 1967 and which uses the calendar year as the taxable year, has distributable amounts and qualifying distributions for 1970 through 1976 as follows:

Year	1970	1971	1972	1973
Distributable amount	$100	$100	$100	$100
Qualifying distribution	0	$250	$70	$140

Year	1974	1975	1976	.....
Distributable amount	$100	$100	$100	.....
Qualifying distribution	$60	$75	$105	.....

(ii) The qualifying distributions made in 1971 will be treated under paragraph (d) of this section as $100 made out of the undistributed income for 1970, then as $100 made out of the undistributed income for 1971, and finally as $50 out of corpus in 1971. Since the total qualifying distributions for 1971 ($150) exceed the distributable amount for 1971 ($100), there exists a $50 excess of qualifying distributions which F may use to reduce its distributable amounts for the years 1972 through 1976 (the taxable years in the adjustment period with respect to the 1971 excess). Therefore, the $100 distributable amount for 1972 is reduced by $30 (the lesser of the 1971 excess ($50) and the remaining undistributed income at the close of 1972 ($30), after the qualifying distributions of $70 for 1972 were applied to the original distributable amount for 1972 of $100). Since the distributable amount for 1972 was reduced to $70, there is no remaining undistributed income for 1972. Accordingly, the qualifying distributions made in 1973 will be treated as $100 made out of the undistributed income for 1973 and as $40 out of corpus in 1973. Since this amount ($140) exceeds the distributable amount for 1973 ($100), there exists a $40 excess which F may use to reduce its distributable amounts for the years 1974 through 1978 (the taxable years in the adjustment period with respect to the 1973 excess). However, in accordance with subparagraph (1) of this paragraph such excess may not be used to reduce F's distributable amounts for the years 1974 through 1976 until the excess created in 1971 has been completely applied against distributable amounts during such years. The distributable amount for 1974 is reduced by $40 (the lesser of the unused portion of the 1971 excess ($20) plus the 1973 excess ($40) and the remaining undistributed income at the close of 1974 ($40), after the qualifying distributions of $60 for 1974 were applied to the original distributable amount for 1974 of $100). The distributable amount for 1975 is reduced by $20 (the lesser of the unused portion of the 1973 excess of qualifying distributions ($20) and the remaining undistributed income at the close of 1975 ($25), after the qualifying distributions of $75 for 1975 were applied to the original distributable amount for 1975 of $100). Consequently, qualifying distributions made in 1976 will be treated as made first out of the $5 of remaining undistributed income for 1975 and then as $100 made out of the undistributed income for 1976.

Example (2). Assume the facts as stated in example (1), except that in 1974 F receives a contribution of $300 from G, a private foundation which controls F (within the meaning of paragraph (a)(3) of this section), and F distributes such contribution in 1975 in satisfaction of paragraph (c) of this section. Under these circumstances, there would be no excess of qualifying distributions for 1975 with respect to such distribution, since such distribution is excluded from the computation of an excess of qualifying distributions by operation of subparagraph (2)(i) of this paragraph.

Example (3). Assume the facts as stated in example (1), except that in 1972 F is treated as an operating foundation (as such term is defined in section 4942(j)(3)). In accordance with subparagraph (3) of this paragraph since F is not subject to the initial excise tax imposed by section 4942(a) for 1972, the 1971 excess cannot be carried forward to 1972 or any subsequent year in the adjustment period with respect to the 1971 excess, even if F is subsequently treated as a private nonoperating foundation for any year during the period 1973 through 1976.

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Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER A—GENERAL

PART 101-4—PATENTS

Licensing of Government-Owned Inventions

This amendment of the Federal Property Management Regulations adds new Part 101-4, Patents, and new Subpart 101-4.1, Licensing of Government-Owned Inventions. The amendment sets forth regulations which implement the Presidential Statement of Government Patent Policy dated August 23, 1971. The statement specifically directs the General Services Administration to issue regulations which provide for the licensing and dedication of Government-owned inventions for the purpose of enhancing the utilization of such inventions. Development of the regulation was accomplished in cooperation with the Committee on Government Patent Policy, Federal Council for Science and Technology. Agency and industry comments were considered.

The table of contents for Subchapter A is amended to add new entries, as follows:

Subpart 101-4.1—Licensing of Government-Owned Inventions

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

Part 101-4 is added as follows:

§ 101-4.100 Scope of subpart.

This subpart prescribes the terms, conditions, and procedures for the licensing of rights in domestic patents and patent applications vested in the United States of America, and for dedication of Government-owned inventions by a Government agency.

§ 101-4.101 Policy.

(a) A major premise of the Presidential Statement of Government Patent Policy, August 23, 1971 (36 FR 16887, August 26, 1971), is that Government-owned inventions normally will best serve

the public interest when they are developed to the point of practical application and made available to the public in the shortest possible time. The granting of express nonexclusive or exclusive licenses for the practice of these inventions may assist in the accomplishment of the national objective to achieve a dynamic and efficient economy. However, it is recognized that there may be inventions as to which a Government agency deems dedication preferable to accomplish these objectives.

(b) The granting of nonexclusive licenses generally is preferable since the invention is thereby laid open to all interested parties and serves to promote competition in industry, if the invention is in fact promoted commercially. However, to obtain commercial utilization of the invention, it may be necessary to grant an exclusive license for a limited period of time as an incentive for the investment of risk capital to achieve practical application of an invention.

(c) Whenever the grant of an exclusive license is deemed appropriate, it shall be negotiated on terms and conditions most favorable to the public interest. In selecting an exclusive licensee, consideration shall be given to the capabilities of the prospective licensee to further the technical and market development of the invention, his plan to undertake the development, the projected impact on competition, and the benefit to the Government and the public. Consideration shall be given also assisting small business and minority business enterprises, as well as economically depressed, low income, and labor surplus areas, and whether each or any applicant is a U.S. citizen or corporation. Where there is more than one applicant for an exclusive license, that applicant shall be selected who is determined to be most capable of satisfying the criteria and achieving the goals set forth in this subpart.

(d) Subject to the following: (1) Specific statutes governing the utilization of patent rights of certain Government agencies, or (2) any existing or future treaty or agreement between the United States and any foreign government or intergovernmental organization, or (3) licenses under or other rights to inventions made or conceived in the course of or under Government research and development contracts where such licenses or other rights to such inventions are granted to or provided for in the contract and acquired by the party contracting with the Government agency, no license shall be granted or implied in a Government-owned invention except as provided for in this subpart.

(e) No grant of a license under this subpart shall be construed to confer upon any licensee any immunity from the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this subpart shall not be immunized from the operation of State or Federal law by reason of the source of the grant.

§ 101–4.102 Definitions.

(a) "Government invention" means an invention covered by a domestic patent or patent application that is vested in the United States and is designated by the Government agency having custody of the invention as appropriate for the grant of an express nonexclusive or exclusive license.

(b) "To the point of practical application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(c) "Government agency" means any executive department, independent commission, board, office, agency, administration, authority, wholly owned corporation, or other independent establishment of the executive branch of the Government of the United States of America.

(d) "The head of the Government agency" means the head of the agency or his designee.

§ 101–4.103 Types of licenses and conditions for licensing.

§ 101–4.103–1 Government inventions available for licensing.

Government inventions normally will be made available for the granting of express nonexclusive or limited exclusive licenses to responsible applicants according to the factors and conditions set forth in §§ 101–4.103–2 and 101–4.103–3, subject to the applicable procedures of § 101–4.104.

§ 101–4.103–2 Nonexclusive license.

(a) *Availability of licenses.* Each Government invention normally shall be made available for the granting of nonexclusive revocable licenses, subject to the provisions of any other licenses, including those under § 101–4.103–4.

(b) *Terms of grant.* (1) The duration of the license shall be for a period as specified in the license agreement, provided that the licensee complies with all the terms of the license.

(2) The license shall require the licensee to bring the invention to the point of practical appplication within a period specified in the license, or such extended period as may be agreed upon, and to continue to make the benefits of the invention reasonably accessible to the public.

(3) The license may be granted for all or less than all fields of use of the invention, and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(4) After termination of a period specified in the license agreement, the Government agency may restrict the license to the fields of use and/or geographic areas in which the licensee has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public.

(5) The license may extend to subsidiaries and affiliates of the licensee but shall be nonassignable without approval of the Government agency, except to the successor of that part of the licensee's business to which the invention pertains.

§ 101–4.103–3 Limited exclusive license.

(a) *Availability of licenses.* Each Government invention may be made available for the granting of a limited exclusive license provided that:

(1) The invention has been published as available for licensing pursuant to § 101–4.104–1 for a period of at least 6 months;

(2) The head of the Government agency has determined that (i) the invention may be brought to the point of practical application in certain fields of use and/or in certain geographical locations by exclusive licensing, (ii) the desired practical application has not been achieved under any nonexclusive license granted on the invention, and (iii) the desired practical application is not likely to be achieved expeditiously in the public interest under a nonexclusive license or as a result of further Government-funded research or development;

(3) The notice of the prospective licensee has been published, pursuant to § 101–4.104–4(a) for at least 60 days; and

(4) After termination of the period set forth in § 101–4.103–3(a)(3), the Government agency has determined that no applicant for a nonexclusive license has brought or will bring, within a reasonable period, the invention to the point of practical application as specified in the exclusive license, and that to grant the exclusive license would be in the public interest.

(b) *Selection of exclusive licensee.* An exclusive licensee shall be selected on bases consistent with the policy set forth in § 101–4.101 and in accordance with the procedures set forth in § 101–4.104.

(c) *Terms of grant.* (1) The license may be granted for all or less than all fields of use of the Government invention and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(2) Subject to the rights reserved to the Government in §§ 101–4.103–3(c)(6) and 101–4.103–3(c)(7), the licensee shall be granted the exclusive right to practice the invention in accordance with the terms and conditions specified in the license.

(3) The duration of the license shall be negotiated but shall be for a period less than the terminal portion of the patent, the period remaining being sufficient to make the invention reasonably available for the grant of a nonexclusive license; and such period of exclusivity shall not exceed 5 years unless the head of the Government agency determines on the basis of a written submission supported by a factual showing that a longer

period is reasonably necessary to permit the licensee to enter the market and recoup his reasonable costs in so doing.

(4) The license shall require the licensee to bring the invention to the point of practical application within a period specified in the license, or within a longer period as approved by the Government agency, and to continue to make the benefits of the invention reasonably accessible to the public.

(5) The license shall require the licensee to expend a specified minimum amount of money and/or to take other specified actions, within a specified period of time after the effective date of the license, in an effort to bring the invention to the point of practical application.

(6) The license shall be subject to the irrevocable royalty-free right of the Government of the United States to practice and have practiced the invention by or on behalf of any foreign government or intergovernmental organization pursuant to any existing or future treaty or agreement with the United States.

(7) The license shall reserve to the Government agency the right to require the licensee to grant sublicenses to responsible applicants on terms that are reasonable in the circumstances (i) to the extent that the invention is required for public use by Government regulations, or (ii) as may be necessary to fulfill health or safety needs, or (iii) for other public purposes stipulated in the license.

(8) The license may extend to subsidiaries and affiliates of the licensee but shall be nonassignable without approval of the Government agency, except to successors of that part of the licensee's business to which the invention pertains.

(9) An exclusive licensee may grant sublicenses under his license, subject to the approval of the Government agency. Each sublicense granted by an exclusive licensee shall make reference to the exclusive license, including the rights retained by the Government under the exclusive license, and a copy of such sublicense shall be furnished to the Government agency.

(10) The license may be subject to such other terms as may be in the public interest.

§ 101–4.103–4 Additional licenses.

Subject to any outstanding licenses, nothing in this subpart shall preclude a Government agency from granting additional nonexclusive or limited exclusive licenses for Government-owned inventions when the Government agency determines that to do so would provide for an equitable exchange of patent rights. The following exemplify circumstances wherein such licenses may be granted:

(a) In consideration of the settlement of an interference;

(b) In consideration of a release of a claim of infringement; or

(c) In exchange for or as part of the consideration for a license under adversely held patents.

§ 101–4.103–5 Royalties.

(a) Normally, royalties shall not be charged under nonexclusive licenses granted to U.S. citizens and U.S. corporations on Government inventions; however, the Government agency may require other considerations.

(b) An exclusive license on a Government invention may require the payment of royalties, and/or other considerations, when the licensing situation and the policy in § 101–4.101 considered together, indicate that it is in the public interest to do so.

§ 101–4.103–6 Reports.

A license shall require the licensee to submit periodic reports on his efforts to achieve practical application of the invention. The reports shall contain information within his knowledge, or which he may acquire under normal business practices, pertaining to the commercial use being made of the invention and other information which the Government agency may determine is pertinent to its licensing activities and is specified in the license.

§ 101–4.104 Procedures.

§ 101–4.104–1 Government agency publication requirements.

Each Government agency shall cause to be published in the FEDERAL REGISTER, the Official Gazette of the U.S. Patent Office, and at least one other publication that the Government agency deems would best serve the public interest, a list of the Government inventions in its custody available for licensing under the conditions specified in § 101–4.103. The list shall be revised periodically to include directly, or by reference to a previously published list, all inventions currently available for licensing. Other publications on inventions available for licensing are encouraged and may include abstracts, when appropriate, as well as information on the design, construction, use, and potential market for the inventions.

§ 101–4.104–2 Contents of a nonexclusive license application.

An application for a nonexclusive license under a Government invention should be addressed to the head of the Government agency having custody of the invention, and shall include:

(a) Identification of invention for which license is desired, including the patent application serial number of patent number, title and date, if known, and any other identification of invention;

(b) Name and address of the person, company, or organization applying for license and whether the applicant is a U.S. citizen or a U.S. corporation;

(c) Name and address of representative of applicant to whom correspondence should be sent;

(d) Nature and type of applicant's business;

(e) Source of information concerning the availability of a license on this invention;

(f) Purpose for which license is desired and a brief description of applicant's plan to achieve that purpose;

(g) A statement of the fields of use for which applicant intends to practice the invention; and

(h) A statement as to the geographic areas in which the applicant would practice the invention.

§ 101–4.104–3 Contents of an exclusive license application.

In addition to the information indicated in § 101–4.104–2, an application for an exclusive license shall include:

(a) Applicant's status, if any, in any one or more of the following categories: (1) Small business firm, (2) minority business enterprise, (3) location in a surplus labor area, (4) location in a low-income area, and (5) location in an economically depressed area;

(b) A statement of applicant's capability to undertake the development and marketing required to achieve the practical application of the invention;

(c) A statement describing the time, expenditure, and other acts which the applicant considers necessary to achieve practical application of the invention and the applicant's offer to invest that sum to perform such acts if the license is granted;

(d) A statement that contains the applicant's best knowledge of the extent to which the Government invention is being practiced by private industry and the Government; and

(e) Any other facts which the applicant believes are evidence that it is in the public interest for the Government agency to grant an exclusive license rather than a nonexclusive license and that such exclusive license should be granted to the applicant.

§ 101–4.104–4 Published notices.

(a) A notice that a prospective exclusive licensee has been selected shall be published in the FEDERAL REGISTER, and a copy of the notice shall be sent to the Attorney General. The notice shall include:

(1) Identification of the invention;

(2) Identification of the selected licensee;

(3) Duration and scope of the contemplated license; and

(4) A statement to the effect that the license will be granted unless:

(i) An application for a nonexclusive license, submitted by a responsible applicant pursuant to § 101–4.104–2, is received by the Government agency having custody of the invention within 60 days from the publication of the notice in the FEDERAL REGISTER, and the Government agency determines in accordance with its prescribed procedures under which procedures the Government agency shall record and make available for public inspection all decisions made pursuant thereto and the basis therefor, that the applicant has established that he has already achieved or is likely to bring the invention to the point of practical application within a reasonable period under a nonexclusive license; or

(ii) The Government agency determines that a third party has presented evidence and argument which has established that it would not be in the public interest to grant the exclusive license.

(b) If an exclusive license has been granted pursuant to this Subpart 101–4.1, notice thereof shall be published in the FEDERAL REGISTER. Such notice shall include:

(1) Identification of the invention;

(2) Identification of the licensee; and

(3) Duration and scope of the license.

(c) If an exclusive license has been modified or revoked pursuant to § 101–4.104–5, notice thereof shall be published in the FEDERAL REGISTER. Such notice shall include:

(1) Identification of the invention;

(2) Identification of the licensee; and

(3) Effective date of the modification or revocation.

§ 101–4.104–5 Modification or revocation.

(a) Any license granted pursuant to this Subpart 101–4. 1 may be modified or revoked by the Government agency granting the license if the licensee at any time defaults in making any report required by the license or commits any breach of any covenant or agreement therein contained.

(b) A license may also be revoked by the Government agency granting the license if the licensee willfully makes a false statement of a material fact or willfully omits a material fact in the license application or any report required in the license agreement.

(c) Before modifying or revoking any license granted pursuant to this subpart for any cause, the Government agency shall furnish the licensee and any sublicensee of record a written notice of intention to modify or revoke the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of any covenant or agreement as referred to in (a) of this section or to show cause why the license should not be modified or revoked.

§ 101–4.104–6 Appeals.

An applicant for a license, a licensee, or such other third party who has participated under § 101–4.104–4(a)(4)(ii) shall have the right to appeal, in accordance with procedures prescribed by the Government agency, any decision concerning the granting, denial, interpretation, modification, or revocation of a license.

§ 101–4.105 Litigation.

An exclusive licensee shall be granted the right to sue at his own expense any party who infringes the rights set forth in his license and covered by the licensed patent. The licensee may join the Government upon consent of the Attorney General as a party complainant in such suit but without expense to the Government, and the licensee shall pay costs and any final judgment or decree that may be rendered against the Government in such suit. The Government shall have an absolute right to intervene in any such suit at its own expense. The licensee shall be obligated to furnish promptly to the Government, upon request, copies of all pleadings and other papers filed in any such suit and of evidence adduced in proceedings relating to the licensed patent including, but not limited to, negotiations or settlement and agreements settling claims by a licensee based on the licensed patent, and all other books, documents, papers, and records pertaining to such suit. If as a result of any such litigation the patent shall be declared invalid, the licensee shall have the right to surrender his license and be relieved from any further obligation thereunder.

§ 101–4.106 Transfer of custody of Government inventions.

A Government agency having custody of a Government-owned invention may enter into an agreement to transfer its custody to another Government agency for purposes of administration, including the granting of licenses pursuant to this subpart.

Effective date. This subpart is effective May 7, 1973, but may be observed earlier. However, the head of a Government agency may exclude from the terms, conditions, and procedures set forth in this subpart any license that was in the process of being negotiated on the effective date.

Dated: January 29, 1973.

ARTHUR F. SAMPSON,
Acting Administrator of General Services.

[FR Doc.73-2119 Filed 2-2-73;8:45 am]

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 71-21; Notice 6]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Lamps, Reflective Devices, and Associated Equipment

This notice denies petitions for reconsideration of an amendment to Federal Motor Vehicle Safety Standard No. 108 published on October 7, 1972, that modified the method by which conformity of certain lamps to photometric requirements is determined.

The National Highway Traffic Safety Administration amended 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment, on October 7, 1972 (37 FR 21328), to allow photometric conformance of parking lamps, taillamps, stoplamps, and turn signal lamps to be based upon the sum of values derived from grouping individual test points rather than upon a requirement of conformance at each test point. Thereafter, pursuant to 49 CFR 553.35, petitions for reconsideration of the amendment were filed by American Motors Corp., Ford Motor Co., General Motors Corp., SWF-Spezial fabrik fur Autozubehor Gustav Rau G.m.b.H., and Volkswagen of America, Inc. Petitions raising the same issues but not timely filed were submitted by Automobiles Peugeot on behalf of the Association Peugeot-Renault and Westfalische Metall Industries KG. Chrysler Corp. submitted a request for an interpretation. The Administration has declined to grant requested relief.

1. *Inclusion of SAE Recommended Practice J256.* All petitioners except General Motors asked for adoption in its entirety of SAE Recommended Practice J256, "Service Performance Requirements for Motor Vehicle Lighting Devices," July 1971. Petitioners complain that the NHTSA adopted the grouping concept and photometric values of Table 1 and Table 3 of the practice without including a correction adjustment factor or a tolerance for maximum photometric values. SAE J256 permits an adjustment in lamp orientation from design position not to exceed 3° in determining compliance with photometric requirements. SAE J256 also permits a tolerance of 10 percent in determining whether group photometric requirements are met. It further provides that the candlepower of parking lamps, taillamps, stoplamps, and turnlamps shall not exceed 120 percent of the maximum values specified in appropriate SAE standards. In support of their request petitioners argue that a readjustment factor is necessitated by the difficulties that test laboratories experience in insuring that lamps of complex and varied shapes are mounted with accuracy in the design position. Tolerances in candlepower output are requested because of variations in test lamp bulbs, and in manufacture and assembly of the lamps themselves.

When Standard No. 108 required compliance at every test point, the SAE standards incorporated by reference did not permit the tolerances that petitioners request. Compliance by meeting minimum group totals rather than compliance at each test point is intended to insert a factor to compensate for those variations in test methods and manufacture that apparently concern industry. The tolerances in the SAE recommended practice represent a further lowering of the quantitative performance requirements. The NHTSA has determined that no sufficient reasons have been given to lower these requirements further, and that it is not in the interest of motor vehicle safety to do so. The petitions are denied.

2. *Excluded lamps.* General Motors requests the inclusion in the group testing concept of clearance lamps, side marker lamps, and identification lamps, as originally proposed by NHTSA. GM's petition is denied. Under the proposal, photometric requirements for clearance, side marker, and identification lamps would have been increased, and identical to those for parking lamps and taillamps. But the proposed values were not adopted, and these lamps were not included in the group concept. The NHTSA believes that the group concept is inappropriate for lamps of low candlepower,

and that requirements should be met at each test point. The photometric requirements for clearance, side marker, and identification lamps, are minimal in nature and identical at all test points.

3. *Interpretations.* Chrysler Corp. has asked whether "the maximum values provided in Figure 1 may be used in place of the maximum photometric values set out in paragraph S5.2," which states in pertinent part that "the maximum photometric candlepower values for one-compartment and two-compartment stoplamps shall be 300 candlepower." The answer is yes, and paragraph S5.2 is being deleted.

Chrysler has also asked whether "subscripts (f) and (g) of Table 2 of * * * SAE Standard J575d applies to the measurement of the maximum values in * * * Figure 1 * * *". There is no footnote (g) in J575d, and footnote (f) does apply.

Clarification has also been requested as to whether the maximum taillamp values in Figure 1 are intended to apply at test points below the horizontal. The answer is no; the limitation, as was true before the amendment, is restricted to the horizontal and above.

In consideration of the foregoing, section S5 of 49 CFR S571.108, Motor Vehicle Standard No. 108, is amended by removing the designation "S5.1" and deleting paragraph S5.2.

Effective date: February 5, 1973. Because the amendment clarifies an ambiguity and creates no additional burden good cause has been shown that an effective date earlier than 180 days after issuance is in the public interest.

(Secs. 103, 119, Public Law 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.51)

Issued on January 30, 1973.

DOUGLAS W. TOMS,
Administrator.

[FR Doc.73-2169 Filed 2-2-73;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S. O. 1106, Amdt. 2]

PART 1033—CAR SERVICE

Baltimore and Ohio Railroad Co. Authorized To Operate Over Tracks of Penn Central Transportation Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 26th day of January 1973.

Upon further consideration of Service Order No. 1106 (37 FR 15307 and 23273), and good cause appearing therefor:

It is ordered, That:

Section 1033. 1106 *Service Order No. 1106* (The Baltimore and Ohio Railroad Co. authorized to operate over tracks of Penn Central Transportation Co., George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, Trustees) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 31, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., January 31, 1973.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-2137 Filed 2-2-73;8:45 am]

[S.O. 1093, Amdt. 3]

PART 1033—CAR SERVICE

Burlington Northern, Inc., Authorized To Operate Over Tracks of Minneapolis Industrial Railway Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 26th day of January 1973.

Upon further consideration of Service Order No. 1093 (37 FR 9028, 12727, and 20827), and good cause appearing therefor:

It is ordered, That:

Section 1033.1093 *Service order No. 1093* (Burlington Northern Inc., authorized to operate over tracks of Minneapolis Industrial Railway Co.) be, and it is hereby, amended by substituting the following paragraph (d) for paragraph (d) thereof:

(d) *Expiration date.* This order shall expire at 11:59 p.m., February 28, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., January 31, 1973.

(Secs. 1, 12, 15, and 17(2), 24 Stat 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-2135 Filed 2-2-73;8:45 am]

[S.O. 1111, Amdt. 4]

PART 1033—CAR SERVICE

Delaware and Hudson Railway Co. Authorized To Operate Over Tracks of Erie Lackawanna Railway Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 26th day of January 1973.

Upon further consideration of Service Order No. 1111 (37 FR 19617, 22872, 25237, and 38 FR 878), and good cause appearing therefor:

It is ordered, That:

Section 1033.1111 Service Order, No. 1111 (Delaware and Hudson Railway Co. authorized to operate over tracks of Erie Lackawanna Railway Co. Thomas F. Patton and Ralph S. Tyler, Jr., Trustees) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., February 28, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., January 31, 1973.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-2139 Filed 2-2-73;8:45 am]

[Second Rev. S.O. 1105, Amdt. 2]

PART 1033—CAR SERVICE

Distribution of Boxcars

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 26th day of January 1973.

Upon further consideration of Service Order No. 1105 (37 FR 22377 and 25236), and good cause appearing therefor:

It is ordered, That:

Section 1033.1105 *Service Order No. 1105* (Distribution of boxcars) be, and it is hereby, amended by substituting the following paragraph (d) for paragraph (d) thereof:

(d) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., April 30, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., January 31, 1973.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2))

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-2136 Filed 2-2-73;8:45 am]

[Rev. S.O. 1110, Amdt. 4]

PART 1033—CAR SERVICE

Penn Central Transportation Co.; Restoration of Service

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 26th day of January 1973.

Upon further consideration of Revised Service Order No. 1110 (37 FR 19616, 22871, 23236, and 38 FR 878), and good cause appearing therefor:

It is ordered, That:

Section 1033.1110 *Revised Service Order No. 1110* (Penn Central Transportation Co., George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees, required to restore service at the Buttonwood (Wilkes-Barre), Pennsylvania, gateway and to reroute traffic originally routed via that gateway) be, and it is hereby, amended by substituting the following paragraphs (a) and (e) for paragraphs (a) and (e) thereof:

(a) The Penn Central Transportation Co., George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees (Penn Central) be, and it is hereby, ordered to restore service via its Buttonwood (Wilkes-Barre), Pa., gateway on or before February 28, 1973.

(e) *It is further ordered*, That this order shall become effective at 11:59 p.m., September 15, 1972, and as to § 1033.1110(b), shall expire at 11:59 p.m., February 28, 1973, unless sooner vacated by order of this Commission upon restoration of service through the Buttonwood (Wilkes-Barre) Gateway.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2))

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-2138 Filed 2-2-73;8:45 am]

Proposed Rule Making

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 1]

CUSTOMS FIELD ORGANIZATION, REGION VIII

Port of Entry, Great Falls, Montana

In order to provide better Customs service in the Great Falls, Mont., Customs district, it is proposed to establish a Customs port of entry at Butte, Mont.

Accordingly, notice is hereby given under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), which was delegated to the Secretary of the Treasury by the President in Executive Order No. 10289, September 17, 1951 (3 CFR Ch. II), and pursuant to authority provided by Treasury Department Order No. 190, Rev. 8 (37 FR 18572), that Butte, Mont., is proposed as a port of entry in the Customs district of Great Falls, Mont.

The proposed geographical limits of the port of Butte shall include all of Ranges 7, 8, and 9 West in Township 2 North and Township 3 North, and Sections 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35, and 36 of Township 3 North, Range 10 West, in the county of Silver Bow, Mont.

Data, views, or arguments with respect to the foregoing proposal may be addressed to the Commissioner of Customs, Attention: Regulations Division, Washington, D.C. 20229. To insure consideration, communications must be received in the Bureau not later than February 20, 1973.

Written material and suggestions submitted will be available for public inspection in accordance with § 103.3(b) of the Customs regulations (19 CFR 103.3 (b)), at the Bureau of Customs, Regulations Division, Washington, D.C., during regular business hours.

[SEAL] EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

JANUARY 24, 1973.

[FR Doc.73-2146 Filed 2-2-73;8:45 am]

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Consolidated Return Regulations; Hearing and Extension of Time for Comments

Proposed regulations under section 1502 of the Internal Revenue Code of 1954, relating to consolidated returns, appear in the FEDERAL REGISTER for January 4, 1973 (38 FR 774).

Written comments or suggestions pertaining to the proposed amendments were required by February 5, 1973. The time for submission of written comments pertaining to the proposed regulations is hereby extended to March 1, 1973.

Also, a public hearing on the provisions of the proposed regulations will be held on March 15, 1973, at 10 a.m., e.s.t., in Room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

The rules of § 601.601(a)(3) of the statement of procedural rules (26 CFR Part 601) shall apply with respect to such public hearing. Copies of these rules may be obtained by a request directed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, or by telephoning (Washington, D.C.) 202—964-3935. Under such § 601.601(a)(3), persons who have submitted written comments or suggestions by March 1, 1973, and who desire to present oral comments at such hearing should by March 1, 1973, submit on outline of the topics and the time they wish to devote to each topic. Such outlines should be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

Persons who desire a copy of such written comments or suggestions or outlines and who desire to be assured of their availability on or before the beginning of such hearing should notify the Commissioner, in writing, at the above address by March 8, 1973. In such a case, unless time and circumstances permit otherwise, the desired copies are deliverable only at the above address. The charge for copies is twenty-five cents ($0.25) per page, subject to a minimum charge of $1.

LEE H. HENKEL, Jr.,
Chief Counsel.

[FR Doc.73-2202 Filed 2-2-73;8:45 am]

ATOMIC ENERGY COMMISSION

[10 CFR Part 50]

LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Environmental Effects of Transportation of Fuel and Waste From Nuclear Power Reactors

Notice is hereby given that the Atomic Energy Commission is considering the amendment of its regulations in 10 CFR Part 50, Appendix D, "Interim Statement of General Policy and Procedure: Implementation of the National Environmental Policy Act of 1969 (Public Law 91-190)," to deal specifically with consideration of environmental effects associated with the transportation of fuel and waste in the individual cost-benefit analyses for light-water-cooled nuclear power reactors.

The Commission's regulation implementing the National Enviromental Policy Act of 1969 (NEPA) in 10 CFR Part 50, Appendix D, requires that each draft and final detailed statement prepared pursuant to section 102(2)(C) of NEPA for a nuclear power reactor contain a cost-benefit analysis which, among other things, considers and balances the adverse environmental effects and environmental, economic, technical, and other benefits of the facility. This regulation further provides that the cost-benefit analysis will, to the fullest extent practicable, quantify the various factors considered.

The Commission's Atomic Safety and Licensing Appeal Board has held that environmental impact statements for nuclear power reactors should consider, among other things, environmental effects of the transportation of irradiated nuclear fuel from the facility that is the subject of the licensing action, and the transportation of low-level wastes and of high-level solid wastes other than irradiated fuel from the facility to depositories. "In the Matter of Vermont Yankee Nuclear Power Corporation" (Vermont Yankee Nuclear Power Station), Docket No. 50-271, Memorandum and Order, June 6, 1972.

In connection with the foregoing, it should be noted that in conjunction with the revision of Appendix D of 10 CFR Part 50 on September 9, 1971, there was transmitted by the Director of Regulation to applicants for licenses to construct or operate nuclear power plants, and made available to the public, a document dated September 1, 1971. This document, among other things, indicated that applicants' environmental reports should describe the environmental effects of the transportation of fuel elements from the fuel fabrication plant to the reactor as well as the transportation of spent fuel elements from the reactor to the fuel reprocessing plant and the transportation of packaged radioactive material from the reactor to low-level waste burial grounds.

As a result, each applicant in an environmental report and the Commission in each environmental statement issued for a nuclear power plant, have presented a cost-benefit analysis of the environmental impact of the transportation of unirradiated fuel to the plant and irradiated fuel and solid radioactive wastes from the plant.

There are in the United States well over 100 nuclear power reactors in operation, under construction, or on order. In connection with the licensing actions for more than 30 nuclear power plants, the Commission has made an evaluation of the environmental impact from transportation of fuel and wastes. Those evaluations indicate the contribution of the environmental effects of such transportation to the cost-benefit balance for a particular nuclear reactor is small.

Although the methods of transportation and the amount of transportation for a reactor may vary in detail from that for another reactor, a detailed evaluation of transportation in connection with the licensing of each reactor does not appear to be warranted in view of the small environmental impact. Further, the transportation environment in which shipments of fuel and wastes are made and the regulatory provisions applicable to transportation are essentially identical for all reactors. This makes possible a general analysis of the environmental impact from transportation, including exposures under normal conditions and risks from accidents, and also suggests that such matters be considered in a generic fashion through the rule making process. The Commission's staff has prepared a report entitled, "Environmental Survey of Transportation of Radioactive Materials to and from Nuclear Power Plants," dated December 1972. That report contains an analysis of the probabilities of occurrences of accidents and the expected consequences of such accidents, as well as the potential exposures to transport workers and the general public under normal conditions of transport. The Environmental Survey of Transportation also provides a basis for assessment of the contribution of the environmental effects from transportation of fuel and solid wastes for a lightwater-cooled nuclear power reactor to the cost-benefit balance in the licensing proceedings for individual reactors.

The Commission proposes to amend Appendix D of 10 CFR Part 50 to add a summary table of environmental effects based on the Environmental Survey of Transportation. If adopted, the amendment would allow applicants in environmental reports and the Commission in detailed environmental statements to take account of the environmental effects associated with the transportation of fuel and wastes in individual cost-benefit analyses for light-water-cooled nuclear power reactors by use of the values in the summary table. In some cases the characteristics of the reactor fuel or wastes or the conditions of transport for the fuel or waste might not fall within the scope of the Environmental Survey of Transportation. In such cases, the applicant would be required to provide in his environmental report a full description and analysis of the environmental effects of such transportation and the Commission would include in its environmental statement a cost-benefit analysis specific to that case.

Pursuant to the Atomic Energy Act of 1954, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendment to 10 CFR Part 50 is contemplated. All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendment should send them to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, by March 22, 1973. Copies of the comments on the proposed amendments may be examined at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20545.

A new section F is added to Appendix D of 10 CFR Part 50 [1] to read as follows:

[1] This proposed amendment would cover part of the subject matter of the proposed amendments to 10 CFR Part 50 concerning consideration of the environmental effects of the uranium fuel cycle in individual cost-benefit analyses for light-water-cooled nuclear power reactors published on Nov. 15, 1972 (37 FR 24191), which would require full discussion, in environmental reports and detailed statements for individual water-cooled power reactors, of the environmental effects of transportation of cold fuel to the reactor and irradiated fuel and solid radioactive wastes from the reactor. In view of the interrelationship, appropriate changes may be required in one or both of the rules under consideration should they be adopted, in order to avoid conflict or duplication.

SECTION F—CONSIDERATION OF TRANSPORTATION IN APPLICANTS' ENVIRONMENTAL REPORTS AND AEC DETAILED STATEMENTS PERTAINING TO LIGHT-WATER-COOLED NUCLEAR POWER REACTORS

In the case of light-water-cooled nuclear power reactors, the applicant's environmental report and the Commission's detailed statement shall contain, inter alia, (1) a statement, where applicable, that the transportation of cold fuel to the reactor and irradiated fuel from the reactor to a fuel reprocessing plant and the transportation of solid radioactive wastes from the reactor to low-level waste burial grounds is within the scope of the Commission's "Environmental Survey of Transportation of Radioactive Materials to and from Nuclear Power Plants" and the contribution of the environmental effects of such transportation to the environmental costs of licensing the nuclear power reactor is as set forth in the following summary table; and (2) a full description and analysis of those environmental effects from such transportation which does not fall within the scope of the "Environmental Survey of Transportation of Radioactive Materials to and from Nuclear Power Plants."

SUMMARY TABLE [1]

ENVIRONMENTAL IMPACT OF TRANSPORTATION OF FUEL AND WASTE TO AND FROM A TYPICAL LIGHT-WATER-COOLED NUCLEAR POWER REACTOR

Normal Conditions of Transport

	Number of shipments per year
Unirradiated fuel and return of empty containers	12 truckloads.
Irradiated fuel and return of empty containers	120 truckloads or 20 railcarloads or 10 barges.
Solid radioactive wastes	46 truckloads or 11 railcarloads.

	Environmental impact
Heat, weight, and number of shipments	Negligible.

Radiation doses	*Number of persons exposed*	*Estimated dose range to exposed individuals* [2]	*Cumulative dose to exposed population* [3]
Transport workers	200	0.01 to 300 millirem per year.	3 man-rem per year.
General public:			
Onlookers	1100	0.003 to 1.3 millirem per year.	2 man-rem per year.
Along route	600,000	0.0001 to 0.06 millirem per year.	

Accidents in Transport

	Environmental risk
Radiological effects	Small.
Common (nonradiological) causes	1 fatal injury in 100 years; 1 nonfatal injury in 10 years $475 property damage per year.

[1] Data supporting this table are given in the Commission's "Environmental Survey of Transportation of Radioactive Materials to and from Nuclear Power Plants," dated December 1972.

[2] The Federal Radiation Council has recommended that the radiation doses from all sources of radiation other than natural background and medical exposures should be limited to 5,000 millirem per year for individuals as a result of occupational exposure and should be limited to 500 millirem per year for individuals in the general population. The dose to individuals due to average natural background radiation is about 130 millirem per year.

[3] Man-rem is an expression for the summation of whole body doses to individuals in a group. Thus, if each member of a population group of 1,000 people were to receive a dose of 0.001 rem (1 millirem), or if 2 people were to receive a dose of 0.5 rem (500 millirem) each, the total man-rem dose in each case would be 1 man-rem.

The Commission will hold an informal rule making hearing on the proposed amendment set forth above on April 2, 1973, at 10 a.m.; the location and the presiding officer will be designated in a notice that will be published in the FEDERAL REGISTER in the near future.

Interested persons are invited to attend the hearing and present oral or written statements. Any person who intends to present views at the hearing should furnish in writing his name and the name of the organization he represents to the Secretary of the Commission by March 1, 1973. The hearing will be conducted as a legislative-type hearing. Since the hearing will be a part of a rule making, rather than an adjudicatory, proceeding, the provisions of Subpart G, "Rules of General Applicability," of 10 CFR Part 2, the Commission's "rules of practice," will not be applicable.

The procedural format for the hearing will follow the legislative pattern, and no discovery or cross-examination will be utilized. The hearing will be conducted as informally and as expeditiously as practicable, consistent with affording the

participants a reasonable opportunity to present their positions. Those participating in the hearing may, but need not be, represented by Counsel.

Relevant written statements may be received for the record and those participating may, depending upon the number of requests received and the time available, be permitted to make brief oral statements of their views either in addition to, or in lieu of, written submissions. Persons making oral statements will not be sworn. Such persons, however, as well as persons offering written submissions at the hearing, will be subject to questioning by the presiding hearing board. All written comments and suggestions received pursuant to the invitation therefor set forth in this notice will be incorporated in the record of the proceeding.

The hearing board is authorized to take all necessary and appropriate action to control the course of the hearing, including, among other things, the holding of one or more procedural planning sessions. A transcript of the hearing will be made, and a copy of the transcript, together with copies of all documents presented at the hearing, will be placed in the Commission's public document room, 1717 H Street NW., Washington, DC, where they will be available for inspection by members of the public.

At the conclusion of the hearing the record will be held open for a period of 30 days during which time any person may file such supplementary written statements as may be deemed appropriate in light of the hearing record. After the 30-day period expires, the presiding hearing board, without rendering any decision or making any recommendation, will forward the transcript of the hearing to the Commission together with an identification of issues raised at the hearing. The Commission will carefully consider the transcript of the hearing and the comments and suggestions submitted pursuant to this notice as well as other relevant considerations and factors, and, after reaching its determination in the rule making proceeding, will cause an appropriate notice to be published in the FEDERAL REGISTER.

Nothing herein shall be construed as affecting the validity of the above-described holding by the Appeal Board in the "Vermont Yankee" proceeding during the course of this rule making proceeding, and it shall continue in effect unless and until modified by promulgation of a regulation or other Commission action.

All interested persons who desire to submit written comments or suggestions in connection with the proposed amendment to Appendix D of 10 CFR Part 50 or the Environmental Survey of Transportation, should send them to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, by March 22, 1973.

Copies of comments on this notice as well as the "Environmental Survey of Transportation of Radioactive Materials to and from Nuclear Power Plants," dated December 1972, may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, DC 20545. In addition, copies of the "Environmental Survey of Transportation of Radioactive Materials to and from Nuclear Power Plants" may be obtained upon request addressed to the Director, Directorate of Regulatory Standards, U.S. Atomic Energy Commission, Washington, D.C. 20545.

(Sec. 161, 68 Stat. 948; Sec. 102, 83 Stat. 853, 42 U.S. 2201, 4332)

Dated at Germantown, Md., this 26th day of January 1973.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-2028 Filed 2-1-73;8:45 am]

[10 CFR Part 140]

NUCLEAR ENERGY LIABILITY POLICY

Financial Protection Requirements and Indemnity Agreements

The Atomic Energy Commission is considering the amendment of its regulations in 10 CFR Part 140 to reflect in the facility form set out in § 140.91, an endorsement to facility policies which would extend from 2 to 10 years the period after termination or cancellation of the Nuclear Energy Liability Insurance Policy (Facility Form) during which a written claim may be made against the insurer which alleges bodily injury or property damage caused during the policy period. This form of policy may be provided as proof of financial protection underlying Government indemnity.

Under the 2-year discovery provision currently in effect in the nuclear facility policy, there is the possibility that termination of the policy after a nuclear incident may result in exclusion of a significant portion of the insurer's liability from the coverage of the policy. Such a possibility has particular significance in connection with radiation injuries because such injuries may not become evident until some years after exposure has occurred. In addition, there could be a gap in the financial protection afforded under such policies since the applicable State statute of limitations might provide for a period longer than 2 years during which suits might be instituted.

Pursuant to the Atomic Energy Act of 1954, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendment to 10 CFR Part 140 is contemplated. All interested persons who desire to submit comments and suggestions for consideration in connection with the proposed amendment should send them to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, by March 7, 1973. Copies of comments received may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, DC.

Section 140.91 Appendix A is amended by adding an endorsement at the end thereof to read as follows:

NUCLEAR ENERGY LIABILITY POLICY (FACILITY FORM)

AMENDATORY ENDORSEMENT (APPLICATION OF POLICY)

It is agreed that Insuring Agreement IV of the policy, captioned "Application of Policy" is amended to read as follows:

Application of policy. This policy applies only to bodily injury or property damage (1) which is caused during the policy period by the nuclear energy hazard and (2) which is discovered and for which written claim is made against the insured, not later than 10 years after the end of the policy period.

(Secs. 161, 170, 68 Stat. 948, 71 Stat. 576; 42 U.S.C. 2201, 2210)

Dated at Germantown, Md. this 26th day of January 1973.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-2029 Filed 2-2-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 1]

[Docket No. 19658; FCC 73-108]

SCHEDULE OF FEES

Order Rescheduling Dates for Filing Comments and Reply Comments

In the matter of amendment of Subpart G of Part I of the Commission's rules relating to the schedule of fees, Docket No. 19658.

1. The Commission has before it two requests for extension of time to file comments and reply comments in the above-captioned proceeding. These requests were filed by the National Association of Radiotelephone Systems, Inc., and by Donald C. Ludwig, president, Michigan Council, Citizens Band. They are for an extension to file comments and reply comments.

2. We are not constrained to grant the extension of time requested for the reason that neither of these requests contain a sufficient showing that an extension of time is warranted in the public interest. However, these requests have brought to our attention the fact that publication in the FEDERAL REGISTER of the notice of proposed rule making herein (adopted by us on December 13, 1972) was delayed until December 27, 1972.

3. When we adopted the notice, it was our intention to give all parties 60 days after such publication to study it and to file appropriate comments. Accordingly, on our own motion, we are rescheduling the dates for filing comments and reply comments.

4. *It is ordered,* That the time for filing comments in this proceeding is set for

February 28, 1973 and reply comments for March 15, 1973.

Adopted: January 29, 1973.

Released: January 30, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.73-2161 Filed 2-2-73;8:45 am]

[47 CFR Part 73]

[Docket No. 18535; FCC 73-22]

NONCOMMERCIAL EDUCATIONAL TELEVISION STATIONS

Limited Amount of ("Scrambled") Transmissions; Terminating Proceeding

Report and order. In the matter of amendment of §§ 73.621 and 73.682 of the Commission's rules to provide for a limited amendment of encoded ("scrambled") transmissions by Noncommercial Educational Television Stations, Docket No. 18535, RM-1365.

1. In response to a petition of Community Television of Southern California (licensee of noncommercial educational television Station KCET, Channel 28, Los Angeles, Calif. (KCET)), RM-1365, filed on November 1, 1968, the Commission adopted, on April 23, 1969, a notice of proposed rule making, released April 25, 1969 (FCC 69-440, 34 FR 7086) in the above-entitled matter which invited comments on petitioner's proposal to amend our rules so as to provide, on a nationwide basis, for "scrambled" instructional broadcasts to the medical and law enforcement professions.

2. In this proceeding interested parties were afforded an opportunity to comment on or before June 2, 1969, and to reply to such comments on or before June 12, 1969. Comments and/or reply comments were timely filed expressing the views of: Twin City Area Educational Television Corporation; Midwestern Educational Television, Inc.; County of Los Angeles, Office of the District Attorney; Commonwealth of Virginia-Governor's Office, Advisory Council on Educational Television; Medical Television Network; Community Television of Southern California; Wilfred Snodgrass, M.D.; Community Medical Television System of Emory University School of Medicine; Veterans Administration Hospital, Los Angeles, Calif.; National Association of Educational Broadcasters and National Cable Television Association, Inc. Each of the comments and reply comments except that of National Cable Television Association, Inc. are similar and support petitioner's proposal.[3]

3. The Commission's Notice proposed the consideration of the use of noncommercial educational television broadcast facilities for transmission of "scrambled" video and multiplexed FM subcarrier aural signals at times, it is alleged, they would not interfere with normal broadcast schedules. The nature of the "scrambled" instructional program material proposed to be broadcast would consist of new information and developments for doctors and nurses and law enforcement officers.

4. The pleadings indicate that under authority granted by the Commission, KCET conducted, from 1965 to 1968, experimental "scrambled" broadcasts intended only for confidential reception by doctors, nurses, and law enforcement officers. The normal audio channel of the station was used to continuously apprise the public that the station was broadcasting a "scrambled" video signal, and that their receiving sets were in order. Parties connected with this experiment do not indicate problems with the engineering aspect of the broadcast procedures.

5. The pleadings in this proceeding each made the same points except for that of National Cable Television Association, Inc. (see footnote 1 supra). Each of the proponents indicates its belief in the benefit the subject telecasts would bring to society by developing an additional means for keeping doctors, nurses and law enforcement officers apprised of current developments. Further, it is contended that the use of existing educational television stations for the "scrambled" broadcasts is the most economic way of broadcasting the subject instructional material. We have carefully examined the pleadings submitted in support of KCET's "scrambled television" proposal and have reached the conclusion that our initial reasoning and concern regarding the use of conventional noncommercial educational broadcast stations for the transmission of instructional programming to an intentionally restricted audience to the exclusion of the general public still stands. We view such point-to-point transmission as a poor use of valuable spectrum space, especially in highly urbanized areas like Los Angeles, where petitioner would wish to operate. Even though relatively little interest has been shown in the proposed service, we are convinced that to authorize it would "be only an opening wedge for more widespread demands by these and other possible users".[4] Our rules governing noncommercial educational broadcast service do not mention instructional programming, but do include among the kinds of programming permitted those "designed for use by schools and school systems in connection with regular school courses, as well as routine and administrative material pertaining thereto." Hence in denying petitioner's proposal we do not rule against the broadcast of instructional programs. We deny only the use of noncommercial educational channels for the limited point-to-point programming in the technical manner proposed. Further, in denying petitioner's proposal, we suggest that parties interested in the limited distribution of instructional television programs investigate the use of cable television (CATV), instructional television fixed service (ITFS), multipoint distribution service,[5] and microwave.

6. *Accordingly, it is ordered,* That the subject petition of Community Television of Southern California, is denied.

7. *It is further ordered,* That this proceeding (Docket No. 18535, RM-1365) is terminated.

Adopted: January 4, 1973.

Released: January 8, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[6]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.73-2164 Filed 2-2-73;8:45 am]

[47 CFR Part 73]

PROGRAM LOGS OF STANDARD BROADCAST STATIONS

Public Inspection and Retention; Order Extending Time for Filing Comments and Reply Comments

In the matter of petition for rule making to require broadcast licensees to maintain certain program records, Docket No. 19667, RM-1475.

1. On January 4, 1973, the Commission adopted a notice of proposed rule making in the above-captioned proceeding. Publication was given in the FEDERAL REGISTER on January 15, 1973, 38 FR 1511. Comment and reply comment dates are presently designated as February 2 and February 16, 1973, respectively.

2. In a petition for extension of time dated January 24, 1973, the National Association of Broadcasters (NAB) requested that the time for filing comments be extended to February 16, 1973. NAB states that it needs more than this unusually brief period to prepare comments which adequately reflect the views of NAB member licensees who continue to express to the NAB staff their reaction to the proposed rule. It further states that the Schedule of Fees proceeding (Docket 19658) compounds the burden on NAB and its member stations. It also notes that many licensees are also in the midst of preparing reply pleadings in the Prime Time Access rule proceeding (Docket 19622).

3. Inasmuch as the instant proceeding is closely related to other matters presently pending before the Commission which need resolution at an early date, the requested extension of NAB cannot be granted. However, the problems outlined by NAB in its request are such as to merit some extension of time.

4. *Accordingly, it is ordered,* That the dates for filing comments and reply comments are extended to and including February 9 and February 23, 1973, respectively.

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[2] Commissioner H. Rex Lee absent; Commissioner Hooks not participating.

[1] The National Cable Television Association, Inc. requested that our action in this proceeding be delayed until the Commission resolved Docket No. 18397 which deals with a basic revision of the regulatory system for Cable Television. Docket No. 18397 and its related dockets were resolved by the Commission in its recent issuance of our new cable television rules. See our Report and Order in Dockets Nos. 18397 et al. adopted February 2, 1972 (FCC 72-108, 37 FR 3252).

[4] Notice of proposed rule making, released April 25, 1969 (FCC 69-440, 34 FR 7086).

[5] Notice of proposed rule making, Docket 19493, released April 26, 1972 (FCC 72-360, 34 F.C.C. 2d 719).

[6] Commissioners Burch, Chairman; and Wiley concurring in the result.

5. *It is further ordered*, That the Petition for Extension of Time for Filing Comments filed by the National Association of Broadcasters is granted insofar as it is consistent with the foregoing and in all other respects is denied.

6. 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 29, 1973.

Released: January 30, 1973.

[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.73-2160 Filed 2-2-73;8:45 am]

[47 CFR Part 89]

[Docket No. 19672; FCC 73-87]

LICENSED LOCAL GOVERNMENT RADIO SERVICE MOBILE STATION

Installation of Communication Units in Vehicles Not Operated by Licensee

In the matter of petition to amend Part 89 of the rules to permit the installation of mobile units licensed in the Local Government Service in vehicles not operated by the licensee, Docket No. 19672, RM-1547.

1. The Northern California Chapter of the Associated Public Safety Communications Officers, Inc., has filed a petition to amend § 89.257 of the Commission's rules to permit mobile communications units, licensed in the Local Government Radio Service, to be installed "in any vehicle which requires cooperation or coordination with the licensee." This provision includes "ambulances, water department and public utility service units, lifeguard units, school buses, and vehicles of contractors or other persons or agencies having responsibility for official local governmental activities of the licensee."

2. The petition argues that "the identical corollary need has been recognized and provided for in * * * many other Public Safety Radio Services," i.e., police, fire, highway maintenance, and forestry-conservation, and that it would be in keeping with evolving Commission policy now further to relax these restrictions in the Local Government Radio Service.

3. We have considered the petitioner's request, and have concluded that the public interest would best be served by granting the petition insofar as emergency vehicles and vehicles charged with official governmental activities are involved. This would largely grant the relief asked for by the petitioner, while at the same time, limiting the use of local government frequencies to emergency situations, and to communications related to local governmental functions. This limitation would be in keeping with the permissible scope of nonlicensee use of radio facilities now provided for in other public safety radio services. The proposed rule would thus permit installation of mobile units in ambulances, utility emergency vehicles, and other similar vehicles mentioned by the petitioner, with which the licensee may need to communicate during an emergency. Our proposal would further permit the licensee to install its mobile units in vehicles of contractors performing functions which the licensee might otherwise perform. However, it would not permit the installation of radio units in nonemergency vehicles not performing governmental functions with which the licensee might want to communicate because the latter purpose is not one for which local government frequencies are available.

4. The proposed rule amendment, which is set forth below, is issued pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

5. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before April 6, 1973, and reply comments on or before April 20, 1973. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by the notice.

6. In accordance with the provisions of § 1.54 of the Commission's rules and regulations, the original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

Adopted: January 23, 1973.

Released: January 29, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

Part 89 of the Commission's rules is amended as follows:

In § 89.257, paragraph (b) is added to read:

§ 89.257 Station limitations.

* * * * *

(b) Subject to the provisions of § 89.157, communication units of a licensed Local Government Radio Service mobile station may be installed in any vehicle which in an emergency would require cooperation or coordination with the licensee, and in any vehicles used in the performance of official local governmental activities of the licensee. This provision includes ambulances, emergency units of public utilities, lifeguard emergency units, and vehicles of contractors or other persons or agencies performing for the licensee one or more of its local governmental functions.

[FR Doc.73-2158 Filed 2-2-73;8:45 am]

[1] Commissioner Johnson concurring in the result.

[47 CFR Parts 89, 91, 93]

[Docket No. 19673; FCC 73-88]

SPECIAL INDUSTRIAL RADIO SERVICE

Use of Frequencies

In the matter of amendment of Parts 89, 91, and 93 of the Commission's rules and regulations concerning the use of the frequency pair 451.800/456.800 MHz, Docket No. 19673, RM-1715.

1. The Special Industrial Radio Service Association, Inc. (SIRSA), has filed a petition proposing amendment of Parts 89, 91, and 93 of the Commission's rules relating to the use of frequency pair 451.800/456.800 MHz. SIRSA proposes amending § 91.504 of the Special Industrial Radio Service rules to allow, on a secondary noninterference basis, itinerant fixed operations (control and relay stations) on the frequency pair 451.800/456.800 MHz. Second, the petitioner requests the deletion of the assignment of this same frequency pair from all services in Parts 89 (Public Safety) and 93 (Land Transportation) now having access to them on a secondary basis for fixed operations.[1] Finally, SIRSA asks us to delete restrictions which limit the use of this frequency pair for fixed operations to locations which are at least 75-100 miles removed from metropolitan areas with populations of 200,000 or more.

2. Prior to 1967, the frequency pair 451.800/456.800 MHz was available on a primary basis for itinerant mobile service and on a secondary basis for limited fixed operational requirements. In 1968, rule amendments (Docket 13847, 11 FCC 2d 648, 12 RR 2d 1555) eliminated the use of frequencies in the 450-470 MHz band by fixed stations other than control stations used for the secondary control of mobile relay stations within a given service. At the same time, this rule making provided for fixed use in other radio services on a secondary basis outside urbanized areas of 200,000 or more population. As a result, this frequency pair became available for assignment to fixed stations in the Public Safety and Land Transportation Radio Services under Parts 89 and 93 of the Commission's Rules. The rationale of this change was to protect these frequencies, as much as possible, for mobile operations and prevent de facto preemption by fixed systems while at the same time providing for reasonable accommodation of fixed systems in areas where there was little need for mobile systems. However, petitioner points out that the result has been that, as a practical matter, there are currently no provisions in the rules permitting use of frequencies in the 450-470 MHz band for itinerant fixed operations in the Special Industrial Radio Service. Further, since itinerant users often employ their systems in areas where there are no existing wire line facilities, or the operation is in specific locations for such

[1] Sections 89.101(p) and 93.101(b).

limited durations that the installation of wire lines is impractical, they often are left without any control and relay facilities for their low band or VHF base/mobile stations. Consequently, their only recourse has been to negotiate special arrangements for frequencies with the cognizant advisory committee and to license control/relay links each time they move into a new location. The Commission agrees with petitioner that these processes are cumbersome and inconsistent with our policy under which we make it possible for itinerant licensees to operate their systems without incurring the delay inherent in obtaining coordination and clearance every time they move into a particular location for a short period of time. Furthermore, we are of the opinion that since this frequency pair is presently generally available for itinerant base, mobile relay and mobile operations, occasional itinerant fixed operations should not cause significant cochannel interference problems with mobile service licensees (beyond that which might otherwise be anticipated from other itinerant mobile service systems). We, therefore, propose to amend our rules to designate the frequency pair 451.800/456.800 MHz as available in the Special Industrial Radio Service on a secondary basis for itinerant control and relay links, when they are associated with temporary base and mobile systems licensed on other itinerant or general use frequencies allocated to the Special Industrial Radio Service.

3. The Commission further agrees with the petitioner's argument that it should delete the assignment of this frequency pair from all Parts 89 and 93 services now having access to them on a secondary basis for fixed operations. Few, if any, licensees in these services use these frequencies on a secondary basis for fixed operations knowing that serious cochannel interference can occur at any time, without prior warning because the itinerant mobile service is not coordinated. In fact, nearly all users are licensees in the Special Industrial Radio Service who use this frequency pair for its intended mobile service function. The Commission, therefore, proposes to eliminate this frequency pair from Parts 89 and 93 services.

4. With regard to the petitioner's third proposal, we do not think it appropriate, at this time, to eliminate the geographical limitation on fixed operations within a 75–100 mile distance from metropolitan areas with populations of 200,000, as requested by SIRSA's petition. To do so would in all probability have the undesired result of removing this pair from mobile service use. Thus, while we do not foresee the possibility of permitting fixed use of the frequency pair in areas where we are already experiencing frequency congestion problems, we believe there may be a possibility of modifying the 200,000 population standard, since we do not believe that frequency conflicts need be expected in all of the 87 areas included. Any action taken to consider a change for Special Industrial should also be applied in our other radio services since their need for additional fixed uses may be as great or greater than in petitioner's service. Accordingly, we plan to study the possibilities of revising the 200,000 standard. Pending an overall review of this limitation, this portion of the SIRSA petition is denied.

5. Accordingly, the petition (RM–1715) filed by SIRSA is granted to the extent indicated herein; and it is denied in all other respects.

6. The proposed rule amendment, which is set forth below is issued pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

7. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before April 6, 1973, and reply comments on or before April 20, 1973. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

8. In accordance with the provisions of § 1.419 of the Commission's rules, an original and fourteen copies of all statements, briefs, or comments filed shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

Adopted: January 23, 1973.

Released: January 29, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[1]

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

PART 89—PUBLIC SAFETY RADIO SERVICES

I. Part 89 of the Commission's rules is amended as follows:

In § 89.101(p) frequencies 451.800 MHz and 456.800 MHz are deleted.

§ 89.101 Frequencies.

* * * * *

(p) [Amended]

* * * * *

PART 91—INDUSTRIAL RADIO SERVICES

II. Part 91 of the Commission's rules is amended as follows:

1. Paragraph (a) is amended and a new subparagraph (35) is added to paragraph (b) of § 91.504 to read as follows:

§ 91.504 Frequencies available.

(a) * * *

Frequency or band	Class of stations	General reference	Limitations
* * *	* * *	* * *	* * *
451.800	Operational, fixed base, and mobile.	Itinerant use	12, 28, 35
* * *	* * *	* * *	* * *
456.800	Operational, fixed base, and mobile.	Itinerant use	12, 28, 35
* * *	* * *	* * *	* * *

(b) * * *

(35) This frequency may be assigned to an itinerant fixed control or relay station on a secondary noninterference basis to land mobile stations in this service: *Provided*, That the fixed relay or control station is to be associated with base and mobile facilities authorized to use other itinerant or general use frequencies available in this service. All such use of these frequencies for fixed systems is limited to locations 100 or more miles from the center of any urbanized area of 200,000 or more population, except that the distance may be 75 miles if the plate input power does not exceed 30 watts. All such fixed systems are limited to a maximum of two frequencies and must employ directional antennas with a front-to-back ratio of at least 15 db. For two-frequency systems, the separation between transmit-receive frequencies is 5 MHz. The centers of urbanized areas of 200,000 or more population are determined from the appendix, page 226, of the U.S. Commerce publication "Air Line Distance Between Cities in the United States." Urbanized areas of 200,000 or more population are defined in the U.S. Census of Population, 1960, Vol. 1, Table 23, page 1–50.

* * * * *

PART 93—LAND TRANSPORTATION RADIO SERVICES

III. Part 93 of the Commission's rules is amended as follows:

In § 93.101(b), the frequencies 451.800 MHz and 456.800 MHz are deleted.

§ 93.101 Frequencies.

* * * * *

(b) [Amended]

* * * * *

[FR Doc.73-2159 Filed 2-2-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release No. 34-9929; File No. S7-475]

EQUITY SECURITY

Proposed Clarification and Definition

The Commission is releasing for public comment an amendment to Rule 3a11-1 (17 CFR 240.3a11-1) under the Securities Exchange Act 1934 (the "Act") clarifying the term "equity security" to specifically include calls and puts (options).

The Board of Governors of the Federal Reserve System has requested for

[1] Commissioner Johnson concurring in the result.

the purpose of clarity and in view of the pending proposals for the exchange trading of such options, that the Commission redefine equity security to specify that such options are equity securities within the meaning of section 3(a)(11) of the Act. The principal effect of this amendment would be to make clear that the Federal Reserve System has authority under section 7(d) of the Act to regulate the extension or maintenance of credit by banks with respect to such options.

All interested persons are invited to submit their views and comments on the proposed rule. Written statements of views and comments should be addressed to Martin Moskowitz, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549, on or before March 16, 1973. Reference should be made to file number S7-475. All such communications will be available for public inspection.

The Securities and Exchange Commission, acting pursuant to the provisions of the Securities Exchange Act of 1934, and particularly section 3(a)(11) thereof, proposes hereby to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations by amending § 240.3a-11-1 to read as follows:

§ 240.3a11-1 Definition of the term equity security.

The term "equity security" is hereby defined to include any stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a business trust; or any security convertible, with or without consideration into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.

(Secs. 3(a) 11, 23(a); 48 Stat. 882, 901; as amended 49 Stat. 1379; 15 U.S.C. 78c(b), 78w(a))

By the Commission.

JANUARY 29, 1973.

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

[FR Doc.73-2095; Filed 2-2-73;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules, that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF THE TREASURY

Monetary Offices

FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

Instructions Relating to Taxpayer Identification Numbers

On June 30, 1972, instructions were issued on this subject and published in the FEDERAL REGISTER (37 FR 13279 (1972)). These procedures have been revised in accordance with amendments to the regulations issued on December 8, 1972, and published in the FEDERAL REGISTER (37 FR 26517 (1972)).

With respect to each deposit or share account opened after June 30, 1972, by a person residing or doing business in the United States or a citizen of the United States, each bank, savings and loan association, building and loan association, credit union, or broker or dealer in securities must, within 45 days from the date the account is opened, secure and maintain a record of the taxpayer identification number of the person maintaining the account.

For individuals, the taxpayer identification number is his social security number. For corporations, partnerships, and other entities it is the IRS employer identification number. If an account is opened in more than one individual's name, the financial institution is required to secure and maintain the social security number of at least one individual having a financial interest in that account.

In determining the proper identification number to be obtained for accounts opened in more than one name, the financial institution should follow the regulations and rulings issued by the Internal Revenue Service under Section 6109 of the Internal Revenue Code. The following guidelines have been issued by IRS under that section:

For this type of account	*Obtain Social Security number of*
1. An individual's account	The individual.
2. Husband and wife (joint account)	The husband.
3. Adult and minor (joint account)	The adult.
4. Two or more individuals (joint account)	Any one of the individuals.
5. Account in the name of guardian or committe for a designated ward, minor, or incompetent person	The ward, minor or incompetent person.
6. Custodian account of a minor (Uniform Gifts to Minor Acts)	The minor.
7. So-called trust account that is not a legal or valid trust under State law	The real owner.
	Obtain employers identification number of
8. A valid trust, estate, or pension trust	Legal entity. Do not furnish the identifying number of the administrator, executor, or trustee unless the legal entity itself is not designated in the account title.
9. Corporate account	The corporation.
10. Religious, charitable, or educational organizational account	The organization.
11. Proprietorship account held in the trade name of the business	The proprietorship.
12. Partnership account held in the name of the business	The partnership.
13. Association, club, or other tax-exempt organization	The organization.
14. A broker or registered nominee	The broker or nominee.

With respect to accounts opened for trusts, charitable organizations, clubs and similar entities the financial institution should secure the employer identification number of the entity. An employer identification number should be obtained for this purpose even though an organization might not otherwise require one.

A taxpayer identification number need not be secured in the following instances: (i) Accounts for public funds opened by agencies and instrumentalities of Federal, State, local or foreign governments, (ii) accounts for aliens who are (a) ambassadors, ministers, career diplomatic, or consular officers, or (b) naval, military or other attachés of foreign embassies and legations, and for the members of their immediate families, (iii) accounts for aliens who are accredited representatives to international organizations entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. Sec. 288), and for the members of their immediate families (a list of such organizations appears in Title 19, § 148.87 (formerly Section 10.30a), Code of Federal Regulations), (iv) aliens temporarily residing in the United States for a period not to exceed 180 days, (v) aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program supervised or conducted by any agency of the Federal Government, (vi) unincorporated subordinate units of a tax-exempt central organization which are covered by a group exemption letter, (vii) interest-bearing accounts maintained by a person under 18 years of age opened as part of a school thrift savings program, provided the annual interest does not exceed $10, and (viii) Christmas club vacation club, and similar installment savings programs provided the annual interest does not exceed $10. In instances (vii) and (viii), the bank shall, within 15 days following the end of any calendar year in which the interest accrued in that year exceeds $10, use its best efforts to secure and maintain the appropriate taxpayer identification number or application form therefor.

If the customer does not have a social security number or is unaware of his number, he can authorize the Social Security Administration to furnish his identification number to the financial institution. This authorization may be printed or stamped on the back of Form SS–5 (Application for Social Security No.), in the space immediately above the legend, "For Bureau of Data Processing and Accounts Use". The authorization must contain the following language:

Please furnish my SSN to:
Name _____
Address _____
Signature _____

The customer should complete Form SS–5 and sign the statement on the back of the form. The financial institution should mail the completed form to the Social Security Administration in the preaddressed envelope provided and retain a copy (duplicate or photocopy) of the application until the number is received.

The Social Security Administration does not require the Form SS–5 or the authorization statement to be signed by a parent or guardian even though the customer is under 18 years of age.

A similar procedure may be used to obtain employer identification numbers. Upon proper authorization by the applicant on the back of Part 2 on the first page of Form SS–4 (Application for Employer Identification No.), the IRS will furnish the employer identification number to both the applicant and the financial institution.

Financial institutions may obtain supplies of Form SS–5 and preaddressed envelopes from their nearest Social Security Office, and supplies of Form SS–4 and

preaddressed envelopes from any Internal Revenue Service Center or district office.

In the event that a financial institution has been unable to secure the identification required herein with respect to an account within the 45-day period specified, it shall nevertheless not be deemed to be in violation of this requirement if (i) it has made a reasonable effort to secure such identification, and (ii) it maintains a list containing the names, addresses, and account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him.

A reasonable effort to obtain a taxpayer identification number should include the mailing of a written request. The request should inform the customer that the bank is required to maintain, for the use of the Department of the Treasury, a list of customers who have failed to supply the bank with a TIN within the 45-day period.

The 45-day period provided for shall be extended where the customer has applied for an employer identification number or social security number on Form SS–4 or SS–5 until such time as the customer has had a reasonable opportunity to secure the number and furnish it to the institution.

Dated: January 30, 1973.

[SEAL] EDWARD L. MORGAN,
Assistant Secretary for Enforcement, Tariff and Trade Affairs, and Operations.

[FR Doc.73–2106 Filed 2–2–73;8:45 am]

Office of the Secretary

[Treasury Dept. Order No. 224]

OFFICE OF REVENUE SHARING

Establishment and Delegation of Authority

Pursuant to the authority vested in me by Reorganization Plan No. 26 of 1950, and as Secretary of the Treasury, there is hereby established in the Office of the Secretary the Office of Revenue Sharing. This Office shall be headed by a Director who shall be appointed by the Secretary of the Treasury. The Director shall perform his duties under the direct supervision of the Deputy Secretary of the Treasury.

The Director shall perform the functions, exercise the powers, and carry out the duties vested in the Secretary of the Treasury by the State and Local Fiscal Assistance Act of 1972, title I, Public Law 92–512, and those functions, powers and duties are hereby delegated to the Director. Regulations for the purposes of carrying out the functions, powers and duties delegated to the Director may be issued by him under his own name and title with the approval of the Secretary.

Dated: January 26, 1973.

[SEAL] GEORGE P. SHULTZ,
Secretary of the Treasury.

[FR Doc.73–2107 Filed 2–2–73;8:45 am]

[Dept. Circular, Public Debt Series, No. 2–73]

6⅝ PERCENT TREASURY NOTES OF SERIES B–1979

Offering of Notes

FEBRUARY 1, 1973.

I. *Offering of notes.* 1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, invites tenders at a price not less than 98.51 percent of their face value for $1 billion, or thereabouts, of notes of the United States, designated 6⅝ percent Treasury notes of Series B–1979. An additional amount of the notes will be allotted by the Secretary of the Treasury to Government accounts and Federal Reserve banks at the average price of accepted tenders in exchange for Treasury notes maturing February 15, 1973. Tenders will be received up to 1:30 p.m., e.s.t., Wednesday, February 7, 1973, under competitive and noncompetitive bidding, as set forth in section III hereof. The 6½ percent Treasury notes of Series C–1973 and 4⅞ percent Treasury notes of Series D–1973, maturing February 15, 1973, will be accepted at par in payment, in whole or in part, to the extent tenders are allotted by the Treasury.

II. *Description of notes.* 1. The notes will be dated February 15, 1973, and will bear interest from that date at the rate of 6⅝ percent per annum, payable on a semiannual basis on May 15 and November 15, 1973, and thereafter on May 15 and November 15 in each year until the principal amount becomes payable. They will mature November 15, 1979, and will not be subject to call for redemption prior to maturity.

2. The income derived from the notes is subject to all taxes imposed under the Internal Revenue Code of 1954. The notes are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The notes will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer notes with interest coupons attached, and notes registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1 million. Provisions will be made for the interchange of notes of different denominations and of coupon and registered notes, and for the transfer of registered notes, under rules and regulations prescribed by the Secretary of the Treasury.

5. The notes will be subject to the general regulations of the Department of the Treasury, now or hereafter prescribed, governing U.S. notes.

III. *Tenders and allotments.* 1. Tenders will be received at Federal Reserve banks and branches and at the Office of the Treasurer of the United States, Washington, D.C. 20220, up to the closing hour, 1:30 p.m., e.s.t., Wednesday, February 7, 1973. Each tender must state the face amount of notes bid for, which must be $1,000 or a multiple thereof, and the price offered, except that in the case of noncompetitive tenders the term "noncompetitive" should be used in lieu of a price. In the case of competitive tenders, the price must be expressed on the basis of 100, with two decimals, e.g., 100.00. Tenders at a price less than 98.51 will not be accepted. Fractions may not be used. Noncompetitive tenders from any one bidder may not exceed $400,000.

2. Commercial banks, which for this purpose are defined as banks accepting demand deposits, may submit tenders for account of customers provided the names of the customers are set forth in such tenders. Others than commercial banks will not be permitted to submit tenders except for their own account. Tenders will be received without deposit from banking institutions for their own account, federally-insured savings and loan associations, States, political subdivisions or instrumentalities thereof, public pension and retirement and other public funds, international organizations in which the United States holds membership, foreign central banks and foreign States, dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, and Government accounts. Tenders from others must be accompanied by payment (in cash or the securities referred to in section I which will be accepted at par) of 5 percent of the face amount of notes applied for.

3. Immediately after the closing hour tenders will be opened, following which public announcement will be made by the Department of the Treasury of the amount and price range of accepted bids. Those submitting tenders will be advised of the acceptance or rejection thereof. In considering the acceptance of tenders, those at the highest prices will be accepted to the extent required to attain the amount offered. Tenders at the lowest accepted price will be prorated if necessary. The Secretary of the Treasury

expressly reserves the right to accept or reject any or all tenders, in whole or in part, and his action in any such respect shall be final. Subject to these reservations, noncompetitive tenders for $400,000 or less without stated price from any one bidder will be accepted in full at the average price [1] (in two decimals) of accepted competitive tenders.

4. All bidders are required to agree not to purchase or to sell, or to make any agreements with respect to the purchase or sale or other disposition of any notes of this issue at a specific rate or price, until after 1:30 p.m., e.s.t., Wednesday, February 7, 1973.

5. Commercial banks in submitting tenders will be required to certify that they have no beneficial interest in any of the tenders they enter for the account of their customers, and that their customers have no beneficial interest in the banks' tenders for their own account.

IV. *Payment.* 1. Settlement for accepted tenders in accordance with the bids must be made or completed on or before February 15, 1973, at the Federal Reserve bank or branch or at the Office of the Treasurer of the United States, Washington, D.C. 20220, in cash, securities referred to in section I (interest coupons dated February 15, 1973, should be detached) or other funds immediately available by that date. Payment will not be deemed to have been completed where registered notes are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. In every case where full payment is not completed, the payment with the tender up to 5 percent of the amount of notes allotted shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States. When payment is made with securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities submitted and the amount payable on the notes allotted.

V. *Assignment of registered securities.* 1. Registered securities tendered as deposits and in payment for notes allotted hereunder should be assigned by the registered payees or assignees thereof, in accordance with the general regulations of the Department of the Treasury, in one of the forms hereafter set forth. Securities tendered in payment should be surrendered at the Federal Reserve bank or branch or at the Office of the Treasurer of the United States, Washington, D.C. 20220. The securities must be delivered at the expense and risk of the holder. If the notes are desired registered in the same name as the securities surrendered, the assignment should be to "The Secretary of the Treasury for 6⅝ percent Treasury notes of Series B–1979"; if the notes are desired registered in another name, the assignment should be to "The Secretary of the Treasury for 6⅝ percent Treasury notes of Series B–1979 in the name of _____"; if notes in coupon form are desired, the assignment should be to "The Secretary of the Treasury for 6⅝ percent Treasury notes of Series B–1979 in coupon form to be delivered to _____".

VI. *General provisions.* 1. As fiscal agents of the United States, Federal Reserve banks are authorized and requested to receive tenders, to make such allotments as may be prescribed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of notes on full-paid tenders allotted, and they may issue interim receipts pending delivery of the definitive notes.

2. The Secretary of the Treasury may at any time, or from time-to-time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve banks.

[SEAL] GEORGE P. SHULTZ,
Secretary of the Treasury.

[FR Doc.73-2287 Filed 2-2-73;8:45 am]

[Dept. Circular, Public Debt Series—No. 1–73]

6½ PERCENT TREASURY NOTES OF SERIES G–1976

Offering of Notes

FEBRUARY 1, 1973.

I. *Offering of notes.* 1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, offers notes of the United States, designated 6½ percent Treasury notes of Series G–1976, at 99.70 percent of their face value, in exchange for the following securities maturing February 15, 1973:

(1) 6½ percent Treasury notes of Series C–1973; or

(2) 4⅞ percent Treasury notes of Series D–1973.

Cash payments due subscribers will be made as set forth in section IV hereof. The amount of this offering will be limited to the amount of eligible securities tendered in exchange. The books will be open until 5 p.m., local time, Wednesday, February 7, 1973, for the receipt of subscriptions.

II. *Description of notes.* 1. The notes will be dated February 15, 1973, and will bear interest from that date at the rate of 6½ percent per annum, payable semiannually on August 15, 1973, and thereafter on February 15 and August 15 in each year until the principal amount becomes payable. They will mature August 15, 1976, and will not be subject to call for redemption prior to maturity.

2. The income derived from the notes is subject to all taxes imposed under the Internal Revenue Code of 1954. The notes are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The notes will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer notes with interest coupons attached, and notes registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1 million. Provision will be made for the interchange of notes of different denominations and of coupon and registered notes, and for the transfer of registered notes, under rules and regulations prescribed by the Secretary of the Treasury.

5. The notes will be subject to the general regulations of the Department of the Treasury, now or hereafter prescribed, governing U.S. notes.

III. *Subscription and Allotment.* 1. Subscriptions accepting the offer made by this circular will be received at the Federal Reserve banks and branches and at the Office of the Treasurer of the United States, Washington, D.C. 20220. Banking institutions generally may submit subscriptions for account of customers, but only the Federal Reserve banks and the Department of the Treasury are authorized to act as official agencies.

2. Under the Second Liberty Bond Act, as amended, the Secretary of the Treasury has the authority to reject or reduce any subscription, and to allot less than the amount of notes applied for when he deems it to be in the public interest; and any action he may take in these respects shall be final. Subject to the exercise of that authority, all subscriptions will be allotted in full.

IV. *Payment.* 1. Payment for the face amount of notes allotted hereunder must be made on or before February 15, 1973, or on later allotment, and may be made only in a life face amount of securities of the issues enumerated in paragraph 1 of section I hereof, which should accompany the subscription. Payment will not be deemed to have been completed where registered notes are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. A cash payment of $3 per $1,000 will be made to subscribers on account of the issue price of the notes. The payment will be made by check or by credit in any account maintained by a

[1] Average price may be at, or more or less than 100.00.

banking institution with the Federal Reserve bank of its district, following acceptance of the securities surrendered. In the case of registered securities, the payment will be made in accordance with the assignments thereon. When payment is made with securities in bearer form, coupons dated February 15, 1973, should be detached and cashed when due. When payment is made with registered securities, the final interest due on February 15, 1973, will be paid by issue of interest checks in regular course to holders of record on January 15, 1973, the date the transfer books closed.

V. *Assignment of registered securities.* 1. Registered securities tendered in payment for notes offered hereunder should be assigned by the registered payees or assignees thereof, in accordance with the general regulations of the Department of the Treasury governing assignments for transfer or exchange, in one of the forms hereafter set forth, and thereafter should be surrendered with the subscription to a Federal Reserve bank or branch or to the Office of the Treasurer of the United States, Washington, D.C. 20220. The securities must be delivered at the expense and risk of the holder. If the notes are desired registered in the same name as the securities surrendered, the assignment should be to "The Secretary of the Treasury for exchange for 6½ percent Treasury notes of Series G–1976"; if the notes are desired registered in another name, the assignment should be to "The Secretary of the Treasury for exchange for 6½ percent Treasury notes of Series G–1976 in the name of _____"; if notes in coupon form are desired, the assignment should be to "The Secretary of the Treasury for exchange for 6½ percent Treasury notes of Series G–1976 in coupon form to be delivered to _____".

VI. *General provisions.* 1. As fiscal agents of the United States, Federal Reserve banks are authorized and requested to receive subscriptions, to make such allotments as may be prescribed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of notes on full-paid subscriptions allotted, and they may issue interim receipts pending delivery of the definitive notes.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve banks.

[SEAL] GEORGE P. SHULTZ,
Secretary of the Treasury.

[FR Doc.73-2288 Filed 2-2-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Geological Survey

COMMITTEE ON MINORITY PARTICIPATION IN EARTH SCIENCE AND MINERAL ENGINEERING

Notice of Public Meeting

Pursuant to Public Law 92–463, effective January 5, 1973, notice is hereby given that an open meeting of the Committee on Minority Participation in Earth Science and Mineral Engineering will be held at 9 a.m., February 19, 1973, in Room 5240, General Services Administration Building, 18th and F Streets NW., Washington, D.C. 20242.

The Committee was appointed to advise the Assistant Secretary—Mineral Resources and the Directors of the Bureau of Mines and the Geological Survey on matters related to education, training, recruitment, and employment in connection with activities undertaken to meet the goals of the President's Equal Employment Opportunity Program.

The Committee is chaired by Dr. Randolph W. Bromery, Chancellor, University of Massachusetts; and is composed of the following Committee members: Dr. Charles A. Baskerville; Mr. Leon Cook; Mr. Jimm De Schields; Dr. Mack Gipson, Jr.; Dr. Frank Press; Mr. Allan E. Snyder; Mr. Bernard Valdez; Dr. Priscilla C. Perkins; Dr. Simon Gonzalez; and Prof. S. D. Foreman.

The purpose of the meeting is to review the report of the June Conference on minority participation in earth science and mineral engineering and plan the follow-up program.

Persons wishing to attend the meeting or desiring more detailed information about the meeting should contact William Thurston, Special Assistant, Office of the Director, Geological Survey, Washington, D.C. 20242 (phone: 202—343–3437).

V. E. MCKELVEY,
Director,
Geological Survey.

[FR Doc.73-2092 Filed 2-2-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

FIRE-CURED, AND DARK AIR-CURED TOBACCO

Notice of Referenda Regarding National Marketing Quota

Notice is hereby given that from February 19 to 23, 1973, each inclusive, separate referenda will be held of farmers engaged in the production of the 1972 crops of fire-cured and dark air-cured tobacco, pursuant to the provisions of the Agricultural Adjustment Act of 1938, as amended. Notice was given (37 FR 23843) that consideration would be given to data, views, and recommendations on establishing the date or period for holding the referenda and whether either or both of the referenda would be conducted at polling places rather than by mail ballot. No data, views, or recommendations regarding the referenda were received pursuant to such notice. It is hereby determined that the referenda will be held by mail ballot during the period specified above. The purpose of the referenda is to determine whether the farmers favor a national marketing quota for each of the 1973–74, 1974–75, and 1975–76 marketing years for fire-cured and/or dark air-cured tobacco.

The referenda will be conducted in accordance with the provisions of the Act and the Regulations Governing the Holding of Referenda on Marketing Quotas, as amended (28 FR 13249), Part 717 of this chapter.

Signed at Washington, D.C., on January 30, 1973.

GLENN A. WEIR,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.73-2091 Filed 2-2-73;8:45 am]

Packers and Stockyards Administration

BLECKLEY COUNTY FEEDER PIG SALE, ET AL.

Posted Stockyards

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. et seq.), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on the respective dates specified below.

Facility number, name, location of stockyard and date of posting

GEORGIA

GA—175 Bleckley County Feeder Pig Sale, Cochran, November 30, 1972.

IOWA

IA—244 Manning Livestock Auction, Manning, December 22, 1972.
IA—243 Farmers Livestock Auction Co., Inc., Oelwein, January 9, 1973.
IA—242 Central Iowa Stock Yards, Webster City, January 15, 1973.

MISSOURI

MO—231 Rolla Auction Company, Rolla, December 28, 1972.

TEXAS

TX—300 Texoma Livestock Commission Company, Tom Bean, December 21, 1972.

WASHINGTON

WA—126 Woodland Auction Yard, Woodland, January 18, 1973.

Done at Washington, D.C., this 30th day of January 1973.

EDWARD L. THOMPSON,
Acting Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc.73-2105 Filed 2-2-73;8:45 am]

Soil Conservation Service

MOORHEAD BAYOU WATERSHED PROJECT, MISSISSIPPI

Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Soil Conservation Service, U.S. Department of Agriculture, has prepared a draft environmental statement for the Moorhead Bayou Watershed Project, Sunflower County, Miss., USDA–SCS–ES–WS–(ADM)–73–25(D).

The environmental statement concerns a plan for watershed protection, flood prevention, and drainage. Planned works of improvement include conservation land treatment measures supplemented by channel modifications on about 40 miles of existing channel.

This draft environmental statement was transmitted to CEQ on January 3, 1973.

Copies are available during regular working hours at the following locations:

Soil Conservation Service, USDA, South Agriculture Building, Room 5227, 14th and Independence Avenue SW., Washington, D.C. 20250.

Soil Conservation Service, USDA, Room 502, Milner Building, Lamar at Pearl Streets, Jackson, MS 39201.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please use name and number of statement above when ordering. The estimated cost is $3.

Copies of the draft environmental statement have been sent for comment to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines. Comments are also invited from others having knowledge of or special expertise on environmental impacts.

Comments concerning the proposed action or request for additional information should be addressed to W. L. Heard, State Conservationist, Soil Conservation Service, Room 502, Milner Building, Lamar at Pearl Streets, Jackson, MS 39201.

Comments must be received within, on or before March 5, 1973, in order to be considered in the preparation of the final environmental statement.

W. B. Davey,
Deputy Administrator for Watersheds, Soil Conservation Service.

January 30, 1973.

[FR Doc.73-2148 Filed 2-2-73;8:45 am]

DEPARTMENT OF COMMERCE

Maritime Administration

BARNETT BANK OF MIAMI BEACH, NATIONAL ASSOCIATION

Notice of Change of Name of Approved Trustee

Notice is hereby given that effective June 1, 1972, Mercantile National Bank of Miami Beach changed its name to Barnett Bank of Miami Beach, National Association.

Dated: December 21, 1972.

Burt Kyle,
Chief, Office of Domestic Shipping.

[FR Doc.73-2153 Filed 2-2-73;8:45 am]

FIRST NATIONAL BANK IN DALLAS

Notice of Approval of Applicant as Trustee

Notice is hereby given that First National Bank in Dallas, with offices at 1401 Elm Street, Dallas, TX, has been approved as Trustee pursuant to Public Law 89–346 and 46 CFR 221.21–221.30.

Dated: December 21, 1972.

Burt Kyle,
Chief, Office of Domestic Shipping.

[FR Doc.73-2152 Filed 2-2-73;8:45 am]

National Oceanic and Atmospheric Administration

[Docket No. B–552]

JOHN W. LEFAVOUR

Notice of Loan Application

January 29, 1973.

John W. Lefavour, 33 South Terrace, Beverly, MA 01915, has applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a new wood vessel, about 42-foot in length, to engage in the fishery for groundfish (cod, cusk, haddock, hake, ocean perch, and pollock).

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above-entitled application is being considered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, on or before March 7, 1973. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

Robert W. Schoning,
Acting Director.

[FR Doc.73-2117 Filed 2-2-73;8:45 am]

[Docket No. B–553]

RONALD A. SIMMONS

Notice of Loan Application

January 30, 1973.

Ronald A. Simmons, Box 41, Port Clyde, ME 04855, has applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a new wood vessel, about 35-foot in length, to engage in the fishery for lobsters.

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above entitled application is being considered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, on or before March 7, 1973. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

Robert W. Schoning,
Acting Director.

[FR Doc.73-2118 Filed 2-2-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ADVISORY COMMITTEES

Notice of Meetings

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (P.L. 92–463, 86 Stat. 770–776), the Food and Drug Administration announces the following public advisory committee meetings and other required information in accordance with provisions set forth in section 10(a)(1) and (2) of the Act:

Committee name	Date, time, place	Type of meeting and contact person
1. Endocrinology and Metabolism Advisory Committee.	Feb. 5, 9 a.m., Conference Room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open 9 a.m. to 11:30 a.m., closed after 11:30 a.m.; Martha Freeman, M.D., Room 14B-19, 5600 Fishers Lane, Rockville, MD 20852, 301—443-3520.

Purpose. Advises the Commissioner of Food and Drugs regarding safety efficacy of drugs employed in the treatment of endocrine and metabolic disorders.

Agenda. Lipid lowering and cholesterol lowering agents; criteria of safety and efficacy.

Committee name	Date, time, place	Type of meeting and contact person
2. Biometric and Epidemiological Methodology Advisory Committee.	Feb. 7, 9 a.m., Conference Room B, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open 9 a.m. to noon, closed after 1 p.m., Charles Anello, D. Sc.; Room 15B-17, 5600 Fishers Lane, Rockville, MD 20852, 301—443-4594.

Purpose. Advises the Commissioner of Food and Drugs regarding extramural and intramural research in the area of epidemiological and biometric methodology.

Agenda. Statistical guidelines, use of statistical experts, and oral contraceptive studies.

Committee name	Date, time, place	Type of meeting and contact person
3. Panel on Review of Antimicrobial Agents.	Feb. 8, 9, 10; 9 a.m., Conference Room B, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open Feb. 8, 9 a.m. to 10 a.m., closed Feb. 8 after 10 a.m., closed Feb. 9 and 10. Michael Kennedy, Room 10B-05.

Purpose. Reviews and evaluates available information concerning safety and effectiveness of active ingredients in currently marketed nonprescription antimicrobial drug products.

Agenda. Continuing review of over-the-counter antimicrobial agents under investigation.

Committee name	Date, time, place	Type of meeting and contact person
4. Panel on Review of Dental Devices.	Feb. 12, 9 a.m., American Dental Association Bldg., Chicago, IL.	Open Feb. 12, 9 a.m. to 10:00 a.m., closed after 10 a.m.; David M. Link, Room 212B, 1901 Chapman Ave., Rockville, MD 20852, 301—443-1743.

Purpose. Reviews and evaluates available information concerning safety, effectiveness, and reliability of dental devices currently in use.

Agenda. Continuing review of dental devices under investigation.

Committee name	Date, time, place	Type of meeting and contact person
5. Surgical Drugs Advisory Committee.	Feb. 12, 9 a.m., Conference Room F, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open 9 a.m. to 10 a.m., closed after 10:30 a.m.; Samuel Sunenblick, M.D., Room 12B-25, 5600 Fishers Lane, Rockville, MD 20852, 301—443-3560.

Purpose. Advises the Commissioner of Food and Drugs regarding safety and efficacy of drugs employed in surgery.

Agenda. Evaluation of information on polyglycolic acid sutures.

Committee name	Date, time, place	Type of meeting and contact person
6. Cardiovascular and Renal Advisory Committee.	Feb. 14, 8 p.m., Feb. 15, 8 a.m., St. Francis Hotel, San Francisco, CA.	Open Feb. 14, 8 p.m. to 11 p.m., closed Feb. 15, 8 a.m. to noon; John MacGregor, M.D., Room 10B-23, 5600 Fishers Lane, Rockville, MD 20852, 301—443-4139.

Purpose. Advises the Commissioner of Food and Drugs regarding safety and efficacy of drugs employed in the treatment of cardiovascular and renal disorders.

Agenda. Diazoxide, limitations of use as approved; hexobendine, report and discussion of adverse reactions; imuran, NDA review; and catapress, NDA review.

Committee name	Date, time, place	Type of meeting and contact person
7. Panel on Review of Bacterial Vaccines and Bacterial Antigens With no U.S. Standard of Potency.	Feb. 15, 9:00 a.m., Bldg. 29, Room 115, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.	Open 9 a.m. to noon, closed after 1 p.m.; Jack Gertzog (BI-5), 5600 Fishers Lane, Rockville, MD 20852, 301—496-4523 or 301—496-1676.

Purpose. Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of currently marketed bacterial vaccines and bacterial antigens for which there are no U.S. standards of potency.

Agenda. Orientation of members and review of bacterial vaccines and bacterial antigens under investigation.

Committee name	Date, time, place	Type of meeting and contact person
8. Obstetrics and Gynecology Advisory Committee.	Feb. 22, 9 a.m., Conference Room M, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open 9 a.m. to noon, closed after 1 p.m.; Victor Berliner, Ph. D., Room 14B-04, 5600 Fishers Lane, Rockville, MD 20852, 301—443-3492.

Purpose. Advises the Commissioner of Food and Drugs regarding safety and efficacy of drugs employed in the practice of obstetrics and gynecology.

Agenda. Prophylactic use of antibiotics in obstetric-gynecological surgery, safety and efficacy of injectable medroxyprogesterone acetate for contraception, and presentation of data on toxicological and pharmacological properties and effects and clinical results.

Committee name	Date, time, place	Type of meeting and contact person
9. Neuropharmacology Advisory Committee.	Feb. 26 and 27, 9 a.m., Conference Room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open Feb. 26, 9 a.m. to 10 a.m., closed Feb. 26 after 10 a.m., closed Feb. 27.

Purpose. Advises the Commissioner of Food and Drugs regarding safety and efficacy of drugs employed in the practice of neuropharmacology.

Agenda. Maintenance therapy with lithium, the "monograph" approach to psychotropic drug classes, and new dosage schedules for psychotropic drugs.

Committee name	Date, time, place	Type of meeting and contact person
10. Panel on Review of Internal Analgesics.	Feb. 26 and 27, 9 a.m., Conference Room F, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open Feb. 26, 9 a.m. to 10 a.m., closed Feb. 26, after 10 a.m., closed Feb. 27; Lee Gebauer, Room 10B-05, 5600 Fishers Lane, Rockville, MD 20852, 301-443-4330.

Purpose. Reviews and evaluates available information concerning safety and effectiveness of active ingredients in currently marketed nonprescription internal analgesic drug products.

Agenda. Continuing review of over-the-counter internal analgesic agents under investigation.

Committee name	Date, time, place	Type of meeting and contact person
11. Panel on Review of Cough, Cold, Allergy, Bronchodilator, and Antiasthmatic Agents.	Feb. 28—Mar. 1, 9 a.m., Conference Room F, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open Feb. 28, 9 a.m. to 10 a.m., closed Feb. 28 after 10 a.m., closed Mar. 1; Thomas De Cillis, Room 10B-05, 5600 Fishers Lane, Rockville, MD 20852, 301—443-4960.

Purpose. Reviews and evaluates available information concerning safety and effectiveness of active ingredients in currently marketed nonprescription drugs containing cough, cold, allergy, bronchodilator, and antiasthmatic agents.

Agenda. Continuing review of over-the-counter drug products under investigation.

Agenda items are subject to change as priorities dictate.

During the open sessions shown above, interested persons may present relevant information or views orally to any committee for its consideration. Information or views submitted to any committee in writing before or during a meeting shall also be considered by the committee.

A list of committee members and summary minutes of meetings may be obtained from the contract person for the committee both for meetings open to the public and those meetings closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act.

Most Food and Drug Administration advisory committees are created to advise the Commissioner of Food and Drugs on pending regulatory matters. Recommendations made by the committees on these matters are intended to result in action under the Federal Food, Drug, and Cosmetic Act, and these committees thus necessarily participate with the Commissioner in exercising his law enforcement responsibilities.

The Freedom of Information Act recognized that the premature disclosure of regulatory plans, or indeed internal discussions of alternative regulatory approaches to a specific problem, could have adverse effects upon both public and private interests. Congress recognized that such plans, even when

finalized, may not be made fully available in advance of the effective date without damage to such interests, and therefore provided that this type of discussion would remain confidential. Thus, law enforcement activities have long been recognized as a legitimate subject for confidential consideration.

These committees often must consider trade secrets and other confidential information submitted by particular manufacturers which the Food and Drug Administration by law may not disclose, and which Congress has included within the exemptions from the Freedom of Information Act. Such information includes safety and effectiveness information, product formulation, and manufacturing methods and procedures, all of which are of substantial competitive importance.

In addition, to operate most effectively, the evaluation of specific drug or device products requires that members of committees considering such regulatory matters be free to engage in full and frank discussion. Members of committees have frequently agreed to serve and to provide their most candid advice on the understanding that the discussion would be private in nature. Many experts would be unwilling to engage in candid public discussion advocating regulatory action against a specific product. If the committees were not to engage in the deliberative portions of their work on a confidential basis, the consequent loss of frank and full discussion among committee members would severely hamper the value of these committees.

The Food and Drug Administration is relying heavily on the use of outside experts to assist in regulatory decisions. The Agency's regulatory actions uniquely affect the health and safety of every citizen, and it is imperative that the best advice be made available to it on a continuing basis in order that it may most effectively carry out its mission.

A determination to close part of an advisory committee meeting does not mean that the public should not have ready access to these advisory committees considering regulatory issues. A determination to close the meeting is subject to the following conditions. First, any interested person may submit written data or information to any committee, for its consideration. This information will be accepted and will be considered by the committee. Second, a portion of every committee meeting will be open to the public, so that interested persons may present any relevant information or views orally to the committee. The period for open discussion will be designated in any announcement of a committee meeting. Third, only the deliberative portion of a committee meeting, and the portion dealing with trade secret and confidential information, will be closed to the public. The portion of any meeting during which non-confidential information is made available to the committee will be open for public participation. Fourth, after the committee makes its recommendations and the Commissioner either accepts or rejects them, the public and the individuals affected by the regulatory decision involved will have an opportunity to express their views on the decision. If the decision results in promulgation of a regulation, for example, the proposed regulation will be published for public comment. Closing a committee meeting for deliberations on regulatory matters will therefore in no way preclude public access to the committee itself or full public comment with respect to the decisions made based upon the committee's recommendation.

The Commissioner has been delegated the authority under section 10(d) of the Federal Advisory Committee Act to issue a determination in writing, containing the reasons therefor, that any advisory committee meeting is concerned with matters listed in 5 U.S.C. 552(b), which contains the exemptions from the public disclosure requirements of the Freedom of Information Act. Pursuant to this authority, the Commissioner hereby determines, for the reasons set out above, that the portions of the advisory committee meetings designated in this notice as closed to the public involve discussion of existing documents falling within one of the exemptions set forth in 5 U.S.C. 552(b), or matters that, if in writing, would fall within 5 U.S.C. 552 (b), and that it is essential to close such portions of such meetings to protect the free exchange of internal views and to avoid undue interference with Agency and committee operations. This determination shall apply only to the designated portions of such meetings which relate to trade secrets and confidential information or to committee deliberations.

Dated: February 1, 1973.

CHARLES C. EDWARDS,
Commissioner of Food and Drugs.

[FR Doc.73-2176 Filed 2-2-73;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[Docket No. N-73-136]

ADVISORY BOARD FOR THE NATIONAL INSURANCE DEVELOPMENT PROGRAM

Notice of Meeting

Notice is hereby given that members appointed by the Secretary to the Advisory Board for the National Insurance Development Program as well as individuals (within the limitations of conference room facilities) who are interested in the programs of FAIR Plans, riot reinsurance, and Federal direct crime insurance are invited to a meeting of the Advisory Board to be held at the Departmental Conference Room of the Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC., at 10 a.m., February 27, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-2154 Filed 2-2-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE

Notice of Public Meeting

On February 15, 16, and 17, the National Highway Safety Advisory Committee is cosponsoring with the Department of Transportation an Interregional Highway Safety Conference at the Broadmoor Hotel in Colorado Springs, Colo. Federal, State, and local leaders from 10 Midwestern and Rocky Mountain States will meet to discuss highway safety issues, problems, and solutions. The conference is open, and the public is invited to attend. A registration fee of $35 is charged to defray expenses.

The National Highway Safety Advisory Committee is composed of 35 members appointed by the President in accordance with the Highway Safety Act of 1966 (23 U.S.C. 401 et seq.). The Committee consists of representatives of State and local governments, State legislatures, public and private interests contributing to, affected by, or concerned with highway safety, other public and private agencies, organizations, and groups demonstrating an active interest in highway safety, and research scientists and other experts in highway safety.

The Advisory Committee advises, consults with, and makes recommendations to the Secretary of Transportation on matters relating to the activities of the Department in the field of highway safety. The Committee is specifically authorized (1) to review research projects or programs, and (2) to review, prior to issuance, standards proposed to be issued by the Secretary under the national highway safety program.

On Thursday, February 15 at 6:30 p.m. the Interregional Highway Safety Conference will open with a banquet featuring the conference objectives and the keynote address.

The program will continue on Friday, February 16, starting at 9 a.m. with the following presentations:

Driver qualification and assistance.
Examination and reexamination of drivers.
Mandatory use of seat belts.
Rules of the road.
Uniform traffic control devices.
Emphasis programs.
Selective traffic enforcement.
STEP program—NHTSA, St. Louis, North Dakota.
Alcohol in relation to highway safety.
Alcohol program—South Dakota, Kansas City, Mo.

On Saturday, February 17, starting at 8:30 a.m. the program will feature:

Traffic adjudication.
Traffic case processing and rehabilitation an overview.
An officer's view of traffic adjudication.
Effective traffic adjudication.
"Sound Off"—Conference discussion and review.

Adjournment will be at 1 p.m.

Further information may be obtained from the Executive Secretariat, National

Highway Traffic Safety Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone 202—426-2872, or from National Highway Traffic Safety Administration, Region VIII, 9393 West Alameda Avenue, Lakewood, CO 80226, telephone 303—234-3253.

This notice is given pursuant to Executive Order 11686 of October 7, 1972.

Issued on: January 29, 1973.

CALVIN BURKHART,
Executive Secretary.

[FR Doc.73-2141 Filed 2-2-73;8:45 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50-413 and 50-414]

DUKE POWER CO.

Establishment of Atomic Safety and Licensing Board

On December 1, 1972, the Commission published in the FEDERAL REGISTER (37 FR 25560) a notice of hearing to consider the application filed by the Duke Power Co., for construction permits for the Catawba Nuclear Station, Units 1 and 2. The notice indicated that the Safety and Licensing Board for this proceeding would be designated at a later date, and that notice of its membership would be published in the FEDERAL REGISTER.

Pursuant to the Atomic Energy Act of 1954, as amended, the regulations of Title 10, Code of Federal Regulations, Part 2, Rules of Practice, and the notice of hearing referred to above, notice is hereby given that the Safety and Licensing Board in this proceeding will consist of Dr. Frederick P. Cowan, Mr. Ralph S. Decker, and Max Paglin, Esq., Chairman. Dr. Marvin M. Mann has been designated as a technically qualified alternate and Frederic T. Suss, Esq., has been designated as an alternate qualified in the conduct of administrative proceedings.

The positions and mailing addresses of the Board members are as follows:

1. Max Paglin, Esq., Chairman, an attorney member of the Atomic Safety and Licensing Board Panel, U.S. Atomic Energy Commission, Washington, D.C. 20545.

2. Dr. Frederick P. Cowan, retired, formerly Head of the Health Physics Division, Brookhaven National Laboratory. Winter address through March 31, 1973—The Conquistador, Apt. 302, 2150 Camino Real, Stuart, FL 33494. Permanent address—22 Livingston Road, Bellport, NY 11713.

3. Mr. Ralph S. Decker, retired, formerly Assistant Manager, Space Nuclear Propulsion Office, U.S. Atomic Energy Commission, mailing address—Route 1, Box 190D, Cambridge, MD 21613.

4. Frederic T. Suss, Esq., Alternate Chairman, attorney at law, 1000 Connecticut Avenue NW., Washington, DC 20036.

5. Dr. Marvin M. Mann, Alternate, a technical member of the Atomic Safety and Licensing Board Panel, U.S. Atomic Energy Commission, Washington, D.C. 20545.

As provided in the notice of hearing, the date and place of a prehearing conference and of a hearing will be scheduled by the Board and will be published in the FEDERAL REGISTER.

Dated at Washington, D.C., this 30th day of January 1973.

JAMES R. YORE,
Executive Secretary, Atomic Safety and Licensing Board Panel.

[FR Doc.73-2099 Filed 2-2-73;8:45 am]

[Docket No. 50-412]

DUQUESNE LIGHT CO. ET AL.

Establishment of Atomic Safety and Licensing Board

On November 28, 1972, the Commission published in the FEDERAL REGISTER, 37 FR 25188, a notice of hearing to consider the application filed by the Duquesne Light Co., Ohio Edison Co., Pennsylvania Power Co., the Cleveland Electric Illuminating Co., and the Toledo Edison Co., for a construction permit for the Beaver Valley Power Station, Unit No. 2. The notice indicated that the Safety and Licensing Board for this proceeding would be designated at a later date, and that notice of its membership would be published in the FEDERAL REGISTER.

Pursuant to the Atomic Energy Act of 1954, as amended, the regulations of Title 10, Code of Federal Regulations, Part 2, Rules of Practice, and the notice of hearing referred to above, notice is hereby given that the Safety and Licensing Board in this proceeding will consist of Dr. John C. Geyer, Mr. Frederick J. Shon, and Samuel W. Jensch, Esq. Dr. David L. Hetrick has been designated as a technically qualified alternate and Edward Luton, Esq., has been designated as an alternate qualified in the conduct of administrative proceedings.

The positions and mailing addresses of the Board members are as follows:

1. Samuel W. Jensch, Esq., Chairman, Chief Administrative Law Judge, U.S. Atomic Energy Commission, Washington, D.C. 20545.

2. Dr. John C. Geyer, Chairman of the Department of Geography and Environmental Engineering, 513 Ames Hall, The Johns Hopkins University, Baltimore, MD 21218.

3. Mr. Frederick J. Shon, a technical member of the Atomic Safety and Licensing Board Panel, U.S. Atomic Energy Commission, Washington, D.C. 20545.

4. Edward Luton, Esq., Alternate Chairman, an attorney member of the Atomic Safety and Licensing Board Panel, U.S. Atomic Energy Commission, Washington, D.C. 20545.

5. Dr. David L. Hetrick, Alternate, Professor of Nuclear Engineering, University of Arizona, Tucson, Ariz. 85721.

As provided in the notice of hearing, the date and place of a prehearing conference and of a hearing will be scheduled by the Board and will be published in the FEDERAL REGISTER.

Dated at Washington, D.C., this 30th day of January 1973.

JAMES R. YORE,
Executive Secretary, Atomic Safety and Licensing Board Panel.

[FR Doc.73-2101 Filed 2-2-73;8:45 am]

[Docket Nos. 50-416 and 50-417]

MISSISSIPPI POWER & LIGHT CO.

Establishment of Atomic Safety and Licensing Board

On December 12, 1972, the Commission published in the FEDERAL REGISTER, 37 FR 26459, a notice of hearing to consider the application filed by the Mississippi Power & Light Co. for construction permits for the Grand Gulf Nuclear Station, Units 1 and 2. The notice indicated that the Safety and Licensing Board for this proceeding would be designated at a later date, and that notice of its membership would be published in the FEDERAL REGISTER.

Pursuant to the Atomic Energy Act of 1954, as amended, the regulations of Title 10, Code of Federal Regulations, Part 2, Rules of Practice, and the notice of hearing referred to above, notice is hereby given that the Safety and Licensing Board in this proceeding will consist of Dr. William E. Martin, Dr. Marvin M. Mann, and Daniel M. Head, Esq., Chairman. Mr. Gustave A. Linenberger has been designated as a technically qualified alternate and Joseph F. Tubridy, Esq., has been designated as an alternate qualified in the conduct of administrative proceedings.

The positions and mailing addresses of the Board members are as follows:

1. Daniel M. Head, Esq., Chairman, an attorney member of the Atomic Safety and Licensing Board Panel, U.S. Atomic Energy Commission, Washington, D.C. 20545.

2. Dr. William E. Martin, Senior Ecologist, Battelle Memorial Institute, Columbus, Ohio 43201.

3. Dr. Marvin M. Mann, a technical member of the Atomic Safety and Licensing Board Panel, U.S. Atomic Energy Commission, Washington, D.C. 20545.

4. Joseph F. Tubridy, Esq., Alternate Chairman, retired attorney, U.S. Department of Justice, mailing address—4100 Cathedral Avenue NW., Washington, DC 20016.

5. Mr. Gustave A. Linenberger, Alternate, a technical member of the Atomic Safety and Licensing Board Panel, U.S. Atomic Energy Commission, Washington, D.C. 20545.

As provided in the notice of hearing, the date and place of a prehearing conference and of a hearing will be scheduled by the Board and will be published in the FEDERAL REGISTER.

Dated at Washington, D.C., this 30th day of January 1973.

JAMES R. YORE,
Executive Secretary, Atomic Safety and Licensing Board Panel.

[FR Doc.73-2102 Filed 2-2-73;8:45 am]

[Docket No. 50-301]

WISCONSIN ELECTRIC POWER CO. AND WISCONSIN-MICHIGAN POWER CO.

Notice of Reconvening of Evidentiary Hearing

In the matter of Wisconsin Electric Power Co. and Wisconsin-Michigan Power Co. (Point Beach Nuclear Plant, Unit 2), Docket No. 50-301.

Pursuant to the schedule established by the Licensing Board in its Order of January 8, 1973, the reopened evidentiary hearing in this proceeding concerning the fuel densification phenomenon shall commence on February 7, 1973. Upon consideration of the various requests of the parties regarding hearing situs, the Board has determined that in view of the nature of the reconvened hearing and the convenience and necessity of the parties as a whole, all the sessions of the forthcoming evidentiary hearing will be held at a location to be designated in downtown Washington, D.C.

Wherefore, it is ordered, In accordance with the Atomic Energy Act, as amended, and the Rules of Practice of the Commission, that an evidentiary session of hearings shall convene at 10 a.m., local time, on Wednesday, February 7, 1973, in the ballroom, Roger Smith Hotel, 18th and Pennsylvania Avenue NW., Washington, DC 20006.

Issued at Washington, D.C., this 30th day of January 1973.

The Atomic Safety and Licensing Board.

ROBERT M. LAZO,
Chairman.

[FR Doc.73-2098 Filed 2-2-73;8:45 am]

COMMISSION ON CIVIL RIGHTS

CONNECTICUT STATE ADVISORY COMMITTEE

Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut State Advisory Committee will convene at 8 p.m. on February 13, 1973, at the Office of Urban Affairs, 208 Columbus Avenue, New Haven, CT 06519. This meeting shall be open to the public and the press.

The purpose of this meeting shall be to assess the present status of the Connecticut State Advisory Committee.

This meeting will be conducted pursuant to rules and regulations of the Commission.

Dated at Washington, D.C., January 30, 1973.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.73-2115 Filed 2-2-73;8:45 am]

NEW HAMPSHIRE STATE ADVISORY COMMITTEE

Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire State Advisory Committee will convene at 7:30 p.m. on Tuesday, February 6, 1973, at the New Hampshire Highway Hotel in Concord, N.H. 03301. This meeting shall be open to the public and the press.

The purpose of this meeting shall be to discuss the New Hampshire Committee's "Report on Public Employment" and make plans for the release and followup to this report.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., January 30, 1973.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.73-2116 Filed 2-2-73;8:45 am]

MAINE STATE ADVISORY COMMITTEE

Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a 2-day meeting of the Maine State Advisory Committee will convene at 9 a.m. on February 7, 1973, and at 9 a.m. on February 8, 1973, in the Federal District Courtroom, The Federal Building, Bangor, Maine. This meeting shall be open to the public.

The purpose of this meeting shall be to collect information concerning legal developments constituting a denial of the equal protection of the laws under the Constitution because of race, color, religion, sex, or national origins, which pertain to Federal and State Services to Maine Indians; to appraise denials of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin as these pertain to Federal and State Services to Maine Indians; and to disseminate information with respect to denials of the equal protection of the laws because of race, color, religion, sex, or national origin with respect to Federal and State Services to Maine Indians and to related areas.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dates at Washington, D.C., January 30, 1973.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.73-2289 Filed 2-2-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

RHODIA, INC.

Notice of Filing of Petition Regarding Pesticide Chemical

Correction

In FR Doc. 72-22083 appearing on page 28443 of the issue for Saturday, December 23, 1972, the following should be inserted between the second and third lines of the first paragraph: "(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1), notice is given that a petition (PP3F1331) has been filed by Rhodia, Inc.".

[Docket No. 63 etc.]

CROP KING CO.

Cancellation of Registration of Pesticide DDT; Notice of Hearing

Notice is hereby given, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.), as amended by the Federal Environmental Pesticide Control Act of 1972 (Public Law 92-516; 86 Stat. 973), that a public hearing session in the reopened consolidated DDT proceedings involving the cancellation of a registration of Crop King Co., Yakima, Wash., of a pesticide containing DDT and the use of DDT to control weevils on stored sweet potatoes, will be held on February 6, 1973, beginning at 9:30 a.m., local time, in the E.P.A. Hearing Room, Room 3906, Waterside Mall, 401 M Street SW., Washington, DC.

For information concerning the issues involved and other details of these proceedings, interested persons are referred to the dockets of these proceedings on file with the Hearing Clerk, Environmental Protection Agency, Room 3902A, Waterside Mall, 401 M Street SW., Washington, DC 20460.

WILLIAM D. RUCKELSHAUS,
Administrator.

JANUARY 31, 1973.

[FR Doc.73-2167 Filed 2-2-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

AD HOC TASK GROUP ON PROCEDURES AND ENFORCEMENT

Notice of Public Meeting

JANUARY 29, 1973.

In accordance with Public Law 92-463, announcement is made of a public meeting of the Ad Hoc Task Group on Procedures and Enforcement of the Dialer Devices Subcommittee to be held February 13, 1973, and a public meeting of the Dialer Devices Subcommittee to be held February 14-16, 1973. The meetings will be held at the Denver Hilton Hotel in the Conference Room and will commence at 9 a.m.

1. *Purposes.* The purpose of the Dialer Devices Subcommittee is to prepare recommended sandards 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 Subcommittee is chaired by Jack Dempsey and is composed of the following: John Albus, D. L. Byers, Donald Briggs, Bryan McNeil, Arnold Dorfman, Robert Webb, Albert Hardy, J. W. Kissel, James McNabb, Donald Moehlenkamp, Richard Reichter, Robin Mosely, Frederic Hildebrandt, Stephen Speltz, Ludwig Walch, Thomas Warner, M. S. Adler, William Wertz, Ronald Binks, Jurgen Kok, H. Marcheschi, Ken Rosenburg, John P. Lekas, William Lindgren, Brendan McShane, John Rison, Amos Jackson, and John R. Mineo. The Task Group chairman is T. Storc.

3. *Activities.* The Ad Hoc Task Group will prepare a recommended draft of procedures and enforcement to the Dialer Devices Subcommittee. The Dialer Devices Subcommitee members, as at prior meetings, will present their suggestions and recommendations regarding the various technical criteria and standards that should be considered with respect to the interconnection of dialer devices to the public switched network.

4. *Agenda.* The agenda for the February 13 Task Group Meeting will be as follows:

a. To determine the further input required from the main Dialer Subcommittee;

b. Resolve the work format;

c. Establish work assignments.

The agenda for the February 14–16, 1973 Subcommittee meeting will be as follows:

a. Review of enforcement procedures;

b. Test Equipment and Inspection Standards revisions;

c. Quality Control Program.

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.73-2163 Filed 2-2-73;8:45 am]

PANEL 8, TELEVISION SYSTEM COORDINATION

Notice of Public Meeting

JANUARY 26, 1973.

Panel 8 (Television System Coordination) of the Cable Television Technical Advisory Committee will hold an open meeting on February 8, 1973, at 10 a.m. It will be held in Room 847S of the main FCC building, 1919 M Street, Washington, DC.

The agenda of the meeting will include:

1. Description of work of the Technical Advisory Committee and the role of Panel 8 in the Committee.

2. Discussion of panel structure and staffing to achieve its goals.

3. New business.

4. Time and place of next meeting.

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

[FR Doc.73-2162 Filed 2-2-73;8:45 am]

[Docket Nos. 19468-19471; FCC 73R-45]

WIOO, INC. ET AL.

Memorandum Opinion and Order

In regard applications of WIOO, Inc., Carlisle, Pa., Docket No. 19468, File No. BPH-6572; Howard J. Hilton, John E. McGowan, and John E. Hilton, doing business as Hilton, McGowan & Hilton, Carlisle, Pa., Docket No. 19469, File No. BPH-6631; Alexander Contract and Sylvia Contract, doing business as Cumberland Broadcasting Co., Carlisle, Pa., Docket No. 19471, File No. BPH-7404; for construction permits.

1. Before the Review Board is a petition to enlarge issues, filed September 28, 1972, by WIOO, Inc. (WIOO), which seeks the addition of an issue to determine whether Cumberland Broadcasting Co. (Cumberland) knowingly solicited a false and misleading statement to be filed with the Commission in support of its application, and, if so, the resulting effect on Cumberland's basic or comparative qualifications.[1]

2. WIOO's petition is directed toward a portion of Cumberland's amended financial showing[2] wherein Cumberland relies upon the sale, if necessary, of certain property known as 117–119 West High Street in Carlisle, Pa., which, Cumberland asserts, has a ready market value of $86,000.[3] WIOO's petition alleges that in order to substantiate their claim of marketability, Cumberland attempted to obtain from James R. Scott, a Carlisle real estate agent, an "agreement of sale" to be filed with the Commission. In his affidavit attached to the petition, Scott relates that Alexander Contract (a Cumberland principal) asked Scott to draft and sign the agreement to purchase the property for $80,000. When Scott said he was not interested in the purchase, especially because the consideration was nearly double Scott's estimate of its value, Contract assured him that the agreement would be destroyed after receiving a license for a new FM station. Scott swears that Contract then told him (Scott) that the purpose of the document was "to substantiate a ready purchaser for the property in order to establish liquidity and assets [sic] in cash to the F.C.C. in order to qualify financially for an FM license." The Broadcast Bureau, while questioning the timeliness of the petition,[4] supports the addition of "an appropriate issue".

3. Cumberland opposes the petition on both procedural and substantive grounds. Cumberland argues first that the petition is nothing more than a "poorly disguised" petition for reconsideration of the Review Board's memorandum opinion and order, supra note 3, which, having considered the "entire James Scott matter,"[5] added only a limited financial issue. Cumberland also opposes the petition on the merits, on the grounds that the allegations fail to establish improper conduct, and that Scott's affidavit relates only a portion of the events which actually occurred. The sequence of events is then augmented by Cumberland's assertions that Scott was initially interested in purchasing the property; that he knew the agreement was to be nonbinding; and that Scott subsequently indicated his reluctance to sign what his attorney purportedly advised him was a binding agreement.

4. In support of its claims, Cumberland submits an affidavit of Alexander Contract,[6] who claims that when Scott asked him what would happen should the FCC's ruling be delayed for a year, Contract assured him that he (Scott) would not be sued on the agreement. Contract maintains that Scott agreed to the proposal and made some notes about Contract's request. It was Scott's responsibility to draft the agreement, and Contract insists that Scott was "free to include any conditions or terms he desired." Upon learning of Scott's change of mind, Contract undertook to draft the proposed agreement with the aid of his attorney, characterizing this effort as "affirmative action to insure that the document that was expected to be filed with the Commission said exactly what was to be the understanding between Mr. Scott and me." The draft agreement[7] states that Scott is "inter-

[1] Also before the Board are the following related pleadings: (a) Broadcast Bureau's comments, filed Oct. 12, 1972; (b) Cumberland's opposition, filed Oct. 19, 1972; and (c) WIOO's reply, filed Oct. 30, 1972.

[2] The amendment was accepted by order of the Presiding Judge, FCC 72M-832, released June 27, 1972.

[3] The disparity between Cumberland's assertions of fair market value, and WIOO's valuation (approximately $50,000) was the subject of an earlier petition to enlarge, and by memorandum opinion and order, 37 FCC 2d 342, 25 RR 2d 312, released Sept. 20, 1972, the Review Board added a limited financial issue against Cumberland to determine both the "current marketability" and the "reasonable fair market value of the property proposed for sale" by Cumberland's principals.

[4] Scott's affidavit is dated Aug. 25, 1972, and was previously submitted to the Board by WIOO on Sept. 8, 1972, in connection with an earlier petition to enlarge issues. See note 5, infra.

[5] WIOO made reference to the "James Scott matter" in its reply to Cumberland's opposition to WIOO's third supplement to its petition to enlarge, filed Sept. 8, 1972, and attached thereto as Exhibit C, the same affidavit of Scott now under consideration.

[6] Also submitted is an affidavit of Cumberland's attorney who was a witness to a phone call Contract made to Scott, aided in the preparation of a draft "agreement," and participated in an abortive attempt to secure Scott's attorney's approval of the agreement. Scott's attorney informed Contract and his counsel that he had not been consulted in the matter by Scott.

[7] A copy of the draft is attached to Cumberland's opposition.

ested in purchasing [the] property for $86,400",[8] but that he "cannot make a binding offer". The draft was never seen by, nor read to, Scott, who was thus, Cumberland asserts, not in a position to know of Contract's efforts to secure an agreement embodying the "complete" understanding. The document does not contain language to the effect that Contract would not institute legal proceedings against Scott, nor does it contain Contract's purported intention to destroy the agreement upon receiving an FCC license.

5. In reply, WIOO submits a further affidavit of Scott, dated October 27, 1972, in which Scott denounces Contract's affidavit as "misleading and deviat[ing] from the truth in several respects." Scott reaffirms his complete lack of interest at any time in purchasing Contract's property, and then states (apparently in spite of his lack of interest) that he consulted his attorney, who recommended that Scott refrain from entering an agreement he had no intention of fulfilling. Scott stresses that:

> * * * I was approached by Mr. Contract to enter into this agreement for the purchase of his property in order for him to establish his financial liquidity and that I made it clearly apparent to him that I was totally disinterested in securing his real estate. It was then that he suggested an executed and notorised (sic) high price with his assurance as a "gentleman" that I would never be called upon to complete the transaction.

6. Initially, the Board notes that the instant petition is untimely and that no good cause has been shown for the tardiness; however, the Board agrees with the Broadcast Bureau that the "Edgefield-Saluda" test[9] has been met and that the serious public interest questions raised by the allegations merit our consideration. "Chapman Radio & Television Co.," FCC 73R-8, released January 10, 1973; and "Medford Broadcasters, Inc. (KDOV)," 18 FCC 2d 699, 16 RR 2d 900 (1969). The Board disagrees with Cumberland's contention that the matter before us is a "petition for reconsideration". The Commission's rules explicitly state that petitions for reconsideration of interlocutory actions of the Review Board will not be entertained. See § 1.102(b)(2), 1.106(a) and 1.291(c)(3) of the Rules. However, the Board must reject Cumberland's argument that WIOO's petition has been the subject of our previous determination. Our prior consideration does not preclude the Board from acting on the instant request because they are premised on distinctly different issues. "Cf. WTAR Radio-TV Corp. (WTAR-TV)", 37 FCC 2d 480, 483-84, 25 RR 2d 463, 468 (1972). The matter previously raised by WIOO was with regard to Cumberland's financial qualifications, specifically, the determination of the value of the property which Cumberland proposed to sell to meet its cash requirements.[10] The allegations now before the Board raise questions concerning the character and conduct of one of Cumberland's two principals. This issue, therefore, is for the first time raised by the instant petition. Having determined that there are no procedural infirmities, we will now proceed to the merits.

7. The petitioner has raised certain questions, which, if true, seriously reflect upon Cumberland's character and its qualifications to be a Commission licensee. Cumberland's assertions to the contrary, the conflicts in the affidavits before the Board must be resolved at an evidentiary hearing. See "Christian Voice of Central Ohio," 26 FCC 2d 76, 81-82, 20 RR 2d 389, 395 (1970); "Sumiton Broadcasting Co., Inc.," 15 FCC 2d 400, 404, 14 RR 2d 1000, 1005 (1968), and cases cited therein. In addition to the conflicting affidavits, however, there are a number of undisputed facts, which, taken together, also indicate the necessity of an evidentiary inquiry to determine whether Alexander Contract's conduct reflects adversely on his character qualifications. Contract's attempts to secure a document which was to have been used to substantiate his financial representations to the Commission remain uncontradicted and, indeed, acknowledged. His motivation and the efficacy of the document clearly warrant the addition of an issue. A similar situation arose in "Orange County Broadcasting Co.," 37 FCC 2d 794, 25 RR 2d 619 (1972), which involved the apparent solicitation of a letter of credit from a bank with assurances from an applicant that the bank would not be legally bound.[11] In adding an issue to determine the circumstances surrounding the issuance of the bank letter, the Board stated:

> While a legally binding commitment is, o[f] course unnecessary to establish the availability of a proposed loan, the wording of (the) letter reflects that the applicant may have been attempting to merely obtain evidence of a commitment to satisfy the Commission without any regard to the efficacy of that commitment. To obtain and rely on such a commitment letter would clearly reflect on an applicant's candor and integrity. (37 FCC 2d at 798, 25 RR 2d at 624.)

The fact that Contract never obtained the signed "agreement" and therefore never filed it with the Commission, while material in the context of a misrepresentation issue, is immaterial to the question of his conduct. Because Contract's conduct is questionable, the Review Board is of the opinion, for the reasons advanced above, that the addition of an issue is warranted.

8. *Accordingly, it is ordered,* That the petition to enlarge issues, filed September 28, 1972, by WIOO, Inc., is granted, and that the issues in this proceeding are enlarged to include the following issue:

> To determine whether Alexander Contract knowingly solicited a false and misleading offer of purchase from James R. Scott, to be filed with the Commission in support of the application of Cumberland Broadcasting Co., and, in light of the evidence adduced, the effect thereof on the basic and/or comparative qualifications of Cumberland Broadcasting Co.

9. *It is further ordered,* That the burden of proceeding with the introduction of evidence under the issue added herein shall be on WIOO, Inc. and the burden of proof shall be on Cumberland Broadcasting Co.

Adopted: January 24, 1973.

Released: January 31, 1973.

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

[FR Doc.73-2165 Filed 2-2-73;8:45 am]

[8] The difference between consideration of $80,000 in Scott's affidavit of Aug. 25, 1972, and that of $86,400 in Contract's affidavit is unexplained, but immaterial to our consideration.

[9] The Edgefield-Saluda Radio Co. (WJES), 5 FCC 2d 148, 8 RR 2d 611 (1966).

[10] Furthermore, Scott's affidavit was appended to a reply pleading (note 5, supra), and therefore the Board expressly limited its consideration to the financial issue raised in WIOO's petition, as thrice supplemented. No new issue may be raised nor considered in a reply pleading; rather, the material contained therein must be confined in scope to a surrebuttal of an opposition. Section 1.294(c) of the rules.

[11] See 37 FCC 2d at 797, 25 RR 2d at 623.

FEDERAL HOME LOAN BANK BOARD

[H.C. 147]

PACIFIC WESTERN CORP.

Notice of Receipt of Application for Approval of Acquisition of Control of Capitol Savings and Loan Association

JANUARY 31, 1973.

Notice is hereby given that the Federal Savings and Loan Insurance Corporation has received an application from Pacific Western Corp., Casper, Wyo., for approval of acquisition of control of the Capitol Savings & Loan Association, Cheyenne, Wyo., an insured institution, under the provisions of section 408(e) of the National Housing Act, as amended (12 U.S.C. 1730a(e)), and § 584.4 of the Regulations for Savings and Loan Holding Companies, and acquisition to be effected by an exchange of stock of Pacific Western Corp., for all of the assets of First Cheyenne Corp., which controls Capitol Savings & Loan Association. Comments on the proposed acquisition should be submitted to the Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, Washington, D.C. 20552, on or before March 7, 1973.

[SEAL] GRENVILLE L. MILLARD, JR.,
Assistant Secretary,
Federal Home Loan Bank Board.

[FR Doc.73-2103 Filed 2-2-73;8:45 am]

FEDERAL POWER COMMISSION

NATIONAL GAS SURVEY, DISTRIBUTION—TECHNICAL ADVISORY TASK FORCE—REGULATION AND LEGISLATION

Notice of Meeting and Agenda

Agenda, meeting, Distribution—Technical Advisory Task Force—Regulation

and Legislation to be held in Conference Room 2043 of the Federal Power Commission 441 G Street, NW., Washington, D.C., February 6 and 7, 1973—9:30 a.m.

Presiding: Mr. Charles A. Gallagher, FPC Survey Coordinating, Representative and Secretary.

1. Call to order and introductory remarks—Mr. Gallagher.
2. Objectives and purposes of meeting:
A. Review of comments and revisions to preliminary draft report—Mr. Arthur R. Seder, Jr.
B. Review and comments of revised report—Mr. Seder.
C. Review and comments of draft report covering synthesis of State surveys—Mr. Jonel C. Hill.
D. Consideration of format to be used in consolidating Mr. Seder's and Mr. Hill's reports into a final draft report.
E. Status of assigned work programs and estimated date for completion of final report.
F. Discussion of coverage of environmental aspects of task force programs.
G. Other business and next meeting date.
3. Adjournment—Mr. Gallagher.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Task Force—which statements, if in written form, may be filed before or after the meeting, or if oral, at the time and in the manner permitted by the Task Force.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-2112 Filed 2-2-73;8:45 am]

NATIONAL POWER SURVEY, TASK FORCE ON ENVIRONMENTAL RESEARCH

Notice of Meeting and Agenda

Agenda, Second Meeting of the Technical Advisory Committee on Research and Development Task Force on Environmental Research, 9 a.m., February 8, 1973, Room 2043.

1. Meeting called to order by FPC Coordinating Representative.
2. Approval of minutes of first meeting.
3. Objectives and purposes of meeting.
A. Discussions:
1. Review and expansion of draft No. 1 of Outline of Research and Development Needs.
2. Selection of outline items for more detail examination and assignment of responsibilities.
3. Schedule of products to R&D Committee.
B. Other business.
C. Date of next meeting.
4. Adjournment.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee—which statements, if in written form, may be filed before or after the meeting, or, if oral, at the time and in the manner permitted by the committee.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-2108 Filed 2-2-73;8:45 am]

NATIONAL POWER SURVEY TECHNICAL ADVISORY COMMITTEE ON RESEARCH AND DEVELOPMENT

Notice of Meeting and Agenda

Agenda, Fourth Meeting of the Technical Advisory Committee on Research and Development, to be held at the Federal Power Commission Offices, 441 G Street NW., Washington, DC, 8:30 a.m., February 9, 1973, Room 2043.

1. Meeting called to order by FPC Coordinating Representative.
2. Objectives and purposes of meeting:
A. Approval of minutes of January 9 meeting.
B. Reports of Task Force meetings.
C. Discussion of conservation-related R. & D.
D. Coordination and interfaces with other committees.
E. Application of FPC assumptions to Committee's work.
F. Further discussion/identification of key electric power research issues on which the Committee might offer recommendations.
G. Other business.
H. Dates of future meetings.
3. Adjournment.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee—which statements, if in written form, may be filed before or after the meeting, or, if oral, at the time and in the manner permitted by the committee.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-2109 Filed 2-2-73;8:45 am]

NATIONAL POWER SURVEY TASK FORCE ON ENERGY CONVERSION RESEARCH

Notice of Meeting and Agenda

Agenda for a Meeting of the Technical Advisory Committee on Research and Development Task Force on Energy Conversion Research to be held at the Federal Power Commission offices, 441 G Street NW., Washington, DC, 9:30 a.m., February 8, 1973, Room 4535.

1. Meeting called to order by FPC Coordinating Representative.
2. Approval of minutes of previous meeting.
3. Objectives and purposes of meeting:
A. Candidate energy conversion technologies for R&D funding.
B. Criteria for evaluating priority of energy conversion systems as candidates for R&D support.
C. Implementation of process of evaluating and comparing energy conversion systems.
D. Criteria for providing support of energy conversion R&D by manufacturing industry, the utilities, and the government.
E. Key Issues—Energy conversion R&D in context with the near-term energy problem.
F. Task Force interactions.
G. Work plan.
H. Other business.
I. Dates for future meetings.
4. Adjournment.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee, which statements, if in written form, may be filed before or after the meeting, or, if oral, at the time and in the manner permitted by the committee.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-2111 Filed 2-2-73;8:45 am]

NATIONAL POWER SURVEY TASK FORCE ON ENERGY SOURCES RESEARCH

Notice of Meeting and Agenda

Agenda, second meeting of the Technical Advisory Committee on Research and Development Task Force on Energy Sources Research, to be held at the Federal Power Commission offices, 441 G Street NW., Washington, DC, 12:30 p.m., February 8, 1973, Room 4535.

1. Meeting called to order by FPC Coordinating Representative.
2. Objectives and purposes of meeting:
A. Use of near term R&D to meet the fossil fuel resource crisis of the next ten years.
B. Reports on current research and research not being done and suggested research priorities with regard to:
1. Nuclear fuels.
2. Fossil fuels.
3. Geothermal.
4. Solar.
5. Other.
C. Other business.
D. Schedule of future meetings.
3. Adjournment.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee—which statements, if in written form, may be filed before or after the meeting, or, if oral, at the time and in the manner permitted by the committee.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-2110 Filed 2-2-73;8:45 am]

NATIONAL POWER SURVEY TASK FORCE ON ENERGY SYSTEMS RESEARCH

Notice of Meeting and Agenda

Agenda, second meeting of the Technical Advisory Committee on Research and Development Task Force on Energy Systems Research, to be held at the Federal Power Commission offices, 441 G Street NW., Washington DC, 2:30 p.m., February 8, 1973, Room 2043.

1. Meeting called to order by FPC Coordinating Representative.
2. Objectives and purposes of meeting.
A. Progress report from Resources for the Future.
B. Develop preliminary outline of final Task Force Report.
C. Assignment of background studies.
D. Suggestions for additional Task Force members.
E. Schedule for next meeting.
3. Adjournment.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee, which statements, if in written form, may be filed before or after the meeting, or, if oral, at the time and in the manner permitted by the committee.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-2113 Filed 2-2-73;8:45 am]

[Docket No. RI72-265, etc.]

PHILLIPS PETROLEUM CO. ET AL.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes to Become Effective Subject to Refund [1]

JANUARY 24, 1973.

Respondents have filed proposed changes in rates and charges for jurisdictional sales of natural gas, as set forth in Appendix A below.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below:

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR, Chapter I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column. Each of these supplements shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the Respondent or by the Commission. Each Respondent shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[1] Does not consolidate for hearing or dispose of the several matters herein.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cent per Mcf* Rate in effect	Cent per Mcf* Proposed increased rate	Rate in effect subject to refund in Docket No.
RI72-265	Phillips Petroleum Co.	47	[17]	El Paso Natural Gas Co. (Jack Herbert Field, Upton County, Tex.) (Permian Basin).	$(1,220)	1-4-73		(2)	19.3278	[3] 17.8019	RI72-265.
RI73-193	Skelly Oil Co.	159	[4] 8	West Texas Gathering Co., (Emperor (Deep) Field, Winkler County, Tex.) (Permian Basin).		12-27-72	1-27-73	[18] Accepted			
	do		9	do	106,683	[5] 12-27-72		2-27-73	19.0713	21.6	RI73-153.
RI73-194	Sun Oil Co.	458	5	Transwestern Pipeline Co. (Halley Field, Winkler County, Tex.) (Permian Basin).	67,094	1-8-73		7-8-73	20.6025	22.6125	RI69-752.
RI73-195	Perry R. Bass	1	[6] 6	El Paso Natural Gas Co. Brown-Bassett Field, Terrell County, Tex.) (Permian Basin).		1-8-73	2-8-73	[14] Accepted			
	do		7	do	148,834	1-8-73		7-8-73	[9 10] 14.3034	[11] 23.5881	RI70-864.
RI73-147	Chevron Oil Co., Western Division.	20	[3] 1 to 7	El Paso Natural Gas Co. (Puckett Field, Pecos County, Tex.) (Permian Basin).	1,538,179	1-8-73		[7] 1-25-73	13.0487	21.0	RI70-1340.
RI73-196	Belco Petroleum Corp.	7	10	Mountain Fuel Supply Co. (Piney (Birch Creek) Field, Sublette County, Wyo.).	90,450	12-26-72		6-26-73	[12] 17.17	[11 12] 32.16	RI70-708.
RI73-197	Sun Oil Co.	108	8	El Paso Natural Gas Co. (Bisti Field, San Juan County, N. Mex., San Juan Basin).	[13]	1-8-73		7-8-73	[12] 21.33	[12] 22.091	RI73-58.
	do	376	13	do	33	1-8-73		7-8-73	[12] 21.33	[12] 22.091	RI73-58.
RI73-198	Mobile Oil Corp.	208	11	West Texas Gathering Co. (Emperor Field, Winkler County, Tex.) (Permian Basin).	80,504	1-8-73		7-8-73	[12] 20.89	[12] 27.89	RI73-151.

[*] Unless otherwise stated, the pressure base is 14.65 p.s.i.a.
[1] Applicable only to low pressure gas produced from Dobson "B" No. 1 well and sold pursuant to settlement provisions of Phillips Rate Schedule No. 309 after connection to buyer low pressure system.
[2] Rate decrease.
[3] Accepted, subject to refund in Docket No. RI72-265, as of the date of connection to buyers low pressure system.
[4] Amends pricing provisions.
[5] Amended filed made Jan. 11, 1973.
[6] Substitute for increase to 24.09 cents per Mcf filed Nov. 24, 1972, and suspended in Docket No. RI73-147 until June 1, 1973.
[7] Date Nov. 24, 1972, filing would become effective subject to refund if subject to a 1-day suspension.
[8] Applicable to gas treated by buyer.
[9] Applicant erroneously shows present effective rate as 13.5567 cents per Mcf.
[10] Includes quality adjustment.
[11] Contract amendment.
[12] Currently no production.
[13] Not used.
[14] Accepted for filing to be effective on the dates shown in the "Effective Date" column.
[15] The pressure base is 15.025 p.s.i.a.

The proposed increases of Sun Oil Co., Perry R. Bass to its FPC Gas Rate Schedule No. 1 and Mobil Oil Corp. exceed the rate limit for a 1 day suspension, and therefore are suspended for 5 months.

The other proposed increases involved here do not exceed the corresponding rate filing limitation imposed in Southern Louisiana and therefore are suspended for 1 day from the expiration of the 60-day notice period or the contractual effective date, whichever is later.

Phillips shall notify this Commission within 20 days from such change of the date of the change in connection of the gas involved in its rate reduction under its FPC Gas Rate Schedule No. 47 from the buyer's high pressure system to the buyer's low pressure system.

Perry R. Bass requests waiver of the 30-day notice requirement. Good cause has not been shown for granting such request and it is denied.

The producers' proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's statement of general policy No. 61-1, as amended (18 CFR 2.56).

[FR Doc.73-2047 Filed 2-1-73;8:45 am]

FEDERAL RESERVE SYSTEM

CHASE MANHATTAN CORP.

Acquisition of Bank

The Chase Manhattan Corporation, New York, N.Y., 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 Chase Manhattan Bank of Western New York (National Association), Buffalo, N.Y., successor by merger to Lincoln National Bank, Buffalo, N.Y. 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 Chase Manhattan Corporation is also engaged in the following nonbank activities: mortgage servicing and servicing the Shapiro Factors Division of the Chase Manhattan Bank, New York, N.Y. In addition to the factors considered under section 3 of the Act (banking factors), the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of New

York. 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 February 26, 1973.

Board of Governors of the Federal Reserve System, January 29, 1973.

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

[FR Doc.73-2126 Filed 2-2-73;8:45 am]

FIRST AMTENN CORP.

Order Approving Acquisition of Atlantic Discount Co., Inc.

First Amtenn Corp., formerly known as First American National Corp., Nashville, Tenn., 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 Atlantic Discount Co., Inc., Jacksonville, Fla., a company that engages in the activities of a finance company and acts as an agent with respect to sales of credit life and disability insurance on borrowers in connection with its loans, and casualty insurance on property securing such loans. Such activities have been determined by the Board to be closely related to the business of banking (12 CFR 225.4(a)(1) and (9)).

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 25966). The time for filing comments and views has expired, and the Board has considered all comments received in the light of the public interest factors set forth in section 4(c)(8) of the Act (12 U.S.C. 1843(c)).

Applicant controls three banks in Tennessee with aggregate deposits of $736.7 million, comprising 8.1 percent of the State's total commercial bank deposits.[1] Atlantic Discount Co., Inc. (Atlantic), is a consumer and commercial finance company operating almost entirely in Florida and south Georgia, with total assets of $26.5 million. Applicant's lead bank, First American National Bank, Nashville, Tenn. (with deposits of $685 million), has $0.2 million of outstanding loans to individuals in areas served by Atlantic; most of these loans, however, were made in Nashville before the borrowers migrated to Florida. In addition, the lead bank has $0.1 million of commercial loans derived from Atlantic's service areas. Therefore, it appears that consummation of the proposal would not eliminate any significant competition between Applicant and Atlantic. No adverse competitive effects would appear to result from removal of Applicant or Atlantic as a potential competitor of the other because neither is considered a likely de novo entrant into the other's markets, and there are several other potential competitors in the product and geographic markets that both serve.

Applicant's advantage over Atlantic in issuing commercial paper and longer term debentures may increase resources available to Atlantic, thereby permitting expansion of Atlantic's loan volume and geographic scope of operations.

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 26, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-2130 Filed 2-2-73;8:45 am]

FIRST NATIONAL CITY CORP.

Order Approving Acquisition of Banks

First National City Corp., New York, N.Y., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of both the successor by merger to the First Trust & Deposit Co. of Oriskany Falls, Oriskany Falls, N.Y. (Oriskany Bank) and the successor by merger to the Central Valley National Bank, Central Valley, N.Y. (Central Valley Bank). The respective banks into which each Bank is to be merged have no significance except as a means to acquire all the shares of the respective Banks. Accordingly, the proposed acquisition of the shares of the successor organizations is treated herein as the proposed acquisition of shares of each Bank.

Notice of the applications, 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 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, the largest banking organization in New York in terms of domestic deposits, controls five subsidiary banks with aggregate deposits of approximately $13.5 billion, representing 14.0 percent of the total deposits in commercial banks in the State.[1] Consummation of the proposed transaction would neither significantly increase Applicant's share of deposits in the State nor result in a significant increase in the concentration of banking resources in New York.

Oriskany Bank, with deposits of $4.8 million, is located in the Utica-Rome banking market where it is the third smallest of 11 banks, controlling less than 1 percent of deposits in commercial banks in that market. Applicant's closest operating subsidiary bank is located about 120 miles from Bank and there is no significant existing or potential competition between Bank and that bank or any other of Applicant's subsidiaries. Applicant's acquisition of Bank could have a procompetitive effect since Bank, with Applicant's support, should compete more aggressively with the two largest banks in the Utica-Rome market, which control approximately 84 percent of deposits in that market.

Central Valley Bank, with deposits of $15.1 million, is located in the Middletown banking market where it is the 12th largest of 15 banks, controlling 3.5 percent of deposits in commercial banks in that market. Applicant's closest operating subsidiary banking office is the Peekskill branch of First National City Bank, located about 16 miles from Bank. Bank and the Peekskill branch are separated by a toll bridge over the Hudson River and the West Point Military Reservation. There is no significant competition between Bank and Citibank's Peekskill office and, due to the geographical separation of Bank and that office, it is unlikely that significant competition would develop in the future. Applicant's acquisition of Bank could have a procompetitive effect since Bank, with Applicant's support, should compete more aggressively with the five largest banks which control approximately 57 percent of the deposits in that market. Additionally, approval of this application would remove home office protection from the town of Woodbury. On the basis of the record, the Board concludes that consummation of the proposed transactions would not eliminate any significant existing or potential competition between either Oriskany Bank or Central Valley Bank and any other existing or proposed subsidiary of Applicant. Further, consummation of the proposals would not have any adverse effect on competing banks in any relevant area.

[1] All banking data are as of June 30, 1972.

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Brimmer, Sheehan, and Bucher. Absent and not voting: Governor Daane.

[1] Deposit and market data relating to Applicant and Central Valley Bank are as of June 30, 1972. Deposit and market data relating to Oriskany Bank are as of Dec. 31, 1971, and June 30, 1971, respectively. All data is adjusted to reflect holding company formations and acquisitions through Dec. 31, 1972.

The financial and managerial resources and future prospects of Applicant, its existing subsidiary banks, Oriskany and Central Valley Bank are generally satisfactory and consistent with approval. It appears that the banking needs of the communities to be served are being adequately met at present. However, Applicant proposes to provide new services at each Bank, such as trust, factoring, and travelers check services. Convenience and needs considerations are, therefore, consistent with and lend some weight toward approval of the applications. It is the Board's judgment that the proposed acquisitions would be in the public interest and that the applications should be approved.

Applicant owns several nonbanking companies that were formed or acquired prior to December 31, 1970. These companies are engaged in activities such as mortgage banking, leasing, factoring, management consulting, community development projects, and computer processing of financial information. In making its determination herein, the Board has relied upon a finding that the combination of two additional subsidiary banks with Applicant's existing nonbanking subsidiaries is unlikely to have an adverse effect upon the public interest at the present time. However, Applicant's banking and nonbanking activities remain subject to Board review and the Board retains the authority to require Applicant to modify or terminate its nonbanking activities or holdings if the Board at any time determines that the combination of Applicant's banking and nonbanking activities is likely to have adverse effects on the public interest.

On the basis of the record, the applications are approved for the reasons summarized above.[2] The transactions shall not be consummated (a) before the 30th calendar day following the effective date of this order or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York pursuant to delegated authority.

By order of the Board of Governors,[3] effective January 26, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-2128 Filed 2-2-73;8:45 am]

F & M OPERATING CO.

Order Approving Acquisition of Banks

F & M Operating Co., Abilene, Tex., a registered bank holding company owning 28.6 percent of the voting shares of Bank of Commerce, Abilene, Tex., has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire directly 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to First National Bank of Abilene, Abilene, Tex. (First National), and, as an incident thereto, to acquire indirectly an additional 3.9 percent of the voting shares of Bank of Commerce, Abilene, Tex. (BOC Bank), which shares are now held by First National's employees profit sharing trust; by virtue of section 2(g)(2) of the Act, such shares would be deemed to be controlled by Applicant upon its acquisition of the successor by merger to First National. The bank into which First National is to be merged has no significance except as a means to facilitate the acquisition of all the voting shares of First National. Accordingly, the proposed acquisition of the successor organization is treated herein as the proposed acquisition of First National.

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, the trusteed affiliate of First National ($76.3 million deposits), was organized in 1956 by the management of First National, and presently holds 28.6 percent of the voting shares of BOC Bank ($10.9 million deposits). (All banking data are as of Dec. 31, 1971, adjusted to reflect holding company formations and acquisitions approved by the Board through Aug. 31, 1972.) As a result of a restructuring of existing interests, Applicant's status as a trusteed affiliate would be terminated, and Applicant would acquire all the voting shares (except for directors' qualifying shares) of First National and, as a result thereof, an additional 3.9 percent of the voting shares of BOC Bank, which shares are now held by First National's employees profit-sharing trust.[1] Upon consummation of the proposal, Applicant would control total deposits of $87.2 million, representing 0.3 of 1 percent of the total commercial bank deposits in the State.

First National, located in downtown Abilene, is the largest banking organization in the Abilene banking market, approximated by the Abilene SMSA, and holds 29.2 percent of the total deposits in commercial banks there. BOC Bank, located on the outskirts of the city 7 miles from First National, is the fourth largest banking organization in the market, and holds 4.2 percent of the deposits in commercial banks in the market. Consummation of the proposal would result in Applicant controlling two banks in the same market and about 33 percent of the deposits in that market. However, since the two banks in question are already under common control, and since the proposed transaction is essentially a reorganization of existing interests and reflects neither an expansion of a banking group nor an increase in the banking resources controlled by it, consummation of Applicant's proposal is not expected to affect existing or potential banking competition. On the basis of the facts of record, the Board concludes that consummation of the proposal would not have an adverse effect on competition in any relevant area.

The financial condition of Applicant is considered satisfactory, its management (which is drawn principally from First National) is considered capable, and its prospects appear favorable. The same conclusions apply generally with respect to the financial condition, management, and prospects of First National and BOC Bank. These considerations relating to the banking factors are consistent with approval of the applications.

Inasmuch as the proposal involves essentially a corporate reorganization, there would be no immediate effect on the convenience and needs of the communities involved. However, considerations relating to the convenience and needs of the communities are regarded as consistent with approval of the applications.

In considering this application, the Board noted that First National has made several personal loans at preferential rates to officials at other Abilene banks which maintain correspondent balances with First National. In most instances, the loan was collaterallized by stock of the borrowing official's bank. The Board believes that, if such loans are to be made by banks at all, they should be made on the same basis as stock collateral loans in general. The Board is concerned that such preferential loans could result in a conflict of interest or breach of fiduciary duty on the part of the borrowing officer or director if the reduction in the interest rate is conditioned on the maintenance of correspondent balances with the lending bank or if such loans are not available on an equivalent basis to all share-

[2] Concurring Statement of Governor Robertson and Dissenting Statement of Governor Brimmer filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of New York.

[3] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, and Sheehan. Voting against this action: Governor Brimmer. Absent and not voting: Governor Bucher.

[1] While in this instance the investment by the profit-sharing trust is not regarded as significant, the Board is concerned that the profit-sharing trust which was established for the exclusive benefit of the employees of First National has invested in some of the voting shares of BOC bank. While the stock of banks and bank holding companies can be appropriate investments for such a trust, the Board is of the view that such holdings should be limited to investments in banking organizations in which the bank that established the trust has neither an actual or potential interest to influence or control. Moreover, the Board regards it as inappropriate for a bank to use such a trust to further its own interests by investing in the stock of banking organizations in direct competition with the investing bank.

holders of the borrowing official's bank.[2] In addition, making bank stock loans at lower than the prevailing interest rate may indicate that the lending bank is attempting to gain a measure of indirect control of the bank shares pledged as collateral for the loan without the approval of the Board as required by the Act, although no evidence has been presented in the present case that First National has made such an attempt. As a matter of policy in its administration of the Bank Holding Company Act, it is the Board's view that each bank should adopt promptly a policy in lending on bank stock that avoids the potential that through such loans it has unlawfully acquired a measure of control over the shares involved.

On the basis of the record, the applications are approved for the reasons summarized above. The transactions shall not be consummated (a) before the 30th calendar day following the effective date of this order or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Dallas pursuant to delegated authority.

By order of the Board of Governors,[3] effective January 29, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-2129 Filed 2-2-73;8:45 am]

SOUTHWEST BANCSHARES, INC.

Acquisition of Bank

Southwest Bancshares, Inc., Houston, Tex., 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 Arlington Bank of Commerce, Arlington, 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 February 26, 1973.

Board of Governors of the Federal Reserve System, January 29, 1973.

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

[FR Doc.73-2127 Filed 2-2-73;8:45 am]

[2] The Board's concern in this area is also reflected in the guidelines previously adopted by the Board for use by the Reserve Banks in approving, under delegated authority, the formation of one-bank holding companies. Those guidelines provide, inter alia, that Reserve Banks may approve the formation of a bank holding company involving a bank stock loan where the loan for the purchase of the bank stock is at an interest rate comparable with other stock collateral loans by the lender to persons of comparable credit standing, and the loan is not conditioned upon maintenance of a correspondent bank balance with the lender that exceeds the usual needs of the bank whose shares are being purchased. 12 CFR 265.2(f)(22).

[3] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, Sheehan, and Bucher.

OFFICE OF TELECOMMUNICATIONS POLICY

FREQUENCY MANAGEMENT ADVISORY COUNCIL

Notice of Public Meeting

Notice is hereby given that the Frequency Management Advisory Council will meet at 10 a.m. on Thursday, February 15, 1973, in Room 712, 1800 G Street NW., Washington, DC.

The principal agenda items will be (a) a discussion of a proposed study of telecommunications growth over the past 20–30 years, and (b) the development of an FMAC study program in support of its advisory role to this Office.

The meeting will be open to the public; any member of the public may file a written statement with the Council, before or after the meeting.

The names of the members of the Council, a copy of the agenda, a summary of the meeting and other information pertaining to the meeting may be obtained from Mr. L. R. Raish, Office of Telecommunications Policy, Washington, D.C. 20504 (telephone: 202—395–5623).

Dated: January 30, 1973.

BRYAN M. EAGLE,
Advisory Committee, Management Officer.

[FR Doc.73-2030 Filed 2-2-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

AVM CORP.

Order Amending Order Suspending Trading

JANUARY 26, 1973.

The Commission having determined to amend its order of January 19, 1973, summarily suspending trading in the securities of AVM Corp., for the period from January 20, 1973, through January 29, 1973;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in the common stock, no par value, and all other securities of AVM Corp., being traded otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from January 20, 1973 through midnight e.s.t. on January 28, 1973.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-2120 Filed 2-2-73;8:45 am]

[812-3368]

CHEMICAL FUND, INC.

Notice of Filing of Application; an Order Exempting Sale by an Open-End Company of its Securities at Other Than Public Offering Price

Notice is hereby given that Chemical Fund, Inc. (Applicant), 61 Broadway, New York, NY 10006, a Delaware corporation registered under the Investment Company Act of 1940 (Act) as a diversified, open-end management investment company, has filed an application pursuant to section 6(c) of the Act for an order of exemption from section 22(d) of the Act to permit Applicant to issue its redeemable securities at a price other than the current offering price in exchange for substantially all of the assets of Corriveau Investment, Inc. (Corriveau), a New Hampshire corporation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Corriveau was incorporated in 1950 and has since operated exclusively as an investment company. Substantially all of Corriveau's assets are in the form of investments in marketable securities and cash. Corriveau is exempt from registration under the Act, by reason of the provisions of section 3(c)(1) of the Act, because all of its outstanding stock is owned of record and beneficially by only seven persons.

On December 20, 1972, Applicant and Corriveau entered into an Agreement and Plan of Reorganization (Agreement) whereby substantialy all of the assets of Corriveau are to be transferred to Applicant in exchange for shares of Applicant's capital stock.

The exchange is expected to be tax-free for Corriveau and its shareholders, and the Applicant's cost-basis for tax purposes for the assets acquired from Corriveau will be the same as Corriveau's cost-basis rather than the price actually paid by Applicant for the assets.

Pursuant to the Agreement, the number of Applicant's shares to be delivered to Corriveau will be determined as of the valuation time, as defined in the Agreement, by dividing the aggregate market value, subject to certain adjustments, of the assets of Corriveau to be transferred to Applicant by the net asset value per share of Applicant, both of which are to be determined as of the valuation time, as defined in the Agreement. The adjustment provided for in the Agreement requires that in determining the number of shares of Applicant to be delivered to Corriveau, the aggregate market value of the assets of Corriveau shall be reduced to compensate the Applicant for any increased tax liability which may result by reason of its acquisition of the assets of Corriveau. If the valuation date had been November 30, 1972, when the net assets of Corriveau to be transferred to Applicant amounted to $556,723, and the assets of the Applicant amounted to $886,603,722, there would have been issued to Corriveau

47,239 shares of Applicant's stock having a net asset value per share of $11.64.

Applicant states that no affiliation exists between Corriveau or its officers, directors and shareholders and Applicant, its officers and directors, and that the Agreement was negotiated at arm's-length by the parties. Subject to changes in investment conditions and considerations, the Applicant represents that it does not intend to sell any of the securities acquired from Corriveau after acquisition. Applicant further states that the shareholders of Corriveau have no present intention of redeeming or otherwise transferring the shares of applicant to be received by them upon the liquidation of Corriveau which is to follow the sale of its assets to Applicant.

Section 22(d) of the Act provides, in pertinent part, that no registered open-end investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. The current offering price of Applicant's shares, as stated in its prospectus, includes a sales charge. Section 6(c) of the Act permits the Commission, upon application, to exempt a transaction from any provision or provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that its board of directors has approved the proposed transaction as being in the best interests of Applicant's shareholders, taking all relevant consideration into account including, among others, the fact that the resulting increase in assets will tend to reduce per share expenses of the Applicant.

Notice is further given that any interested person may, not later than February 21, 1973, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact and law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the Application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73–2096 Filed 2–2–73;8:45 am]

[File No. 500–1]

CONTINENTAL VENDING MACHINE CORP.

Order Suspending Trading

JANUARY 29, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, 10 cents par value, of Continental Vending Machine Corp., and the 6 percent convertible subordinated debentures due September 1, 1976, being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors.

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from January 30, 1973 through February 8, 1973.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73–2121 Filed 2–2–73;8:45 am]

[70–5292]

GENERAL PUBLIC UTILITIES CORP.

Notice of Proposed Cash Capital Contributions to Subsidiary Companies

Notice is hereby given that General Public Utilities Corporation (GPU), 80 Pine Street, New York, NY 10005, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating section 12(b) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

GPU proposes to make cash capital contributions, from time to time during the 11 month period ending December 31, 1973, to certain of its subsidiary companies of up to the following respective aggregate amounts:

Jersey Central Power & Light Co. (JCP&L)	$40,000,000
New Jersey Power & Light Co. (NJP&L)	5,000,000
Metropolitan Edison Co. (Met Ed)	40,000,000
Pennsylvania Electric Co. (Penelec)	35,000,000
	120,000,000

The proposed capital contributions will be utilized by JCP&L, NJP&L, Met Ed and Penelec for the purpose of financing their respective businesses as public utilities, including the construction of additional facilities and the increase of their working capital. Such cash capital contributions will be credited by the recipients to their respective capital surplus accounts.

The filing states that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transactions. GPU estimates that the fees and expenses in connection with the proposed transactions will be approximately $5,000.

Notice is further given that any interested person may, not later than February 27, 1973, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addresed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73–2122 Filed 2–2–73;8:45 am]

[812-3345]

GEORGE PUTNAM FUND OF BOSTON ET AL.

Notice of Application for Order Exempting Applicants

Notice is hereby given that The George Putnam Fund of Boston, Putnam Convertible Fund, Inc., Putnam Equities Fund, Inc., The Putnam Growth Fund, The Putnam Income Fund, Inc., Putnam Investors Fund, Inc., Putnam Vista Fund, Inc., and Putnam Voyager Fund, Inc. (Funds), 265 Franklin Street, Boston, MA 02110, all of which are open-end diversified management investment companies registered under the Investment Company Act of 1940 (Act), and Putnam Fund Distributors, Inc. and Putnam Financial Services, Inc., 555 Northgate Drive, San Rafael, CA 94903, the principal underwriters for each of the Funds (hereinafter collectively called Applicants) have filed an application pursuant to Section 6(c) of the Act for an order exempting Applicants from section 22(d) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made herein, which are summarized below.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus.

Applicants propose that persons who have caused their shares to be redeemed within the previous 15 calendar days and who have not previously exercised this privilege as to a particular Fund will be offered the privilege to: (1) Repurchase shares of that Fund, or (2) purchase shares of any of the other Funds through the exercise of the exchange privilege which is available to the shareholders of each of the Funds. The reinvestment purchase price per share will be at a Fund(s) net asset value next determined following receipt of the written purchase order and payment. Such reinvestment purchases would be limited to the amount of redemption proceeds. No sales commissions will be received by the principal underwriters or any sales representative on such reinvestment purchases. Shareholders electing to exercise the exchange privilege will be charged the usual service charge, currently $5, and must otherwise be eligible for such privilege as then described in the Funds' current prospectuses. Written order of repurchase or exchange accompanied by payment for the shares involved and the service charge, if applicable, would have to be postmarked or received by Putnam Fund Distributors, Inc. or Funds within 15 days after redemption.

Applicants submit that, in some instances, shareholders may mistakenly redeem their Fund shares, and the granting of the requested exemption would permit an investor to rectify a mistake without paying another sales charge. Such exemption is thus in the public interest and consistent with the protection of investors.

Section 6(c) of the Act provides that the Commission may, upon application, conditionally or unconditionally exempt any person or transaction from any provisions of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 23, 1973, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing thereon shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-2123 Filed 2-2-73;8:45 am]

[File No. 500-1]

MONARCH GENERAL, INC.

Order Suspending Trading

JANUARY 30, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.01 par value, and all other securities of Monarch General, Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from January 31, 1973 through February 9, 1973.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-2124 Filed 2-2-73;8:45 am]

[File No. 500-1]

MERIDIAN FAST FOOD SERVICES, INC.

Order Suspending Trading

JANUARY 30, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $.01 par value, of Meridian Fast Food Services, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from January 31, 1973 through February 9, 1973.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-2125 Filed 2-2-73;8:45 am]

TARIFF COMMISSION

[TEA-I-27]

CERTAIN BALL BEARINGS

Notice of Investigation and Hearing

Investigation instituted. Following receipt of a petition filed by the Anti-Friction Bearing Manufacturers Association, Inc., on behalf of its member companies, the U.S. Tariff Commission, on January 31, 1973, instituted an investigation under section 301(b)(1) of the Trade Expansion Act of 1962 to determine whether antifriction balls, ball bearings, including such bearings with integral shafts, and parts thereof, provided for in items 680.30 to 680.36, inclusive, of the Tariff Schedules of the United States are, as a result in major part of concessions granted thereon under trade agreements, being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to the domestic industry or industries producing like or directly competitive products.

Public hearing ordered. A public hearing in connection with this investigation will be held beginning at 10 a.m., e.s.t., Tuesday, April 3, 1973, in the Hearing Room, U.S. Tariff Commission Building, Eighth and E Streets NW., Washington, DC. Requests for appearances at the hearing should be received by the Secretary of the Tariff Commission, in writing, at its offices in Washington, D.C., not later than noon, Thursday, March 29, 1973.

Inspection of petition. The petition filed in this case is available for inspection by persons concerned at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC, and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission.

Issued January 31, 1973.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-2168 Filed 2-2-73;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

STANDARDS ADVISORY COMMITTEE ON NOISE

Notice of Establishment and Meeting

Notice is hereby given that a standards advisory committee on noise has been established under section 7(b) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 656) and that it will meet in Washington, D.C., starting at 9:30 a.m. on February 22, 1973 in Room 216 A, B, and C of the Main Labor Building, 14th and Constitution Avenue NW.

The noise committee has been established to make recommendations to the Assistant Secretary of Labor for Occupational Safety and Health regarding rules to help protect employees from safety and health hazards resulting from noise in the occupational environment.

This is the first meeting of the committee. The agenda provides for orientation to the committee concerning tasks involved. The meeting shall be open to the public. Any member of the public wishing to submit a written presentation to the committee may do so by filing such statement with the Director, Office of Standards, Occupational Safety and Health Administration, Room 500, 400 First Street NW., Washington, DC 20210, not later than February 16, 1973. There will be additional meetings and additional opportunity for the public to make presentations on the subject matter before the committee.

Signed at Washington, D.C., this 31st day of January 1973.

CHAIN ROBBINS, *Acting Assistant Secretary of Labor.*

[FR Doc.73-2145 Filed 2-2-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 171]

ASSIGNMENT OF HEARINGS

JANUARY 31, 1973.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC 107403 Sub 832, Matlack, Inc., now assigned February 21, 1973, No. 35539, Louisiana Intrastate Freight Rates and Charges—1972, now assigned February 26, 1973, will be held in the East Court Room, Room 233, Court of Appeals, 600 Camp Street, New Orleans, LA.

MC 115162 Sub 212, Poole Truck Line, Inc., now assigned February 20, 1973, at Mobile, Ala., will be held at the Admiral Semmes Hotel, "Alabama Room," 251 Government Street, instead of the Battle House Hotel, 26 North Royal Street.

AB-62, Marinette, Tomahawk & Western Railroad Co., Abandonment Between Tomahawk and Kings, Lincoln County, WI, now assigned February 15, 1973, at Tomahawk, Wis., is postponed indefinitely.

MC 119777 Sub 208, Ligon Specialized Hauler, Inc., continued to April 17, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 106884 Sub 23, Rogers Transfer, Inc., application dismissed.

FSA No. 42558 and 42559, Iron or Steel, Angles and Bars to Points in Texas, now assigned February 20, 1973, at Washington, D.C., is canceled. The rates have been canceled and the applications dismissed

MC 115322 Sub 89, Redwing Refrigerated, Inc., now being assigned hearing March 6, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 62690 Sub 3, Carey F. Weathers Transfer & Storage Co., now being assigned hearing March 7, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 115841 Sub 413, Colonial Refrigerated Transportation, Inc., now being assigned hearing March 12, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 115841 Sub 438, Colonial Refrigerated Transportation, Inc., now being assigned hearing March 19, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-C-7284 B & H Transfer, Inc., Revocation of Certificate, now assigned February 2, 1973, at New York, N.Y., is postponed indefinitely.

MC 26825 Sub 12, Andrews Van Lines, Inc., now assigned February 7, 1973, at Omaha, Nebr., is canceled and the application is dismissed.

MC-C-7436 Needham Packing Company, Inc.-V-Curtis, Inc., now assigned February 5, 1973, at Omaha, Nebr., is canceled.

MC 105566 Sub 80, Sam Tanksley Trucking, Inc., now assigned February 13, 1973, at Chicago, Ill., is postponed indefinitely.

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

[FR Doc.73-2142 Filed 2-2-73;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

JANUARY 31, 1973.

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 on or before February 20, 1973.

FSA No. 42611—*Joint Water-Rail Container Rates—Mitsui O.S.K. Lines, Ltd.* Filed by Mitsui O.S.K. Lines, Ltd. (No. 3) (M.O.L. Series), for itself and interested rail carriers. Rates on general commodities, from ports in Japan and Korea, to Baton Rouge, La., Savannah, Ga., and New Orleans, La.

Grounds for relief—Water competition.

By the Commission.

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

[FR Doc.73-2143 Filed 2-2-73;8:45 am]

[Notice 203]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before February 20, 1973. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-74042. By order entered January 10, 1973, the Motor Carrier Board approved the transfer to Cycles, Inc., doing business as Twin City Honda, St. Paul, Minnesota, of the operating rights set forth in Permit No. MC-114789 (Sub-No. 11), issued September 9, 1964, in the name of Nationwide Carriers, Inc., and subsequently acquired by Irving M. Stern, Minnetonka, Minn., pursuant to order of the Commission, Motor Carrier Board, entered August 26, 1971, in No. MC-FC-72871, and assigned No. MC-135911, authorizing the transportation of dairy products as described in section B of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209, fertilizer in bags, animal and poultry feed, and dried milk powder, when moving in mixed loads with commodities subject to economic regulation

under the Interstate Commerce Act, frozen poultry and eggs when moving in mixed loads with commodities subject to economic regulation under the Interstate Commerce Act, butter, and cheese, from specified points in Minnesota and Wisconsin, to specified points in California, Arizona, Nevada, Colorado, and New Mexico, limited to a transportation service to be performed under a continuing contract or contracts with Land O'Lakes Creameries, Inc., of Minneapolis, Minn. Paul H. Ravich, 2308 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402, attorney for applicants.

No. MC-FC-74115. By order of January 10, 1973, the Motor Carrier Board approved the transfer to Edward S. and Ruth H. Murray, a partnership, doing business as Cross & Murray, Minneapolis, Minn., of the operating rights in Certificate No. MC-116328 issued July 5, 1957, to Edward S. Murray and Richard E. Murray, a partnership, doing business as Cross & Murray, Minneapolis, Minn., authorizing the transportation of edible corn syrup, liquid sugar, and blends thereof, in bulk, in tank vehicles, from named points in Minnesota to Mason City, Iowa, and points in Minnesota and described areas in North Dakota and Wisconsin.

No. MC-FC-74160. By order of January 5, 1973, the Motor Carrier Board approved the transfer to K & R Delivery, Inc., Des Plaines, Ill., of the operating rights in Certificate No. MC-36255 issued May 4, 1970, to Superior Freight Lines, Inc., Burr Ridge, Ill., authorizing the transportation of general commodities, with exceptions, between points in the Chicago, Ill. commercial zone; and between points in Illinois, Wisconsin, Indiana, and Michigan, within 100 miles of Chicago, Ill. Carl L. Steiner, 39 South La Salle Street, Chicago, IL 60603, attorney for applicants.

No. MC-FC-75062. By order of January 16, 1973, the Motor Carrier Board approved the transfer to Malba Trucking, Inc., Long Island City, N.Y., of the operating rights in Certificate No. MC-92410 issued January 3, 1957, to Steel Haulage Corp., Long Island City, N.Y., authorizing the transportation of various commodities from, to, and between specified points and areas in New York, New Jersey, and Connecticut. George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306, representative for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-2144 Filed 2-2-73;8:45 am]

[No. AB 5 (Sub-No. 48)]

PENNDEL CO. ET AL.

Notice of Assignment of Hearing

JANUARY 22, 1973.

Penndel Co. and George P. Baker, Richard C. Bond, Jervis Langdon, Jr., Willard Wirtz, trustees of the property of Penn Central Transportation Co., debtor, abandonment between Walton Junction and Traverse City, Traverse County, Mich.

The above-entitled proceeding is assigned for hearing on March 22, 1973 (2 days), at 9:30 a.m., U.S. standard time, at Traverse City, Mich. Location of hearing room will be by subsequent notice. A tentative time allowance is shown for this hearing.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-2140 Filed 2-2-73;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Army

U.S. ARMY CHIEF OF ENGINEERS ENVIRONMENTAL ADVISORY BOARD

Notice of Advisory Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, notice is hereby given of the February 5-6, 1973 meeting of the U.S. Army Chief of Engineers Environmental Advisory Board at the Monteleone Hotel, New Orleans, La. The purpose of the meeting is to discuss Corps of Engineers environmental policies and programs, particularly in the Gulf Coast and Mississippi River regions.

This meeting will not be open to the public.

For the Chief of Engineers.

WESLEY E. PEEL,
Colonel, Corps of Engineers,
Executive.

[FR Doc.73-2181 Filed 2-2-73;8:45 am]

CUMULATIVE LIST OF PARTS AFFECTED—FEBRUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during February.

FEDERAL REGISTER PAGES AND DATES—FEBRUARY

Pages	*Date*
3031–3179	Feb. 1
3181–3285	2
3287–3377	5

federal register

MONDAY, FEBRUARY 5, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 23

PART II

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

■

WRITTEN EXAMINATION OF DRIVERS

Notice of Proposed Rule Making

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[49 CFR Part 391]

[Docket No. MC-46; Notice 73-5]

WRITTEN EXAMINATION OF DRIVERS

Notice of Proposed Rule Making

The Director of the Bureau of Motor Carrier Safety proposes to reinstitute the requirement that each driver of a commercial motor vehicle operating in interstate or foreign commerce must, as a prerequisite to his qualification to drive, successfully complete a written examination testing his knowledge of safety regulations pertinent to this job.

A requirement for successful completion of a written examination was included in the last major revision of the Bureau's driver qualification regulations issued in April 1970 (35 FR 6458, 6462–6463). The form of the prescribed examination consisted of 30 true-false questions selected from a list of questions drafted by the Bureau and published in Appendix C to the Motor Carrier Safety Regulations. Shortly before the January 1, 1971, effective date of the new qualification rules, the requirement that all drivers must successfully complete the examination was withdrawn, and the Bureau substituted a requirement that the prescribed examination must simply be administered to all drivers as a means of acquainting them with applicable provisions of the Motor Carrier Safety Regulations and the Hazardous Materials Regulations pertaining to transportation by motor vehicle (35 FR 19181). This latter step was taken in light of the action of the Equal Employment Opportunity Commission's issuance, in August of 1970, of guidelines for the use of written examinations as a condition of employment. Those guidelines provided, among other things, that the use of a written examination requirement in that manner would be deemed a violation of the employers' duties under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2003–1 et seq.) unless it could be demonstrated that the examination so used had been "validated" in accordance with specified criteria to assure that its use did not produce unlawful discrimination against members of minority groups seeking employment, retention, or promotion.

The driver's examination originally prescribed had not been "validated" under the Commission's criteria. Successful completion of the examination was, therefore, withdrawn as a prerequisite to employment of the person taking the examination as the driver of a commercial motor vehicle in interstate or foreign commerce. In announcing the withdrawal of that requirement, however, the Director also said that the Bureau planned to "promptly undertake the development of a validated examination with a view toward reinstating, in full, the written examination requirement."

A contract for the development of a new, validated, examination was awarded early in 1971 and was performed during the period July 1971 to June 1972. As a result of that effort, the contractor, in July 1972, supplied the Bureau with its final report and set of four written examination forms, together with instructions for their administration and answer sheets. The four examinations so developed are in multiple-choice format, and they are reproduced below, with minor modifications to take into account changes in substantive rules that occurred after the contractor filed its report, in the proposed revision of Appendix C to the Motor Carrier Safety Regulations. On the basis of the data contained in the contractor's final report, it is believed that each of the examination forms is valid under the criteria of the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance. Field testing of the examination, according to the report, demonstrated that it did not individually discriminate against drivers and driver-applicants who were members of minority groups.

A copy of the contractor's final report will be placed in the public docket, where it will be available for examination by any interested person. In addition, arrangements will be made to have the report available for sale to interested members of the public through the National Technical Information Service.

Under the rules here proposed, successful completion of one of the four forms of examination will become prerequisite to qualification as a driver under the Motor Carrier Safety Regulations. A person who has achieved a passing grade on any of the forms will be qualified, assuming he meets the other qualification criteria in Part 391, to operate any commercial motor vehicle in interstate or foreign commerce, except a vehicle transporting hazardous materials in large quantities. Drivers of the latter category of vehicles must have successfully completed the examination in Form C or D, both of which include questions relating to the safe transportation of hazardous materials.

Under the proposal, a driver who fails to pass the examination may be reexamined using an examination form other than the one he failed. In other words, if the examinee fails to achieve a passing score of 70 percent correct answers on Form A, the carrier who administered the test may permit him to take another test on Form B. If he answers at least 70 percent of the questions on Form B correctly, the examinee would be regarded as having successfully completed the written test requirement. The proposal does not contain any limitation on the number of times a driver applicant may take the written examination, nor would it preclude a driver who has failed the examination on a particular form when he applied for employment at one carrier from subsequently taking the examination on the same form as an applicant to another carrier. In this respect, the proposal retains the hypothesis that education of drivers is one of the primary objectives of the examination requirement.

As has been the case in the past, the proposal includes a grandfather clause. The proposed new § 391.61(b) would exempt drivers who are regularly employed by a motor carrier before July 1, 1973 (the prospective effective date of the new requirements), from the need to pass a written examination as a condition for continuing as regularly employed drivers for that carrier. In addition, the proposal would not change the status of drivers who currently enjoy a "grandfather clause" exemption from the present written examination rules.

In consideration of the foregoing, the Director proposes to amend the Motor Carrier Safety Regulations (Subchapter B of Chapter III in Title 49, CFR) as set forth below.

The proposed effective date of these amendments is July 1, 1973.

Interested persons are invited to submit written data, views, or arguments pertaining to the proposed amendments. All comments submitted should refer to the docket number and notice number appearing at the top of this document and should be submitted in three copies to the Director, Bureau of Motor Carrier Safety, Washington, D.C. 20590. All comments received before the close of business on May 4, 1973, will be considered before further action is taken. Comments will be available for examination in the public docket of the Bureau of Motor Carrier Safety, Room 4136, 400 Seventh Street SW., Washington, DC, both before and after the closing date for comments.

This Notice of Proposed Rule Making is issued under the authority of section 204 of the Interstate Commerce Act, as amended, 49 U.S.C. 304, section 6 of the Department of Transportation Act, 49 U.S.C. 1655, and the delegations of authority by the Secretary of Transportation and the Federal Highway Administrator at 49 CFR 1.48 and 389.4.

Issued on January 24, 1973.

ROBERT A. KAYE,
Director, Bureau of Motor Carrier Safety.

I. Paragraph (b)(11) of § 391.11 would be revised to read as follows:

§ 391.11 Qualification of drivers.

* * * * *

(b) Except as provided in subpart G of this part, a person is qualified to drive a motor vehicle if he—

* * * * *

(11) Has successfully completed a written examination and has been issued a certificate of written examination in accordance with § 391.35 or has presented a certificate of written examination which the motor carrier that employs him has accepted as equivalent to a written examination in accordance with § 391.37; and

* * * * *

II. § 391.35 would be revised to read as follows:

§ 391.35 Written examination.

(a) Except as provided in § 391.37 and in Subpart G of this part, a person shall not drive a motor vehicle unless he has first successfully completed a written examination and has been issued a certificate of written examination in accordance with the rules in this section.

(b) The written examination shall be administered by the motor carrier or a competent person designated by the motor carrier. Four written examinations, including instructions, questions, and the correct answers to the questions, are set forth in Appendix C to this subchapter. They are identified as Form A, Form B, Form C, and Form D. A person who correctly answers at least 70 percent of the questions on any one of those examinations has successfully completed a written examination. However, a person is not qualified to drive a motor vehicle transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with § 177.823 of this title unless he has sucessfully completed the examination in Form C or D.

(c) If the examinee successfully completes the examination, the person who administered it shall advise him of the correct answers to any questions he failed to answer correctly and shall complete a certificate in substantially the following form:

CERTIFICATE OF WRITTEN EXAMINATION

This certifies that the person whose name appears below has successfully completed the written examination under my supervision in accordance with § 391.35 of the Motor Carrier Safety Regulations.

(Name of person taking examination) (Date)

Examination form:
A ☐
B ☐
C ☐
D ☐

(Location of examination)

(Signature of examiner) (Title)

(Organization and address of examiner)

(d) If the examinee fails to complete the examination successfully, the motor carrier may reexamine him, using an examination form different from the one he previously failed to complete successfully. If, upon reexamination, the examinee successfully completes the examination, he shall be treated as prescribed in paragraphs (c) and (e).

(e) A copy of the certificate required by paragraph (c) shall be given to a person who successfully completes a written examination. The motor carrier shall retain, in the driver qualification file of the person who was examined—

(1) The original, or a copy of, a certificate given to that person pursuant to paragraphs (c) and (e) of this section;

(2) The questions asked on the examination or a notation of the examination form that was used; and

(3) The person's answers to the questions asked on the examination.

III. Section 391.61 would be revised to read as follows:

§ 391.61 Exemptions from retroactive application (grandfather provisions).

(a) The provisions of §§ 391.21 (relating to applications for employment), 391.23 (relating to investigations and inquiries), 391.31 (relating to road tests), and 391.35 (relating to written examinations) do not apply to a driver who has been a regularly employed driver (as defined in § 395.2(f) of this subchapter) of a motor carrier for a continuous period which began before January 1, 1971, as long as he continues to be a regularly employed driver of that motor carrier. Such a driver is qualified to drive a motor vehicle if he fulfills the requirements of subparagraphs (1) through (9) of § 391.11(b) (relating to qualifications of drivers).

(b) So much of § 391.35 as requires a person to have successfully completed a written examination before he is qualified to drive a motor vehicle does not apply to a driver who has been a regularly employed driver (as defined in § 395.2(f) of this subchapter) of a motor carier for a continuous period which began before July 1, 1973, as long as he continues to be a regularly employed driver of that motor carrier.

IV. Appendix C to Subchapter B would be revised to read as follows:

APPENDIX C (REVISED 7/73)—WRITTEN EXAMINATION FOR DRIVERS

As specified in § 391.35, the written examination consists of one of the following four examination forms. A person who answers at least 70 percent of the questions in any examination form correctly (40 correct answers in Form A or B; 46 correct answers in Form C or D) has successfully completed the examination requirement. A driver who transports hazardous materials driving a vehicle that must be marked or placarded must have successfully completed the examination in either Form C or D. A driver who transports cargo other than hazardous materials or who drives a passenger-carrying vehicle may qualify by successfully completing the examination in any form. A driver who fails the examination in any form may retake it in another form.

Additional copies of the examinations are available upon request to the Director, Bureau of Motor Carrier Safety, Washington, D.C. 20590.

MOTOR CARRIER—SAFETY REGULATIONS EXAMINATION

FORM A

CONTENTS

INSTRUCTIONS

All of the questions contained herein are based on the U.S. Department of Transportation's Motor Carrier Safety Regulations. Applicants for the position of commercial driver are required to take the examination and answer 70 percent of its questions correctly before they can be considered qualified to drive.

Each question has four answers but only one is right. Your job on each question is to read all of the answers and then to pick the *one* answer you think is right. Mark an "X" in the space next to the answer you choose. Do *not* pick more than one answer for each question.

Here is a sample question to show you what is to be done:

The Motor Carrier Safety Regulations were written for:

1.( ) vehicle makers.
2.( ) drivers only.
3.( ) carriers only.
4.( ) drivers and carriers.

The right answer is number 4, "drivers and carriers," so you would mark an "X" in the space next to answer number 4.

Finally, be sure to answer every question and do not skip any pages. Your score will be the number of items correctly answered. Keep in mind that most of the regulations covered here are different from what is required of passenger car drivers; they apply to commercial bus and truck drivers. Again, *pick only one answer for each question.* There is no time limit on the examination, but try to work as fast as you can.

A1–390.32 *A motor carrier who is also a driver (owner-operator):*

1.( ) is not covered by the safety regulations.
2.( ) must obey only those parts of the regulations which cover drivers.
3.( ) must obey only those parts of the regulations which cover motor carriers.
4.( ) must obey both the parts covering drivers and the parts covering motor carriers.

A2–391.11(b)(1) *With only a few exceptions, the Motor Carrier Safety Regulations say a driver must be:*

1.( ) at least 18 years old.
2.( ) at least 19 years old.
3.( ) at least 20 years old.
4.( ) at least 21 years old.

A3–391.15(e)(2)(3) *A driver cannot drive a motor vehicle:*

1.( ) For 1 year after a first offense conviction for a felony involving a commercial motor vehicle he was driving.
2.( ) For 1 year after a first offense conviction for driving a commercial vehicle under the influence of alcohol or narcotics.
3.( ) For 1 year after a first offense conviction for leaving the scene of an accident which resulted in personal injury or death.
4.( ) For 1 year after a first offense conviction for any of the above.

A4–391.21(b)(7)(8)(10) *Every driver applicant must fill out an application form giving:*

1.( ) a list of all vehicle accidents he was in during the previous 3 years.
2.( ) a list of all of his motor vehicle violation convictions and bond forfeits (except for parking) during the previous 3 years.
3.( ) a list of names and addresses of all of his employers during the previous 3 years.
4.( ) all of the above.

A5–391.27(a)(b) *At least once a year, a driver must fill out a form listing all motor vehicle violations (except parking) which he had during the previous 12 months. He must fill out the form:*
1.( ) even if he had no violations.
2.( ) only if he was convicted.
3.( ) only if he was convicted or forfeited bond or collateral.
4.( ) only if the carrier requires it.

A6–391.33(a)(2) *If a driver applicant has a valid certificate showing he passed a driver's road test:*
1.( ) the carrier must accept it.
2.( ) the carrier may still require the applicant to take a road test.
3.( ) the carrier cannot accept it.
4.( ) the carrier may request a road test waiver from the Bureau of Motor Carrier Safety.

A7–391.41(b)(5) *Persons with breathing problems which may affect safe driving:*
1.( ) cannot drive.
2.( ) cannot drive unless the vehicle has an emergency oxygen supply.
3.( ) cannot drive unless another driver is along.
4.( ) cannot drive except on short runs.

A8–391.41(b)(7) *Persons with arthritis, rheumatism, or any such condition which may affect safe driving:*
1.( ) cannot drive unless they are checked by a doctor before each trip.
2.( ) cannot drive.
3.( ) cannot drive except when they are free of pain.
4.( ) cannot drive unless another driver is along.

A9–391.41(b)(8) *Persons who have ever had epilepsy:*
1.( ) cannot drive unless another driver is along.
2.( ) cannot drive.
3.( ) cannot drive on long runs.
4.( ) cannot drive without monthly medical examinations.

A10–391.41(b)(9)(12)(13) *In order to be able to drive, a person:*
1.( ) must not have any mental, nervous, or physical problem likely to affect safe driving.
2.( ) must not use an amphetamine, narcotic, or any habit-forming drug.
3.( ) must not have a current alcoholism problem.
4.( ) must not have or use any of the above.

A11–391.45(c) *Any driver who gets an injury or illness serious enough to affect his ability to perform his duties:*
1.( ) must report it at his next scheduled physical.
2.( ) cannot drive again.
3.( ) must take another physical and be recertified before driving again.
4.( ) must wait at least 1 month after recovery before driving again.

A12–392.2 *A driver may* not *drive faster than posted speed limits:*
1.( ) unless he is sick and must complete his run quickly.
2.( ) at any time.
3.( ) unless he is passing another vehicle.
4.( ) unless he is late and must make a scheduled arrival.

A13–392.3 *When a driver's physical condition while on a trip requires that he stop driving, but stopping would not be safe, the driver:*
1.( ) must stop anyway.
2.( ) may try to complete his trip, but as quickly as possible.
3.( ) may continue to drive to his home terminal.
4.( ) may continue to drive, but must stop at the nearest safe place.

A14–392.5(a)(1) *A driver may not drink or be under the influence of any alcoholic beverage (regardless of alcoholic content):*
1.( ) within 4 hours before going on duty or driving.
2.( ) within 6 hours before going on duty or driving.
3.( ) within 8 hours before going on duty or driving.
4.( ) within 12 hours before going on duty or driving.

A15–392.7 *A driver must satisfy himself that service and parking brakes, tires, lights and reflectors, mirrors, coupling, and other devices are in good working order:*
1.( ) at the end of each trip.
2.( ) before the vehicle may be driven.
3.( ) only when he considers it necessary.
4.( ) according to schedules set by the carrier.

A16–392.8 *Which of the following must be in place and ready for use before a vehicle can be driven?*
1.( ) At least one spare fuse or other overload protector of each type used on the vehicle.
2.( ) A tool kit containing a specified list of hand tools.
3.( ) At least one spare tire for every four wheels.
4.( ) A set of spark plugs.

A17–392.9(a)(3) *If any part of the cargo or anything else blocks a driver's front or side views, his arm or leg movements, or his access to emergency equipment, the driver:*
1.( ) can drive the vehicle, but must report the problems at the end of the trip.
2.( ) cannot drive the vehicle.
3.( ) can drive the vehicle, but only at speeds under 40 miles per hour.
4.( ) can drive the vehicle, but only on secondary roads.

A18–392.9a *Any driver who needs glasses to meet the minimum visual requirements:*
1.( ) must drive only during daylight hours.
2.( ) must always wear his glasses when driving.
3.( ) must always carry a spare pair of glasses.
4.( ) must not drive a motor vehicle.

A19–392.9b *A driver may drive with a hearing aid:*
1.( ) if he always has it turned on while he is driving.
2.( ) if he always carries a spare power source for it.
3.( ) if he can meet the hearing requirements when he has it turned on.
4.( ) if all of the above requirements are met.

A20–392.10(a) *A driver required to stop at a railroad crossing should bring his vehicle to a stop no closer to the tracks than:*
1.( ) 5 feet.
2.( ) 10 feet.
3.( ) 15 feet.
4.( ) 20 feet.

A21–392.10(a) *Shifting gears is not permitted:*
1.( ) when traveling faster than 35 miles per hour.
2.( ) when moving across any bridge.
3.( ) when crossing railroad tracks.
4.( ) when traveling down a hill steeper than 10°.

A22–392.13 *Drivers of motor vehicles not required to stop at drawbridges without signals:*
1.( ) must drive at a rate of speed which will permit a stop before reaching the lip of the draw.
2.( ) must sound their horn before crossing.
3.( ) can proceed across without reducing speed.
4.( ) must slow down only if directed to by an attendant.

A23–392.15(a) *A driver turning his vehicle should begin flashing his turn signal:*
1.( ) at least 50 feet before turning.
2.( ) at least 60 feet before turning.
3.( ) at least 75 feet before turning.
4.( ) at least 100 feet before turning.

A24–392.16 *Which of the following is true?*
1.( ) If a seat belt is installed in the vehicle, a driver must have it fastened before beginning to drive.
2.( ) A driver may or may not use the seat belt, depending on his judgment.
3.( ) Seat belts are not necessary on heavier vehicles.
4.( ) A driver must use his seat belt only if required to by the carrier.

A25–392.21 *When a motor vehicle cannot be stopped off the traveled part of the highway, the driver:*
1.( ) must keep driving.
2.( ) may stop, but shall get as far off the traveled part of the highway as possible.
3.( ) may stop, but shall make sure that the vehicle can be seen as far as possible to its front and rear.
4.( ) may stop if he has to, but should do both 2 and 3 above.

A26–392.22(b)(1) *If a vehicle has a breakdown on a poorly lit two-way street the driver must place one emergency signal:*
1.( ) 100 feet in front of the vehicle in the center of the lane it occupies.
2.( ) 100 feet in back of the vehicle in the center of the lane it occupies.
3.( ) 10 feet in front or back of the vehicle on the traffic side.
4.( ) at all of the above locations.

A27–392.22(b)(1)(i) *If a vehicle has a breakdown on a poorly lit street or highway, the driver shall place on the traffic side:*
1.( ) a reflective triangle.
2.( ) a lighted red electric lantern.
3.( ) a red reflector.
4.( ) any one of the above.

A28–392.22(b)(2)(iii) *No emergency signals are required for a vehicle with a breakdown if the street or highway lighting is bright enough so it can be seen at a distance of:*
1.( ) 100 feet.
2.( ) 200 feet.
3.( ) 500 feet.
4.( ) 750 feet.

A29–392.22(b)(2)(v) *If a vehicle has a breakdown and stops on a poorly lit* divided or one-way *highway, the driver must place one emergency signal:*
1.( ) 200 feet in back of the vehicle in the center of the lane it occupies.
2.( ) 100 feet in back of the vehicle in the center of the lane it occupies.
3.( ) 10 feet in back of the vehicle on the traffic side of the vehicle.
4.( ) at all of the above locations.

A30–392.25 *Lighted flame-producing emergency signals, including fuses:*
1.( ) may not be used with vehicles carrying class A or B explosives.
2.( ) may not be used with tank vehicles, loaded or empty, which are used to carry flammable liquids or gas.
3.( ) may not be used with any vehicle using compressed gas as a fuel.
4.( ) may not be used with any of the above.

A31–392.30(a) *A driver is required to have his lights on:*
1.( ) from one-half hour *before* sunset to one-half hour *before* sunrise.

2.( ) from one-half hour before sunset to sunrise.
3.( ) from one-half hour *after* sunset to one-half hour *before* sunrise.
4.( ) from sunset to one-half hour before sunrise.

A32-392.32(a)(b) *When lights are required on the open highway, a driver shall use the high beam:*
1.( ) except when within 500 feet of an on-coming vehicle or a vehicle he is following.
2.( ) except when within 400 feet of an on-coming vehicle or a vehicle he is following.
3.( ) except when within 200 feet of an on-coming vehicle or a vehicle he is following.
4.( ) except when within 100 feet of an on-coming vehicle or a vehicle he is following.

A33-392.32(a) *When lights are required, drivers may use lower beam lights:*
1.( ) when fog, dust or other such conditions exist.
2.( ) when approaching tunnels or bridges.
3.( ) when driving on one-way highways.
4.( ) when within 1,000 feet of business areas or where people live.

A34-392.40 *Every driver involved in an accident must follow the safety regulation procedures whenever an injury or death is involved or if:*
1.( ) the accident is caused by the driver and property damage of over $250 results.
2.( ) property damage of over $250 results, no matter who is at fault.
3.( ) property damage of over $100 results.
4.( ) property damage of any kind results.

A35-392.41 *If a driver strikes a parked vehicle, he should* first:
1.( ) stop and call the local police.
2.( ) stop and call his carrier.
3.( ) stop and try to find the driver or owner of the parked vehicle.
4.( ) stop and estimate the damage.

A36-392.42 *When a driver receives notice that his operator's license or permit has been revoked, suspended, or withdrawn, he must:*
1.( ) notify his carrier within 72 hours.
2.( ) notify his carrier within 1 week.
3.( ) notify his carrier before the end of the next business day.
4.( ) take no action since his carrier will also get a notice.

A37-392.61 *Except in emergencies, no driver shall allow his vehicle to be driven by any other person:*
1.( ) except those he knows can drive it.
2.( ) except on roads with little or no traffic.
3.( ) except those allowed by the carrier to do it.
4.( ) unless he goes along with the person driving.

A38-392.64 *A person may ride inside a vehicle's closed body or trailer:*
1.( ) only on short runs.
2.( ) only if there is an easy way to get out from the inside.
3.( ) only if the inside of the body or trailer is lighted.
4.( ) only if there is no cargo in it.

A39-392.66 *If carbon monoxide is inside a vehicle or if a mechanical problem may produce a carbon monoxide danger, the vehicle:*
1.( ) may be sent out and driven so long as the windows are left open.
2.( ) may not be sent out or driven.
3.( ) may be sent out and driven only if the carrier decides the vehicle has to be used.
4.( ) may be sent out and driven on short runs.

A40-392.68 *No motor vehicle shall be operated out of gear:*
1.( ) except when fuel must be saved.
2.( ) except on hills which are less than 20°.
3.( ) except when it is necessary for stoppage or shifting gears.
4.( ) except when the vehicle's speed is under 25 miles per hour.

A41-393.1(a) *Under the Motor Carrier Safety Regulations, no vehicle may be driven:*
1.( ) until a list of all missing or defective equipment has been prepared and given to the carrier.
2.( ) until all equipment has been inspected and replacements for defective parts have been ordered.
3.( ) unless all missing equipment is to be replaced no later than the end of the vehicle's next run.
4.( ) until it meets all of the equipment requirements of the regulations.

A42-393 various *Minimum requirements for lighting, reflecting, and electrical equipment and devices on buses and trucks:*
1.( ) are set by the vehicle makers.
2.( ) are set by the National Safety Council.
3.( ) are specified in the safety regulations.
4.( ) are set by the trucking associations.

A43-393.18(a)(b) *Every motor vehicle which has a load sticking out over its sides must be specially marked with flags and lamps. Additional flags and lamps must be added if the load or tailgate sticks out beyond the rear of the vehicle by more than:*
1.( ) 2 feet.
2.( ) 4 feet.
3.( ) 6 feet.
4.( ) 8 feet.

A44-393.41(a) *Every vehicle shall have a parking brake system which will hold it, no matter what its load:*
1.( ) on any grade on which it is operated which is free from ice and snow.
2.( ) on all grades under 15° which are free from ice and snow.
3.( ) on all grades under 20° which are free from ice and snow.
4.( ) on all grades under 25° which are free from ice and snow.

A45-393.77(b)(6) *A portable heater may not be used in any vehicle cab:*
1.( ) unless it is secured.
2.( ) unless it is of the electric filament type.
3.( ) at any time.
4.( ) without approval from the carrier.

A46-395.3(a) *Drivers are not generally allowed to drive for more than:*
1.( ) 6 hours following 8 straight hours off-duty.
2.( ) 8 hours following 8 straight hours off-duty.
3.( ) 10 hours following 8 straight hours off duty.
4.( ) 12 hours following 8 straight hours off duty.

A47-395.3(a) *Most drivers of large vehicles are* not *allowed to drive:*
1.( ) after they have been *on duty* for 16 hours.
2.( ) after they have been *on duty* for 15 hours.
3.( ) after they have been *on duty* for 14 hours.
4.( ) after they have been *on duty* for 12 hours.

A48-395.3(b) *Generally, a driver may* not *be "on duty":*
1.( ) for more than 40 hours in any 7 straight days.
2.( ) for more than 50 hours in any 7 straight days.
3.( ) for more than 60 hours in any 7 straight days.
4.( ) for more than 70 hours in any 7 straight days.

A49-395.7 *When a driver is riding in a vehicle, but is not driving and has no other responsibility, such time shall be counted as:*
1.( ) on-duty time.
2.( ) on-duty time unless he is allowed 8 straight hours off duty when he gets to the destination.
3.( ) on-duty time unless he is allowed 6 straight hours off duty when he gets to the destination.
4.( ) on-duty time unless he is allowed 4 straight hours off duty when he gets to the destination.

A50-395.8(b) *Every driver must prepare an original and one copy of a daily log which he must keep current by updating it:*
1.( ) every time he changes a duty status.
2.( ) every 24 hours.
3.( ) every 8 hours.
4.( ) at the end of each trip.

A51-395.8(c) *Except for the name and main address of the carrier, all entries in a log:*
1.( ) must be printed in ink or typed.
2.( ) must be made by the carrier dispatcher.
3.( ) must be made in front of a witness.
4.( ) must be written in the driver's own handwriting.

A52-395.8(1)(p)(q) *Which of the following is* not *to be put in a driver's log?*
1.( ) Time spent in a sleeper berth.
2.( ) Total hours in each duty status.
3.( ) The name of the carrier or carriers.
4.( ) The name and make of his vehicle.

A53-395.11 *If an emergency delays a run which could normally have been completed within hours of service limits, the driver:*
1.( ) must still stop driving when the hours of service limit is reached.
2.( ) may drive for 1 extra hour.
3.( ) may drive for 2 extra hours.
4.( ) may finish his run without being in violation.

A54-395.13 *Any driver declared "Out of Service":*
1.( ) must take a road test before driving again.
2.( ) must wait 72 hours before driving again.
3.( ) must appeal to the Director of the Bureau of Motor Carrier Safety to drive again.
4.( ) can drive again only after hours of service requirement are met.

A55-396.4 *If a vehicle on a trip is in a condition likely to cause an accident or breakdown:*
1.( ) the driver should report it at the end of his run so repairs can be made.
2.( ) the driver should drive at lower speeds for the rest of the run.
3.( ) the driver should stop immediately unless going on to the nearest repair shop is safer than stopping.
4.( ) the driver should change his route so as to get away from heavily traveled roads.

A56-396.5(c) *If authorized Federal inspectors find a vehicle which is likely to cause an accident or breakdown:*
1.( ) it will be reported to the carrier for repair as soon as the vehicle is not scheduled.
2.( ) it will be reported to the carrier for repair at the end of the trip.
3.( ) it will be marked with an "Out of Service Vehicle" sticker and not driven until repairs are made.
4.( ) the driver will be held responsible and declared "Out of Service."

A57-396.5(c)(4) *If the driver makes his own repairs on an "Out of Service" vehicle:*

1.( ) his work must be approved by a mechanic.
2.( ) he must complete and sign a "Certification of Repairman" form himself.
3.( ) his work must be approved by his supervisor.
4.( ) his work must be approved by a Federal inspector.

SCORING KEY

WRITTEN EXAMINATION—FORM A

Subpart	Answer
A1-390.32	4
A2-391.11(b)(1)	4
A3-391.15(c)(2)(3)	4
A4-391.21(b)(7)(8)(10)	4
A5-391.27(a)(b)	1
A6-391.33(2)	2
A7-391.41(b)(5)	1
A8-391.41(b)(7)	2
A9-391.41(b)(8)	2
A10-391.41(b)(9)(12)(13)	4
A11-391.45(c)	3
A12-392.2	2
A13-392.3	4
A14-392.5(a)(1)	1
A15-392.7	2
A16-392.8	1
A17-392.9(a)(3)	2
A18-392.9a	2
A19-392.9b	4
A20-392.10(a)	3
A21-392.10(a)	3
A22-392.13	1

FORM A—Continued

Subpart	Answer
A23-392.15(a)	4
A24-392.16	1
A25-392.21	4
A26-392.22(b)(1)	4
A27-392.22(b)(1)(i)	4
A28-392.22(b)(2)(iii)	3
A29-392.22(b)(2)(v)	4
A30-392.25	4
A31-392.30(a)	3
A32-392.32(a)(b)	1
A33-392.32(a)	1
A34-392.40	4
A35-392.41	3
A36-392.42	3
A37-392.61	3
A38-392.64	2
A39-392.66	2
A40-392.68	3
A41-393.1(a)	4
A42-393 various	3
A43-393.18(a)(b)	2
A44-393.41(a)	1
A45-393.77(b)(6)	3
A46-395.3(a)	3
A47-395.3(a)	2
A48-395.3(b)	3
A49-395.7	2
A50-395.8(b)	1
A51-395.8(c)	4
A52-395.8(1)(p)(q)	4
A53-395.11	4
A54-395.13	4
A55-396.4	3
A56-396.5(c)	3
A57-396.5(c)(4)	2

MOTOR CARRIER—SAFETY REGULATIONS EXAMINATION

FORM B

INSTRUCTIONS

All of the questions contained herein are based on the U.S. Department of Transportation's Motor Carrier Safety Regulations. Applicants for the position of commercial driver are required to take the examination and answer 70 percent of its questions correctly before they can be considered qualified to drive.

Each question has four answers but only one is right. Your job on each question is to read all of the answers and then to pick the *one* answer you think is right. Mark an "X" in the space next to the answer you choose. Do *not* pick more than one answer for each question.

Here is a sample question to show you what is to be done:

The Motor Carrier Safety Regulations were written for:

1.( ) vehicle makers.
2.( ) drivers only.
3.( ) carriers only.
4.( ) drivers and carriers.

The right answer is number 4, "drivers and carriers," so you would mark an "X" in the space next to answer number 4.

Finally, be sure to answer every question and do not skip any pages. Your score will be the number of items correctly answered. Keep in mind that most of the regulations covered here are different from what is required of passenger car drivers; they apply to commercial bus and truck drivers. Again, *pick only one answer for each question.* There is no time limit on the examination, but try to work as fast as you can.

B1-391.11(b)(4) *The safety regulations say that a driver:*

1.( ) doesn't have to know anything about loading cargo.
2.( ) must be able to tell if his cargo or baggage has been properly located, distributed, and secured.
3.( ) must load his own cargo at least once to learn about it.
4.( ) must first work loading cargo for at least 1 month.

B2-391.15(b) *A driver who has any of his commercial licenses revoked, suspended, withdrawn, or denied:*

1.( ) may not drive until his license is restored by the authority that took it away.
2.( ) may not drive for 3 months after his license is restored.
3.( ) may not drive without approval of the Bureau of Motor Carrier Safety.
4.( ) may drive in some States with the approval of State authorities.

B3-391.31(c) *Which of the following is usually not included in a road test?*

1.( ) A pretrip inspection.
2.( ) Performing basic maintenance procedures.
3.( ) Using the vehicle's emergency equipment.
4.( ) Operating the vehicle in traffic.

B4-391.41(a) *Whenever a driver is driving, he must carry:*

1.( ) the original or a copy of his current medical examiner's certificate.
2.( ) a listing of State police locations in the States where he will drive.
3.( ) a copy of the vehicle's last vehicle condition report.
4.( ) all of the above.

B5-391.41(b)(3) *A person cannot drive:*

1.( ) if he has ever had his operator's license suspended.
2.( ) if he has diabetes and requires insulin to control it.
3.( ) if he has a previous arrest record.
4.( ) if he has not completed a basic course in vehicle maintenance.

B6-391.41(b)(4) *Persons with certain heart conditions which may affect safe driving:*

1.( ) cannot drive without a waiver from the Director of the Bureau of Motor Carrier Safety.
2.( ) cannot drive.
3.( ) cannot drive on long runs.
4.( ) cannot drive unless another driver is along.

B7-391.41(b)(6) *Persons with high blood pressure which may affect safe driving:*

1.( ) cannot drive without carrier permission.
2.( ) cannot drive unless they are checked by a doctor before each trip.
3.( ) cannot drive.
4.( ) cannot drive unless another driver is along.

B8-391.41(b)(10) *A person cannot drive unless he can recognize:*

1.( ) at least the color red.
2.( ) at least the colors red and green.
3.( ) at least the colors red, green, and amber (yellow).
4.( ) at least the colors red, green, amber, and white.

B9-391.45(b) *Every driver must have a physical examination at least once:*

1.( ) every 24 or 36 months, depending on carrier practices.
2.( ) every 24 months.
3.( ) every 18 months.
4.( ) every 12 months.

B10-392.2 *Where there are differences between State and local laws and Federal regulations, a driver:*

1.( ) must obey only the law of the State in which he is driving.
2.( ) must obey only the Federal regulations.
3.( ) must obey whichever law or regulation is stricter.
4.( ) must contact the carrier for advice.

B11-392.3 *When a driver's physical condition* before a trip *is too poor for safe driving:*

1.( ) he should drive only if no other driver can take his trip.
2.( ) he should drive only if another driver is along.
3.( ) he should go out on his trip, but should plan to see a doctor, or rest as soon as possible.
4.( ) he should not go out on his trip.

B12-392.3 *When a driver's physical condition* while on a trip *is too poor for safe driving:*

1.( ) he can keep driving, but should see a doctor or rest as soon as his trip is ended.
2.( ) he can keep driving and see if the condition improves.
3.( ) he should stop driving right away unless such stopping would be unsafe.
4.( ) he should keep driving only if he has a schedule to keep.

B13-392.4(a)(1)(2)(3) *No driver shall drive if he has in his possession, is under the influence of, or is using:*

1.( ) a norcotic drug or any byproduct of a narcotic drug.
2.( ) an amphetamine or any byproduct (including but not limited to "pep pills" and "bennies").
3.( ) any other substance which makes him unable to safely operate a vehicle.
4.( ) any of the above.

B14-392.4(c) *A driver may drive while possessing or using a medicine prescribed by a doctor:*

1.( ) only if the doctor tells the driver that the medicine will not affect driving ability.
2.( ) only if the driver does not use it while driving.

3.( ) only if the last dose of medicine is taken at least 4 hours before driving.
4.( ) only if the label says the medicine is safe.

B15-392.5(a)(2)(3) *The safety regulations say that a driver cannot:*
1.( ) drink any alcoholic beverage, regardless of alcoholic content, while on duty or driving.
2.( ) be under the influence of any alcoholic beverage while on duty or driving.
3.( ) possess any alcoholic beverage, regardless of alcoholic content, while on duty or driving.
4.( ) do any of the above.

B16-392.6 *The safety regulations say that motor carriers:*
1.( ) shall not set schedules which would require going faster than the speed limits along the route.
2.( ) shall check with State police authorities before setting route schedules.
3.( ) shall require drivers to prepare schedules.
4.( ) shall include time in each schedule for at least two breakdowns.

B17-392.8 *Which of the following must be in place and ready for use before a vehicle can be driven?*
1.( ) a fire extinguisher which meets regulation standards.
2.( ) a flashlight.
3.( ) a set of extra bulbs for vehicle taillights.
4.( ) all of the above.

B18-392.8 *Which of the following must be carried and ready for use before a vehicle can be driven?*
1.( ) A set of specified emergency warning devices.
2.( ) An ignition repair kit.
3.( ) One spare tire for each two tires on the vehicle.
4.( ) All of the above.

B19-392.9(a) *Any vehicle with a cargo secured or distributed in an unsafe way:*
1.( ) can be driven, but only at low speeds.
2.( ) can be driven, but should be reported at the end of the trip.
3.( ) cannot be driven.
4.( ) can be driven, but only if the load can be carefully watched.

B20-392.9a *A person who wears contact lenses:*
1.( ) cannot drive.
2.( ) can drive only during daylight hours.
3.( ) cannot drive on long runs.
4.( ) must wear his lenses and also carry a spare or a spare set when he drives.

B21-392.11 *Drivers of vehicles* not *required to stop at a railroad grade crossing:*
1.( ) must still be able to stop, if necessary, before reaching the nearest rail.
2.( ) can proceed across without reducing speed.
3.( ) must cross at no less than 35 miles per hour.
4.( ) must slow down only if directed to by an attendant.

B22-392.12 *When approaching a drawbridge without stop and go signals, motor vehicles carrying passengers:*
1.( ) must stop no less than 50 feet from the lip of the draw.
2.( ) must slow down but are not required to stop.
3.( ) can proceed across without reducing speed.
4.( ) must stop only if directed to by an attendant.

B23-392.14 *Which of the following should be done under conditions such as those caused by snow, ice, sleet, fog, mist, dust, or smoke?*
1.( ) The driver should slow down.
2.( ) If conditions become too bad, the vehicle should be stopped.
3.( ) If stopping is dangerous to passengers, the driver should proceed to the nearest safe location.
4.( ) If necessary, the driver should do all of the above.

B24-392.15(b)(c) *Which one of the following is an* approved *use of turn signals?*
1.( ) Using turn signals when moving into the traffic stream or when changing lanes.
2.( ) Flashing turn signals on the traffic side of a parked or disabled vehicle.
3.( ) Using turn signals as a courtesy "OK to pass" signal to other drivers.
4.( ) All of the above.

B25-392.20 *No motor vehicle may be left unattended:*
1.( ) unless the vehicle is parked on the shoulder of the road.
2.( ) until the parking brake is well set and every step has been taken to keep the vehicle from moving.
3.( ) unless the turn signals are left flashing.
4.( ) for more than 1 hour.

B26-392.22(a) *Whenever a vehicle on a poorly lit street or highway must be stopped, the driver:*
1.( ) should immediately get out and wave traffic by.
2.( ) should immediately flash the two front and two rear turn signals.
3.( ) should immediately flash the turn signal nearest the highway.
4.( ) should immediately telephone for help in directing traffic.

B27-392.22(b)(1) *Placing some form of emergency signal must be done on all stops, other than necessary traffic stops, no later than:*
1.( ) 10 minutes.
2.( ) 15 minutes.
3.( ) 20 minutes.
4.( ) 25 minutes.

B28-392.22(b)(2)(vi) *If gasoline or some or some other flammable liquid leaks from a motor vehicle stopped on a poorly lit road, the driver:*
1.( ) should not use any signal producing a flame unless it is lighted and placed far enough away to prevent fire or explosions.
2.( ) should not place any signals.
3.( ) should immediately go for assistance.
4.( ) should signal the emergency with turn signals and nothing else.

B29-392.22(b)(2)(ii) *If a disabled vehicle is stopped on a highway or shoulder during daylight hours, the required emergency signal is a set of:*
1.( ) emergency triangles.
2.( ) white flags.
3.( ) blue flags.
4.( ) orange or yellow flags.

B30-392.22(b)(2)(ii) *If a disabled vehicle is stopped on a highway or shoulder during daylight hours, the driver shall place:*
1.( ) one red flag 50 feet in front and one red flag 50 feet in back of the vehicle in the center of its lane.
2.( ) one red flag 100 feet in front and one red flag 100 feet in back of the vehicle in the center of its lane.
3.( ) one red flag 100 feet in back of the vehicle in the center of its lane.
4.( ) one red flag 200 feet in back of the vehicle in the center of its lane.

B31-392.24 *Flame-producing emergency signals, including fusees:*
1.( ) may not be attached to any motor vehicle at any time.
2.( ) may not be attached to any motor vehicle without carrier approval.
3.( ) may be attached to a vehicle only when other signal devices are not available.
4.( ) may be attached to a vehicle at any time.

B32-392.30(b) *A driver is required to have his lights on whenever he cannot clearly see persons and other vehicles on the road at a distance of:*
1.( ) 250 feet.
2.( ) 500 feet.
3.( ) 750 feet.
4.( ) 1,000 feet.

B33-392.31 *When a vehicle is parked or stopped on the highway in a business or residential district of a city and street lighting is not enough to see clearly, the vehicle:*
1.( ) should have at least one white or amber light on its traffic side which can be seen at least 500 feet to the front.
2.( ) should have at least one red light which can be seen at least 500 feet to the rear.
3.( ) should have head lamps dimmed or depressed, if in use.
4.( ) should have all of the above.

B34-392.33 *When any of the vehicle's required lights are found at any time to be covered by dirt, by the tailboard, or by any part of the load or otherwise, the vehicle:*
1.( ) may not be driven until the problem is fixed.
2.( ) may be driven, but the problem should be fixed as soon as possible.
3.( ) may be driven, but the problem should be reported.
4.( ) is subject to the carrier's judgment as to its usefulness.

B35-392.41 *If a driver cannot find the owner or driver of a parked vehicle which he has hit, he should leave:*
1.( ) his name and address and that of his carrier.
2.( ) his name, license number, and the phone number or address of his destination.
3.( ) the name of his supervisor and his business phone number.
4.( ) nothing—he should wait until the owner or driver of the parked vehicle returns.

B36-392.50(a)(b)(c) *Which of the following is* not *in the safety regulations on fueling a motor vehicle?*
1.( ) The engine should not be running, except when it is necessary to run the engine to fuel the vehicle.
2.( ) The driver should not sit in the cab while it is being fueled.
3.( ) No one should be allowed to smoke near the vehicle while it is being fueled.
4.( ) The nozzle of the fuel hose should always be in contact with the fuel tank intake pipe.

B37-392.51 *The fuel supply for a motor vehicle may be carried:*
1.( ) in properly mounted fuel tanks and in 25 gallon drums for emergency use.
2.( ) in properly mounted fuel tanks and nowhere else on the vehicle.
3.( ) in properly mounted fuel tanks and in 10 gallon drums for emergency use.
4.( ) in properly mounted fuel tanks and in 5 gallon drums for emergency use.

B38–392.60 *Except in certain emergencies and with certain farm vehicles, a truck driver may not carry any passengers:*
1.( ) unless he knows the person.
2.( ) unless he has written authority to do so.
3.( ) unless the person is in his family.
4.( ) unless he is traveling outside city limits.

B39–392.65 *A person may move in or out of a sleeper berth in a moving motor vehicle:*
1.( ) at any time.
2.( ) only when the vehicle is moving less than 30 miles per hour.
3.( ) only if it can be done without going outside the cab.
4.( ) at no time.

B40–393.19 *Every motor vehicle must have a signal system:*
1.( ) which can signal turns.
2.( ) which can flash the two front turn signals and the two rear signals at the same time.
3.( ) which can flash all turn signals at the same time whether the ignition is on or off.
4.( ) which can do all of the above.

B41–393.52 *Requirements for vehicle service braking performance:*
1.( ) are set by vehicle makers.
2.( ) are specified in detail in the safety regulations.
3.( ) have been set by the National Safety Council.
4.( ) are set according to the laws of the counties in which the vehicle operates.

B42–393.60(c) *Objects or stickers which block the driver's view:*
1.( ) are allowed at the top of the windshield.
2.( ) are allowed only on the passenger side.
3.( ) are not allowed.
4.( ) are allowed only with carrier approval.

B43–393.75(a) *A vehicle which has a tire with fabric showing through the tread or the sidewall:*
1.( ) may be driven, but at speeds less than 50 miles per hour.
2.( ) may be driven, but the tire or tires should be changed as soon as possible.
3.( ) may be driven if the carrier thinks it is safe.
4.( ) may not be driven.

B44–393.85(a) *Any truck carrying a cargo which could break into or crush the cab if it shifts:*
1.( ) must be driven according to hazardous materials regulations.
2.( ) must be driven only on primary roads.
3.( ) must be especially equipped so that shifting is prevented.
4.( ) must be driven on secondary roads.

B45–395.2(a) *"On-duty" time is defined as:*
1.( ) only the time spent by the driver actually driving.
2.( ) all of the time when the driver is actually working or required to be ready for work.
3.( ) only the time spent by the driver driving or inspecting his vehicle.
4.( ) only the time spent by the driver driving or servicing his vehicle.

B46–395.2(a)(1)(2)(4)(5) *Which of the following is* not *"on-duty" time?*
1.( ) Time spent in loading or unloading a vehicle.
2.( ) Time spent waiting at a carrier's terminal to be dispatched.
3.( ) Time spent in a sleeper berth.
4.( ) Time spent inspecting or servicing a vehicle.

B47–395.3(b) *Carriers operating every day in the week may allow a driver to be on duty:*
1.( ) for not more than 50 hours in any 8 straight days.
2.( ) for not more than 60 hours in any 8 straight days.
3.( ) for not more than 70 hours in any 8 straight days.
4.( ) for not more than 80 hours in any 8 straight days.

B48–395.3(c) *Driving time limits exist for all drivers except:*
1.( ) those driving two axle vehicles of no more than 10,000 pounds gross weight which do not carry passengers or hazardous materials.
2.( ) those driving vehicles carrying oilfield equipment.
3.( ) those driving in the State of Alaska.
4.( ) those driving vehicles carrying hazardous materials.

B49–395.8(a) *Not keeping logs, making false entries, or failures to make entries or save logs:*
1.( ) make both the carrier and driver liable to prosecution.
2.( ) makes only the carrier liable to prosecution.
3.( ) makes only the carrier liable to prosecution.
4.( ) makes neither the carrier or driver liable to prosecution.

B50–395.8(r) *A driver should send his log to his home terminal or to the carrier's main office:*
1.( ) at the end of each day.
2.( ) at the end of each week.
3.( ) every 2 weeks.
4.( ) at the end of each month.

B51–395.8(t) *A driver does not have to keep a log:*
1.( ) if he is on duty less than 8 hours.
2.( ) if he only drives two axle vehicles.
3.( ) if he only drives within 50 miles of his home terminal and the carrier keeps time records.
4.( ) if he only drives part time.

B52–395.10 *When snow, sleet, fog, or other such weather or unusual road conditions are present, a driver may be required or allowed to complete his run by driving:*
1.( ) no more than 12 hours following 8 straight hours off duty.
2.( ) no more than 14 hours following 8 straight hours off duty.
3.( ) no more than 15 hours following 8 straight hours off duty.
4.( ) no more than 16 hours following 8 straight hours off duty.

B53–395.13 *A driver will be declared "Out of Service":*
1.( ) if he is found to have driven longer than the allowed time limit.
2.( ) if his vehicle needs any repairs.
3.( ) if his log is inspected and is not current.
4.( ) if he appears tired to the examiner.

B54–396.4 *A vehicle which is likely to cause an accident or have a breakdown if it is driven:*
1.( ) must not be driven.
2.( ) must be reported, but can be used for short runs until it is fixed.
3.( ) may only be driven at speeds of 40 miles per hour or less.
4.( ) may be driven only if operating schedules make it necessary.

B55–396.5(c)(4) *The completion of the repair work on an "out of service" vehicle must be certified by:*
1.( ) the person who does the repair work.
2.( ) the supervisor of the person who makes the repairs.
3.( ) an authorized Federal inspector.
4.( ) the safety director of the carrier.

B56–396.6 *The amount of the damage and the safety of any vehicle damaged in an accident or from another cause must be determined:*
1.( ) within 24 hours of the time of the accident.
2.( ) by the driver of the vehicle's next scheduled run.
3.( ) by a qualified person before the vehicle may be driven again.
4.( ) by local police authorities.

B57–396.7 *With a few exceptions, a written "vehicle condition report" must be supplied by a driver to his carrier:*
1.( ) at the end of each week of driving.
2.( ) at the end of each day's work or tour of duty.
3.( ) every time he changes duty status.
4.( ) only when he changes vehicles.

SCORING KEY

WRITTEN EXAMINATION—FORM B

Subpart	*Answer*
B1–391.11(b)(4)	2
B2–391.15(b)	1
B3–391.31(c)	2
B4–391.41(a)	1
B5–391.41(b)(3)	2
B6–391.41(b)(4)	2
B7–391.41(b)(6)	3
B8–391.41(b)(10)	3
B9–391.45(b)	2
B10–392.2	3
B11–392.3	4
B12–392.3	3
B13–392.4(a)(1)(2)(3)	4
B14–392.4(c)	1
B15–392.5(a)(2)(3)	4
B16–392.6	1
B17–392.8	1
B18–392.8	1
B19–392.9(a)	3
B20–392.9a	4
B21–392.11	1
B22–392.12	1
B23–392.14	4
B24–392.15(b)(c)	1
B25–392.20	2
B26–392.22(a)	2
B27–392.22(b)(1)	1
B28–392.22(b)(2)(vi)	1
B29–392.22(b)(2)(ii)	1
B30–392.22(b)(2)(ii)	2
B31–392.24	1
B32–392.30(b)	2
B33–392.31	4
B34–392.33	1
B35–392.41	1
B36–392.50(a)(b)(c)	2
B37–392.51	2
B38–392.60	2
B39–392.65	3
B40–393.19	4
B41–393.52	2
B42–393.60(c)	3
B43–393.75(a)	4
B44–393.85(a)	3
B45–395.2(a)	2
B46–395.2(a)(1)(2)(4)(5)	3
B47–395.3(b)	3
B48–395.3(c)	1
B49–395.8(a)	1
B50–395.8(r)	1
B51–395.8(t)	3
B52–395.10	1
B53–395.13	1
B54–396.4	1
B55–396.5(c)(4)	1
B56–396.6	3
B57–396.7	2

MOTOR CARRIER—SAFETY REGULATIONS EXAMINATION

FORM C

INSTRUCTIONS

All of the questions contained herein are based on the U.S. Department of Transportation's Motor Carriers Safety Regulations. Applicants for the position of commercial driver are required to take the examination and answer 70 percent of its questions correctly before they can be considered qualified to drive.

Each question has four answers but only one is right. Your job on each question is to read all of the answers and then to pick the *one* answer you think is right. Mark an "X" in the space next to the answer you choose. Do *not* pick more than one answer for each question.

Here is a sample question to show you what is to be done:

The Motor Carrier Safety Regulations were written for:

1.( ) vehicle makers.
2.( ) drivers only.
3.( ) carriers only.
4.( ) drivers and carriers.

The right answer is number 4, "drivers and carriers," so you would mark an "X" in the space next to answer 4.

Finally, be sure to answer every question and do not skip any pages. Your score will be the number of items correctly answered. Keep in mind that most of the regulations covered here are different from what is required of passenger car drivers; they apply to commercial bus and truck drivers. Again, *pick only one answer for each question.* There is no time limit on the examination, but try to work as fast as you can.

C1–390.32 *A motor carrier who is also a driver (owner-operator):*

1.( ) is not covered by the safety regulations.
2.( ) must obey only those parts of the regulations which cover drivers.
3.( ) must obey only those parts of the regulations which cover motor carriers.
4.( ) must obey both the parts covering drivers and the parts covering motor carriers.

C2–391.11(b)(1) *With only a few exceptions, the Motor Carrier Safety Regulations say a driver must be:*

1.( ) at least 18 years old.
2.( ) at least 19 years old.
3.( ) at least 20 years old.
4.( ) at least 21 years old.

C3–391.15(c)(2)(3) *A driver cannot drive a motor vehicle:*

1.( ) for 1 year after a first offense conviction for a felony involving a commercial motor vehicle he was driving.
2.( ) for 1 year after a first offense conviction for driving a commercial vehicle under the influence of alcohol or narcotics.
3.( ) for 1 year after a first offense conviction for leaving the scene of an accident which resulted in personal injury or death.
4.( ) for 1 year after a first offense conviction for any of the above.

C4–391.21(b)(7)(8)(10) *Every driver applicant must fill out an application form giving:*

1.( ) a list of all vehicle accidents he was in during the previous 3 years.
2.( ) a list of all of his motor vehicle violation convictions and bond forfeits (except for parking) during the previous 3 years.
3.( ) a list of names and addresses of all of his employers during the previous 3 years.
4.( ) all of the above.

C5–391.27(a)(b) *At least once a year, a driver must fill out a form listing all motor vehicle violations (except parking) which he had during the previous 12 months. He must fill out the form:*

1.( ) even if he had no violations.
2.( ) only if he was convicted.
3.( ) only if he was convicted or forfeited bond or collateral.
4.( ) only if the carrier requires it.

C6–391.33(a)(2) *If a driver applicant has a valid certificate showing he passed a driver's road test:*

1.( ) the carrier must accept it.
2.( ) the carrier may still require the applicant to take a road test.
3.( ) the carrier cannot accept it.
4.( ) the carrier may request a road test waiver from the Bureau of Motor Carrier Safety.

C7–391.41(b)(5) *Persons with breathing problems which may affect safe driving:*

1.( ) cannot drive.
2.( ) cannot drive unless the vehicle has an emergency oxygen supply.
3.( ) cannot drive unless another driver is along.
4.( ) cannot drive except on short runs.

C8–391.41(b)(7) *Persons with arthritis, rheumatism, or any such condition which may affect safe driving:*

1.( ) cannot drive unless they are checked by a doctor before each trip.
2.( ) cannot drive.
3.( ) cannot drive except when they are free of pain.
4.( ) cannot drive unless another driver is along.

C9–391.41(b)(8) *Persons who have ever had epilepsy:*

1.( ) cannot drive unless another driver is along.
2.( ) cannot drive.
3.( ) cannot drive on long runs.
4.( ) cannot drive without monthly medical examinations.

C10–391.41(b)(9)(12)(13) *In order to be able to drive, a person:*

1.( ) must not have any mental, nervous, or physical problem likely to affect safe driving.
2.( ) must not use an amphetamine, narcotic, or any habit-forming drug.
3.( ) must not have a current alcoholism problem.
4.( ) must not have or use any of the above.

C11–391.45(c) *Any driver who gets an injury or illness serious enough to affect his ability to perform his duties:*

1.( ) must report it at his next scheduled physical.
2.( ) cannot drive again.
3.( ) must take another physical and be recertified before driving again.
4.( ) must wait at least 1 month after recovery before driving again.

C12–392.2 *A driver may* not *drive faster than posted speed limits:*

1.( ) unless he is sick and must complete his run quickly.
2.( ) at any time.
3.( ) unless he is passing another vehicle.
4.( ) unless he is late and must make a scheduled arrival.

C13–392.3 *When a driver's physical condition while on a trip requires that he stop driving, but stopping would not be safe, the driver:*

1.( ) must stop anyway.
2.( ) may try to complete his trip, but as quickly as possible.
3.( ) may continue to drive to his home terminal.
4.( ) may continue to drive, but must stop at the nearest safe place.

C14–392.5(a)(1) *A driver may not drink or be under the influence of any alcoholic beverage (regardless of alcoholic content):*

1.( ) within 4 hours before going on duty or driving.
2.( ) within 6 hours before going on duty or driving.
3.( ) within 8 hours before going on duty or driving.
4.( ) within 12 hours before going on duty or driving.

C15–392.7 *A driver must satisfy himself that service and parking brakes, tires, lights and reflectors, mirrors, coupling, and other devices are in good working order:*

1.( ) at the end of each trip.
2.( ) before the vehicle may be driven.
3.( ) only when he considers it necessary.
4.( ) according to schedules set by the carrier.

C16–392.8 *Which of the following must be in place and ready for use before a vehicle can be driven?*

1.( ) At least one spare fuse or other overload protector of each type used on the vehicle.
2.( ) a tool kit containing a specified list of hand tools.
3.( ) At least one spare tire for every four wheels.
4.( ) A set of spark plugs.

C17–392.9(a)(3) *If any part of the cargo or anything else blocks a driver's front or side views, his arm or leg movements, or his access to emergency equipment, the driver:*

1.( ) can drive the vehicle, but must report the problems at the end of the trip.
2.( ) cannot drive the vehicle.
3.( ) can drive the vehicle, but only at speeds under 40 miles per hour.
4.( ) can drive the vehicle, but only on secondary roads.

C18–392.9a *Any driver who needs glasses to meet the minimum visual requirements:*

1.( ) must drive only during daylight hours.
2.( ) must always wear his glasses when driving.
3.( ) must always carry a spare pair of glasses.
4.( ) must not drive a motor vehicle.

C19–392.9b *A driver may drive with a hearing aid:*

1.( ) if he always has it turned on while he is driving.
2.( ) if he always carries a spare power source for it.
3.( ) if he can meet the hearing requirements when he has it turned on.
4.( ) if all of the above are met.

C20–392.10(a) *A driver required to stop at a railroad crossing should bring his vehicle to a stop no closer to the tracks than:*

1.( ) 5 feet.
2.( ) 10 feet.
3.( ) 15 feet.
4.( ) 20 feet.

C21–392.10(a) *Shifting gears is not permitted:*

1.( ) when traveling faster than 35 miles per hour.
2.( ) when moving across any bridge.
3.( ) when crossing railroad tracks.
4.( ) when traveling down a hill steeper than 10°.

C22-392.13 *Drivers of motor vehicles not required to stop at drawbridges without signals:*
1.( ) must drive at a rate of speed which will permit a stop before reaching the lip of the draw.
2.( ) must sound their horn before crossing.
3.( ) can proceed across without reducing speed.
4.( ) must slow down only if directed to by an attendant.

C23-392.15(a) *A driver turning his vehicle should begin flashing his turn signal:*
1.( ) at least 50 feet before turning.
2.( ) at least 60 feet before turning.
3.( ) at least 75 feet before turning.
4.( ) at least 100 feet before turning.

C24-392.16 *Which of the following is true?*
1.( ) If a seat belt is installed in the vehicle, a driver must have it fastened before beginning to drive.
2.( ) A driver may or may not use the seat belt, depending on his judgment.
3.( ) Seat belts are not necessary on heavier vehicles.
4.( ) A driver must use his seat belt only if required to by the carrier.

C25-392.21 *When a motor vehicle cannot be stopped off the traveled part of the highway, the driver:*
1.( ) must keep driving.
2.( ) may stop, but shall get as far off the traveled part of the highway as possible.
3.( ) may stop, but shall make sure that the vehicle can be seen as far as possible to its front and rear.
4.( ) may stop if he has to, but should do both 2 and 3 above.

C26-392.22(b)(1) *If a vehicle has a breakdown the driver must place one emergency signal:*
1.( ) 100 feet in front of the vehicle in the center of the lane it occupies.
2.( ) 100 feet in back of the vehicle in the center of the lane it occupies.
3.( ) 10 feet in front or back of the vehicle on the traffic side.
4.( ) at all of the above locations.

C27-392.22(b)(1)(i) *If a vehicle has a breakdown on a poorly lit street or highway, the driver shall place on the traffic side:*
1.( ) a reflective triangle.
2.( ) a lighted red electric lantern.
3.( ) a red reflector.
4.( ) any one of the above.

C28-392.22(b)(2)(iii) *No emergency signals are required for a vehicle with a breakdown if the street or highway lighting is bright enough so it can be seen at a distance of:*
1.( ) 100 feet.
2.( ) 200 feet.
3.( ) 500 feet.
4.( ) 750 feet.

C29-392.22(b)(v) *If a vehicle has a breakdown and stops on a poorly lit* divided or one way *highway, the driver must place one emergency signal:*
1.( ) 200 feet in back of the vehicle in the center of the lane it occupies.
2.( ) 100 feet in back of the vehicle in the center of the lane it occupies.
3.( ) 10 feet in back of the vehicle on the traffic side of the vehicle.
4.( ) at all of the above locations.

C30-392.25 *Lighted flame-producing emergency signals, including fusees:*
1.( ) may not be used with vehicles carrying class A or B explosives.
2.( ) may not be used with tank vehicles, loaded or empty, which are used to carry flammable liquids or gas.
3.( ) may not be used with any vehicle using compressed gas as a fuel.
4.( ) may not be used with any of the above.

C31-392.30(a) *A driver is required to have his lights on:*
1.( ) from one-half hour *before* sunset to one-half hour *before* sunrise.
2.( ) from one-half hour *before* sunset to sunrise.
3.( ) from one-half hour *after* sunset to one-half hour *before* sunrise.
4.( ) from sunset to one-half hour before sunrise.

C32-392.32(a)(b) *When lights are required on the open highway, a driver shall use the high beam:*
1.( ) except when within 500 feet of an on-coming vehicle or a vehicle he is following.
2.( ) except when within 400 feet of an on-coming vehicle or a vehicle he is following.
3.( ) except when within 200 feet of an on-coming vehicle or a vehicle he is following.
4.( ) except when within 100 feet of an on-coming vehicle or a vehicle he is following.

C37-392.61 *Except in emergencies, no driver shall allow his vehicle to be driven by any other person:*
1.( ) except those he knows can drive it.
2.( ) except on roads with little or no traffic.
3.( ) except those allowed by the carrier to do it.
4.( ) unless he goes along with the person driving.

C38-392.64 *A person may ride inside a vehicle's closed body or trailer:*
1.( ) only on short runs.
2.( ) only if there is an easy way to get out from the inside.
3.( ) only if the inside of the body or trailer is lighted.
4.( ) only if there is no cargo in it.

C39-392.66 *If carbon monoxide is inside a vehicle or if a mechanical problem may produce a carbon monoxide danger, the vehicle:*
1.( ) may be sent out and driven so long as the windows are left open.
2.( ) may not be sent out or driven.
3.( ) may be sent out and driven only if the carrier decides the vehicle has to be used.
4.( ) may be sent out and driven on short runs.

C40-392.68 *No motor vehicle shall be operated out of gear:*
1.( ) except when fuel must be saved.
2.( ) except on hills which are less than 20°.
3.( ) except when it is necessary for stopping or shifting gears.
4.( ) except when the vehicle's speed is under 25 miles per hour.

C33-392.32(a) *When lights are required, drivers may use lower beam lights:*
1.( ) when fog, dust, or other such conditions exist.
2.( ) when approaching tunnels or bridges.
3.( ) when driving on one-way highways.
4.( ) when within 1,000 feet of business areas or where people live.

C34-392.40 *Every driver involved in an accident must follow the safety regulation procedures whenever an injury or death is involved or if:*
1.( ) the accident is caused by the driver and property damage of over $250 results.
2.( ) property damage of over $250 results, no matter who is at fault.
3.( ) property damage of over $100 results.
4.( ) property damage of any kind results.

C35-392.41 *If a driver strikes a parked vehicle, he should* first:
1.( ) stop and call the local police.
2.( ) stop and call his carrier.
3.( ) stop and try to find the driver or owner of the parked vehicle.
4.( ) stop and estimate the damage.

C36-392.42 *When a driver receives notice that his operator's license or permit has been revoked, suspended, or withdrawn, he must:*
1.( ) notify his carrier within 72 hours.
2.( ) notify his carrier within 1 week.
3.( ) notify his carrier before the end of the next business day.
4.( ) take no action since his carrier will also get a notice.

C37-392.61 *Except in emergencies, no driver shall allow his vehicle to be driven by any other person:*
1.( ) except those he knows can drive it.
2.( ) except on roads with little or no traffic.
3.( ) except those allowed by the carrier to do it.
4.( ) unless he goes along with the person driving.

C38-392.64 *A person may ride inside a vehicle's closed body or trailer:*
1.( ) only on short runs.
2.( ) only if there is an easy way to get out from the inside.
3.( ) only if the inside of the body or trailer is lighted.
4.( ) only if there is no cargo in it.

C39-392.66 *If carbon monoxide is inside a vehicle or if a mechanical problem may produce a carbon monoxide danger, the vehicle:*
1.( ) may be sent out and driven so long as the windows are left open.
2.( ) may not be sent out or driven.
3.( ) may be sent out and driven only if the carrier decides the vehicle has to be used.
4.( ) may be sent out and driven on short runs.

C40-392.68 *No motor vehicle shall be operated out of gear:*
1.( ) except when fuel must be saved.
2.( ) except on hills which are less than 20°.
3.( ) except when it is necessary for stopping or shifting gears.
4.( ) except when the vehicle's speed is under 25 miles per hour.

C41-393.1(a) *Under the Motor Carrier Safety Regulations, no vehicle may be driven:*
1.( ) until a list of all missing or defective equipment has been prepared and given to the carrier.
2.( ) until all equipment has been inspected and replacements for defective parts have been ordered.
3.( ) unless all missing equipment is to to be replaced no later than the end of the vehicle's next run.
4.( ) until it meets all of the equipment requirements of the regulations.

C42-393 various *Minimum requirements for lighting, reflecting and electrical equipment and devices on buses and trucks:*
1.( ) are set by the vehicle makers.
2.( ) are set by the National Safety Council.
3.( ) are specified in the safety regulations.
4.( ) are set by the trucking associations.

C43-393.18(a)(b) *Every motor vehicle which has a load sticking out over its sides must be specially marked with flags and lamps. Additional flags and lamps must be added if the load or tailgate sticks out beyond the rear of the vehicle by more than:*
1.( ) 2 feet.
2.( ) 4 feet.
3.( ) 6 feet.
4.( ) 8 feet.

C44-393.41(a) *Every vehicle shall have a parking brake system which will hold it, no matter what its load:*
1.( ) on any grade on which it is operated which is free from ice and snow.
2.( ) on all grades under 15° which are free from ice and snow.
3.( ) on all grades under 20° which are free from ice and snow.
4.( ) on all grades under 25° which are free from ice and snow.

C45-393.77(b)(6) *A portable heater may not be used in any vehicle cab:*
1.( ) unless it is secured.
2.( ) unless it is of the electric filament type.
3.( ) at any time.
4.( ) without approval from the carrier.

C46-395.3(a) *Drivers are not generally allowed to drive for more than:*
1.( ) 6 hours following 8 straight hours off duty.
2.( ) 8 hours following 8 straight hours off duty.
3.( ) 10 hours following 8 straight hours 14 hours.
4.( ) 12 hours following 8 straight hours off duty.

C47-395.3(a) *Most drivers of large vehicles are* not *allowed to drive.*
1.( ) after they have been *on duty* for 16 hours.
2.( ) after they have been *on duty* for 15 hours.
3.( ) after they have been *on duty* for 14 hours.
4.( ) after they have been *on duty* for 12 hours.

C48-395.3(b) *Generally, a driver may* not *be "on duty":*
1.( ) for more than 40 hours in any 7 straight days.
2.( ) for more than 50 hours in any 7 straight days.
3.( ) for more than 60 hours in any 7 straight days.
4.( ) for more than 70 hours in any 7 straight days.

C49-395.7 *When a driver is riding in a vehicle, but is not driving and has no other responsibility, such time shall be counted as:*
1.( ) on-duty time.
2.( ) on-duty time unless he is allowed 8 straight hours off duty when he gets to the destination.
3.( ) on-duty time unless he is allowed 6 straight hours off duty when he gets to the destination.
4.( ) on-duty time unless he is allowed 4 straight hours off duty when he gets to the destination.

C50-395.8(b) *Every driver must prepare an original and one copy of a daily log which he must keep current by updating it:*
1.( ) every time he changes a duty status.
2.( ) every 24 hours.
3.( ) every 8 hours.
4.( ) at the end of each trip.

C51-395.8(c) *Except for the name and main address of the carrier, all entries in a log:*
1.( ) must be printed in ink or typed.
2.( ) must be made by the carrier dispatcher.
3.( ) must be made in front of a witness.
4.( ) must be written in the driver's own handwriting.

C52-395.8(1)(p)(q) *Which of the following is* not *to be put in a driver's log?*
1.( ) Time spent in a sleeper berth.
2.( ) Total hours in each duty status.
3.( ) The name of the carrier or carriers.
4.( ) The name and make of his vehicle.

C53-395.11 *If an emergency delays a run which could normally have been completed within hours of service limits, the driver:*
1.( ) must still stop driving when the hours of service limit is reached.
2.( ) may drive for 1 extra hour.
3.( ) may drive for 2 extra hours.
4.( ) may finish his run without being in violation.

C54-395.13 *Any driver declared "out of service":*
1.( ) must take a road test before driving again.
2.( ) must wait 72 hours before driving again.
3.( ) must appeal to the Director of the Bureau of Motor Carrier Safety to drive again.
4.( ) can drive again only after hours of service requirements are met.

C55-396.4 *If a vehicle on a trip is in a condition likely to cause an accident or breakdown:*
1.( ) the driver should report it at the end of his run so repairs can be made.
2.( ) the driver should drive at lower speeds for the rest of the run.
3.( ) the driver should stop immediately unless going on to the nearest repair shop is safer than stopping.
4.( ) the driver should change his route so as to get away from heavily traveled roads.

C56-396.5(c) *If authorized Federal inspectors find a vehicle which is likely to cause an accident or breakdown:*
1.( ) it will be reported to the carrier for repair as soon as the vehicle is not scheduled.
2.( ) it will be reported to the carrier for repair at the end of the trip.
3.( ) it will be marked with an "out of service vehicle" sticker and not driven until repairs are made.
4.( ) the driver will be held responsible and declared "out of service."

C57-396.5(c)(4) *If the driver makes his own repairs on an "out of service vehicle":*
1.( ) his work must be approved by a mechanic.
2.( ) he must complete and sign a "certification of repairman" form himself.
3.( ) his work must be approved by his supervisor.
4.( ) his work must be approved by a Federal inspector.

C58-397.3 *Department of Transportation Regulations covering the driving and parking of vehicles containing hazardous materials:*
1.( ) replace State and local laws.
2.( ) prevent States and cities from having their own laws.
3.( ) must be obeyed even if State or local laws are less strict or disagree.
4.( ) should not be obeyed if State or local laws disagree.

C59-397.5(c) *A vehicle which contains hazardous materials* other than *class A or B explosives must be attended at all times:*
1.( ) by the driver.
2.( ) by the driver except when he is involved in something else necessary to his duties as a driver.
3.( ) by the driver or a person chosen by the driver.
4.( ) by the driver or a police officer.

C60-397.5(d)(1) *A vehicle containing class A or B explosives or other hazardous materials on a trip is "attended":*
1.( ) when the person in charge is anywhere within 100 feet of it.
2.( ) as long as the driver can see it from 200 feet away.
3.( ) when the person in charge is within 100 feet and has a clear view of it.
4.( ) when the person in charge is resting in the berth.

C61-397.7(a)(3) *Except for short periods when operations make it necessary, trucks carrying class A or B explosives cannot be parked any closer to bridges, tunnels, buildings, or crowds of people than:*
1.( ) 50 feet.
2.( ) 100 feet.
3.( ) 200 feet.
4.( ) 300 feet.

C62-397.13(a) *Smoking or carrying a lighted cigarette, cigar, or pipe near a vehicle which contains explosives, oxidizing, or flammable materials is not allowed:*
1.( ) except in the closed cab of the vehicle.
2.( ) except when the vehicle is moving.
3.( ) except at a distance of 25 feet or more from the vehicle.
4.( ) except when approved by the carrier.

C63-397.15(a)(b) *When a vehicle containing hazardous materials is being fueled:*
1.( ) no peson may remain in the cab.
2.( ) a person must be in control of the fueling process at the point where the fuel tank is filled.
3.( ) the area within 50 feet of the vehicle must be cleared.
4.( ) the person who controls the fueling process must wear special clothes.

C64-397.17(a) *If a vehicle carrying hazardous materials is equipped with dual tires on any axle, the driver must examine the tires:*
1.( ) at all fueling stops only.
2.( ) only at the end of each day or tour of duty.
3.( ) at the beginning of each trip and each time the vehicle is parked.
4.( ) at the beginning of each trip only.

C65-397.17(c) *If a driver of a vehicle carrying hazardous materials finds a tire which is overheated, he must:*
1.( ) wait for the overheated tire to cool before going on.
2.( ) remove and replace the overheated tire, store it on the vehicle and drive on.
3.( ) remove the tire, place it a safe distance from the vehicle and not drive the vehicle until the cause of the overheating is fixed.
4.( ) drive slowly to the nearest repair shop and have the cause of the overheating fixed.

C66-177.823(a)(3) *When required, specified hazardous materials markings or signs must be placed:*
1.( ) wherever they can be seen clearly.
2.( ) on the sides and rear of the vehicle.
3.( ) on the front, rear and sides of the vehicle.
4.( ) on the front and rear bumpers of the vehicle.

SCORING KEY

WRITTEN EXAMINATION—FORM C

Subpart	Answer
C1-390.32	4
C2-391.11(b)(1)	4
C3-391.15(c)(2)(3)	4
C4-391.21(b)(7)(8)(10)	4
C5-391.27(a)(b)	1
C6-391.33(2)	2
C7-391.41(b)(5)	1
C8-391.41(b)(7)	2
C9-391.41(b)(8)	2
C10-391.41(b)(9)(12)(13)	4
C11-391.45(c)	3
C12-392.2	2
C13-392.3	4
C14-392.5(a)(1)	1
C15-392.7	2
C16-392.8	1
C17-392.9(a)(3)	2
C18-392.9(a)	2
C19-392.9(b)	4
C20-392.10(a)	3
C21-392.10(a)	3
C22-392.13	1
C23-392.15(a)	4
C24-392.16	1
C25-392.21	4
C26-392.22(b)(1)	4
C27-392.22(b)(1)(i)	4
C28-392.22(b)(2)(iii)	3
C29-392.22(b)(2)(v)	4
C30-393.25	4
C31-392.30(a)	3
C32-392.32(a)(b)	1

FORM C—Continued

Subpart	Answer
C33-392.32(a)	1
C34-392.40	4
C35-392.41	3
C36-392.42	3
C37-392.61	3
C38-392.64	2
C39-392.66	2
C40-392.68	3
C41-393.1(a)	4
C42-393 various	3
C43-393.18(a)(b)	2
C44-393.41(a)	1
C45-393.77(b)(6)	3
C46-395.3(a)	3
C47-395.3(a)	2
C48-395.3(b)	3
C49-395.7	2
C50-395.8(b)	1
C51-395.8(c)	4
C52-395.8(1)(p)(q)	4
C53-395.11	4
C54-395.13	4
C55-396.4	3
C56-396.5(c)	3
C57-396.5(c)(4)	2
C58-397.3	3
C59-397.5(c)	2
C60-397.5(d)(1)	3
C61-397.7(a)(3)	4
C62-397.13(a)	3
C63-397.15(a)(b)	2
C64-397.17(a)	3
C65-397.17(c)	3
C66-177.823(a)(3)	3

MOTOR CARRIER—SAFETY REGULATIONS EXAMINATION

FORM D

INSTRUCTIONS

All of the questions contained herein are based on the U.S. Department of Transportation's Motor Carrier Safety Regulations. Applicants for the position of commercial driver are required to take the examination and answer 70 percent of its questions correctly before they can be considered qualified to drive.

Each question has four answers but only one is right. Your job on each question is to read all of the answers and then to pick the *one* answer you think is right. Mark an "X" in the space next to the answer you choose. Do *not* pick more than one answer for each question.

Here is a sample question to show you what is to be done:

The Motor Carrier Safety Regulations were written for:

1.( ) vehicle makers.
2.( ) drivers only.
3.( ) carriers only.
4.( ) drivers and carriers.

The right answer is number 4, "drivers and carriers," so you would mark an "X" in the space next to answer number 4.

Finally, be sure to answer every question and do not skip any pages. Your score will be the number of items correctly answered. Keep in mind that most of the regulations covered here are different from what is required of passenger car drivers; they apply to commercial bus and truck drivers. Again, *pick only one answer for each question.* There is no time limit on the examination, but try to work as fast as you can.

D1-391.11(b)(4) *The safety regulations say that a driver:*

1.( ) doesn't have to know anything about loading cargo.
2.( ) must be able to tell if his cargo or baggage has been properly located, distributed, and secured.
3.( ) must load his own cargo at least once to learn about it.
4.( ) must first work loading cargo for at least 1 month.

D2-391.15(b) *A driver who has any of his commercial licenses revoked, suspended, withdrawn, or denied:*

1.( ) may not drive until his license is restored by the authority that took it away.
2.( ) may not drive for 3 months after his license is restored.
3.( ) may not drive without approval of the Bureau of Motor Carrier Safety.
4.( ) may drive in some States with the approval of State authorities.

D3-391.31(c) *Which of the following is usually* not *included in a road test?*

1.( ) a pretrip inspection.
2.( ) performing basic maintenance procedures.
3.( ) using the vehicle's emergency equipment.
4.( ) operating the vehicle in traffic.

D4-391.41(a) *Whenever a driver is driving, he must carry:*

1.( ) the original or a copy of his current medical examiner's certificate.
2.( ) a listing of State police locations in the States where he will drive.
3.( ) a copy of the vehicle's last vehicle condition report.
4.( ) all of the above.

D5-391.41(b)(3) *A person cannot drive:*

1.( ) if he has ever had his operator's license suspended.
2.( ) if he has diabetes and requires insulin to control it.
3.( ) if he has a previous arrest record.
4.( ) if he has not completed a basic course in vehicle maintenance.

D6-391.41(b)(4) *Persons with certain heart conditions which may affect safe driving:*

1.( ) cannot drive without a waiver from the Director of the Bureau of Motor Carrier Safety.
2.( ) cannot drive.
3.( ) cannot drive on long runs.
4.( ) cannot drive unless another driver is along.

D7-391.41(b)(6) *Persons with high blood pressure which may affect safe driving:*

1.( ) cannot drive without carrier permission.
2.( ) cannot drive unless they are checked by a doctor before each trip.
3.( ) cannot drive.
4.( ) cannot drive unless another driver is along.

D8-391.41(b)(10) *A person cannot drive unless he can recognize:*

1.( ) at least the color red.
2.( ) at least the colors red and green.
3.( ) at least the colors red, green, and and amber (yellow).
4.( ) at least the colors red, green, amber, and white.

D9-391.45(b) *Every driver must have a physical examination at least once:*

1.( ) every 24 or 36 months, depending on carrier practices.
2.( ) every 24 months.
3.( ) every 18 months.
4.( ) every 12 months.

D10-392.2 *Where there are differences between State and local laws and Federal regulations, a driver:*

1.( ) must obey only the law of the State in which he is driving.
2.( ) must obey only the Federal regulations.
3.( ) must obey whichever law or regulation is stricter.
4.( ) must contact the carrier for advice.

D11-392.3 *When a driver's physical condition* before a trip *is too poor for safe driving:*

1.( ) he should drive only if no other driver can take his trip.
2.( ) he should drive only if another driver is along.
3.( ) he should go out on his trip, but should plan to see a doctor, or rest as soon as possible.
4.( ) he should not go out on his trip.

D12-392.3 *When a driver's physical condition* while on a trip *is too poor for safe driving:*

1.( ) he can keep driving, but should see a doctor or rest as soon as his trip is ended.
2.( ) he can keep driving and see if the condition improves.
3.( ) he should stop driving right away unless such stopping would be unsafe.
4.( ) he should keep driving only if he has a schedule to keep.

D13-392.4(a)(1)(2)(3) *No driver shall drive if he has in his possession, is under the influence of, or is using:*

1.( ) a narcotic drug or any byproduct of a narcotic drug.
2.( ) an amphetamine or any byproduct (including but not limited to "pep pills" and "bennies").
3.( ) any other subatance which makes him unable to safely operate a vehicle.
4.( ) any of the above.

D14-392.4(c) *A driver may drive while possessing or using a medicine prescribed by a doctor:*

1.( ) only if the doctor tells the driver that the medicine will not affect driving ability.
2.( ) only if the driver does not use it while driving.
3.( ) only if the last dose of medicine is taken at least 4 hours before driving.
4.( ) only if the label says the medicine is safe.

D15-392.5(a)(2)(3) *The safety regulations say that a driver cannot:*
1.( ) drink any alcoholic beverage, regardless of alcoholic content, while on duty or driving.
2.( ) be under the influence of any alcoholic beverage while on duty or driving.
3.( ) possess any alcoholic beverage, regardless of alcoholic content, while on duty or driving.
4.( ) do any of the above.

D16-392.6 *The safety regulations say that motor carriers:*
1.( ) shall not set schedules which would require going faster than the speed limits along the route.
2.( ) shall check with State police authorities before setting route schedules.
3.( ) shall require drivers to prepare schedules.
4.( ) shall include time in each schedule for at least two breakdowns.

D17-392.8 *Which of the following must be in place and ready for use before a vehicle can be driven?*
1.( ) A fire extinguisher which meets regulation standards.
2.( ) A flashlight.
3.( ) A set of extra bulbs for vehicle taillights.
4.( ) All of the above.

D18-392.8 *Which of the following must be carried and ready for use before a vehicle can be driven?*
1.( ) A set of specified emergency warning devices.
2.( ) An ignition repair kit.
3.( ) One spare tire for each two tires on the vehicle.
4.( ) All of the above.

D19-392.9(a) *Any vehicle with a cargo secured or distributed in an unsafe way:*
1.( ) can be driven, but only at low speeds.
2.( ) can be driven, but should be reported at the end of the trip.
3.( ) cannot be driven.
4.( ) can be driven, but only if the load can be carefully watched.

D20-392.9a *A person who wears contact lenses:*
1.( ) cannot drive.
2.( ) can drive only during daylight hours.
3.( ) cannot drive on long runs.
4.( ) must wear his lenses and also carry a spare or a spare set when he drives.

D21-392.11 *Drivers of vehicles* not *required to stop at a railroad grade crossing:*
1.( ) must still be able to stop, if necessary, before reaching the nearest rail.
2.( ) can proceed across without reducing speed.
3.( ) must cross at no less than 35 miles per hour.
4.( ) must slow down only if directed to by an attendant.

D22-392.12 *When approaching a drawbridge without stop and go signals, motor vehicles carrying passengers:*
1.( ) must stop no less than 50 feet from the lip of the draw.
2.( ) must slow down but are not required to stop.
3.( ) can proceed across without reducing speed.
4.( ) must stop only if directed to by an attendant.

D23-392.14 *Which of the following should be done under conditions such as those caused by snow, ice, sleet, fog, mist, dust, or smoke?*
1.( ) The driver should slow down.
2.( ) If conditions become too bad, the vehicle should be stopped.
3.( ) If stopping is dangerous to passengers, the driver should proceed to the nearest safe location.
4.( ) If necessary, the driver should do all of the above.

D24-392.15(b)(c) *Which one of the following is an* approved *use of turn signals?*
1.( ) Using turn signals when moving into the traffic stream or when changing lanes.
2.( ) Flashing turn signals on the traffic side of a parked or disabled vehicle.
3.( ) Using turn signals as a courtesy "OK to pass" signal to other drivers.
4.( ) All of the above.

D25-392.20 *No motor vehicle may be left unattended:*
1.( ) unless the vehicle is parked on the shoulder of the road.
2.( ) until the parking brake is well set and every step has been taken to keep the vehicle from moving.
3.( ) unless the turn signals are left flashing.
4.( ) for more than 1 hour.

D26-392.22(a) *Whenever a vehicle on a poorly lit street or highway must be stopped, the driver:*
1.( ) should immediately get out and wave traffic by.
2.( ) should immediately flash the two front and two rear turn signals.
3.( ) should immediately flash the turn signal nearest the highway.
4.( ) should immediately telephone for help in directing traffic.

D27-392.22(b)(1) *Placing some form of emergency signal must be done on all stops, other than necessary traffic stops, no later than:*
1.( ) 10 minutes.
2.( ) 15 minutes.
3.( ) 20 minutes.
4.( ) 25 minutes.

D28-392.22(b)(2)(vi) *If gasoline or some other flammable liquid leaks from a motor vehicle stopped on a poorly lit road, the driver:*
1.( ) should not use any signal producing a flame unless it is lighted and placed far enough away to prevent fire or explosions.
2.( ) should not place any signals.
3.( ) should immediately go for assistance.
4.( ) should signal the emergency with turn signals and nothing else.

D29-392.22(b)(2)(ii) *If a disabled vehicle is stopped on a highway or shoulder during daylight hours, the required emergency signal is a set of:*
1.( ) emergency triangles.
2.( ) white flags.
3.( ) blue flags.
4.( ) orange or yellow flags.

D30-392.22(b)(2)(ii) *If a disabled vehicle is stopped on a highway or shoulder during daylight hours, the driver shall place:*
1.( ) one red flag 50 feet in front and one red flag 50 feet in back of the vehicle in the center of its lane.
2.( ) one red flag 100 feet in front and one red flag 100 feet in back of the vehicle in the center of its lane.
3.( ) one red flag 100 feet in back of the vehicle in the center of its lane.
4.( ) one red flag 200 feet in back of the vehicle in the center of its lane.

D31-392.24 *Flame-producing emergency signals, including fusees:*
1.( ) may not be attached to any motor vehicle at any time.
2.( ) may not be attached to any motor vehicle without carrier approval.
3.( ) may be attached to a vehicle only when other signal devices are not available.
4.( ) may be attached to a vehicle at any time.

D32-392.30(b) *A driver is required to have his lights on whenever he cannot clearly see persons and other vehicles on the road at a distance of:*
1.( ) 250 feet.
2.( ) 500 feet.
3.( ) 750 feet.
4.( ) 1,000 feet.

D33-392.31 *When a vehicle is parked or stopped on the highway in a business or residential district of a city and street lighting is not enough to see clearly, the vehicle:*
1.( ) should have at least one white or amber light on its traffic side which can be seen at least 500 feet to the front.
2.( ) should have at least one red light which can be seen at least 500 feet to the rear.
3.( ) should have head lamps dimmed or depressed, if in use.
4.( ) should have all of the above.

D34-392.33 *When any of the vehicle's required lights are found at any time to be covered by dirt, by the tailboard, or by any part of the load or otherwise, the vehicle:*
1.( ) may not be driven until the problem is fixed.
2.( ) may be driven, but the problem should be fixed as soon as possible.
3.( ) may be driven, but the problem should be reported.
4.( ) is subject to the carrier's judgment as to its usefulness.

D35-392.41 *If a driver cannot find the owner or driver of a parked vehicle which he has hit, he should leave:*
1.( ) his name and address and that of his carrier.
2.( ) his name, license number, and the phone number or address of his destination.
3.( ) the name of his supervisor and his business phone number.
4.( ) nothing—he should wait until the owner or driver of the parked vehicle returns.

D36-392.50(a)(b)(c) *Which of the following is* not *in the safety regulations on fueling a motor vehicle?*
1.( ) The engine should not be running, except when it is necessary to run the engine to fuel the vehicle.
2.( ) The driver should not sit in the cab while it is being fueled.
3.( ) No one should be allowed to smoke near the vehicle while it is being fueled.
4.( ) The nozzle of the fuel hose should always be in contact with the fuel tank intake pipe.

D37-392.51 *The fuel supply for a motor vehicle may be carried:*
1.( ) in properly mounted fuel tanks and in 25 gallon drums for emergency use.
2.( ) in properly mounted fuel tanks and nowhere else on the vehicle.
3.( ) in properly mounted fuel tanks and in 10 gallon drums for emergency use.
4.( ) in properly mounted fuel tanks and in 5 gallon drums for emergency use.

D38-392.60 *Except in certain emergencies and with certain farm vehicles, a truck driver may not carry any passengers:*
1.( ) unless he knows the person.
2.( ) unless he has written authority to do so.

3.( ) unless the person is in his family.
4.( ) unless he is traveling outside city limits.

D39-392.65 *A person may move in or out of a sleeper berth in a moving motor vehicle:*
1.( ) at any time.
2.( ) only when the vehicle is moving less than 30 miles per hour.
3.( ) only if it can be done without going outside the cab.
4.( ) at no time.

D40-393.19 *Every motor vehicle must have a signal system:*
1.( ) which can signal turns.
2.( ) which can flash the two front turn signals and the two rear signals at the same time.
3.( ) which can flash all turn signals at the same time whether the ignition is on or off.
4.( ) which can do all of the above.

D41-393.52 *Requirements for vehicle service braking performance:*
1.( ) are set by vehicle makers.
2.( ) are specified in detail in the safety regulations.
3.( ) have been set by the National Safety Council.
4.( ) are set according to the laws of the counties in which the vehicle operates.

D42-393.60(c) *Objects or stickers which block the driver's view:*
1.( ) are allowed at the top of the windshield.
2.( ) are allowed only on the passenger side.
3.( ) are not allowed.
4.( ) are allowed only with carrier approval.

D43-393.75(a) *A vehicle which has a tire with fabric showing through the tread or the sidewall:*
1.( ) may be driven, but at speeds less than 50 miles per hour.
2.( ) may be driven, but the tire or tires should be changed as soon as possible.
3.( ) may be driven if the carrier thinks it is safe.
4.( ) may not be driven.

D44-393.85(a) *Any truck carrying a cargo which could break into or crush the cab if it shifts:*
1.( ) must be driven according to hazardous materials regulations.
2.( ) must be driven only on primary roads.
3.( ) must be especially equipped so that shifting is prevented.
4.( ) must be driven on secondary roads.

D45-395.2(a) *"On-duty" time is defined as:*
1.( ) only the time spent by the driver actually driving.
2.( ) all of the time when the driver is actually working or required to be ready for work.
3.( ) only the time spent by the driver driving or inspecting his vehicle.
4.( ) only the time spent by the driver driving or servicing his vehicle.

D46-395.2(a)(1)(2)(4)(5) *Which of the following is not "on-duty" time?*
1.( ) Time spent in loading or unloading a vehicle.
2.( ) Time spent waiting at a carrier's terminal to be dispatched.
3.( ) Time spent in a sleeper berth.
4.( ) Time spent inspecting or servicing a vehicle.

D47-395.3(b) *Carriers operating every day in the week may allow a driver to be on duty:*
1.( ) for not more than 50 hours in any 8 straight days.
2.( ) for not more than 60 hours in any 8 straight days.
3.( ) for not more than 70 hours in any 8 straight days.
4.( ) for not more than 80 hours in any 8 straight days.

D48-395.3(c) *Driving time limits exist for all drivers except:*
1.( ) those driving two axle vehicles of no more than 10,000 pounds gross weight which do not carry passengers or hazardous materials.
2.( ) those driving vehicles carrying oilfield equipment.
3.( ) those driving in the State of Alaska.
4.( ) those driving vehicles carrying hazardous materials.

D49-395.8(a) *Not keeping logs, making false entries, or failures to make entries or save logs:*
1.( ) make both the carrier and driver liable to prosecution.
2.( ) makes only the carrier liable to prosecution.
3.( ) makes only the driver liable to prosecution.
4.( ) makes neither the carrier or driver liable to prosecution.

D50-395.8(r) *A driver should send his log to his home terminal or to the carrier's main office:*
1.( ) at the end of each day.
2.( ) at the end of each week.
3.( ) every 2 weeks.
4.( ) at the end of each month.

D51-395.8(t) *A driver does not have to keep a log:*
1.( ) if he is on duty less than 8 hours.
2.( ) if he only drives two axle vehicles.
3.( ) if he only drives within 50 miles of his home terminal and the carrier keeps time records.
4.( ) if he only drives part time.

D52-395.10 *When snow, sleet, fog, or other such weather or unusual road conditions are present, a driver may be required or allowed to complete his run by driving:*
1.( ) no more than 12 hours following 8 straight hours off duty.
2.( ) no more than 14 hours following 8 straight hours off duty.
3.( ) no more than 15 hours following 8 straight hours off duty.
4.( ) no more than 16 hours following 8 straight hours off duty.

D53-395.13 *A driver will be declared "out of service":*
1.( ) if he is found to have driven longer than the allowed time limit.
2.( ) if his vehicle needs any repairs.
3.( ) if his log is inspected and is not current.
4.( ) if he appears tired to the examiner.

D54-396.4 *A vehicle which is likely to cause an accident or have a breakdown if it is driven:*
1.( ) must not be driven.
2.( ) must be reported, but can be used for short runs until it is fixed.
3.( ) may only be driven at speeds of 40 miles per hour or less.
4.( ) may be driven only if operating schedules make it necessary.

D55-396.5(c)(4) *The completion of the repair work on an "out of service" vehicle must be certified by:*
1.( ) the person who does the repair work.
2.( ) the supervisor of the person who makes the repairs.
3.( ) an authorized Federal inspector.
4.( ) the safety director of the carrier.

D56-396.6 *The amount of the damage and the safety of any vehicle damaged in an accident or from another cause must be determined:*
1.( ) within 24 hours of the time of the accident.
2.( ) by the driver of the vehicle's next scheduled run.
3.( ) by a qualified person before the vehicle may be driven again.
4.( ) by local police authorities.

D57-396.7 *With a few exceptions, a written "vehicle condition report" must be supplied by a driver to his carrier:*
1.( ) at the end of each week of driving.
2.( ) at the end of each day's work or tour of duty.
3.( ) every time he changes duty status.
4.( ) only when he changes vehicles.

D58-397.5(a) *Except when in an approved location, a vehicle which contains class A or B explosives must be attended at all times:*
1.( ) by the driver only.
2.( ) by either the driver or a person chosen by the driver.
3.( ) by either the driver or a qualified representative of the motor carrier.
4.( ) by either the driver or a police officer.

D59-397.5(d)(1) *A vehicle containing class A or B explosives or other hazardous materials on a trip is "attended":*
1.( ) when the person in charge of it is on it, awake, and not in a sleeper berth.
2.( ) when the person in charge is anywhere within 100 feet of it.
3.( ) as long as someone is on it.
4.( ) as long as the driver can see it from 200 feet away.

D60-397.9(a) *Of the following, the most important thing for a carrier to consider when planning a hazardous cargo run should be:*
1.( ) picking the route which best serves the carrier's operating needs.
2.( ) picking a route which has no secondary roads.
3.( ) picking a route which does not pass through or near heavily populated areas, tunnels, or narrow streets.
4.( ) picking a route which does not have steep grades.

D61-397.9(b) *Before a vehicle carrying class A or B explosives is driven, the carrier must give the driver:*
1.( ) special clothes to be worn in case of emergency.
2.( ) a written plan covering the route to be followed.
3.( ) a certificate showing the driver is qualified to handle explosives.
4.( ) 8 hours of classroom training in handling explosives.

D62-397.9(b) *A driver of a vehicle containing Class A or B explosives may be allowed to prepare a written route plan:*
1.( ) if the carrier forgets to do it.
2.( ) if the driver has had at least 5 years of experience in carrying explosives.
3.( ) If the driver begins his trip at a spot other than the carrier's terminal.
4.( ) if the vehicle must leave before the carrier's plan is finished.

D63-397.13(b) *After a tank truck has been emptied of its flammable materials, smoking or carrying a lighted cigarette, cigar, or pipe:*
1.( ) is allowed only in the cab.
2.( ) is not allowed in the cab or anywhere within 25 feet of the vehicle.
3.( ) is allowed since the danger of fire or explosion is no longer there.
4.( ) is allowed if the vehicle is moving.

D64-397.17(a) *If a vehicle carrying hazardous materials is equipped with dual tires on any axle, the driver must stop in a safe spot and examine the tires:*
1.( ) every hour or 50 miles of travel, whichever is less.
2.( ) every 2 hours or 100 miles of travel, whichever is less.

3.( ) every 4 hours or 200 miles of travel, whichever is less.
4.( ) at the end of each working day, or tour of duty.

D65-397.17(b) *If a driver of a vehicle carrying hazardous materials finds a tire which is flat, leaking, or poorly inflated, he should:*
1.( ) continue as far as he can since stopping would probably be dangerous.
2.( ) have the tire repaired, replaced, or inflated before going on.
3.( ) drive slowly to the nearest service station.
4.( ) ignore the regulation about attending his vehicle and go for help.

D66-177.854(g) *Repairs on any vehicle carrying explosives or dangerous articles can only be made:*
1.( ) by a mechanic certified to make such repairs.
2.( ) if the vehicle is parked at least 100 feet away from other vehicles.
3.( ) if the repairs can be made without danger.
4.( ) at the carrier's terminal.

SCORING KEY

WRITTEN EXAMINATION—FORM D

Subpart	*Answer*
D1-391.11(b)(4)	2
D2-391.15(b)	1
D3-391.31(c)	2
D4-391.41(a)	1
D5-391.41(b)(3)	2
D6-391.41(b)(4)	2
D7-391.41(b)(6)	3
D8-391.41(b)(10)	3
D9-391.45(b)	2
D10-392.2	3
D11-392.3	4
D12-392.3	3
D13-392.4(a)(1)(2)(3)	4
D14-392.4(c)	1
D15-392.5(a)(2)(3)	4
D16-392.6	1
D17-392.8	1
D18-392.8	1
D19-392.9(a)	3
D20-392.9a	4

FORM D—Continued

Subpart	*Answer*
D21-392.11	1
D22-392.12	1
D23-392.14	4
D24-392.15(b)(c)	1
D25-392.20	2
D26-392.22(a)	2
D27-392.22(b)(1)	1
D28-392.22(b)(2)(vi)	1
D29-392.22(b)(2)(ii)	1
D30-392.22(b)(2)(ii)	2
D31-392.24	1
D32-392.30(b)	2
D33-392.31	4
D34-392.33	1
D35-392.41	1
D36-392.50(a)(b)(c)	2
D37-392.51	2
D38-392.60	2
D39-392.65	3
D40-393.19	4
D41-393.52	2
D42-393.60(c)	3
D43-393.75(a)	4
D44-393.85(a)	3
D45-395.2(a)	2
D46-395.2(a)(1)(2)(4)(5)	3
D47-395.3(b)	3
D48-395.3(c)	1
D49-395.8(a)	1
D50-395.8(r)	1
D51-395.8(t)	3
D52-395.10	1
D53-395.13	1
D54-396.4	1
D55-396.5(c)(4)	1
D56-396.6	3
D57-396.7	2
D58-397.5(a)	3
D59-397.5(d)(1)	1
D60-397.9(a)	3
D61-397.9(b)	2
D62-397.9(b)	3
D63-397.13(b)	2
D64-397.17(a)	2
D65-397.17(b)	2
D66-177.854(g)	3

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[FR Doc.73-2001 Filed 2-2-73;8:45 am]

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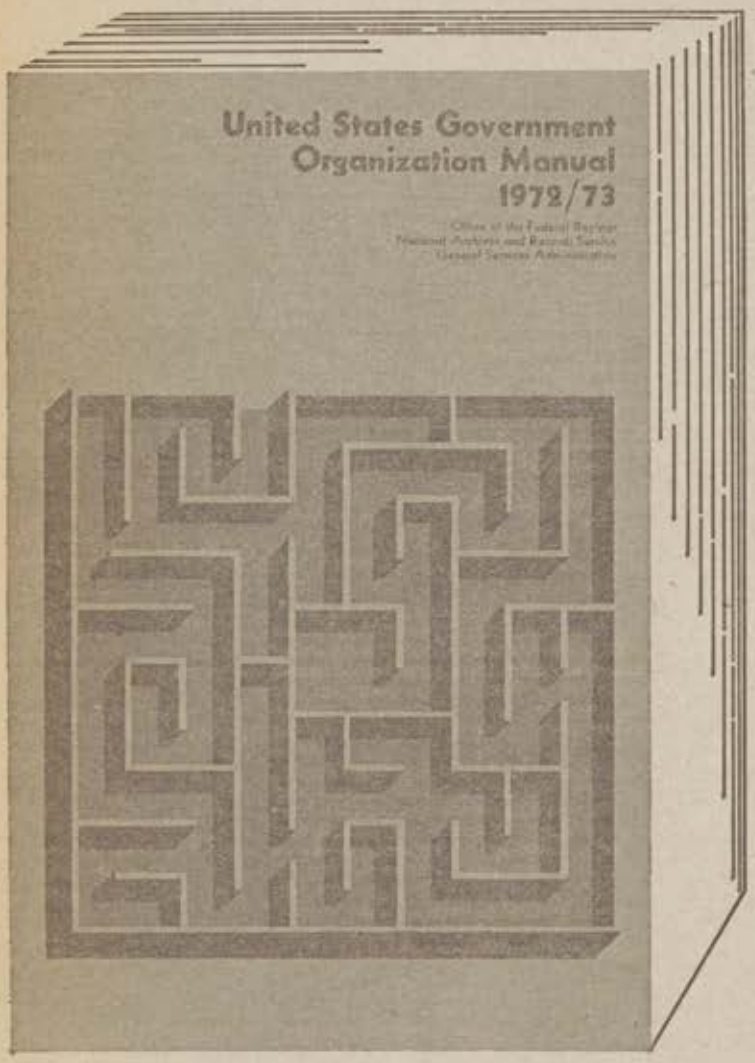

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