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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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REMINDERS

NOTE: There were no items published after October 1, 1972, that are eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

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List of CFR Parts Affected

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

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

Rules and Regulations

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Treasury Department

Section 213.3305 is amended to show that one position of Secretary to the Deputy Assistant Secretary (Enforcement, Tariff and Trade Affairs, and Operations) is excepted under Schedule C.

Effective on February 13, 1973, § 213.3305(a)(38) is added as set out below.

§ 213.3305 **Treasury Department.**

(a) *Office of the Secretary.* * * *

(38) One Secretary to the Deputy Assistant Secretary (Enforcement, Tariff and Trade Affairs, and Operations).

* * * * *

(5 U.S.C. secs. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-2846 Filed 2-12-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Agriculture

Section 213.3313 is amended to show that one position of Private Secretary to the Confidential Assistant to the Secretary is excepted under Schedule C.

Effective on February 13, 1973, § 213.313(a)(28) is added as set out below.

§ 213.3313 **Department of Agriculture.**

(a) *Office of the Secretary.* * * *

(28) One Private Secretary to the Confidential Assistant to the Secretary.

* * * * *

(5 U.S.C. secs. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-2842 Filed 2-12-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

Section 213.3316 is amended to show that one position of Assistant to an Assistant to the Secretary for Special Program is excepted under Schedule C.

Effective on February 13, 1973, § 213.3316(a)(27) is added as set out below.

§ 213.3316 **Department of Health, Education, and Welfare.**

(a) *Office of the Secretary.* * * *

(27) One Assistant to an Assistant to the Secretary for Special Programs.

* * * * *

(5 U.S.C. secs. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-2844 Filed 2-12-73;8:45 am]

PART 213—EXCEPTED SERVICE

Environmental Protection Agency

Section 213.3318 is amended to show that one position of Director, Office of Regional Liaison, is no longer excepted under Schedule C.

Effective on February 13, 1973, § 213.3318(a)(9) is revoked.

(5 U.S.C. secs. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-2843 Filed 2-12-73;8:45 am]

PART 213—EXCEPTED SERVICE

U.S. Information Agency

Section 213.3328 is amended to show that one position of Confidential Assistant to the General Counsel is excepted under Schedule C.

Effective on February 13, 1973, § 213.3328(b) is added as set out below.

§ 213.3328 **U.S. Information Agency.**

* * * * *

(b) One Confidential Assistant to the General Counsel.

(5 U.S.C. secs. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-2847 Filed 2-12-73;8:45 am]

PART 213—EXCEPTED SERVICE

Action

Section 213.3359 is amended to show that one position of Special Assistant for Communications to the Associate Director for Domestic and Antipoverty Operations is excepted under Schedule C.

Effective on February 13, 1973, § 213.3359(i) is added as set out below.

§ 213.3359 **Action.**

* * * * *

(i) One Special Assistant for Communications to the Associate Director for Domestic and Antipoverty Operations.

(5 U.S.C. secs. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-2841 Filed 2-12-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Transportation

Section 213.3394 is amended to show that one position of Special Assistant for Urban Transportation Policy to the Assistant Secretary for Environment and Urban Systems is excepted under Schedule C.

Effective on February 13, 1973, § 213.3394(a)(31) is added as set out below.

§ 213.3394 **Department of Transportation.**

(a) *Office of the Secretary.* * * *

(31) One Special Assistant for Urban Transportation Policy to the Assistant Secretary for Environment and Urban Systems.

* * * * *

(5 U.S.C. secs. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-2845 Filed 2-12-73;8:45 am]

Title 9—Animals and Animal Products

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

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

[Docket No. 73-509]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined and Released

These amendments quarantine a portion of Tippecanoe County in Indiana because of the existence of hog cholera. This action is deemed necessary to pre-

vent 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.

The amendments exclude portions of Charles, Prince Georges, and St. Marys Counties in Maryland from the areas quarantined because of hog cholera. Therefore, the restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas contained in 9 CFR Part 76, as amended, do not apply to the excluded area, but will continue to apply to the quarantined areas described in § 76.2(e). Further, the restrictions pertaining to the interstate movement of swine and swine products from nonquarantined areas contained in said Part 76 apply to the excluded area. No area in Maryland remains under quarantine.

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)(1) relating to the State of Maryland is deleted, and a new paragraph (e)(1) relating to Indiana is added to read:

(e) * * *

(1) *Indiana.* That portion of Tippecanoe County bounded by a line beginning at the junction of the Tippecanoe-White County line and U.S. Highway 231, State Highway 53; thence, following the Tippecanoe-White County line in an easterly direction to County Road 470E; thence, following County Road 470E in a southerly, then easterly direction to County Road 500E; thence, following County Road 500E in a southerly direction to Pretty Prairie Road; thence, following Pretty Prairie Road in a southwesterly direction to State Highway 225; thence, following State Highway 225 in a southeasterly direction to the north bank of the Wabash River; thence, following the north bank of the Wabash River in a generally southwesterly direction to County Road 700W; thence, following County Road 700W in a northwesterly direction to Division Road; thence, following Division Road in an easterly direction to County Road 575W; thence, following County Road 575W in a northerly, then easterly direction to County Road 550W; thence, following County Road 550W in a northerly direction to State Highway 26; thence, following State Highway 26 in a westerly direction to County Road 600W; thence, following County Road 600W in a northerly, then westerly, then northerly direction to Old Jackson Highway; thence, following Old Jackson Highway in a northwesterly direction to U.S. Highway 231, State Highway 53; thence, following U.S. Highway 231, State Highway 53 in a northerly direction to its junction with the Tippecanoe-White County line.

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

Effective date. The foregoing amendments shall become effective February 7, 1973.

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

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

Done at Washington, D.C., this 7th day of February 1973.

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

[FR Doc.73-2855 Filed 2-12-73;8:45 am]

PART 82—EXOTIC NEWCASTLE DISEASE; AND PSITTACOSIS OR ORNITHOSIS IN POULTRY

Areas Quarantined and Released

These amendments quarantine an additional portion of Riverside County in California because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, apply to the quarantined area.

The amendments also exclude portions of San Bernardino and Riverside Counties in California from the areas quarantined because of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded area.

Pursuant to the provisions of sections 1, 2, 3, and 4 of the Act of March 3, 1905, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, sections 4, 5, 6, and 7 of the Act of May 29, 1884, as amended, and sections 3 and 11 of the Act of July 2, 1962 (21 U.S.C. 111, 112, 113, 115, 117, 120, 123, 124, 125, 126, 134b, 134f), Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respects:

In § 82.3, in paragraph (a)(1) relating to the State of California, subdivision (iii) relating to San Bernardino and Riverside Counties is amended and a new subdivision (vii) relating to San Bernardino County is added to read:

(a) * * *

(1) *California.* * * *

(iii) That portion of San Bernardino and Riverside Counties bounded by a line beginning at the junction of the eastern edge of U.S. Highway 395 and the dividing line between T. 2 N. and T. 1 N. of the San Bernardino baseline in San Bernardino County; thence, following the dividing line between T. 2 N. and T. 1 N. in an easterly direction to the San Bernardino National Forest boundary line; thence, following the San Bernardino National Forest boundary line in a southeasterly direction to the San Bernardino meridian; thence, following the San Bernardino meridian in a southerly direction to the dividing line between T. 3 S. and T. 4 S. of the San Bernardino baseline in Riverside County; thence, following the dividing line between T. 3 S. and T. 4 S. in a westerly direction to the dividing line between R. 1 W. and R. 2 W. of the San Bernardino meridian; thence, following the dividing line between R. 1 W. and R. 2 W. in a northerly direction to the San Timoteo Canyon Road; thence, following the southern edge of the San Timoteo Canyon Road in a westerly, then northerly direction to the Riverside-San Bernardino County line; thence, following the Riverside-San Bernardino County line in a generally westerly direction to the eastern edge of U.S. Highway 395; thence, following the eastern edge of U.S. Highway 395 in a southwesterly, then southeasterly direction to Cajalco Road; thence, following the southern edge of the Cajalco Road in a westerly direction to California State Highway 71; thence, following the eastern edge of California State Highway 71 in a northwesterly direction to California State Highway 91; thence, following the southern edge of California State Highway 91 in a southwesterly direction to the Riverside-Orange County line; thence, following the Riverside-Orange County line in a northwesterly direction to the junction of the San Bernardino-Riverside-Orange County lines; thence, following the San Bernardino-Orange County line in a northwesterly direction to the junction of the Orange-San Bernardino-Los Angeles County lines; thence, following the San Bernardino-Los Angeles County line in a generally northeasterly direction to the southern edge of Mission Boulevard; thence, following the southern edge of Mission Boulevard in a generally southeasterly direction to the San Bernardino-

Riverside County line; thence, following the San Bernardino-Riverside County line in a generally easterly direction to the eastern edge of U.S. Highway 395; thence, following the eastern edge of U.S. Highway 395 in a northerly direction to its junction with the dividing line between T. 2 N. and T. 1 N. of the San Bernardino baseline in San Bernardino County.

* * * * *

(vii) The premises of Matthys Kooyman, 6433 Archibald Avenue, city of Alta Loma in San Bernardino County, located on lot 13 of the Foothill Frostless Fruit Co.'s Tract No. 2.

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

Effective date. The foregoing amendment shall become effective February 8, 1973.

The amendments impose certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish their purpose in the public interest. The amendments also relieve certain restrictions presently imposed but no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to the affected persons. It does not appear that public participation in this rule making proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 8th day of February 1973.

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

[FR Doc.73-2854 Filed 2-12-73;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-9988]

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

Net Capital Requirements for Brokers and Dealers

Adoption of amendment to exempt certain exchange members from the SEC's net capital rule.

The Securities and Exchange Commission today announced the amendment of paragraph (b) (2) of Rule 15c3–1 (17 CFR 240.15c3–1) under the Securities Exchange Act of 1934. Under the amendment members in good standing of the Chicago Board Options Exchange, Inc. (CBOE) will be exempt from compliance with the net capital requirements of Rule 15c3–1. At present members of six other exchanges are similarly exempted. The registration of the CBOE as a national securities exchange became effective on February 1, 1973.[1]

The amendment was adopted after a finding by the Commission that the pertinent rules, settled practices and applicable regulatory procedures of the CBOE that impose net capital requirements on their members, are more comprehensive than the requirements of Rule 15c3–1. The Commission noted that on December 6, 1972, it released, for public comment, proposed comprehensive amendments to Rule 15c3–1,[2] which would establish, among other things, uniform net capital requirements for all broker-dealers, including members of all exchanges exempted under the current rule.[3]

In addition, the words "Philadelphia-Baltimore-Washington Stock Exchange" in present paragraph (b) (2) have been amended to read "PBW Stock Exchange", in conformity with that exchange's official name change effective July 11, 1972, and the words "Pittsburgh Stock Exchange" have been deleted to reflect the withdrawal of its registration by that Exchange effective December 24, 1969, by reason of its being merged into the PBW Stock Exchange.

Commission action. The Securities and Exchange Commission acting pursuant to the provisions of the Securities Exchange Act of 1934, and more particularly sections 15(c) (3) and 23(a) thereof, hereby amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulations by adopting § 240.15c3–1 as set forth below.

Because the above described amendments are technical in nature or relax certain of the requirements of Rule 15c 3–1 under the Securities Exchange Act of 1934, the Commission finds that, for good cause, the notice and procedures specified in the Administrative Procedure Act, 5 U.S.C. 553, are unnecessary, and accordingly it amends paragraph (b) (2) of said rule effective February 1, 1973, to read as follows:

§ 240.15c3–1 Net capital requirements for brokers an dealers.

* * * * *

(b) Exemptions: * * *

(2) The provisions of this rule shall not apply to any member in good standing and subject to the capital rules of the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange, the New York Stock Exchange, the Pacific Coast Stock Exchange, the PBW Stock Exchange, or the Chicago Board Options Exchange, Inc., whose rules, settled practices and applicable regulatory procedures are deemed by the Commission to impose requirements more comprehensive than the requirements of this rule: *Provided, however*, That the exemption as to the members of any exchange may be suspended or withdrawn by the Commission at any time, by sending 10 days written notice to such exchange, if it appears to the Commission to be necessary or appropriate in the public interest or for the protection of investors so to do. This exemption shall not be available to the members of any exchange whose capital rules do not provide that in the computation of net capital there shall be a deduction of not less than 10 percent of the contract price of each item in the securities failed to deliver account which is outstanding 40 to 49 calendar days; 20 percent of the contract price of each item in the securities failed to deliver account which is outstanding 50 to 59 calendar days; and 30 percent of the contract price of each item in the securities failed to deliver account which is outstanding 60 or more calendar days.

* * * * *

(Secs. 15c–3, 23(a), 48 Stat. 895, 901; as amended 52 Stat. 1075, 84 Stat. 1653, 49 Stat. 1379, 15 U.S.C. 78o(c), 78w(a))

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

FEBRUARY 6, 1973.

[FR Doc.73-2812 Filed 2-12-73;8:45 am]

[Release Nos. 33-5360, 34-9972, IC-7644, IA-359; File No. 4-149]

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

Exemption of Certain Variable Life Insurance Contracts and their Issuers from Federal Securities Laws

On February 15, 1972, the Securities and Exchange Commission published a notice of and order for hearing with respect to rules proposed by the American Life Convention and the Life Insurance Association of America (Petitioners) in a Petition for Issuance and Amendment of rules and rule making proceeding therefor (Petition).[1] As proposed, the rules would exempt certain variable life insurance contracts, related interests and participations therein, and the issuers thereof and their related persons from the Securities Act of 1933 (Securities Act) (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (Exchange Act), (15 U.S.C. 78a et seq.), the Investment Company Act of 1940 (Investment Company Act) (15 U.S.C. 80a–1 et seq.), and the Investment Advisers Act of 1940 (Investment Advisers Act) (15 U.S.C. 80b–1 et seq.). The Commission invited all interested persons who wished to comment on the proposed rules to appear in

[1] Release No. 34-9985 February 1, 1973.
[2] Release No. 344-9891.
[3] If the rules were adopted as proposed, the CBOE members would no longer have the exemption announced today.

person at the hearing or to submit written statements for inclusion in the proceeding.

The public hearing commenced on April 10, 1972, and concluded on June 7, 1972, during which time the Commission had the aid and assistance of extensive testimony and written submissions. The Commission has also considered a report prepared by its Division of Investment Management Regulation, shortly to be published, which summarizes and explains the features of variable life insurance based upon information developed during the hearing and provides an analysis of the law with regard to variable life insurance. Based upon this record and upon its own independent review of the Petition and the issues raised therein, the Commission has determined:

1. A public offering of variable life insurance contracts in the forms proposed in the Petition would involve an offering of securities required to be registered under the Securities Act.

2. Persons selling such variable life contracts would generally be required to register as broker-dealers under the Securities Exchange Act.

3. A company, including a separate account of an insurance company, primarily engaged in issuing and selling such variable life insurance contracts would be an investment company required to be registered under the Investment Company Act.

4. An insurance company or other person rendering investment advice to a separate account issuing and funding such variable life insurance contracts would be required to register as an investment adviser under the Investment Advisers Act.

The Commission has further determined:

1. To adopt Rule 3c–4 under the Investment Company Act to exempt from the Act separate accounts with certain specified characteristics established to fund such contracts.

2. To adopt Rule 202–1 under the Investment Advisers Act to exempt from the Act an insurance company or affiliated company acting as adviser to such an account.

The Applicability of the Federal Securities Laws

In arriving at these determinations, the Commission in no way questions the merits or desirability of variable life insurance which may well become an important and valuable combined investment and insurance vehicle. Analysis of the record does indicate that such a contract would involve important elements of insurance. In particular, a variable life insurance contract would provide immediate insurance equal to the initial face amount many times the amount of premiums paid, and a guaranteed minimum death benefit also equal to the initial face amount. But, unlike traditional life insurance, a variable life contract would also provide a variable death benefit and a variable cash value—important features which are likely to be emphasized in the sale of variable life insurance. As to these critical features, the contractholder participates directly in the investment experience of the separate account and bears an investment risk.

For these reasons the Commission has determined that a variable life contract would be a security, not entitled to the exemption set forth in section 3(a)(8) (15 U.S.C. 77c(a)(8)) of the Securities Act. That provision was intended only to exempt an insurance policy or contract under which a policyholder has a fixed benefit and does not share in the investment experience of an equity portfolio and as to which the insurance company assumes the risk of loss. In such a case, the requirements of the Securities Act—which would compel full disclosure of the nature and extent of the participation and risk—are not necessary. A variable life contract, on the other hand, would present entirely different considerations and disclosures made in connection with registration under the Securities Act would be very relevant.

A separate account established by a life insurance company to fund such contracts would also meet the definition of an investment company set forth in sections 3(a)(1) (15 U.S.C. 80a–3(a)(1)) and 3(a)(3) (15 U.S.C. 80a–3(a)(3)) of the Investment Company Act. The traditional insurance company contemplated by section 3(c)(3) (15 U.S.C. 80a–3(c)(3)) has as its primary investment aim the preservation of capital with income in order to fund only fixed-dollar obligations. In contrast, a variable life separate account would be invested in equity securities, with the primary investment aim of growth rather than preservation of capital, and would be used to fund in part variable obligations. In view of the substantial differences between nature of the investment activity and the interest of contractholders in such a separate account and the nature of the investment activity and the interest of contractholders in a traditional insurance company, the Commission has determined that the exception from the Act for an insurance company, set forth in section 3(c)(3) (15 U.S.C. 80a(c)(3)) would not be applicable.

As indicated below, the Commission has reached its determination with respect to the requested exemptions under the Securities Exchange Act and the Investment Advisers Act in the light of these conclusions.

Proposed Exemptive Rules

Proposed Rule 157 (17 CFR 230.157)

As proposed, Rule 157 would define a contract issued by a separate account meeting the requirements of proposed Rule 3c–4 (17 CFR 270.3c–4) under the Investment Company Act as an insurance contract exempt from the Securities Act by section 3(a)(8) (15 U.S.C. 77c(a)(8)) thereof. The Commission has determined not to adopt this rule. The important investment features of the contract—the opportunity to participate in the investment experience of the separate account in order to achieve increased life insurance benefits including death protection and cash value—require that contractholders be afforded the protections of full disclosure which would be developed by registration of the contracts under the Securities Act. The Commission has had extensive experience with the registration of complex investment contracts under the Securities Act and is confident that adequate disclosure can be developed for variable life insurance to achieve the truth-in-securities afforded by registration under the statute. Such disclosure would cover, for example, the operation of the contract, the investment policies of the separate account, the extent of the contractholder's participation in the investment experience, the nature of the investment risk borne by the contractholder and a clear discussion of such costs as sales charges, administrative and mortality charges, risk charges and management fees.

Proposed Rules 3a12–4 and 15c1–4 under the Securities Exchange Act (17 CFR 240.3a12–4, 240.15c1–4)

Proposed Rules 3a12–4 and 15c1–4 under the Securities Exchange Act (15 U.S.C. 78a et seq.) would define a variable life contract as an exempted security under the statute and make the confirmation requirements of Rule 15c1–4 inapplicable to the sale of such contracts. The Commission has determined not to adopt these rules because the complex nature of the investment elements of variable life insurance make it particularly important that the disclosures provided by Securities Act registration be communicated by salesmen and firms subject to regulation by the Commission, and no justification was established at the hearing for relief from the confirmation requirement.

Proposed Rule 3c–4 under the Investment Company Act (17 CFR 270.3c–4)

The Investment Company Act, unlike the Securities Act which provides disclosure and prohibits fraud, is a comprehensive regulatory statute primarily, although not exclusively, designed for the familiar types of investment companies. The Commission believes that the variable life insurance separate account would be an investment company not exempted from the Investment Company Act, but this is a close question. In view of this and for the reasons set forth below, the Commission has determined to adopt proposed Rule 3c–4 under the Act.

The Commission is persuaded to take this course for several reasons, even though some of the protections of the Investment Company Act would be relevant to variable life insurance. The principal reason is that to reconcile the regulatory scheme of the Act with State regulation of insurance—which unquestionably is applicable to variable life insurance—would, at the very least, be difficult. It probably could not be done without interfering to some degree with the orderly development of State regulation. In deference, therefore, to the established congressional policy of preserving State regulation of insurance, the

See footnotes at end of document.

Commission concludes that the exemption should be granted. In addition, application of the Investment Company Act to variable life insurance would create complex administrative problems, since substantial exemptions from the Act would be required in order to make the operation of a separate account to fund variable life insurance contracts feasible. In particular, the Commission is persuaded by the active participation of the National Association of Insurance Commissioners in the hearing and the Model Variable Contract Law and Regulation adopted by them which the Commission views as the beginning of the development of a uniform State regulatory structure designed specifically to meet the requirements of variable life insurance and the needs of variable life insurance contract-holders beyond the disclosure which the Securities Act would provide. Based on the representations made in the memoranda submitted by the National Association of Insurance Commissioners, the Commission believes that they are qualified to develop and administer the type of regulation particularly appropriate to the operation of variable life insurance separate accounts. Application of many of the provisions of the Investment Company Act in this context would only duplicate the regulation developed by the State insurance commissioners.

Consistent with the representations made by the National Association of Insurance Commissioners, we expect the States to move expeditiously to develop, refine, and adopt regulations with respect to variable life insurance. Further, we expect that such regulations will provide material protections to purchasers substantially equivalent to the relevant protections that would be available under the Investment Company Act. In particular, we believe it important that the regulations provide for the valuation of portfolio securities in a uniform manner; that they assure that contractholders be furnished annual statements containing information similar in nature to the information that would be provided by a registered investment company through annual reports and proxy statements; that they provide protection against unauthorized or improper changes in investment policies and against excessive management, administrative, and sales charges; and that transactions with affiliates be restricted in a manner similar to section 17 (15 U.S.C. 80a–17) of the Investment Company Act and the rules thereunder. The Commission will closely monitor the development of State law in this area to assure its adequacy in providing these protections and, if in the future it appears that substantial deficiencies exist and are not likely to be remedied, the Commission will then consider whether it is necessary or appropriate to modify or rescind Rule 3c–4.

In this connection, it should be noted that the Commission's reliance on State insurance laws and the administration of those laws with regard to variable life insurance is analogous to the action taken by Congress in 1964 when, in amending the Securities Exchange Act, it determined not to apply certain registration, reporting, and insider trading requirements to stock insurance companies regulated under State law.[3] Just as in 1964 the National Association of Insurance Commissioners had undertaken a program to bring about enactment of statutes and regulation which would afford protections comparable to the Federal securities laws; so, too, today they have undertaken the development of a meaningful uniform code and regulation with regard to variable life insurance.

Rule 3c–4 defines the term "insurance company" as used in section 3(c)(3), (15 U.S.C. 80a–3(c)(3)) of the Investment Company Act to include a separate account which would be employed as the funding medium for variable life insurance contracts. For this purpose, the rule would define a variable life insurance contract to be any contract of insurance issued by an insurance company which, so long as premiums are paid when due, provides a death benefit which varies to reflect the investment experience of a separate account established and maintained by such insurance company and which meets the four criteria specified in the rule.

Rule 3c–4 is adopted pursuant to the statutory authority granted in sections 38(a) (15 U.S.C. 80a–37(a)) and 6(c) (15 U.S.C. 80a–6(c)) of the Investment Company Act.

PROPOSED RULE 202–1 UNDER THE INVESTMENT ADVISERS ACT

The Commission has also determined to adopt Rule 202–1 under the Investment Advisers Act.[3] The Commission expects that the State regulation of life insurance companies issuing variable life contracts will provide adequate protection in this area but will closely monitor developments under State law to verify that this will be the case.

Rule 202–1 excludes from the term "investment adviser," an insurance company, or any affiliated company thereof the extent that any advisory services performed are incidental to the conduct of the business of issuing any variable life insurance contract as defined in Rule 3c–4 under the Investment Company Act or any interest or participation in a separate account issued in connection with such contract. The rule is adopted pursuant to the statutory authority granted in sections 206A (15 U.S.C. 80b–6a), 211(a), (15 U.S.C. 80b–11) and 202(a)(11), (15 U.S.C. 80b–2(a)(11)) of the Advisers Act.

Commission action. The Securities and Exchange Commission, pursuant to authority in sections 6(c) and 38(a) of the Investment Company Act of 1940 and sections 202(a)(11), 206A, and 211(a) of the Investment Advisers Act of 1940, hereby amends Parts 270 and 275 of Title 17 of the Code of Federal Regulations by adding §§ 270.3c–4 and 275.202–1, respectively, as indicated below:

Part 270 is amended by adding thereto a new § 270.3c–4 reading as follows:

§ 270.3c–4 Definition of "Insurance Company" for purposes of section 3(c)(3) of the Act.

(a) The term "insurance company," in section 3(c)(3) of the Act, shall include a separate account established and maintained by an insurance company:

(1) The assets of which separate account are derived solely from the sale of variable life insurance policies, as herein defined, and advances made by the insurance company in connection with the operation of such separate account; and

(2) Which separate account is not used for variable annuity contracts or for the investment of funds corresponding to dividend accumulations or other policy liabilities not involving life contingencies.

(b) For the purpose of this § 270.3c–4, a "variable life insurance policy" shall mean any policy of insurance issued by an insurance company which, so long as premiums are paid when due, provides a death benefit which varies to reflect the investment experience of a separate account established and maintained by such insurance company and:

(1) Provides for life insurance coverage for the whole of life, and the mortality and expense risks thereunder are assumed by such insurance company;

(2) Provides for an initial stated amount of death benefit and guarantees payment of a death benefit at least equal to such amount;

(3) Provides that the amount payable upon the death of the insured under such policy in any year will be no less than a minimum multiple of the gross premium payable in that year (exclusive of that portion allocable to any incidental insurance benefit) by a person who meets standard underwriting requirements, as shown in the following table:

Issue ages	*Multiples*
0–5	80
6–10	71
11–15	63
16–20	55
21–25	47
26–30	40
31–35	33
36–40	27
41–45	21
46–50	15
51–55	13
56–60	11
61–65	9
66–70	8
71 and over	7;

and

(4) In its entirety is a life insurance contract subject to regulation under the insurance laws of any State in which such policy is offered, including all required approvals by the insurance commissioner of such State.

Part 275 is amended by adding thereto a new § 275.202–1 reading as follows:

§ 275.202–1 Exclusion of issuers of variable life insurance policies and of interests or participations thereunder.

The term "investment adviser," in section 202(a)(11) of the Act, shall not include an insurance company, or any affiliated company thereof as defined in

See footnotes at end of document.

section 2(a)(2) of the Investment Company Act of 1940, to the extent that performance of advisory services is incidental to the conduct of the business of issuing any variable life insurance policy, as defined in § 270.3c–4 of this chapter under the Investment Company Act of 1940, and of any interest or participation in a separate account, as referred to in said § 270.3c–4 of this chapter, issued in connection with such a policy.

(Secs 6(c), 38(a), 202(a), 206A, 211(a), 54 Stat. 800, 841, 847, 855, 84 Stat. 1433, 15 U.S.C. 80a–6(c), 80a–37(a), 80b–2, 80b–6a, 80b–11(a))

The Commission finds that the foregoing rules grant exemptions from certain provisions of the Acts and may be declared effective forthwith. Accordingly, the foregoing rules shall become effective February 12, 1973.

By the Commission.

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

JANUARY 31, 1973.

[FR Doc 73–2810 Filed 2–12–73;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER C—DRUGS

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

COMBINATION DRUG FOR INJECTION

Betamethosone Dipropionate and Betamethasone Sodium Phosphate Aqueous Suspension

The Commissioner of Food and Drugs has evaluated a new animal drug application (49–185V) filed by Schering Corp., Bloomfield, N.J. 07003, proposing the safe and effective use of betamethasone dipropionate and betamethasone sodium phosphate aqueous suspension as an aid in the control of pruritus associated with dermatoses in dogs. The application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135b is amended by adding the following new section:

§ 135b.62 Betamethasone dipropionate and betamethasone sodium phosphate aqueous suspension.

(a) *Specifications.* Betamethasone dipropionate and betamethasone sodium phosphate aqueous suspension is a sterile aqueous suspension. Each milliliter of the suspension contains the equivalent of 5 milligrams of betamethasone as betamethasone dipropionate and 2 milligrams of betamethasone as betamethasone sodium phosphate.

(b) *Sponsor.* See code No. 032 in § 135.501(c) of this chapter.

(c) *Conditions of use.* (1) It is used in dogs as an aid in the control of pruritus associated with dermatoses.

(2) It is administered by intramuscular injection at a dosage of 0.25 to 0.5 milliliter per 20 pounds of body weight, depending on the severity of the condition. Frequency of dosage depends on recurrence of pruritic symptoms. In clinical studies one dosage of the drug brought relief for 1 to 6 weeks; the average period of relief was 3 weeks, and in many cases only one injection was required. Therefore, dosage may be repeated every 3 weeks or when symptoms recur. Total dosage should not exceed four injections.

(3) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. This order shall be effective February 12, 1973.

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

Dated: February 7, 1973.

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

[FR Doc.73–2761 Filed 2–12–73;8:45 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Niclosamide

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (34–394V) filed by Chemagro, Division of Baychem Corp., Hawthorn Road, Post Office Box 4913, Kansas City, MO 64120, proposing revised labeling for the safe and effective use of niclosamide tablets for removal of tapeworms from dogs and cats. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135c is amended by adding a new section as follows:

§ 135c.101 Niclosamide tablets.

(a) *Chemical name.* 2',5-Dichloro-4'-nitrosalicylanilide.

(b) *Specifications.* Niclosamide tablets contain niclosamide in a tablet intended for oral administration.

(c) *Sponsor.* See code No. 007 in § 135.501(c) of this chapter.

(d) *Conditions of use.* (1) The drug is intended for removal of tapeworms from dogs (*Dipylidium caninum, Taenia pisiformis, Taenia hydatigena*) and cats (*Taenia taeniaeformis*).

(2) The drug is administered orally at the rate of 500 milligrams of niclosamide per 7 pounds of body weight. An overnight fast is recommended. Treatment may be repeated should tapeworm proglottids reappear due to reinfection or underdosing.

(3) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. This order shall be effective on February 13, 1973.

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

Dated: February 5, 1973.

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

[FR Doc.73–2829 Filed 2–12–73;8:45 am]

PART 141—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

PART 148r—TYROTHRICIN

Updating and Technical and Editorial Revisions of Tyrothricin Monographs

In the FEDERAL REGISTER of August 30, 1972 (37 FR 17561), and October 4, 1972 (37 FR 20870), the Commissioner of Food and Drugs proposed to amend Parts 141 and 148r to provide for updating and editorial and technical revisions in the tyrothricin bulk drug monograph. The amendments also provided for the revocation of the sections providing for the certification of the tyrothricin dosage forms for which requests to certify are no longer received. Interested persons were invited to submit their comments in response to the notice of proposed rule making within 60 days. No comments were received. Accordingly, the Commissioner of Food and Drugs concludes that the antibiotic drug regulations should be amended as set forth below.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), Parts 141 and 148r are amended as follows:

§ 141.111 [Amended]

1. In Part 141, § 141.111 is amended in the table in paragraph (a) as follows:

a. By deleting all the existing entries for tyrothricin under "Working standard stock solutions" and "Standard response line concentrations."

b. By adding for the antibiotic "Tyrothricin" the following footnote 2:

[2] The gramicidin working standard and the gramicidin standard response line concentrations are used for the assay of tyrothricin.

2. In Part 148r:

a. By revising § 148r.1 to read as follows:

§ 148r.1 Tyrothricin.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Tyrothricin is a white to brownish-white compound of a kind of tyrothricin or a mixture of two or more such compounds. It consists principally of gramicidin and tyrocidine. It is so purified and dried that:

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[1] Securities Act Release No. 5234, Securities Exchange Act Release No. 9494, Investment Company Act Release No. 6999, and Investment Advisers Act Release No. 310, 37 FR 5510 (1972).

[2] Section 12(g)(2)(G) of the Securities Exchange Act (15 U.S.C. 78*l*, 78 Stat. 565 (1964)).

[3] Proposed Rule 202–1 under the Investment Advisers Act regarding the registration under the Act of companies which are subsidiaries of other companies, published for comment on December 18, 1972 (Investment Advisers Act Release No. 353, 38 FR 1649), will be renumbered if adopted.

(i) Its potency is not less than 900 micrograms and not more than 1,400 micrograms of tyrothricin per milligram.

(ii) Its loss on drying is not more than 5 percent.

(iii) It gives a positive identity test for tyrothricin.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, loss on drying, and identity.

(ii) Samples required: five packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 95 percent ethyl alcohol, U.S.P. XVIII or equivalent, to give a stock solution of convenient concentration. Further dilute the stock solution with 95 percent ethyl alcohol, U.S.P. XVIII or equivalent, to the reference concentration of 0.20 microgram of tyrothricin per milliliter (estimated). Average the absorbance values for the tyrothricin sample and read the gramicidin concentration from the gramicidin standard response line. Multiply by 5 to obtain the number of micrograms of tyrothricin in the sample.

(2) *Loss on drying.* Proceed as directed in § 141.501(b) of this chapter.

(3) *Identity.* To 5 milliliters of *p*-dimethylaminobenzaldehyde (T.S.) add about 5 milligrams of tyrothricin. Shake well for 2 minutes; then add 2 drops of 0.1*M* sodium nitrite and 5 milliliters of water. A blue color is produced.

§§ 148r.2, 148r.3, 148r.4, 148r.5 [Revoked]

b. By revoking §§ 148r.2, 148r.3, 148r.4, and 148r.5 and by reserving them for future use.

Effective date. This order shall become effective on March 15, 1973.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: February 5, 1973.

MARY A. MCENIRY,
Assistant to the Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc.73-2762 Filed 2-12-73;8:45 am]

SUBCHAPTER F—REGULATIONS UNDER SPECIFIC ACTS OF CONGRESS OTHER THAN THE FOOD, DRUG, AND COSMETIC ACT

PART 273—BIOLOGICAL PRODUCTS

Procedures for Review of Safety, Effectiveness and Labeling

A proposal regarding procedures for the review of safety, effectiveness and labeling of biological products was published in the FEDERAL REGISTER of August 18, 1972 (37 FR 16679). Interested persons were invited to submit comments on the proposal within 60 days. Comments were received from the Pharmaceutical Manufacturers Association, 12 affected manufacturers and several private individuals. These comments concerned almost every part of the proposal and its accompanying preamble. In addition, many other comments were received from physicians and recipients of bacterial vaccines which, although referring to these regulations, did not offer any comments on the proposed procedure, but rather concerned themselves only with the review for safety and effectiveness of bacterial vaccines and antigens whose label bears the statement "No U.S. standard of potency." These comments were considered as being responsive to the call for information on such bacterial vaccines and antigens which was published in the same issue of the FEDERAL REGISTER (37 FR 16690), and have thus been filed with other data received on these products.

GENERAL COMMENTS

1. Comments received from some physicians indicated concern that the Food and Drug Administration will spend public funds on a review which will result in the removal from the market of drugs which physicians are currently using and which patients need. As the advisory review panels will be constituted in such a manner that practicing physicians will be well represented, the needs of the patients for whom they care will be fully considered. Furthermore, any persons, particularly physicians, who have scientific and/or clinical information concerning these products will be given full opportunity to present such data to the advisory panels. It should be noted that the FDA has no desire to reduce the number of biological products available to the practicing physician and his patients. The agency's overriding purpose is to assure everyone who administers or receives a biological product that he is utilizing a product which is safe and effective for its labeled purpose.

2. Many comments were received which indicated that for many biological products there is a positive correlation between potency standards and clinical effectiveness, and that therefore the review should be limited to products for which ability to control disease has not been demonstrated. If not so limited, one comment requested that for products recognized as effective, a group submission should be permitted. Section 273.745 (b) of the proposed regulations indicated that the submission should follow the published format unless changed in the formal FEDERAL REGISTER notice requesting data, thus indicating an awareness by the FDA that such information may not always be requested. This section has been modified to clearly indicate that when the Commissioner of Food and Drugs determines that the available documented data are clear concerning the safety, effectiveness, or proper labeling of such products, the particular request for data and information will indicate that the usual format need not be followed, and will also specifically indicate what information should be submitted and in what format.

3. Many comments stated that the proposed regulations combined the substance of the requirements of the Federal Food, Drug, and Cosmetic Act with the procedural requirements of the Public Health Service Act, by making the standards of safety and effectiveness set forth in the new drug provisions of section 505 of the Federal Food, Drug, and Cosmetic Act applicable to biological products through the employment of the licensing provisions of the Public Health Service Act. These comments contended that such a combination was not legally permissible. To the contrary, biological products, subject to regulation under section 351 of the Public Health Service Act, are also drugs, within the meaning of section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act, and are therefore also subject to regulation under that act. Furthermore, Congress has clearly indicated its intentions in this regard in that both acts clearly and unequivocally state that nothing in either act shall be construed so as to in any way affect, modify, repeal, or supersede the provisions of the other act. It is therefore clearly permissible for the agency to develop a comprehensive regulatory program which combines the applicable provisions of both acts so as to regulate all biological drugs uniformly and efficiently.

4. Some comments argued that the license of a biological product which is not a new drug within the meaning of section 505 of the Federal Food, Drug, and Cosmetic Act cannot be revoked solely because a product is lacking in substantial evidence of effectiveness. With respect to biological products which are new drugs, these comments argued that the agency can only withdraw approval of the products under the procedures, and subject to the judicial review provided for, in the Federal Food, Drug, and Cosmetic Act. Regardless of whether a particular biological product is a new drug, however, all biological products are subject to the misbranding provisions of both section 502 of the Federal Food, Drug, and Cosmetic Act and section 351(b) of the Public Health Service Act. A biological product whose label purports, represents, or suggests it to be effective and/or safe for certain intended uses, and which is not safe and effective for such uses, is misbranded within the meaning of both acts, and therefore should not and will not be licensed under section 351 of the Public Health Service Act. Congress has clearly stated that a misbranded biologic may not be distributed in interstate commerce.

5. One comment argued that the proposed procedure would illegally shift the burden of proof upon the licensee to show that his product is not misbranded. This is not the situation. No license has been issued in the past for a product that the agency believes to be misbranded. The burden is on the prospective licensee, as it is upon a new drug applicant, to show a lack of misbranding to obtain a license or an approved new drug application, and

this burden remains on the licensee or new drug applicant after the license or new drug application is issued and approved.

COMMENTS RELATING TO SPECIFIC PROVISIONS OF PROPOSED § 273.245 (21 CFR 273.245)

I. PARAGRAPH (a)—ADVISORY REVIEW PANELS

1. Numerous comments were received requesting that the final order indicate the categories of products to be reviewed and their anticipated order of review, and further, that in the call for data and information for a particular category, the proper name of all products included in the category be stated. It is anticipated that nine designated categories of biological products shall be reviewed, the reviews to commence in the following order:

(a) Bacterial vaccines and bacterial antigens bearing labeling stating "No U.S. standard of potency."

(b) Bacterial vaccines and toxoids with standards of potency, single or in combination.

(c) Viral vaccines, single or in combination, and Rickettsial vaccines.

(d) Allergenic extracts.

(e) Skin test antigens.

(f) Immune serums, antitoxins and antivenins.

(g) Blood and blood derivatives.

(h) In Vitro diagnostic reagents.

(i) Miscellaneous (all other biological products not falling within one of the above therapeutic categories).

2. Several comments suggested that the regulations require that the advisory panels include persons from lists submitted by interested organizations, rather than allowing the inclusion of such persons to be discretionary. Further, they stressed that qualified persons of divergent views be mandatorily included. The Commissioner intends that the advisory review panels be both highly qualified and broadly representative of responsible medical and scientific opinion. Therefore, these comments are accepted and the regulations have been revised accordingly.

II. PARAGRAPH (b)—REQUEST FOR DATA AND VIEWS

1. Many comments were received questioning the FDA's authority summarily to revoke a license for a biological product on the ground that the requested data and information were not submitted. The FDA has sufficient authority under section 351 of the Public Health Service Act to revoke a license for a willful failure to submit required safety and effectiveness data. Nevertheless, the Commissioner has determined to revise the procedures governing the treatment accorded licensees failing to submit safety and effectiveness data for their products. Licenses for such products will not be revoked until such time as the Commissioner has published the final order establishing standards for the safety, effectiveness, and labeling of the particular category of biological products, and the products for which no data have been submitted fail to meet those standards. This approach has been adopted so as to ensure that no person currently receiving a licensed biological product in a medical context will be deprived of any of the possible benefits of the product until an expert advisory panel has made a thorough evaluation of all available safety and effectiveness data concerning the product. As the majority of currently licensed biologics have been in use for a substantial period of time, and were evaluated for safety prior to initial licensure, the Commissioner finds that no substantial safety risk will be presented by allowing such products to remain on the market pending a thorough review. The Commissioner expects that all responsible licensees will actively participate in the review by submitting all relevant safety and effectiveness data at their disposal. A consideration of the public interest in assuring that only safe, effective, and properly labeled biologics are available to the American public demands nothing less than full participation by all concerned manufacturers. Should such participation not be forthcoming, the Commissioner reserves the right to reconsider this decision to permit interim marketing of products for which no submission has been made.

2. Several comments were received requesting that the data submitted pursuant to these review procedures be considered confidential, even after the evaluation of the particular advisory review panel has been completed. The FDA position in this matter is that while data submitted in confidence is being reviewed by the panel, FDA will protect the data's confidentiality if it is entitled to such treatment under the provisions of 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j). However, the data would be made available to the public 30 days after publication of the proposed order unless the person submitting the data can demonstate that it is in fact still entitled to such confidentiality. Such action protects both the confidentiality of true trade secrets as well as the public's right to understand the basis for governmental decisions that vitally affect it. In keeping with the congressional intent of the Freedom of Information Act (5 U.S.C. 552), the FDA is making available to the public as much of the biologics effectiveness review data and information as is permissible under the law.

3. Several comments were received indicating that the time of 60 days which was allotted for submission of data was insufficient, especially in those cases in which a manufacturer is licensed for several products within the same category. The Commissioner recognizes that in certain instances 60 days may be an inadequate period of time in which to gather and submit the requisite data. On the other hand, in certain instances submission of data may be in an abbreviated form, and the time should be set accordingly. Therefore, this section has been amended to indicate that the submission shall be within 60 days, unless otherwise indicated in the notice for a particular category.

III. PARAGRAPH (b) (3), ITEM I

A. *Label or labels and all other labeling.* 1. Comments were received requesting that the requirement for submission of labels be limited to the final container label, package label, and package enclosures. In addition, several comments indicated that they assumed that the requirement for labeling pertained only to domestic labeling. While the only labeling that need be submitted by a manufacturer is the container and package label, as well as the package insert, the Commissioner intends that export as well as domestic labeling be submitted, since section 351 of the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act regulate the export of biological products as well as interstate commerce in such products. The regulations have been revised to clarify this point.

PARAGRAPH (b) (3), ITEM III

B. *Complete quantitative composition of the biological product.* 1. Comments were received stating that the Food and Drug Administration's request for the complete quantitative composition of the biological product was not necessary because the review covered only the safety and efficacy of active ingredients. Since inactive ingredients may markedly affect the stability, and therefore the potency and effectiveness of a product, the composition of all ingredients must be known. These comments have therefore been rejected.

PARAGRAPH (b) (3), ITEM VII

C. *Summary.* 1. Several comments suggested that the last sentence in this section should be revised to indicate that the explanation of the absence of controlled studies in the materials submitted be permitted to include not only why such studies are not considered necessary, but also why they are not considered to be feasible. As it is not the Commissioner's intention to require controlled studies where they are clearly not feasible, the suggestion has been accepted and the regulations have been revised accordingly.

PARAGRAPH (b) (3), ITEM VIII

D. *Signed statement.* 1. There was a request that this section be revised to indicate clearly that the designated statement be permitted to be filed either as a corporate submission, a submission signed by the responsible head, or a submission signed by the individual responsible for the submission. In order to clarify the meaning of this section, it has been revised to state that the statement must be signed by the person who is the "responsible head" as designated in 21 CFR 273.500. The request that corporate submissions be permitted is rejected, for the Commissioner is convinced that requiring the responsible head of an establishment to sign the statement will promote the submission

of more comprehensive and balanced data.

IV. PARAGRAPH (c)—DELIBERATIONS OF AN ADVISORY REVIEW PANEL

1. Several comments concerned the provision that any interested person may request an opportunity to present his views orally to the panel. They stated that oral presentations made to the panel should not be based on whether or not the panel wished to hear such presentations, but that such presentations should be a matter of right. The panel, however, must reserve the right to grant or deny a request to make an oral presentation on the basis of the merits of the request as well as on the amount of time available. The Commissioner has therefore rejected these requests, preferring to leave the panel with discretion to grant or deny a request for an oral presentation, since they alone know whether the presentation requested may present data, information, or views in which they are interested. The Commissioner believes that no reasonable request will be denied.

V. PARAGRAPH (d)—STANDARDS FOR SAFETY, EFFECTIVENESS, AND LABELING

A. *Paragraph (d), subparagraph (1) safety.* 1. Several comments were made requesting that the definition of safety be broadened so as to include a consideration of the benefit to risk ratio of the particular product under review. As subparagraph (3) of this paragraph indicates that the benefit to risk ratio of a biological product shall be considered in determining both safety and effectiveness, the proposed revision of the definition of safety is unnecessary.

B. *Paragraph (d), subparagraph (2) effectiveness.* 1. Several comments requested that the definition of effectiveness be extended to allow in certain situations for alternative methods, such as serological response evaluation in clinical studies, and appropriate animal and laboratory assays, to serve as adequate substantiation of effectiveness. Although this subparagraph as originally proposed indicated that in certain circumstances alternative methods of investigation will be adequate to substantiate effectiveness, this subparagraph has been amended to indicate with greater specificity that alternative procedures may be considered satisfactory.

VI. PARAGRAPH (e)—ADVISORY REVIEW PANEL REPORT TO THE COMMISSIONER

1. Comment was received requesting that the report of the advisory review panel be submitted to the concerned manufacturers at the same time that it is submitted to the Commissioner. This request has been rejected, since the report of each panel is advisory to the Commissioner, who has the final authority either to accept or to reject the conclusions and recommendations of the panel. It should be noted in this connection that the regulations provide that at such time as the Commissioner publishes the proposed order in the FEDERAL REGISTER, he shall also publish the full report or reports of the panel. It should further be noted that interested parties, including consumers and manufacturers, will be kept fully informed of the deliberations of the panel through liaison representatives. It is therefore anticipated that concerned members of industry and the general public will have ample opportunity to express their views to the panel. The Freedom of Information Act would also prohibit any special submission of the panel report to industry before its general release.

2. Comments were also received asserting that the advisory panels cannot state the type of studies that should be done for biological products deemed to be neither safe and effective nor unsafe and ineffective, since the design of study protocols are the prerogative of the licensee and not of the advisory panel. The Commissioner has no intention whatever of infringing on the right of a manufacturer to conduct whatever studies it wishes. The Commissioner will, however, give careful consideration to the recommendations of the advisory panels regarding appropriate studies during his evaluation of the adequacy of a licensee's or applicant's proposed studies.

VII. PARAGRAPHS (f) AND (g)—PROPOSED AND FINAL ORDERS

1. Comment was received requesting that the proposed and final orders be made available to concerned licensees prior to their publication in the FEDERAL REGISTER. Inasmuch as industry, along with consumers, will have a liaison member on the panel to keep it informed, and because the Commissioner has an obligation to all members of the public to keep them informed as promptly as possible, no change will be made in either of the two paragraphs concerning the procedures to be followed with respect to the availability of the proposed and final orders.

VIII. PARAGRAPH (h)—ADDITIONAL STUDIES

1. Some comments indicated that 30 days is an inadequate period of time in which to undertake any further studies which may be needed. These comments stressed that, except in rare instances, studies which may be required could probably not begin within that time period due to necessary planning. Although the Commissioner has indicated that this 30-day period may be extended if necessary, the regulations have been amended to more specifically provide for an additional period of time from the publication of the final order, providing certain prescribed conditions are met.

IX. PARAGRAPH (i)—CATEGORIES OF BIOLOGICAL PRODUCTS TO BE REVIEWED

1. Some comments were received concerning the need for a different type of review for those biological products which are also in vitro diagnostic reagents. It is anticipated that the format for submissions may in fact need to be revised for in vitro diagnostic reagents, but it is believed that the format is sufficiently flexible to cover these products. It should further be noted that such products are also the subject of the impending in vitro diagnostic product review (37 FR 16613), and that the two reviews will be coordinated.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701, 52 Stat. 1040–1042, as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 321, 352, 355, 371), the Public Health Service Act (sec. 351, 58 Stat. 702, as amended; 42 U.S.C. 262), and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243, as amended; 5 U.S.C. 553, 702, 703, 704), and under authority delegated to the Commissioner, Part 273 is amended by adding a new section, as follows:

§ 273.245 Review procedures to determine that licensed biological products are safe, effective, and not misbranded under prescribed, recommended, or suggeste conitions of use.

For purposes of reviewing biological products that have been licensed prior to July 1, 1972, to determine that they are safe and effective and not misbranded, the following regulations shall apply. Prior administrative action exempting biological products from the provisions of the Federal Food, Drug, and Cosmetic Act is superseded to the extent that these regulations result in imposing requirements pursuant to provisions therein for a designated biological product or category of products.

(a) *Advisory review panels.* The Commissioner of Food and Drugs shall appoint advisory review panels (1) to evaluate the safety and effectiveness of biological products for which a license has been issued pursuant to section 351 of the Public Health Service Act, (2) to review the labeling of such biological products, and (3) to advise him on which of the biological products under review are safe, effective, and not misbranded. An advisory review panel shall be established for each designated category of biological product. The members of a panel shall be qualified experts, appointed by the Commissioner, and shall include persons from lists submitted by organizations representing professional, consumer, and industry interests. Such persons shall represent a wide divergence of responsible medical and scientific opinion. The Commissioner shall designate the chairman of each panel, and summary minutes of all meetings shall be made.

(b) *Request for data and views.* (1) The Commissioner of Food and Drugs will publish a notice in the FEDERAL REGISTER requesting interested persons to submit, for review and evaluation by an advisory review panel, published and unpublished data and information pertinent to a designated category of biological products.

(2) Data and information submitted pursuant to a published notice, and falling within the confidentiality provisions of 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j), shall be handled by the

advisory review panel and the Food and Drug Administration as confidential until publication of a proposed evaluation of the biologics under review and the full report or reports of the panel. Thirty days thereafter such data and information shall be made publicly available and may be viewed at the Office of the Hearing Clerk of the Food and Drug Administration, except to the extent that the person submitting it demonstrates that it still falls within the confidentiality provisions of one or more of those statutes.

(3) To be considered, 12 copies of the submission on any marketed biological product within the class shall be submitted, preferably bound, indexed, and on standard sized paper, approximately 8½ x 11 inches. The time allotted for submissions will be 60 days, unless otherwise indicated in the specific notice requesting data and views for a particular category of biological products. When requested, abbreviated submissions should be sent. All submissions shall be in the following format, indicating "none" or "not applicable" where appropriate, unless changed in the FEDERAL REGISTER notice:

BIOLOGICAL PRODUCTS REVIEW INFORMATION

I. Label or labels and all other labeling (preferably mounted. Facsimile labeling is acceptable in lieu of actual container labeling), including labeling for export.

II. Representative advertising used during the past 5 years.

III. The complete quantitative composition of the biological product.

IV. Animal safety data.

A. Individual active components.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

B. Combinations of the individual active components.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

C. Finished biological product.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

V. Human safety data.

A. Individual active components.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

3. Documented case reports.

4. Pertinent marketing experiences that may influence a determination as to the safety of each individual active component.

5. Pertinent medical and scientific literature.

B. Combinations of the individual active components.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

3. Documented case reports.

4. Pertinent marketing experiences that may influence a determination as to the safety of combinations of the individual active components.

5. Pertinent medical and scientific literature.

C. Finished biological product.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

3. Documented case reports.

4. Pertinent marketing experiences that may influence a determination as to the safety of the finished biological product.

5. Pertinent medical and scientific literature.

VI. Efficacy data.

A. Individual active components.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

3. Documented case reports.

4. Pertinent marketing experiences that may influence a determination on the efficacy of each individual active component.

5. Pertinent medical and scientific literature.

B. Combinations of the individual active components.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

3. Documented case reports.

4. Pertinent marketing experiences that may influence a determination as to the effectiveness of combinations of the individual active components.

5. Pertinent medical and scientific literature.

C. Finished biological product.

1. Controlled studies.

2. Partially controlled or uncontrolled studies.

3. Documented case reports.

4. Pertinent marketing experiences that may influence a determination as to the effectiveness of the finished biological product.

5. Pertinent medical and scientific literature.

VII. A summary of the data and views setting forth the medical rational and purpose (or lack thereof) for the biological product and its components and the scientific basis (or lack thereof) for the conclusion that the biological product, including its components, has been proven safe and effective and is properly labeled for the intended use or uses. If there is an absence of controlled studies in the materials submitted, an explanation as to why such studies are not considered necessary or feasible shall be included.

VIII. If the submission is by a licensee, a statement signed by the responsible head (as defined in 21 CFR 273.500) of the licensee shall be included, stating that to the best of his knowledge and belief, it includes all information, favorable and unfavorable, pertinent to an evaluation of the safety, effectiveness, and labeling of the product, including information derived from investigation, commercial marketing, or published literature. If the submission is by an interested person other than a licensee, a statement signed by the person responsible for such submission shall be included, stating that to the best of his knowledge and belief, it fairly reflects a balance of all the information, favorable and unfavorable, available to him pertinent to an evaluation of the safety, effectiveness, and labeling of the product.

(c) *Deliberations of an advisory review panel.* An advisory review panel will meet as often and for as long as is appropriate to review the data submitted to it and to prepare a report containing its conclusions and recommendations to the Commissioner of Food and Drugs with respect to the safety, effectiveness, and labeling of the biological products in the designated category under review.

(1) A panel may also consult any individual or group.

(2) Any interested person may request in writing an opportunity to present oral views to the panel. Such written requests for oral presentations should include a summarization of the data to be presented to the panel. Such request may be granted or denied by the panel.

(3) Any interested person may present written data and views which shall be considered by the panel. This information shall be presented to the panel in the format set forth in paragraph (b)(3) of this section and within the time period established for the biological product category in the notice for review by a panel.

(d) *Standards for safety, effectiveness, and labeling.* The advisory review panel, in reviewing the submitted data and preparing the panel's conclusions and recommendations, and the Commissioner of Food and Drugs, in reviewing and implementing the conclusions and recommendations of the panel, shall apply the following standards to determine that a biological product is safe and effective and not misbranded.

(1) Safety means the relative freedom from harmful effect to persons affected, directly or indirectly, by a product when prudently administered, taking into consideration the character of the product in relation to the condition of the recipient at the time. Proof of safety shall consist of adequate tests by methods reasonably applicable to show the biological product is safe under the prescribed conditions of use, including results of significant human experience during use.

(2) Effectiveness means a reasonable expectation that, in a significant proportion of the target population, the pharmacological or other effect of the biological product, when used under adequate directions, for use and warnings against unsafe use, will serve a clinically significant function in the diagnosis, cure, mitigation, treatment, or prevention of disease in man. Proof of effectiveness shall consist of controlled clinical investigations as defined in § 130.12(a)(5)(ii) of this chapter, unless this requirement is waived on the basis of a showing that it is not reasonably applicable to the biological product or essential to the validity of the investigation, and that an alternative method of investigation is adequate to substantiate effectiveness. Alternate methods, such as serological response evaluation in clinical studies and appropriate animal and other laboratory assay evaluations may be adequate to substantiate effectiveness where a previously accepted correlation between data generated in this way and clinical effectiveness already exists. Investigations may be corroborated by partially controlled or uncontrolled studies, documented clinical studies by qualified experts, and reports of significant human experience during marketing. Isolated case reports, random experience, and reports lacking the details which permit scientific evaluation will not be considered.

(3) The benefit-to-risk ratio of a biological product shall be considered in determining safety and effectiveness.

(4) A biological product may combine two or more safe and effective active components: (i) When each active component makes a contribution to the claimed effect or effects; (ii) when combining of the active ingredients does not decrease the purity, potency, safety, or effectiveness of any of the individual active components; and (iii) if the combination, when used under adequate directions for use and warnings against unsafe use, provides rational concurrent preventive therapy or treatment for a significant proportion of the target population.

(5) Labeling shall be clear and truthful in all respects and may not be false or misleading in any particular. It shall comply with section 351 of the Public Health Service Act and sections 502 and 503 of the Federal Food, Drug, and Cosmetic Act, and in particular with the applicable requirements of §§ 273.600 through 273.605 and 1.106 of this chapter.

(e) *Advisory review panel report to the Commissioner.* An advisory review panel shall submit to the Commissioner of Food and Drugs a report containing the panel's conclusions and recommendations with respect to the biological products falling within the category covered by the panel. Included within this report shall be:

(1) A statement which designates those biological products determined by the panel to be safe and effective and not misbranded. This statement may include any condition relating to active components, labeling, tests required prior to release of lots, product standards, or other conditions necessary or appropriate for their safety and effectiveness.

(2) A statement which designates those biological products determined by the panel to be unsafe or ineffective, or to be misbranded. The statement shall include the panel's reasons for each such determination.

(3) A statement which designates those biological products determined by the panel not to fall within either subparagraph (1) or (2) of this paragraph on the basis of the panel's conclusion that the available data are insufficient to classify such biological products, and for which further testing is therefore required. The report shall recommend with as much specificity as possible the type of further testing required and the time period within which it might reasonably be concluded. The report shall also recommend whether the product license should or should not be revoked, thus permitting or denying continued manufacturing and marketing of the biological product pending completion of the testing. This recommendation will be based on an assessment of the present evidence of the safety and effectiveness of the product and the potential benefits and risks likely to result from the continued use of the product for a limited period of time while the questions raised concerning the product are being resolved by further study.

(f) *Proposed order.* After reviewing the conclusions and recommendations of the advisory review panel, the Commissioner of Food and Drugs shall publish in the FEDERAL REGISTER a proposed order containing:

(1) A statement designating the biological products in the category under review that are determined by the Commissioner of Food and Drugs to be safe and effective and not misbranded. This statement may include any condition relating to active components, labeling, tests required prior to release of lots, product standards, or other conditions necessary or appropriate for their safety and effectiveness, and may propose corresponding amendments in other regulations under this Part 273.

(2) A statement designating the biological products in the category under review that are determined by the Commissioner of Food and Drugs to be unsafe or ineffective, or to be misbranded, together with the reasons therefor. All licenses for such products shall be proposed to be revoked.

(3) A statement designating the biological products not included in either of the above two statements on the basis of the Commissioner of Food and Drugs determination that the available data are insufficient to classify such biological products under either subparagraphs (1) or (2) of this paragraph. Licenses for such products may be proposed to be revoked or to remain in effect on an interim basis. Where the Commissioner determines that the potential benefits outweigh the potential risks, the proposed order shall provide that the product license for any biological product, falling within this paragraph will not be revoked but will remain in effect on an interim basis while the data necessary to support its continued marketing are being obtained for evaluation by the Food and Drug Administration. The tests necessary to resolve whatever safety or effectiveness questions exist shall be described.

(4) The full report or reports of the panel to the Commissioner of Food and Drugs.

The summary minutes of the panel meeting or meetings shall be made available to interested persons upon request. Any interested person may, within 60 days after publication of the proposed order in the FEDERAL REGISTER, file with the Hearing Clerk of the Food and Drug Administration written comments in quintuplicate. Comments may be accompanied by a memorandum or brief in support thereof. All comments may be reviewed at the office of the Hearing Clerk during regular working hours, Monday through Friday.

(g) *Final order.* After reviewing the comments, the Commissioner of Food and Drugs shall publish in the FEDERAL REGISTER a final order on the matters covered in the proposed order. The final order shall become effective as specified in the order.

(h) *Additional studies.* (1) Within 30 days following publication of the final order, each licensee for a biological product designated as requiring further study to justify continued marketing on an interim basis, pursuant to paragraph (f) (3) of this section, shall satisfy the Commissioner of Food and Drugs in writing that studies adequate and appropriate to resolve the questions raised about the product have been undertaken, or the Federal Government may undertake the studies. The Commissioner may extend this 30-day period if necessary, either to review and act on proposed protocols or upon indication from the licensee that the studies will commence at a specified reasonable time. If no such commitment is made, or adequate and appropriate studies are not undertaken, the product license or licenses shall be revoked.

(2) A progress report shall be filed on the studies every January 1 and July 1 until completion. If the progress report is inadequate or if the Commissioner of Food and Drugs concludes that the studies are not being pursued promptly and diligently, or if interim results indicate the potential benefits do not outweigh the potential risks, the product license or licenses shall be revoked.

(3) Promptly upon completion of the studies undertaken on the product, the Commissioner of Food and Drugs will review all available data and will either retain or revoke the product license or licenses involved. In making this review and evaluation the Commissioner may again consult the advisory review panel which prepared the report on the product, or other advisory committees, professional organizations, or experts. The Commissioner shall take such action by notice published in the FEDERAL REGISTER.

(i) *Court Appeal.* The final order(s) published pursuant to paragraph (g) of this section, and any notice published pursuant to paragraph (h) of this section, consitute final agency action from which appeal lies to the courts. The Food and Drug Administration will request consolidation of all appeals in a single court. Upon court appeal, the Commissioner of Food and Drugs may, at his discretion, stay the effective date for part or all of the final order or notice, pending appeal and final court adjudication.

Effective date. This order shall become effective on February 13, 1973.

Dated: February 8, 1973.

SHERWIN GARDNER,
Deputy Commissioner of Food and Drugs.

[FR Doc.73-2826 Filed 2-12-73;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 7218]

PART 53—FOUNDATION EXCISE TAXES

Foreign Private Foundations

Correction

In FR Doc. 72-19374 appearing at page 23918 in the issue for Friday, November 10, 1972, in the penultimate line of § 53.4948-1(a)(3), the figure "4943(a)" should read "4948(a)".

Title 39—Postal Service

CHAPTER III—POSTAL RATE COMMISSION

[Docket No. RM73-2]

PART 3001—RULES OF PRACTICE AND PROCEDURE

Evidentiary Hearings

FEBRUARY 9, 1973.

I. *Commission participation in hearings.* Associated Third Class Mail Users (ATCMU) and Direct Mail Advertising Association (DMAA) want to require the Commission to preside en banc at all evidentiary hearings. They thus object to the present rules, which allow the presiding officer to be an Administrative Law Judge, a single Commissioner, or the Chairman if the hearing is conducted by the Commission en banc.

The Commission's present rules, which mirror the provisions of the Administrative Procedure Act (5 U.S.C. 556) in this respect, are plainly lawful and proper. Evidentiary hearings before this Commission are marked by numerous requests for technical rulings about testimony and about requests for discovery. Not only is it more practical for a single person rather than a group to rule upon these requests, but an Administrative Law Judge is especially trained for this task. The Commission is convinced that the Administrative Law Judge's presence at the hearings expedites agency proceedings.

When an Administrative Law Judge presides, the agency also has the option of allowing that officer to publish an initial decision. This procedure, which is "desirable and usually followed,"[1] sharpens the issues presented and allows hte participants to focus their arguments upon the fundamental questions. As a result, it normally speeds rather than delays the final Commission decision.

In complaining against the use of an Administrative Law Judge, ATCMU and DMAA rely upon a letter which ATCMU filed before the hearings in the Commission's first case, Docket No. R71-1. At that time ATCMU expressed concern that, unless the Commissioners presided at those hearings, they would be "insulated from first-hand exposure to the witnesses." In fact, Members of the Commission regularly attended the Docket No. R71-1 hearings; they heard the evidence; and they were personally familiar with the entire record. The Commission intends to follow the same course in the future. ATCMU's concern is thus totally unwarranted.

II. Many suggestions have been offered for changes in the Commission's rules governing the conduct of hearings.

Interlocutory appeals. Five parties note that the present rules appear to prevent interlocutory appeals of the presiding officer's rulings unless that officer certifies the appeal. Although the parties offer different suggestions for change, all agree that the Commission should be empowered to grant interlocutory appeals—without the presiding officer's certification—in some circumstances.

Interlocutory appeal procedures for agency scrutiny of rulings by presiding officers must balance the advantages of immediate review of important rulings against the possible interruption of the hearing process and other costs of piecemeal review. Except in rare circumstances, interlocutory review is to be discouraged. Ordinarily, the presiding officer is in the best position to exercise expert judgment on the procedural questions which dominate interlocutory rulings, to develop consistent and informed decisions, and to direct discovery and control the proceeding.

After an exhaustive study of this question, the Administrative Conference found that "[p]rocedures which delegate the responsibility for allowing interlocutory appeals to presiding officers, with a reserved power in the agency to handle exceptional situations, have proven most satisfactory."[2] Our new rule is in line with the Administrative Conference's recommendations. In cases when the presiding officer declines to certify an interlocutory appeal, the Commission will not allow such an appeal except in extraordinary circumstances, as specified in the new rule.

Procedural deadlines. In order to expedite the first rate case, the Commission established tight procedural deadlines. In response to comments from four parties, the Commission has extended the time limits for answers to requests for discovery, for briefs on exceptions, and for certain other pleadings.

The Commission will continue "to conduct its proceedings with utmost expedition consistent with procedural fairness to the parties * * * (39 U.S.C. 3624(b)). If circumstances warrant, the presiding officer is fully empowered under our rules to prescribe shorter procedural deadlines. However, if the presiding officer requires a pleading to be filed within a time period of 5 days or less, the new rules allow Saturdays, Sundays, and holidays to be excluded in computing due dates.

Grouping of parties. ATCMU and Penney complain about the rules' provisions for grouping of two or more parties. These rules allow the agency to require parties who have substantially like interests and positions to join together for the purpoce of making a combined presentation. Recognizing that Commission proceedings are so complex that limitations on redundancy are essential, the Postal Service supports the present rules.

In our opinion, the Congress plainly authorized the Commission to adopt rules, such as those for grouping parties, which would assist the Commission in conducting its proceedings with "the utmost expedition consistent with procedural fairness to the parties * * *" (39 U.S.C. 3624(b)). The Congress expressly recognized that such rules could include the "limitation of testimony" (Id.). Combined with our statutory power to adopt rules needed to "carry out [our] functions" (39 U.S.C. 3603), the specific legislative authorization fully justifies our rules.

Although both ATCMU and Penney question the rules' fairness, the rules are not unprecedented.[3] Indeed, our rules simply implement the Supreme Court's admonition that "the effectiveness and clarity with which issues are presented in cases of * * * complexity might be significantly increased if even greater efforts were made to focus and consolidate argumentation on behalf of parties with essentially similar views."[4]

Naturally, our rules regarding grouping cannot be arbitrarily applied. Thus, contrary to Penney's concern, the grouping rules do not cover settlement conferences, where each party is free to stake out its own position. As experience in the Commission's first rate case shows, the grouping rules can and have been administered without infringing upon any party's fundamental rights. In the absence of any showing of prejudice, the Commission is not prepared to abandon enlightened rules which may be essential for expediting its proceedings.

Rebuttal testimony. The Postal Service asks that the rules be amended to specify that it has the right to offer rebuttal evidence. In accordance with the Administrative Procedure Act (5 U.S.C. 556(d)), the Commission's present rules (39 CFR 3001.30(d)) already give the

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[1] See Florida Economic Advisory Council v. FPC, 251 F. 2d 643, 647 (D.C. Cir. 1957) certiorari denied, 356 U.S. 959 (1958).

[2] 1970-71 Report of the Administrative Conference of the United States, July 1971, pp. 50-51 (Recommendation No. 23). See also Gellhorn, Interlocutory Appeal Procedures in Administrative Hearings, Administrative Conference of the United States (April 19, 1971).

[3] Note, for example, Professor Davis' approval of 18 CFR 1.8(g), an FPC rule allowing the presiding officer to limit presentations by two or more intervenors having substantially like interests and positions. 1 K. Davis, Administrative Law (1958), p. 566, note 30.

[4] Permian Basin Area Rate Cases, 390 U.S. 747, 766, note 32 (1968). See also Office of Communication of United Church of Christ v. FCC, 359 F. 2d 994 (D.C. Cir. 1966), where Judge Burger, commenting on the problems inherent in multiparty proceedings, noted that "it is no novelty in the administrative process to require consolidation of petitions and briefs to avoid multiplicity of parties and duplication of effort." 359 F. 2d at 1006.

Service the right to present opening and closing evidence in rate and classification proceedings. Indeed, the Service was routinely granted the right to offer rebuttal testimony during the first rate case. Our present rules are thus clear on this point and do not need amendment.

Motions during hearings. During the hearings in the first rate case, the Commission received motions involving procedural matters which the presiding officer should rule upon. To avoid this practice in the future, the new rules provide that motions—except motions to dismiss or terminate the proceeding—should be addressed to the presiding officer during the hearings.

III. One of the innovative features of the Act is its mandate for the Commission to adopt rules providing "discovery both from the Postal Service and the parties to the proceeding." (39 U.S.C. 3624(b)(3)) While the Commission finds that its discovery rules need only minor change, several suggestions also warrant comment.

Individual-company data. Our present discovery rules require participants to furnish certain requested information "as is available to the participant" (39 CFR 3001.25). In the first rate case, dispute over these rules stemmed from the fact that many corporate mailers chose to participate in Commission proceedings through trade associations. Because of this, the Postal Service was obliged to ask the trade associations to produce financial and other information regarding their individual member companies. Some trade associations resisted discovery on the ground that the information for individual member companies was not "available" to the associations.

Both the Postal Service and two trade associations, DMAA and ATCMU, suggest that the rules be amended to define a trade association's obligation to provide individual member-company information. On the one hand, the Service wants the associations to be required to obtain and provide such information. In contrast, DMAA and ATCMU want to provide only such information as their member companies are required—as a condition of membership—to furnish to the association.

The Commission is not able to accede to either request. At one extreme, the trade associations' proposal could deprive the Commission of essential information. The trade associations must recognize that they participate in Commission p roceedings essentially as a convenience for their member companies. The trade associations do not ordinarily challenge rate and classification changes because of the financial effect upon the associations themselves; they assert claims of impact on behalf of their members collectively. If these impact claims are not supported by financial data for the member companies, the Commission cannot evaluate them.

The Commission recognizes that trade associations may have to make special arrangements with their members to finance and to authorize data collection. This, we believe, is an appropriate matter for trade associations to discuss with their member companies before undertaking to represent those companies before the Commission. In the last rate case, some trade associations did present compilations of individual member-company data. In the future, if trade associations are unable or unwilling to present necessary evidence, the Commission may be forced to required that the member companies themselves intervene in order to present claims under 39 U.S.C. 3622(b)(4).

On the other hand, the Commission is not persuaded that, as the Service suggests, trade associations must always provide any individual-company information which is requested. In some instances, the expense or prejudice resulting from furnishing the information may outweigh its probative value. The presiding officer is uniquely able to appraise the facts of each situation and to balance the conflicting considerations. Since our present rules properly leave this task to the presiding officer, we will decline to change them.

Privileged material. The Service and ATCMU suggest that our rule governing interrogatories can be read as allowing requests for privileged, nonrelevant information. The Commission agrees that the rule is ambiguous, and we have clarified it accordingly.

Protective orders. Magazine Publishers Association, Inc. (MPA) asks for a new provision specifying that protective orders may be issued to prevent disclosure of confidential commercial data. The present rules already empower the agency to issue such orders. Indeed, as MPA acknowledges, the presiding officer issued such an order on MPA's behalf in the recent rate case. As we see it, the present rules are ample without change.

Filing and service. Although 39 CFR 3001.42(b) classifies discovery pleadings as "public records," our rules do not now require copies to be lodged with the Commission. The new rules will correct this omission. They also require participants to serve discovery pleadings upon other participants who request copies.

IV. Many suggestions involve the rules relating to filings, service, conferences, briefs, and intervention.

Filings. On its own motion, the Commission has decided to publish a FEDERAL REGISTER notice whenever the Service files a formal request for a recommended or advisory opinion. Both the Service and the Commission voluntarily published such notices when the first rate case was filed. The nationwide interest in Commission proceedings requires that the Commission's practice be made mandatory.

Our rules require the Service to file its direct evidence together with its formal requests for Commission action. The Postal Service is concerned that these rules might preclude it from submitting newly available evidence during the hearings. However, the presiding officer has full authority to regulate the hearings and, in fact, allowed the Service to present supplemental testimony in the recent rate case. Accordingly, no rules change is needed.

The Service also wants the rules modified so as to establish that the Service may initiate rate and classification cases without filing "suggested" changes. In fact, however, the Service filed suggested rate changes in Docket No. R71–1 and suggested classification changes in Docket No. MC73–1. As a practical matter, therefore, the Commission sees no need to change the rules.

Service. Stating that the change will enable it to respond promptly to pleadings, the Service asks that it receive six copies of all documents. No party has objected, and we will grant this request.

Conferences. Four parties object to the rule that informal, off-the-record prehearing conferences "shall be presided over by the Commission's officer designated to represent the interest of the general public or such other person as the participants may select." (39 CFR 3001.24(b), emphasis supplied.) They are concerned that the rule may be read as though it embodied an inference favoring selection of the Commission's officer. No such inference is supported by the rule's text, and none was intended. With this explanation, the rule is retained in its present form.

Briefs. As requested by ATCMU and DMAA, we have revised our rules to insure that participants will have an opportunity to file briefs after the evidentiary hearings end. We will, however, retain the rule which requires that briefs must be completely self-contained and may not incorporate other pleadings by reference. Despite the Postal Service's reservations, the Commission is convinced that participants are encouraged by this rule to refine and clarify their final arguments to the presiding officer and to the Commission. (See also Order No. 27, para. 2(b), Feb. 2, 1972.)

Intervention. During the last rate case, the Commission authorized a number of mailers to participate although those mailers were late in filing their requests for leave to intervene. In each instance, the Commission found that the mailer had satisfied the rule which authorizes late filing for good cause shown. Believing that the Commission has been too lenient in allowing late intervention, the Service recommends that the rule be made more stringent.

In our opinion, the Postal Service fails to give sufficient weight to the public interest in allowing full participation by mailers in Commission proceedings. Recent court decisions are uniformly critical of any attempt to exclude interested ratepayers from administrative proceedings on the basis of technicalities. Indeed, "users of the mails" have a statutory right to participate in this Commission's hearings if they comply with the Commission's regulations. (See 39 U.S.C. 3603, 3624(a); 39 CFR 3001.20.)

Recognizing this, the Commission "has been disposed to allow late intervention where a reasonable basis for failure to

make timely filing has been shown and where the proceeding will not be delayed by such late intervention." (Order No. 12, June 16, 1971.) Usually, the Commission has required late intervenors to take the case as they find it—that is, they are permitted to intervene subject to all previously-made rulings regarding procedural matters. The Commission's policy regarding late interventions did not impede the first rate case and should be retained.

Clearly, the Commission has sufficient power under present rules to deny late intervention where it would prejudice the rights of the Service or other participants.

V. The Institute for Public Interest Representation (Institute), organized by Georgetown University, has submitted comments about the rules' provisions for "public information" (39 CFR 3001.42). Although the Commission does not accept all the Institute's suggestions, it agrees that certain changes are constructive.

Exempt records. The rules classify eight categories of records as being nonpublic information. The first six categories are taken almost verbatim from the Freedom of Information Act (5 U.S.C. 552) and are not challenged in substance.

The seventh category is composed of certain intra-agency documents. Although those documents are included within the Freedom of Information Act definition of nonpublic records (5 U.S.C. 552(b)(5)), the Institute properly notes that it may be confusing to list them as a separate category. We agree and will revise the rules clarify that these documents are an illustrative example of the six listed Freedom of Information Act categories.

The Commission will take similar action with regard to the eighth category of information—unaccepted offers of settlement. Despite the Institute's views, we are not convinced that such settlement offers should be classified as public information. Other agencies treat them as examples of privileged commercial or financial information, which the Freedom of Information Act classifies as nonpublic. (See e.g., 18 CFR 1.36(c)(15)(v).) Moreover, the Institute has not addressed itself to the possible effect of the statutory provision exempting from disclosure "information prepared for use in connection with proceedings under chapter 36 of" the Postal Reorganization Act. (See 39 U.S.C. 410(c)(4).)

Requests. We will revise the rules for requesting information. In lieu of the Institute's suggested language, the new rule is patterned after recommendations made by the Administrative Conference and by the House Committee on Government Operations.[5] Among other things, the rule provides for timely action on requests, a statement of reasons for refusals to disclose information, and notice that denials of information may be appealed to the Commission.

VI. The Commission has decided to make certain changes in rules relating to the conduct of its employees.

Ex parte rules. The Commission is now governed by two separate rules regarding ex parte communications. One rule (39 CFR 3001.7) was promulgated by the Commission as part of the procedural regulations issued in January 1971. Subsequently, the Civil Service Commission, acting pursuant to Executive Order No. 11570, issued Standards of Conduct which prescribed new ex parte rules for this Commission.

Six parties ask the Commission to relax the ex parte rules issued by the Civil Service Commission. Their particular complaint is that those regulations prohibit our Litigation Division from communicating privately on matters of substance with other participants.

As we see it, however, this restriction is required. The President specifically ordered that the Civil Service Commission Rules provide for "strict control of ex parte contacts with the * * * Commissioners or employees of the Commission * * *" (Exec. Order No. 11570, emphasis supplied). Nothing in the President's directive suggests that some employees should be covered while others should be exempt.

The Civil Service Commission rules were coordinated with an intergovernmental task force which included representatives of the Justice Department. At the time the task force considered those rules, its attention was drawn to the Commission's January 1971 rule (39 CFR 3001.7), which exempted the Litigation Division from ex parte prohibitions. The task force decline to follow this approach and, instead, made the Civil Service Commission prohibition applicable to all employees. Consequently, although some parties now ask us to conform the Civil Service Commission rules to our January 1971 rule, their suggestion would in effect undo the task force's deliberate decision. That step would be plainly improper.

Consequently, the Commission adheres to the ex parte restrictions promulgated for it by the Civil Service Commission. To avoid future confusion, the Commission has modified its January 1971 rule to eliminate certain inconsistencies between it and the Civil Service Commission regulations.

Former employees. The Commission's January 1971 rules contained provisions for the disqualification of former employees from Commission proceedings (39 CFR 3001.6(f)). Since these provisions have been superseded by the Civil Service Commission's Standards of Conduct (39 CFR 3000.735-303 and 316), they will be deleted.

Other. ATCMU and DMAA ask that our January 1971 ex parte rule (39 CFR 3001.7) be changed so that it prohibits the Litigation Division from communicating with the Commission privately on issues in pending proceedings. However, under another Commission regulation, the Litigation Division is already barred from participating or advising the agency as to a formal decision except by public, on-the-record action (39 CFR 3001.8). Consequently, no change in the rules is needed.

VII. We turn last to a number of other suggestions relating to nonhearing matters.

Two additional suggestions of the Institute warrant adoption. The definition of "person" (39 CFR 3001.5(f)) will be clarified to include a "public or private organization." And we will expand the time for filing comments on notice of proposed rulemaking from 15 days to 30 days.[6]

The Institute has also asked the Commission to adopt certain recommendations related to Recommendation No. 28 of the Administrative Conference. The Conference's recommendation entails far-reaching proposals to encourage individuals and citizen organizations to participate in administrative hearings. This matter requires additional study by the Commission and will not be considered as part of this rulemaking proceeding.

Section 3001.1 of the Commission's January 1971 rules contains general information regarding the Commission and its offices. On November 18, 1971, the Commission adopted organization regulations which made this provision of the January 1971 rules redundant (39 CFR 3002.2 and 3002.3). We will therefore delete the present § 3001.1 and, in its place, substitute a general guideline for construing the rules of practice and procedure.

After careful consideration, we are not persuaded that our rules regarding complaints and subpoenas need change at this time. Nor has a sufficient case been made to support development of rules governing proceedings on possible remand or resubmission of Commission decisions.

The Commission has carefully considered comments requesting the Commission to adopt rules allowing limited intervention. On February 5, 1973, the Commission adopted rules allowing limited participation in Commission proceedings by persons who choose not to become full parties (38 FR 3510, Feb. 7, 1973). Moreover, it should be noted that our rules have always empowered the presiding officer to exempt participants—who show good cause—

[5] 1970-71 Rept. of the Administrative Conference of the U.S., July 1971, p. 12 (Recommendation No. 24); House Comm. on Government Operations, Administration of the Freedom of Information Act, H.R. Rept. No. 92-1419, 92 Cong., 2d Sess. (1972).

[6] The Institute is also concerned about the Commission's request (in this rulemaking proceeding) for interested persons to file a notice of intention to participate before filing comments. Contrary to the Institute's view, this was intended solely as a convenience to those parties who wished other parties to serve them with copies of comments. The filing of a notice of intention was not a requirement for participation in the rulemaking proceeding. Indeed, although the Institute did not file such a notice, it was allowed to file the comments which the Commission has considered fully.

from burdensome discovery procedures (§§ 3001.25(d) and 3001.26(c)).

Pursuant to section 3603 of the Postal Reorganization Act, 39 U.S.C. 3603: *It is ordered*, That the rules of practice and procedure are amended as set forth below. *It is further ordered*, That since the amendments are procedural in nature, they shall become effective on February 13, 1973. Accordingly, in light of the foregoing findings, and after careful consideration of the comments received, the Commission hereby amends Part 3001 of its regulations (39 CFR Part 3001), as follows:

1. Amend the Table of Contents by substituting for the present § 3001.1 a new § 3001.1 as follows:

Sec.
3001.1 Construction of rules.

2. Delete present § 3001.1 and replace it with the following:

§ 3001.1 Construction of rules.

The rules in this part shall be liberally construed to secure just and speedy determination of issues.

3. Revise paragraph (f) of § 3001.5 as follows:

§ 3001.5 Definitions.

* * * * *

(f) "Person" means an individual, a partnership, corporation, trust, unincorporated association, public or private organization, or governmental agency.

* * * * *

§ 3001.6 [Amended]

4. Amend § 3001.6 by deleting paragraphs (f)(1) and (f)(2) in their entirety.

5. Revise paragraphs (a) and (c) of § 3001.7 as follows:

§ 3001.7 Ex parte communications.

(a) *Prohibition.* To avoid the possibility or appearance of impropriety or of prejudice to the public interest and persons involved in proceedings pending before the Commission, no person who is a party to any on-the-record proceeding or who is granted limited participation in accordance with § 3001.19a or his counsel, agent, or other person acting on his behalf, nor any interceder, shall volunteer or submit to any member of the Commission or member of his personal staff, to the presiding officer, or to any employee of the Commission, any ex parte off-the-record communication regarding any matter, either substantive or procedural, which is at issue, or any substantive matter which is likely to be at issue in the on-the-record proceeding, except as authorized by law; and no Commissioner, member of his personal staff, presiding officer, or employee of the Commission, shall request or entertain any such communication. For the purposes of this section, the term "on-the-record proceeding" means a proceeding noticed pursuant to § 3001.17. The prohibitions of this paragraph shall apply from the date of issuance of such notice.

* * * * *

(c) *Offer of communications.* A Commissioner, member of his immediate staff, presiding officer or employee of the Commission who, during the pendency of any on-the-record proceeding, receives an offer of any communication concerning any matter, substantive or procedural, which is at issue or any substantive matter which is likely to be at issue in such proceeding shall decline to listen to such communication and explain that the matter is pending for determination. If unsuccessful in preventing such communication, the recipient thereof shall advise the communicator that he will not consider the communication and shall promptly and fully inform the Commission in writing of the substance of and the circumstances attending the communication, so that the Commission will be able to take appropriate action. Such written report shall be included in the file maintained by the Secretary pursuant to paragraph (b) of this section.

* * * * *

6. Amend paragraph (e) of § 3001.12 as follows:

§ 3001.12 Service of documents.

* * * * *

(e) *Method of service.* Service may be made by first class mail or personal delivery to the address shown for the persons designated on the Secretary's service list. Service of any document upon the Postal Service shall be made by delivering or mailing six copies thereof to the Office of the Assistant General Counsel, Postal Rate and Mail Classifications Office, U.S. Postal Service, Washington, DC 20260.

* * * * *

7. Amend § 3001.15 to read:

§ 3001.15 Computation of time.

Except as otherwise provided by law, in computing any period of time prescribed or allowed by this part, or by any notice, order, rule or regulation of the Commission or a presiding officer, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday for the Commission, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, or holiday. A part-day holiday shall be considered as other days and not as a holiday. In computing a period of time which is 5 days or less, all Saturdays, Sundays, and legal holidays of the Commission are to be excluded.

8. Revise paragraph (d) of § 3001.20 as follows:

§ 3001.20 Formal interventions.

* * * * *

(d) *Answers.* Answers to petitions to intervene may be filed by any participant in a proceeding or any person who has filed a petition to intervene therein no later than 10 days after the petition to intervene is filed.

* * * * *

9. Revise § 3001.21 to read:

§ 3001.21 Motions.

(a) *Scope and Contents.* An application for an order or ruling not otherwise specifically provided for in this part shall be by motion. Motions shall set forth with particularity the ruling or relief sought, the grounds and basis therefor, and the statutory or other authority relied upon, and shall be filed with the Secretary and served pursuant to the provisions of §§ 3001.9 to 3001.12. All motions to dismiss proceedings or other motions which involve a final determination of the proceeding shall be addressed to the Commission. After a presiding officer is designated in any proceeding, and before the issuance of an initial decision pursuant to § 3001.39 or certification of the record to the Commission pursuant to § 3001.38, all other motions in that proceeding shall be addressed to the presiding officer.

(b) *Answers.* Within 10 days after a motion is filed, or such other period as the Commission or presiding officer may fix, any participant to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to §§ 3001.9 to 3001.12. Such answers shall state with particularity the position of the participant with regard to the ruling or relief requested in the motion and the grounds and basis and statutory or other authority relied upon. Unless the Commission or presiding officer otherwise provide, no reply to an answer or any further responsive document shall be filed.

10. Amend paragraphs (a) and (b) of § 3001.25 as follows:

§ 3001.25 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written interrogatories requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant serving the interrogatories shall file a copy thereof with the Secretary pursuant to § 3001.9 and shall serve copies upon other participants who request them.

(b) *Answers and objections.* Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of any answer. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an or the application of law to fact, but the Commission or presiding officer may or-

der that such an interrogatory need not be answered until a prehearing conference or other later time. The answers are to be signed by the person making them and the objections signed by the attorney making them. The party responding to the interrogatories shall serve the answers and objections, if any, tories within 20 days of the service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers and objections, if any, to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants who request them.

* * * * *

11. Amend paragraphs (a) and (b) of § 3001.26 as follows:

§ 3001.26 Requests for production of documents or things for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon which the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants who ask for them.

(b) *Answers and objections.* The participant upon whom the request is served shall serve a written answer on the participant who filed the request within 20 days after the service of the request, or within such other period as may be fixed by the presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to, in which event the reason for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The participant answering the request shall file a copy of the answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants who request them.

* * * * *

12. Amend paragraphs (a) and (b) of § 3001.27 as follows:

§ 3001.27 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants who request them.

(b) *Answers and objections.* Each matter of which an admission is requested shall be separately set forth and is admitted unless within 20 days after service of the request, or within such other period as may be fixed by the presiding officer, the participant to whom the request is directed serves upon the participant requesting the admission a written answer or objection addressed to the matter, which shall be signed by the participant or his attorney. A participant who answers or objects to a request for admission shall file a copy of the answer or objection with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants who request them.

* * * * *

13. Revise § 3001.32 to read:

§ 3001.32 Appeals from rulings of the presiding officer.

(a) *General policy.* The Commission will not review a ruling of the presiding officer prior to its consideration of the entire proceeding except in extraordinary circumstances. This section specifies the showing which participants must make in order to appeal interlocutory rulings.

(b) *Appeals certified by the presiding officer.* (1) Before the issuance of an initial decision pursuant to § 3001.39(a) or the certification of the record to the Commission pursuant to § 3001.38(a), rulings of the presiding officer may be appealed when the presiding officer certifies in writing that an interlocutory appeal is warranted. The presiding officer shall not certify an appeal unless the officer finds that (i) the ruling involves an important question of law or policy concerning which there is substantial ground for difference of opinion and (ii) an immediate appeal from the ruling will materially advance the ultimate termination of the proceeding or subsequent review will be an inadequate remedy.

(2) A request for the presiding officer to certify an appeal shall set forth with specificity the reasons that a participant believes that an appeal meets the criteria of paragraph (b)(1)(i) and (1)(ii) of this section. Such requests shall also state in detail the legal, policy, and factual arguments supporting the participant's position that the ruling should be modified. If the appeal is from a ruling rejecting or excluding evidence, such request shall include a statement of the substance of the evidence which the participant contends would be adduced by the excluded evidence and the conclusions intended to be derived therefrom.

(3) The presiding officer may request responsive pleadings from other participants prior to ruling upon the request to certify an appeal.

(c) *Appeals not certified by the presiding officer.* If the presiding officer declines to certify an appeal, a participant who has requested certification may apply to the Commission for review. Unless the Commission directs otherwise, its review of the application will be based on the record and pleadings filed before the presiding officer pursuant to paragraph (b) of this section.

(d) *Action by the Commission.* (1) The Commission may dismiss an appeal certified by the presiding officer if it determines that (i) the objection to the ruling should be deferred until the Commission's consideration of the entire proceeding or (ii) interlocutory review is otherwise not warranted or appropriate under the circumstances.

(2) Where the presiding officer has declined to certify an appeal, the Commission will not allow an application for review unless it determines (i) that the presiding officer should have certified the matter, (ii) that extraordinary circumstances exist, and (iii) that prompt Commission decision is necessary to prevent g rave detriment to the public interest.

(3) The Commission may issue an order accepting an interlocutory appeal within 15 days after the presiding officer certifies the appeal or a participant files an application for review. If the Commission fails to issue such an order, leave to appeal from the presiding officer's interlocutory ruling shall be deemed to be denied. If the Commission issues an order accepting an appeal, it may rule upon the merits of the appeal in that order or at a later time.

(e) *Effect of appeals.* Unless the presiding officer or the Commission so orders, the certification of an appeal or the filing of an application for review shall not stay the p roceeding or the effectiveness of any ruling.

(f) *Review at conclusion of proceeding.* If an interlocutory appeal is not allowed or requested, objection to the ruling may be raised on review of the presiding officer's initial decision, or, if the initial decision is omitted, at the conclusion of the proceeding.

(g) *Form, filing, and service of documents.* Requests for certification, applications for review, and any responses shall be in writing and shall be in conformity with §§ 3001.10 and 3001.11. They shall be filed and served pursuant to §§ 3001.9 and 3001.12.

14. Revise paragraph (a) of § 3001.34 as follows:

§ 3001.34 Briefs.

(a) *When filed.* At the close of the taking of testimony in any proceeding, the Commission or the presiding officer shall fix the time for the filing and service of briefs, giving due regard to the timely issuance of a recommended decision or advisory opinion to the Postal Service within the contemplation of sections 3641(a) and 3661 of the Act. In addition, subject to such consideration, due regard shall be given to the nature of the proceeding, the complexity and importance of the issues involved, and the magnitude

of the record. In cases subject to a limitation on the time available to the Commission for decision, the Commission shall generally direct that each participant shall file a single brief at the same time. In cases where, because of the nature of the issues and the record or the limited number of participants involved, the filing of initial and reply briefs, or the filing of initial, answering, and reply briefs, will not unduly delay the conclusion of the proceeding and will aid in the proper disposition of the proceeding, the participants may be directed to file more than one brief and at different times rather than a single brief at the same time. The presiding officer or the Commission may also order the filing of briefs during the course of the proceeding.

15. Amend § 3001.35 to read:

§ 3001.35 Proposed findings and conclusions.

The Commission or the presiding officer may direct the filing of proposed findings and conclusions with a brief statement of the supporting reasons for each proposed finding and conclusion.

16. Revise paragraph (a) of §3001.40 as follows:

§ 3001.40 Exceptions to intermediate decisions.

(a) *Briefs on exceptions and opposing exceptions.* Any participant in a proceeding may file exceptions to any intermediate decision by filing a brief on exceptions with the Commission within 30 days after the date of issuance of the intermediate decision or such other time as may be fixed by the Commission. Any participant to a proceeding may file a response to briefs on exceptions within 20 days after the time limited for the filing of briefs on exceptions or such other time as may be fixed by the Commission. No further response will be entertained unless the Commission, upon motion for good cause shown or on its own initiative, so orders.

* * * * *

17. Revise paragraph (a) of § 3001.41 as follows:

§ 3001.41 Rule making proceedings.

(a) *General notice.* Before the adoption of any rule of general applicability, or the commencement of any hearing on any such proposed rule making, the Commission will cause general notice to be given by publication in the FEDERAL REGISTER, such notice to be published therein not less than 30 days prior to the date fixed for the consideration of the adoption of a proposed rule or rules or for the commencement of the hearing, if any, on the proposed rule making, except where a shorter period is reasonable and good cause exists therefor. However, where the Commission, for good cause, finds it impracticable, unnecessary, or contrary to the public interest to give such notice, it may proceed with the adoption of rules without notice by incorporating therein a finding to such effect and a concise statement of the reasons therefor. Advance notice shall not be required for rules subject to 5 U.S.C. 553(d).

* * * * *

18. Revise § 3001.42 to read:

§ 3001.42 Public information and requests.

This section prescribes the rules governing: Publication of recommended decisions, advisory opinions, and public reports; and records of the Commission.

(a) *Notice and publication.* Service of intermediate and recommended decisions, advisory opinions and public reports upon parties to the proceedings is provided in §§ 3001.12(a) and 3001.39(d). Descriptions of the Commission's organization, its methods of operation, statements of policy and interpretations, procedural and substantive rules, and amendments thereto will be filed with and published in the FEDERAL REGISTER. Commission recommended decisions, advisory opinions and public reports, Commission orders, and intermediate decisions will be released to the press and made available to the public promptly.

(b) *Public records.* The public records of the Commission include:

(1) All submittals and filings as follows:

(i) Requests of the Postal Service for recommended decisions or advisory opinions, public reports, complaints (both formal and informal), and other papers seeking Commission action;

(ii) Financial, statistical and other reports to the Commission, and other filings and submittals to the Commission in compliance with the requirements of any statute, Executive order, or Commission rule, regulation, or order;

(iii) All answers, replies, responses, objections, protests, motions, stipulations, exceptions, other pleadings, notices, depositions, certificates, proofs of service, transcripts, and briefs in any matter or proceeding;

(iv) All exhibits, attachments and appendices to, amendments and corrections of, supplements to, or transmittals or withdrawals of, any of the foregoing;

(v) Any Commission correspondence relating to any of the foregoing .

(2) All other parts of the formal record in any matter or proceeding set for formal or statutory hearing and any Commission correspondence related thereto. "Formal record" includes in addition to all the filings and submittals, any notice or Commission order initiating the matter or proceeding, and, if a hearing is held, the following: the designation of the presiding officer, transcript of hearings, all exhibits received in evidence, offers of proof, motions, stipulations, proofs of service, referrals to the Commission, and determination made by the Commission thereon, certifications to the Commission, and anything else upon which action of the presiding officer or the Commission may be based; it does not include any unaccepted offer of settlement made by a party in the course of a proceeding and not formally submitted to the Commission.

(3) Any proposed testimony or exhibit filed with the Commission but not yet offered or received in evidence.

(4) All presiding officer actions and all presiding officer correspondence and memoranda to or from others except within his own office.

(5) All Commission orders, notices, findings, determinations, and other actions in any matter or proceeding and all Commission minutes which have been approved.

(6) All Commission correspondence relating to any furnishing of data or information by the Postal Service.

(7) Commission correspondence with respect to the furnishing of data, information, comments, or recommendations to or by another branch, department, or agency of the Government where furnished to satisfy a specific requirement of a statute or where made public by that branch, department or agency.

(8) Commission correspondence and reports on legislative matters under consideration by the Office of Management and Budget or Congress but only if and after made public or released for publication by that Office or the Commission or Member of Congress involved.

(9) Commission correspondence on the interpretation or applicability of any statute, rule, regulation, recommended decision, advisory opinion, or public report issued or administered by the Commission and letters of opinion on that subject signed by the General Counsel and sent to others than the Commission, a Commissioner, or any of the staff.

(10) Copies of all filings by the Commission, and all orders, judgments, decrees, and mandates directed to the Commission in Court proceedings involving Commission action and all correspondence with the courts or clerks of court.

(11) The Commission's administrative and operating manuals as issued.

(12) All other records of the Commission except for those that are:

(i) Specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(ii) Related solely to the internal personnel rules and practices of the Commission;

(iii) Specifically exempted from disclosure by statute;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(vi) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(13) The following are examples of information which is not part of the public records of the Commission:

(i) Written communications between or among the Commission, members of the Commission, the Secretary, and expressly designated members of the staff while particularly assigned, in accord-

ance with all applicable legal requirements, to aid the Commission in the drafting of any recommended decision, advisory opinion or public report and findings, with or without opinion, or report in any matter or proceeding;

(ii) Unaccepted offers of settlement in any matter or proceeding unless or until made public by act of the offeror.

(c) *Procedures applicable to requests for records.* Requests for records shall be in writing and shall describe the records sought with sufficient specificity to permit their identification. Requests shall be addressed to the Secretary at the offices of the Commission. Within 15 days after receipt of a request for a Commission record, the Secretary shall:

(1) Inform the requestor where and when the records may be inspected and, if ascertainable, of the charge for furnishing copies; or

(2) Deny the request. A denial shall be in writing; it shall cite the specific exemption or exemptions under these rules authorizing the withholding of the records sought and shall inform the requestor that he may, within 20 days, appeal the denial to the Commission. Appeals to the Commission shall be in writing. The Commission will expeditiously consider all appeals and either grant or deny them in writing.

(d) *Procedure in event of subpoena.* If an officer or employee of the Commission is served with a subpoena duces tecum, material which is not part of the public files and records of the Commission shall be produced only as authorized by the Commission. Service of such a subpoena shall immediately be reported to the Commission with a statement of all relevant facts. The Commission will thereupon enter such order or give such instructions as it deems advisable.

19. Amend § 3001.52 to read:

§ 3001.52 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on changes in rates or fees subject to this subpart, the Postal Service shall file with the Commission a formal request for a recommended decision. Such request shall be filed in accordance with the requirements of §§ 3001.9 to 3001.11 and 3001.54. Within 5 days after the Postal Service has filed a formal request for a recommended decision in accordance with this subsection, the Secretary shall lodge a notice thereof with the Director of the Federal Register for publication in the FEDERAL REGISTER.

20. Amend § 3001.62 to read:

§ 3001.62 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on establishing or changing the mail classification schedule, the Postal Service shall file with the Commission a formal request for a recommended decision. Such request shall be filed in accordance with the requirements of §§ 3001.9 to 3001.11 and 3001.64. Within 5 days after the Postal Service has filed a formal request for a recommended decision in accordance with this subsection, the Secretary shall lodge a notice thereof with the Director of the Federal Register for publication in the FEDERAL REGISTER.

21. Amend § 3001.72 to read:

§ 3001.72 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission issue an advisory opinion on a proposed change in the nature of postal services subject to this subpart, the Postal Service shall file with the Commission a formal request for such an opinion in accordance with the requirements of §§ 3001.9 to 3001.11 and 3001.74. Such request shall be filed not less than 90 days in advance of the date on which the Postal Service proposes to make effective the change in the nature of postal services involved. Within 5 days after the Postal Service has filed a formal request for a recommended decision in accordance with this subsection, the Secretary shall lodge a notice thereof with the Director of the Federal Register for publication in the FEDERAL REGISTER.

(Secs. 3603, 3622–3624, 3661, 3662, Postal Reorganization Act; 84 Stat. 759, 760–761, 764; 39 U.S.C. 3603, 3622–3624, 3661, 3662; 5 U.S.C. 552, 553; 80 Stat. 383–384)

By the Commission.

[SEAL] JOSEPH A. FISHER,
Secretary.

APPENDIX A

Comments were filed by the following:
American Retail Federation.
Associated Third Class Mail Users.
Direct Mail Advertising Association, Inc.
Fairchild Publications, Inc.[1]
Institute for Public Interest Representation, Georgetown University Law Center.
Magazine Publishers Association, Inc.[1]
J. C. Penney Company, Inc.
Second Class Mail Publications, Inc.
United States Postal Service.[1]

[FR Doc.73-2858 Filed 2-12-73;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDES PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Certain Inert Ingredients in Pesticide Formulations Applied to Animals

A number of comments were received in response to the notice published in the FEDERAL REGISTER of September 9, 1972 (37 FR 18400), proposing establishment of exemptions from tolerances for 50 inert (or occasionally active) ingredients in pesticide formulations applied to animals under provisions of section 408 of the Federal Food, Drug, and Cosmetic Act; no requests for referral to an advisory committee were received.

Because the comments requested exemptions for additional compounds, more time will be required for scientific review and evaluation. Thus, in order not to delay establishment of exemptions for the aforesaid 50 compounds, it is concluded that this order be published for them and that the additional compounds be considered in a separate order.

Having considered the comments received and other relevant information, it is concluded that:

1. The proposal should be adopted.

2. Minor changes should be made in the reference citations for petroleum hydrocarbons.

Therefore, pursuant to provisions of the act (sec. 408 (c), (e), 68 Stat. 512, 514; 21 U.S.C. 346a (c), (e)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator for Pesticides programs (36 FR 9038), § 180.1001 is amended by revising paragraph (e) by rewording the introductory statement and by alphabetically inserting new items in the table as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) The following materials are exempted from the requirement of a tolerance when used in accordance with good agricultural practice as inert (or occasionally active) ingredients in pesticide formulations applied to animals:

Inert ingredients	Limits	Uses
Alkyl(C_8-C_{18}) benzenesulfonic acid and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts.	----------	Surfactants, emulsifier, related adjuvants of surfactants.
Alkyl(C_8-C_{18}) sulfate sodium salt.	----------	Surfactants, related adjuvants of surfactants.
Attapulgite-type clay.	----------	Solid diluent, carrier.
α-Butyl-ω-hydroxy-poly(oxypropylene) block polymer with poly(oxyethylene); molecular weight 2,400–3,500.	----------	Surfactants, emulsifier, related adjuvants of surfactants.
* * *	* * *	* * *
Calcium carbonate	----------	Solid diluent, carrier.
Calcium silicate, hydrated calcium silicate.	----------	Anticaking agent, solid diluent, carrier.
Castor oil, U.S.P.	----------	Cosolvent.
Castor oil, polyoxyethylated; the poly(oxyethylene) content averages 40 moles.	----------	Surfactants, related adjuvants of surfactants.
Citric acid	----------	Buffer.
Cumene (isopropylbenzene).	----------	Solvent, cosolvent.
Cyclohexanone	----------	Do.
Dextrose	----------	Solid diluent, carrier, sweetener.
Dialkyl(C_{12}-C_{18}) dimethylammonium chloride.	Not more than 0.2% in silica hydrated silica.	Flocculating agent in the manufacture of silica, hydrated silica for use as a solid diluent, carrier.
Diatomite (diatomaceous earth).	----------	Solid diluent, carrier.

[1] Fairchild Publications, Inc., Magazine Publishers Association, Inc., and the Postal Service filed reply comments in addition to their initial comments.

Inert ingredients	Limits	Uses
Dichlorodifluoromethane.	----------	Propellant.
Diethyl phthalate	----------	Solvent, cosolvent.
Dipropylene glycol monomethyl ether.	----------	Do.
α-(p-Dodecylphenyl)-omega-hydroxypoly (oxyethylene) produced by the condensation of 1 mole of dodecylphenol (dodecyl group is a propylene tetramer isomer) with an average of 4-14 or 30-70 moles of ethylene oxide; if a blend of products is used, the average number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 4-14 or 30-70 moles.	----------	Surfactants, emulsifier.
Ethyl alcohol	----------	Solvent, cosolvent.
α-Hydro-omega-hydroxypoly-(oxyethylene)-poly (oxypropylene) poly-(oxyethylene) block copolymer; the minimum poly (oxypropylene) content is 37 moles and the minimum molecular weight is 1,900.	----------	Surfactant, wetting agent.
Isopropyl alcohol	----------	Solvent, cosolvent.
Kaolinite-type clay	----------	Solid diluent, carrier.
Kerosene, U.S.P. reagent.	----------	Solvent, cosolvent.
Magnesium carbonate.	----------	Solid diluent, carrier.
Methyl alcohol	----------	Solvent, cosolvent.
Methylcellulose	----------	Dispersing-wetting agent.
Methyl isobutyl ketone.	----------	Solvent, cosolvent.
Methylene chloride	----------	Do.
Mineral oil, U.S.P.	----------	Solvent, diluent.
Montmorillonite-type clay.	----------	Solid diluent, carrier.
Naphthalenesulfonic acid and its sodium salt.	----------	Surfactants, related adjuvants of surfactants.
α-(p-Nonylphenyl)-omega-hydroxypoly (oxyethylene) produced by the condensation of 1 mole of nonylphenol (nonyl group is a propylene trimer isomer) with an average of 4-14 or 30-90 moles of ethylene oxide; if a blend of products is used, the average number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 4-14 or 30-90 moles.	----------	Surfactants, emulsifier, relate i adjuvants of surfactants.
Perchloroethylene	----------	Solvent, cosolvent.
Petroleum hydrocarbons, light, odorless, conforming to Title 21, § 121.1182 or § 121.2504.	----------	Solvent, diluent.
Petroleum hydrocarbons, synthetic isoparaffinic, conforming to Title 21, § 121.1154 or § 121.2508.	----------	Do.
Polyethylene glycol (mean molecular weight 200-9, 500).	----------	Solvent, cosolvent.
• • •	• • •	• • •
block polymer with poly(oxyethylene); molecular weight 1,800-9,000.		adjuvants of surfactants.
Propylene glycol	----------	Solvent, cosolvent.
Propylene glycol monomethyl ether.	----------	Deactivator, emmollient.
Pyrophyllite	----------	Solid diluent, carrier.
Silica aerogel (finely powdered microcellular silica foam having a minimum silica content of 80.5%).	----------	Component of antifoaming agent.
Silica, hydrated silica.	----------	Anticaking agent, solid diluent, carrier.
Soapstone	----------	Solid diluent.
Sodium isopropyl naphthalene sulfonate.	----------	Surfactants, related adjuvants of surfactants.
Sucrose	----------	Solid diluent, carrier.
Talc	----------	Do.
Triacetin (glyceryl triacetate).	----------	Solvent, cosolvent.
Trichlorofluoromethane.	----------	Propellant.
Wheat shorts	----------	Solid diluent.
Xylene	----------	Solvent, cosolvent.

Any person who will be adversely affected by the foregoing order may at any time on or before March 15, 1973 file with the Hearing Clerk, Environmental Protection Agency, Room 3902A, Fourth and M Streets SW., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on February 13, 1973.

(Sec. 408 (c), (e), 68 Stat. 512, 514; 21 U.S.C. 346a(c), (e))

Dated: February 5, 1973.

EDWIN L. JOHNSON,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.73-2635 Filed 2-12-73;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 73—RADIO BROADCAST SERVICES

Noncommercial Educational FM Broadcast Stations; Correction

Order. In the matter of editorial amendment of § 73.552(b) (3).

1. It has come to our attention that § 73.552(b) (3) of the Commission's rules pertaining to noncommercial educational FM broadcast stations requires comparison of station frequency with an external source to insure operation within the tolerance prescribed in § 73.568. However, § 73.568 pertains to maintenance of modulation percentage. It is § 73.569 that pertains to frequency tolerance. In view of this, § 73.552(b) (3) should be amended to refer to § 73.569 rather than § 73.568.

2. *Accordingly, it is ordered,* That § 73.552(b) (3) of the Commission's rules and regulations is amended to read as follows:

§ 73.552 Frequency monitors.

• • • • •

(b) • • •

(3) The frequency of the station shall be compared with an external frequency source of known accuracy at sufficiently frequent intervals to insure that the frequency is maintained within the tolerance prescribed in § 73.569. An entry shall be made in the station log as to the method used and the results thereof.

• • • • •

3. Since this amendment is editorial in nature, pursuant to the provisions of 5 U.S.C. 553(b) (3) (A) and (B), and 553 (d) (2) and (3), notice and public procedure are not required and publication of the amendment in the FEDERAL REGISTER may be made less than 30 days prior to the effective date of the amendment Hence, this amendment shall be effective February 9, 1973.

4. This amendment is made pursuant to the authority found in sections 4(i), 5(d) (1), and 303(r) of the Communications Act of 1934, as amended, and § 0.231 (d) of the Commission's rules and regulations.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303)

Adopted and released: February 1, 1973.

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

[FR Doc.73-2831 Filed 2-12-73;8:45 am]

Title 49—Transportation

CHAPTER I—DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A—HAZARDOUS MATERIALS REGULATIONS BOARD

[Docket No. HM-22; Amendments Nos. 171-16, 174-15, 175-8]

MATTER INCORPORATED BY REFERENCE

The purpose of these amendments to the Hazardous Materials Regulations of the Department of Transportation is to update the following references:

1. The addenda to sections VIII (Division I) and IX of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code.

2. CGA Pamphlet C–8, "Standard for Requalification of DOT–3HT Cylinders.

3. NFPA No. 58, "Storage and Handling Liquefied Petroleum Gases."

In addition, a reference to NACE Standard TM–01–69, "Test Method Laboratory Corrosion Testing of Metals for the Process Industries," which was previously omitted, has been added, and the title of the Bureau of Explosives' Pamphlet No. 22, in §§ 174.600(a) and 175.655 (j)(3) Note 2, has been removed.

On November 18, 1972, the Board published a notice of proposed rule making, Docket No. HM–22; Notice No. 72–12 (37 FR 24678) proposing to make the above changes. All comments received were in agreement with the proposals.

In addition to the changes proposed in the notice, these amendments provide for the change of address of the American Petroleum Institute, and the inclusion of the Institute of Makers of Explosives' Standard, "IME Standard for the Safe Transportation of Electric Blasting Caps in the Same Vehicle with Other Explosives." These changes do not impose a burden on anyone, therefore, public notice and procedure thereon is unnecessary.

In consideration of the foregoing, Parts 171, 174, and 175 of Title 49, Code of Federal Regulations, are amended as follows:

PART 171—GENERAL INFORMATION AND REGULATIONS

In § 171.7, paragraphs (c)(7), (d)(1), (d)(3)(iii), and (d)(6) are amended; paragraphs (c)(14), (d)(8), and (d)(9) are added to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(c) * * *

(7) API: American Petroleum Institute, 1801 K Street NW., Washington, DC 20006.

* * * * *

(14) IME: Institute of Makers of Explosives, 420 Lexington Avenue, New York, NY 10017.

(d) * * *

* * * * *

(1) ASME Code means sections VIII (Division 1) and IX of the 1971 edition of the "American Society of Mechanical Engineers Boiler and Pressure Vessel Code," and addenda thereto through June 30, 1972.

* * * * *

(3) * * *

(iii) CGA Pamphlet C–8 is titled, "Standard for Requalification of DOT–3HT Cylinders," 1972 edition.

* * * * *

(6) NFPA Pamphlet No. 58 is titled, "Standard for the Storage and Handling of Liquefied Petroleum Gases," 1972 edition.

* * * * *

(8) NACE Standard TM–01–69 is titled, "Test Method Laboratory Corrosion Testing of Metals for the Process Industries," 1969 edition.

(9) IME Standard is titled, "IME Standard for the Safe Transportation of Electric Blasting Caps in the Same Vehicle With Other Explosives," dated November 5, 1971 (IME Safety Library Publication No. 22).

PART 174—CARRIERS BY RAIL FREIGHT

In § 174.600, paragraph (a) is amended to read as follows:

§ 174.600 In case of a wreck.

(a) Details involving the handling of hazardous materials in the event of a wreck may be found in Bureau of Explosives Pamphlet No. 22.

* * * * *

PART 175—CARRIERS BY RAIL EXPRESS

In § 175.655, note 2 following paragraph (j)(3) is amended to read as follows:

§ 175.655 Protection of packages.

* * * * *

(j) * * *

(3) * * *

NOTE 2: Details involving the handling of radioactive materials in the event of an accident can be found in Bureau of Explosives Pamphlet No. 22.

* * * * *

These amendments are effective March 31, 1973. However, immediate compliance with the regulations, as amended herein, is authorized.

(Secs. 831–835 of Title 18, United States Code; sec. 9, Department of Transportation Act, 49 U.S.C. 1657; Title VI; sec. 902(h), Federal Aviation Act of 1958, 49 U.S.C. 1421–1430, 1472, and 1655(c))

Issued in Washington, D.C., on February 7, 1973.

G. H. READ,
Captain, Alternate Board Member, for the U.S. Coast Guard.

JAMES F. RUDOLPH,
Board Member, for the Federal Aviation Administration.

ROBERT A. KAYE,
Board Member, for the Federal Highway Administration.

MAC E. ROGERS,
Board Member, for the Federal Railroad Administration.

NOTE: Incorporation by reference provisions approved by the Director of the Federal Register, February 9, 1973.

[FR Doc.73–2838 Filed 2–12–73;8:45 am]

CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—MOTOR CARRIER SAFETY REGULATIONS

[Docket No. MC–41; Notice No. 73–9]

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Coiled Nylon Brake Tubing

The Director of the Bureau of Motor Carrier Safety is amending § 393.45 of the Motor Carrier Safety Regulations to permit the use of coiled nylon brake tubing for connections between towed and towing motor vehicles operated in interstate or foreign commerce.

This amendment grows out of a petition for rule making filed by Leaseway Transportation Corp., a motor carrier which had participated in a 15-month field test program using coiled nylon tubing. The results of that test program, in which Cleveland Motor Freight Lines and Pacific Intermountain Express, Inc. also participated, were discussed in a notice of proposed rule making which the Director issued on August 9, 1972 (37 FR 16001). In the notice, the director proposed to allow the use of coiled nylon tubing for brake connections between towed and towing vehicles and between the frame of a towed vehicle and adjustable axles of that vehicle. The proposal would also have required conventional brake hose to meet the requirements of the current Society of Automotive Engineers Standards.

As the notice reported, the results of the test program were mixed. During the initial phases of the program, kinking of the tubing developed at its interface with the hose coupler fittings. The kinking occurred because the spring guard, which was installed at that location to prevent kinking, tended to come loose from the fitting. Soon after this problem became evident, one of the tubing manufacturers supplied a modified spring guard to the participating carriers for further testing. The modification consisted of installing the spring in the fitting nut and crimping the nut so that the spring could not come loose. It became clear that the way to prevent kinking of the tubing was to insure that the spring remained in position and did not come loose. The modified spring guards and fittings were in use for approximately 9 months of the 15-month test period. Regrettably, this fact was not initially reported to the Bureau and, hence, was not mentioned in the notice of proposed rule making. However, the Bureau has assured itself that once this "fix" was completed, the kinking problem ceased to exist for that manufacturer's tubing. The objective of the requirement that the tubing must be installed so that it cannot kink at the fitting is to require use of this, or an equally effective, solution to the kinking problem.

In view of the foregoing, the Director has determined that the major technical objection to the use of tubing, at least as the means for making brake connections between towed and towing vehicles, no longer has validity. Suitable means exist to remedy the kinking problem at the tubing-hose coupler interface.

The notice of proposed rule making also proposed to allow the use of coiled nylon tubing between the frame and adjustable axles of a towed vehicle. The test program did not relate to this particular application for coiled nylon tubing; the Bureau expected that comments in response to the notice might contain data concerning frame-and-ad-

justable-axle connections. However, no information was submitted to indicate that coiled nylon tubing was suitable for these connections, and the Director has concluded that it would not be prudent at this time to permit the use of nylon tubing for this application.

Several comments stated that the notice contained no data comparing the failure rate of coiled nylon tubing and conventional rubber hose. That is true. It is, of course, impossible to establish a valid failure rate for a product in a particular application when, because a regulation prohibits its use in that application, it is never so used. However, the field trial of nylon tubing showed that it did not succumb to the usual types of failures that the Bureau's field staff finds when it inspects vehicles equipped with rubber hose. Furthermore, it appears that coiled nylon tubing has been successfully used by European and Canadian carriers for some years. These facts present convincing evidence that coiled nylon tubing is suitable for brake connections between towed and towing vehicles.

Chrysler Corp.'s comments asked the Director to change the proposed requirement that hydraulic brake hose must meet the requirements set forth in SAE Standard J1401. Instead Chrysler said, the Director should incorporate by reference Federal Motor Vehicle Safety Standard No. 106, which establishes performance requirements for hydraulic brake hose. Standard No. 106 applies only to hydraulic brake hose for use in passenger cars and multipurpose passenger vehicles. Chrysler said that it uses brake hose conforming to the requirements of that standard on all of its vehicles equipped with hydraulic brakes, and recommended that, for the sake of uniformity, § 393.45 should adopt the requirements of the Motor Vehicle Safety Standard rather than those in SAE Standard J1401.

SAE Standard J1401 is more stringent than Motor Vehicle Safety Standard No. 106. It establishes a higher level of performance. Any hydraulic brake hose that conforms to the SAE standard also conforms, of necessity, to the requirements of Standard No. 106. Furthermore, the Bureau has been advised that all of the hydraulic brake hose manufactured by the four major hydraulic brake hose makers in the United States conforms to the requirements of both standards. In light of these facts, the Director has decided that, in the interests of safety, § 393.45 should require hydraulic brake hose to conform to the requirements of SAE Standard J1401. He finds that adoption of the more restrictive requirements of that standard will cause no undue hardship on motor vehicle manufacturers. Chrysler Corp.'s request is, therefore, denied.

The notice of proposed rule making proposed to require that coiled nylon brake tubing must have a straight segment (pigtail) that is at least 6 inches long at each end of the tubing. Two comments questioned this limitation, stating that ample protection against kinking could be obtained with a "pigtail" having a minimum length of 2 inches measured to the inner face of the fitting. There should be no maximum limit on the length of the pigtail, said the comments, as long as the spring guard coverage remains unchanged. The Director agrees, and an appropriate change in the requirement has been made.

In consideration of the foregoing, § 393.45 of the Motor Carrier Safety Regulations (Subchapter B in Chapter III of Title 49, CFR) is revised to read as set forth below.

Effective date. Compliance with § 393.45 as revised is permissible on and after the date of issue set forth below and is mandatory on and after October 1, 1973.

(Sec. 204, Interstate Commerce Act, as amended, 49 U.S.C. 304; sec. 6, Department of Transportation Act, 49 U.S.C. 1655, and delegations of authority at 49 CFR 1.48 and 389.4)

Issued on February 1, 1973.

ROBERT A. KAYE,
Director,
Bureau of Motor Carrier Safety.

§ 393.45 Brake tubing and hose, adequacy.

(a) *General requirements.* Brake tubing and brake hose must—

(1) Be designed and constructed in a manner that insures proper, adequate, and continued functioning of the tubing or hose;

(2) Be installed in a manner that insures proper continued functioning of the tubing or hose;

(3) Be long and flexible enough to accommodate without damage all normal motions of the parts to which it is attached;

(4) Be suitably secured against chafing, kinking, or other mechanical damage;

(5) Be installed in a manner that prevents it from contacing the vehicle's exhaust system or any other source of high temperatures; and

(6) Conform to the applicable requirements of paragraph (b) or (c) of this section.

(b) *Special requirements for brake hose other than nylon tubing.* (1) Except as provided in paragraph (c), brake hose installed on a motor vehicle on or after October 1, 1973, must conform to one of the following specifications:

(i) Hydraulic brake hose: Society of Automotive Engineers (SAE) Standard J1401, January 1967.

(ii) Air brake hose: SAE Standard J1402b, June 1971.

(iii) Vacuum brake hose: SAE Standard J1403, June 1968.

(2) Except as provided in paragraph (c) brake hose installed on a motor vehicle before October 1, 1973, must conform to either—

(i) The applicable specification set forth in subdivision (i), (ii), or (iii) of subparagraph (1) of this paragraph; or

(ii) The applicable specification in the SAE Standard for Automotive Brake Hoses published in the 1952 edition of the SAE Handbook.

(c) *Nylon brake tubing.* Coiled nylon brake tubing may be used for connections between towed and towing vehicles if—

(1) The tubing conforms to the requirements for Type 3B nylon tubing set forth in Society of Automotive Engineers Standard J844c, "Air Brake Tubing and Pipe", December 1970;

(2) The coiled tubing has a straight segment (pigtail) at each end that is at least 2 inches in length and is encased in a spring guard or similar device which prevents the tubing from kinking at the fitting at which it is attached to the vehicle; and

(3) The spring guard or similar device has at least 2 inches of closed coils or similar surface at its interface with the fitting and extends at least 1½ inches into the coiled segment of the tubing from its straight segment.

[FR Doc.73-2805 Filed 2-12-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 73-NW-1-AD, Amdt. 39-1593]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Model 707 Airplanes

There have been cracks emanating from the barrel nut hole on the main deck cargo door latch support fitting that, if allowed to progress, could result in sudden depressurization or possible in-flight loss of the main cargo door. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require inspection of the barrel nut area of the main deck cargo door latch support fittings and replacement as necessary.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days. However, interested persons have been afforded an opportunity to participate in the making of this amendment. Some of these interested parties desired an initial inspection threshold of 350 hours' time in service; others felt the period should be 600 hours. Due to the possible consequences of failure of the fittings involved, it has been determined that a 200-hour period from the effective date hereof is necessary in the interest of safety.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

BOEING. Applies to all Model 707 airplanes with 7079-T6 main deck cargo door latch support fittings, and manufactured prior to January 1, 1972.

Compliance required as indicated:

To prevent possible rapid airplane depressurization by detecting cracks emanating from the barrel nut hole on the main deck cargo door latch support fitting, accomplish the following:

(a) Unless already inspected within the last 1,200 hours' time in service before the effective date of this AD, or inspected per Boeing Alert Service Bulletin 3124 dated January 29, 1973, inspect per (d) below at the times specified in (b) or (c), as applicable.

(b) For those airplanes manufactured prior to December 1, 1967, inspect per (d) within the next 1,200 hours' time in service from the effective date of this AD.

(c) For those airplanes manufactured after December 1, 1967, inspect per (d) within the next 1200 hours' time in service from the effective date of this AD.

(d) Inspect in accordance with Boeing Alert Service Bulletin 3124 dated January 29, 1973, for cracks emanating from the barrel nut hole on each of the eight fittings using visual or dye penetrant or eddy current methods.

(e) If cracks are found emanating from the barrel nut hole, replace with a serviceable fitting or a 7075-T73 fitting prior to further flight. However, airplanes with only one of the six center fittings cracked at the barrel nut hole may be continued in service at reduced cabin operating pressure of not more than 6.0 p.s.i. cabin differential, provided: all fittings are reinspected at intervals of 200 hours' time in service in accordance with (d) above. Also, if cracks are found emanating from the barrel nut holes on either the most forward or most aft fitting, replace prior to further pressurized flight.

(f) Revisions to this AD concerning other reinspection intervals and terminating action will be forthcoming.

(g) Aircraft having cracks which require rework under this AD may be flown unpressurized in accordance with FAR 21.197, to a base where rework can be accomplished.

This amendment becomes effective February 12, 1973.

The manufacturer's specification and procedures identified and described in this directive are incorporated herein and made a part hereof, pursuant to 5 U.S.C., 552(a)(1). All persons affected by the directive who have not already received these documents, may obtain copies upon request to The Boeing Commercial Airplane Co., Post Office Box 3707, Seattle, WA 98124. These documents may also be examined at the FAA Northwest Region, Boeing Field International, Seattle, Wash.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued at Seattle, Wash., February 7, 1973.

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

[FR Doc.73-2966 Filed 2-12-73;9:22 am]

[Airspace Docket No. 72-RM-32]

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

Alteration of Control Zone and Transition Area

Correction

In FR Doc. 73-1768 appearing on page 2963 in the issue for Wednesday, January 31, 1973, in the description of the Missoula, Mont., transition area (§ 71.181), the word "to" in the 17th line should read "of".

[Airspace Docket No. 73-GL-4]

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

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the control zone at Cincinnati, Ohio.

A review of the control zone designation at Cincinnati-Lunken Airport indicates that the northeast extension may be shortened and still provide adequate protection for the approach procedures to the airport. Since this alteration imposes no additional burden on any person and is not a safety compromise, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective 0901 G.m.t., April 26, 1973, as hereinafter set forth:

In § 71.171 (38 FR 351), the following control zone is amended to read:

CINCINNATI, OHIO

Within a 5-mile radius of Cincinnati Municipal-Lunken Field Airport (latitude 39°-06'14" N., longitude 84°25'18" W.) within 2 miles each side of Runway 20L ILS localizer northeast course, extending from the 5-mile-radius zone to 6.5 miles northeast of the airport; and within 1.5 miles each side of the 227° bearing from Lunken RBN, extending from the 5-mile-radius zone to the RBN.

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

Issued in Des Plaines, Ill., on January 23, 1973.

LYLE K. BROWN,
Director, Great Lakes Region.

[FR Doc.73-2790, Filed 2-12-73;8:45 am]

[Airspace Docket No. 72-CE-23]

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

Designation of Transition Area

On page 22876 of the FEDERAL REGISTER dated October 26, 1972, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Audubon, Iowa.

Interested persons were given 30 days to submit written comments, suggestions or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., March 29, 1973.

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

Issued in Kansas City, Mo., on January 23, 1973.

JOHN M. CYROCKI,
Director, Central Region.

In § 71.181 (38 FR 435), the following transition area is added:

AUDUBON, IOWA

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Audubon Municipal Airport (latitude 41°42'30" N., longitude 94°55'00" W.); and that airspace extending upward from 1,200 feet above the surface within 4½ miles southwest and 9½ miles northeast of the Audubon NDB 149° bearing extending from the airport to 18½ miles southeast of the airport.

[FR Doc.73-2787 Filed 2-12-73;8:45 am]

[Airspace Docket No. 72-EA-120]

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

Alteration of Transition Area

On page 28191 of the FEDERAL REGISTER for December 21, 1972, the Federal Aviation Administration published a proposed rule which would alter the Babylon, N.Y., transition area (38 FR 444).

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulations have been received.

In view of the foregoing, the proposed regulations are hereby adopted, effective 0901 G.m.t., March 29, 1973.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749; 49 U.S.C. 1348; sec. 6(c), of Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on January 26, 1973.

ROBERT H. STANTON,
Acting Director, Eastern Region.

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to amend the description of the Babylon, N.Y. 700-foot floor transition area by inserting after "(latitude 40°43'45" N., longitude 73°24'45" W.);", the following:

Within 4.5 miles northeast and 6.5 miles southwest of the Republic Airport ILS localizer northwest course, extending from the OM (40°46'35" N., 73°28'59" W.) to 11.5 miles northwest of the OM;

[FR Doc.73-2788, Filed 2-12-73;8:45 am]

[Airspace Docket No. 72-EA-121]

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

Alteration of Transition Area

On page 28190 of the FEDERAL REGISTER for December 21, 1972, the Federal Aviation Administration published a proposed rule which would alter the Doylestown, Pa., transition area (38 FR 476).

Interested parties were given 30 days after publication in which to submit

written data or views. No objections to the proposed regulations have been received.

In view of the foregoing, the proposed regulations are hereby adopted, effective 0901 G.m.t., March 29, 1973.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on January 26, 1973.

ROBERT H. STANTON,
Acting Director, Eastern Region.

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Doylestown, Pa. 700-foot floor transition area and insert the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the center (40°20'20" N., 75°07'20" W.) of Doylestown Airport, Doylestown, Pa.; within 8 miles northwest and 4.5 miles southeast of the 224° bearing and the 044° bearing from the Doylestown, Pa. RBN (40°19'59" N., 75°07'21" W.), extending from 5.5 miles southwest of the RBN to 11.5 miles northeast of the RBN; within 8 miles northwest and 4.5 miles southeast of the Solberg, N.J. VORTAC 229° radial, extending from 7.5 miles southwest of the VORTAC to 24.5 miles southwest of the VORTAC, excluding the portions which coincide with the North Philadelphia, Pa., Pittstown, N.J. and Readington, N.J. transition areas.

[FR Doc.73-2789 Filed 2-12-73;8:45 am]

[Airspace Docket Docket No. 72-GL-61]

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

Designation of Transition Area

On pages 24767 and 24768 of the FEDERAL REGISTER dated November 21, 1972, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Frankfort, Ill.

Interested persons were given 30 days to submit written comments, suggestions or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., March 29, 1973.

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

Issued in Des Plaines, Ill., on January 23, 1973.

LYLE K. BROWN,
Director, Great Lakes Region.

In § 71.181 (38 FR 435), the following transition area is added:

FRANKFORT, ILL.

That airspace extending upward from 700 feet above the surface within a 5½-mile radius of the Frankfort Airport (latitude 41°29'00" N.; longitude 87°51'00" W.); and within 3½ miles either side of the 261° radial from Chicago Heights VORTAC extending from the 5½-mile radius to 8½ miles east of the airport, excluding that portion that overlies the Chicago, Ill., transition area.

[FR Doc.73-2791 Filed 2-12-73;8:45 am]

[Airspace Docket No. 72-SW-76]

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

Alteration of Transition Area; Correction

On January 16, 1973, FR Doc. 73-855 was published in the FEDERAL REGISTER (38 FR 1581). This document altered the Little Rock, Ark., 700-foot transition area.

A review of the document revealed that a portion of the description of the transition area was incorrect. Action is taken herein to effect a correction.

As this correction is editorial in nature and imposes no additional burden on any person or persons, notice and public procedures are not considered necessary.

In view of the foregoing, FR Doc. 73-855 (38 FR 1581) is amended by deleting from the fifth line of the description "23 NM" and substituting "23-mile" therefor.

The effective date of the original document (0901 G.m.t., March 29, 1973) may be retained.

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

Issued in Fort Worth, Tex., on February 5, 1973.

HENRY L. NEWMAN,
Director, Southwest Region.

[FR Doc.73-2793 Filed 2-12-73;8:45 am]

[Airspace Docket No. 72-GL-62]

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

Alteration of Transition Area

On page 24768 of the FEDERAL REGISTER dated November 21, 1972, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of the Federal Aviation regulations so as to alter the transition area at Marquette, Mich.

Interested persons were given 30 days to submit written comments, suggestions or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., March 29, 1973.

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

Issued in Des Plaines, Ill., on January 23, 1973.

LYLE K. BROWN,
Director, Great Lakes Region.

In § 71.181 (38 FR 435), the following transition area is amended to read:

MARQUETTE, MICH.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Marquette County Airport (latitude 46°-32'03" N., longitude 87°33'35" W.); within 4½ miles north and 9½ miles south of the Marquette ILS localizer west course extending from the 7-mile radius to 16 miles west; within 4½ miles north and 4½ miles south of the Marquette ILS localizer east course extending from the 7-mile radius to 16½ miles east; within an 8-mile radius of K. I. Sawyer AFB (latitude 46°21'15" N., longitude 87°23'40" W.); within 2 miles each side of the K. I. Sawyer AFB ILS localizer course extending from the 8-mile radius area to 12 miles south of the LOM; within 2 miles each side of the K. I. Sawyer AFB TACAN 183° radial, extending from the 8-mile radius area to 12 miles south of the TACAN; and within 2 miles east and 5 miles west of the K. I. Sawyer AFB TACAN 015° radial, extending from the 8-mile radius area to 12 miles north of the TACAN; and that airspace extending upward from 1,200 feet above the surface within a 40-mile radius of K. I. Sawyer AFB, excluding the portion which overlies the Escanaba, Mich., transition area.

[FR Doc.73-2792 Filed 2-12-73;8:45 am]

[Docket No. 11941; Amdt. 93-26]

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

Special Air Traffic Rule; Addison Airport Traffic Area, Texas

The purpose of this amendment of Part 93 of the Federal Aviation Regulations is to establish special air traffic rules and airport traffic patterns for the Airpark-Dallas Airport, Hebron, Tex.

These amendments are based on a notice of proposed rule making (Notice 72-14) issued on May 22, 1972, and published in the FEDERAL REGISTER on May 26, 1972 (37 FR 10673). Interested persons have been afforded an opportunity to participate in the making of these amendments, and due consideration has been given to all relevant matter presented.

Four public comments were received in response to the notice from aviation user groups and associations. Two comments concurred in the proposal and two objected.

The two objections made by Airpark users were directed at proposed § 93.143. This section would require each person operating an aircraft to or from the Airpark-Dallas Airport to establish and maintain two-way radio communications with Addison Tower. Those opposing stated that this proposed section should allow pilots who do not have radio-equipped aircraft to satisfy the communications requirement by calling the Addison Tower by phone before takeoff. The FAA believes that § 93.1(b) provides the Addison Tower with sufficient authority to allow the operation of aircraft without a radio. Accordingly, this provision need not be repeated in § 93.143.

In order to accurately reflect the intent of the Notice, proposed § 93.145 is revised to require arriving aircraft to enter the traffic pattern "at or below 500

feet AGL" instead of "at 500 feet AGL," as stated in the Notice.

In consideration of the foregoing and for reasons stated in Notice No. 72-14, Part 93 of the Federal Aviation Regulations is amended, effective March 15, 1973, by adding a new Subpart L to read as follows:

Subpart L—Addison (Texas) Airport Traffic Area

Sec.
93.141 Applicability.
93.143 Communications.
93.145 Airpark-Dallas Airport Traffic.

AUTHORITY: Secs. 307(a) and 313(a) of the Federal Aviation Act of 1958, 49 U.S.C. 1348 (a) and 1354(a); and sec. 6(c) of the Department of Transportation Act, 49 U.S.C. 1655(c).

Subpart L—Addison (Texas) Airport Traffic Area

§ 93.141 Applicability.

This subpart prescribes special air traffic rules and communication requirements for persons operating aircraft to or from the Airpark-Dallas Airport.

§ 93.143 Communications.

While within the Addison Airport traffic area, each person operating an aircraft to or from the Airpark-Dallas Airport shall establish and maintain two-way radio communications with Addison Airport Traffic Control Tower.

§ 93.145 Airpark-Dallas Airport traffic.

(a) *Arriving.* Each person piloting an aircraft landing at the Airpark-Dallas Airport shall enter the traffic pattern east of the airport at or below 500 feet AGL and execute a left traffic pattern for a landing to the south or a right traffic pattern for a landing to the north.

(b) *Departing.* Each person piloting an aircraft departing from Airpark-Dallas Airport shall leave the traffic pattern to the east.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a), 1354(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on February 5, 1973.

J. H. SHAFFER,
Administrator.

[FR Doc.73-2794 Filed 2-12-73;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

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Use of the Full Absorption Method of Inventory Valuation

On December 15, 1971, notice of proposed rule making with respect to amendment of the Income Tax Regulations (26 CFR Part 1) under sections 61, 446, and 471, of the Internal Revenue Code of 1954, as amended, as they relate to inventory costing, was published in the FEDERAL REGISTER (36 FR 23809). After consideration of all such relevant matter as has been presented by interested persons regarding the rules proposed, the notice of proposed rule making of December 15, 1971, is hereby withdrawn and notice is hereby given that the regulations set forth in tentative form in the attached appendix are proposed to be prescribed by the Commissioner of Internal Revenue, with approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, preferably in quintuplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by April 16, 1973. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by April 12, 1973. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

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

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 61, 446, and 471 of the Internal Revenue Code of 1954 in order to provide rules for the costing of inventories.

The purpose of these proposed amendments is to provide explicit rules for the costing of inventories. For many years, disputes have existed concerning the propriety of various methods of inventory costing for tax purposes. The Income Tax Regulations now being proposed provide explicit, certain, and complete rules governing the costing of inventories. Such rules should simplify the tax reporting for many businesses and eliminate the uncertainty and controversy of past practices. The proposed amendments withdraw those proposed amendments with respect to inventory costing which the Service published on December 15, 1971.

The regulations require the use of a "full absorption" method of inventory costing for all taxpayers engaged in manufacturing or production operations. The required use of the "full absorption" method for all taxpayers is a change from the prior notice which provided that in certain cases a modified full absorption method could be used. The modified full absorption method allowed certain costs to be excluded from inventory costing by the taxpayer if the method of inventory valuation included at least 35 percent of all fixed indirect production costs and the taxpayer excluded such costs in its financial reports. Those excludable costs under the modified full absorption method may still be excludable under the "full absorption" method. The costs are excludable if the taxpayer excludes such costs in his financial statements and such exclusion is in conformity with generally accepted accounting principles. These regulations thus eliminate the arbitrary aspects of the percentage test in determining the exclusion of those costs.

To provide guidance to taxpayers as to which costs are includable or excludable in the computation of inventoriable costs the new proposed regulations establish three cost categories. Under this approach certain costs are always required to be included in the computation of inventoriable costs and certain other costs are not required to be included in the computation of inventoriable costs. A third category of costs are includable or excludable from the computation of inventoriable costs in accordance with the taxpayer's financial accounting treatment for such costs and generally accepted accounting principles.

If a taxpayer's financial accounting method is not comparable to his tax accounting method, the proposed regulations provide only two categories of costs, costs which must be included and costs which may be excluded.

The proposed regulations permit the use of the manufacturing burden rate method and the standard cost method of allocating inventoriable costs to a taxpayer's goods in ending inventory. If the manufacturing burden rate method or standard cost method is used, adjustments or variances resulting from such method must be reallocated to ending inventory if the adjustment or variance is significant or if the taxpayer allocates such adjustments or variances in his financial statements. The previously proposed regulations did not specifically permit the use of the standard cost method.

These proposed regulations also permit the use of the practical capacity concept. The previously proposed regulations treated the practical capacity concept as a method of apportioning fixed indirect production costs to the goods in ending inventory. The new regulations reflect the fact that the practical capacity method is not an allocation method, but is a method which determines the total amount of fixed indirect production costs which must be included among inventoriable costs.

To encourage taxpayers to adopt the full absorption method, the proposed regulations provide liberal transition rules for all taxpayers. The transition rules are available to all taxpayers not previously using the full absorption method of inventory costing as defined in this document. The transition rules provide that a change to the full absorption method from a method of costing less inclusive of production costs will be considered a change initiated by the Commissioner and will permit the taxpayer to make any adjustment with respect to such change over a 10-year period. The prior notice only allowed the transition rules for taxpayers who adopted the full absorption method and were not available to those who chose the modified full absorption method. In addition, the complicated suspense account transition rules of the prior notice are not included in the new proposals.

The new regulations also attempt to simplify the transition rules for LIFO taxpayers and to provide consistency between dollar value LIFO and ordinary LIFO taxpayers. Thus, a liberal cutoff method is now available during the transition period.

Comparable transition rules have also been provided for taxpayers changing to the full absorption method during the transition period from a method of costing more inclusive of production costs.

Adoption of amendments to the regulations. In order to provide rules for the use of the full absorption method of inventory costing, the Income Tax Regulations (26 CFR Part 1) under sections 61, 446, and 471 of the Internal Revenue Code of 1954, relating to gross income, methods of accounting and inventory valuation are amended as follows:

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

§ 1.61–3 Gross income derived from business.

(a) *In general.* In a manufacturing, merchandising, or mining business,

"gross income" means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources. Gross income is determined without subtraction of depletion allowances based on a percentage of income to the extent that it exceeds cost depletion which may be required to be included in the amount of inventoriable costs as provided in § 1.471–11 and without subtraction of selling expenses, losses or other items not ordinarily used in computing costs of goods sold or amounts which are of a type for which a deduction would be disallowed under section 162 (c), (f), or (g) in the case of a business expense. The cost of goods sold should be determined in accordance with the method of accounting consistently used by the taxpayer.

* * * * *

PAR. 2. Section 1.446–1(c)(1)(ii) is amended to read as follows:

§ 1.446–1 General rule for methods of accounting.

* * * * *

(c) *Permissible methods.* * * *

(1) *In general.* * * *

(ii) *Accrual method.* Generally, under an accrual method, income is to be included for the taxable year when all the events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy. Under such a method, deductions are allowable for the taxable year in which all the events have occurred which establish the fact of the liability giving rise to such deduction and the amount thereof can be determined with reasonable accuracy. The method used by the taxpayer in determining when income is to be accounted for will be acceptable if it accords with generally accepted accounting principles, is consistently used by the taxpayer from year to year, and is consistent with the Income Tax Regulations. For example, a taxpayer engaged in a manufacturing business may account for sales of his product when the goods are shipped, when the product is delivered or accepted, or when title to the goods passes to the customer, whether or not billed, depending upon the method regularly employed in keeping his books.

PAR. 3. Section 1.471–2 is amended, by revising the cross references in paragraph (b), deleting the last sentence in paragraph (b), and by adding subparagraphs (6) and (7) to paragraph (f), to read as follows:

§ 1.471–2 Valuation of inventories.

* * * * *

(b) It follows, therefore, that inventory rules cannot be uniform but must give effect to trade customs which come within the scope of the best accounting practice in the particular trade or business. In order to clearly reflect income, the inventory practice of a taxpayer should be consistent from year to year, and greater weight is to be given to consistency than to any particular method of inventorying or basis of valuation so long as the method or basis used is in accord with §§ 1.471–1 through 1.471–11.

* * * * *

(f) * * *

(6) Segregating indirect production costs into fixed and variable production cost classifications (as defined in § 1.471–11(b)(3)(ii)) and allocating only the variable costs to the cost of goods produced while treating fixed costs as period costs which are currently deductible. This method is commonly referred to as the "direct cost" method.

(7) Treating all or substantially all indirect production costs (whether classified as fixed or variable) as period costs which are currently deductible. This method is generally referred to as the "prime cost" method.

PAR. 4. Paragraph (c) of § 1.471–3 is amended by adding a cross reference at the end to read as follows:

§ 1.471–3 Inventories at cost.

* * * * *

(c) In the case of merchandise produced by the taxpayer since the beginning of the taxable year (1) the cost of raw materials and supplies entering into or consumed in connection with the product, (2) expenditures for direct labor, and (3) indirect production costs associated with the production of the particular article, including in such indirect production costs an appropriate portion of management expenses, but not including any cost of selling or return on capital, whether by way of interest or profit. See § 1.471–11 for more specific rules regarding the treatment of indirect production costs.

PAR. 5. Section 1.471–11 is added immediately following § 1.471–10 to read as follows:

§ 1.471–11 Inventories of Manufacturers.

(a) *Use of full absorption method of inventory costing.* In order to conform as nearly as may be possible to the best accounting practices and to clearly reflect income (as required by section 471 of the Code), both direct and indirect production costs must be taken into account in the computation of inventoriable costs in accordance with the "full absorption" method of inventory costing. Under the full absorption method of inventory costing production costs must be allocated to goods produced during the taxable year, whether sold during the taxable year or in inventory at the close of the taxable year determined in accordance with the taxpayer's method of identifying goods in inventory. Thus, the taxpayer must include as inventoriable costs all direct production costs and, to the extent provided by paragraphs (c) and (d) of this section, all indirect production costs. For purposes of this section, the term "financial reports" means financial reports (including consolidated financial statements) to shareholders, partners, beneficiaries or other proprietors, and for credit purposes.

(b) *Production costs*—(1) *In General.* Costs are considered to be production costs to the extent that they are associated with production or manufacturing operations or processes. Production costs include direct production costs and fixed and variable indirect production costs.

(2) *Direct Production Costs.* (i) Costs classified as "direct production costs" are generally those costs which are associated with production or manufacturing operations or processes and are components of the cost of either direct material or direct labor. Direct material costs include the cost of those materials which become an integral part of the specific product and those materials which are consumed in the ordinary course of manufacturing and can be identified or associated with particular units or groups of units of that product. See § 1.471–3 for the elements of direct material costs. Direct labor costs include the cost of labor which can be identified or associated with particular units or groups of units of a specific product. The elements of direct labor costs include such items as basic compensation, overtime pay, vacation and holiday pay, sick leave pay (other than payments pursuant to a wage continuation plan under section 105(d)), shift differential, payroll taxes and payments to a supplemental unemployment benefit plan paid or incurred on behalf of employees engaged in direct labor. For the treatment of rework labor, scrap, spoilage costs, and any other costs not specifically described as direct production costs see § 1.471–11(c)(2)(iii).

(ii) Under the full absorption method, a taxpayer must take into account all items of direct production cost in his inventoriable costs. Nevertheless, a taxpayer will not be treated as using an incorrect method of inventory costing if he treats any direct production costs as indirect production costs, provided such costs are allocated to the taxpayer's ending inventory to the extent provided by paragraph (d) of this section. Thus, for example, a taxpayer may treat direct labor costs as part of indirect production costs (for example, by use of the conversion cost method), provided all such costs are allocated to ending inventory to the extent provided by paragraph (d) of this section.

(3) *Indirect production costs*—(i) *In general.* The term "indirect production costs" includes all costs which are associated with production or manufacturing operations or processes other than direct production costs (as defined in subparagraph (2) of this paragraph). Indirect production costs may be classified as to kind or type in accordance with acceptable accounting principles so as to enable convenient identification with various production or manufacturing activities or functions and to facilitate reasonable groupings of such costs for purposes of determining unit product costs.

(ii) *Fixed and variable classifications.* For purposes of this section, fixed indirect production costs are generally those costs which do not vary significantly with changes in the amount of

goods produced at any given level of production capacity. These fixed costs may include, among other costs, rent and property taxes on buildings and machinery associated with manufacturing operations or processes. On the other hand, variable indirect production costs are generally those costs which do vary significantly with changes in the amount of goods produced at any given level of production capacity. These variable costs may include, among other costs, indirect materials, factory janitorial supplies, and utilities. Where a particular cost contains both fixed and variable elements, these elements should be segregated into fixed and variable classifications to the extent necessary under the taxpayer's method of allocation, such as for the application of the practical capacity concept (as described in paragraph (d)(4) of this section).

(c) *Certain indirect production costs*—(1) *General rule.* Except as provided in subparagraph (3) of this paragraph, in order to determine whether indirect production costs referred to in paragraph (b) of this section must be included in a taxpayer's computation of the amount of inventoriable costs, three categories of costs have been provided in subparagraph (2) of this paragraph. Costs described in subparagraph (2)(i) of this paragraph must be included in the taxpayer's computation of the amount of inventoriable costs, regardless of their treatment by the taxpayer in his financial reports. Costs described in subparagraph (2)(ii) of this paragraph need not enter into the taxpayer's computation of the amount of inventoriable costs, regardless of their treatment by the taxpayer in his financial reports. Costs described in subparagraph (2)(iii) of this paragraph must be included in or excluded from the taxpayer's computation of the amount of inventoriable costs in accordance with the treatment of such costs by the taxpayer in his financial reports and generally accepted accounting principles. For the treatment of indirect production costs described in subparagraph (2) of this paragraph in the case of a taxpayer who is not using comparable methods of accounting for such costs for tax and financial reporting, see subparagraph (3) of this paragraph. After a taxpayer has determined which costs must be treated as indirect production costs includible in the computation of the amount of inventoriable costs, such costs must be allocated to a taxpayer's ending inventory in a manner prescribed by paragraph (d) of this section.

(2) *Includibility of certain indirect production costs*—(i) *Indirect production costs included in inventoriable costs.* Indirect production costs which must enter into the computation of the amount of inventoriable costs (regardless of their treatment by a taxpayer in his financial reports) include:

(*a*) Repair expenses,

(*b*) Maintenance,

(*c*) Utilities,

(*d*) Rent,

(*e*) Indirect labor and production supervisory wages, including basic compensation, overtime pay, vacation and holiday pay, sick leave pay (other than payments pursuant to a wage continuation plan under section 105(d)), shift differential, payroll taxes and contributions to a supplemental unemployment benefit plan,

(*f*) Indirect materials and supplies,

(*g*) Tools and equipment not capitalized,

(*h*) Engineering and product development expenses (other than research and experimental expenses described in section 174 and the regulations thereunder), and

(*i*) Costs of quality control and inspection,

to the extent, and only to the extent, such costs are associated with production or manufacturing operations or processes.

(ii) *Indirect production costs not included in inventoriable costs.* Expenses which are not required to be included for tax purposes in the computation of the amount of inventoriable costs (regardless of their treatment by a taxpayer in his financial reports) include:

(*a*) Marketing expenses,

(*b*) Advertising expenses,

(*c*) Selling expenses,

(*d*) Other distribution expenses,

(*e*) Interest,

(*f*) Research and experimental expenses described in section 174 and the regulations thereunder,

(*g*) Losses under section 165 and the regulations thereunder,

(*h*) Percentage-depletion in excess of cost depletion,

(*i*) Depreciation reported for Federal income tax purposes in excess of depreciation reported by the taxpayer in his financial reports,

(*j*) Income taxes attributable to income received on the sale of inventory, and

(*k*) Pension and profit-sharing contributions to the extent that they represent past services cost.

Notwithstanding the preceding sentence, if a taxpayer consistently includes in his computation of the amount of inventoriable costs any of the costs described in the preceding sentence, a change in such method of inclusion shall be considered a change in method of accounting within the meaning of sections 446 and 481. See paragraph (e)(4) of this section.

(iii) *Indirect production costs includible in inventoriable costs depending upon treatment in taxpayer's financial reports.* Except as provided in subdivisions (i) and (ii) of this subparagraph, where a particular cost is not clearly associated with production or manufacturing operations or processes, a taxpayer's inclusion or exclusion of such cost in the computation of the amount of inventoriable costs in his financial reports shall determine whether such cost must be included in or excluded from the computation of the amount of inventoriable costs for tax purposes, but only if such treatment is not inconsistent with generally accepted accounting principles. For example, items which may be included in or excluded from the computation of the amount of inventoriable costs depending upon their treatment in a taxpayer's financial reports include, but are not limited to:

(*a*) *Taxes.* Taxes otherwise allowable as a deduction under section 164 (other than State and local and foreign income taxes) attributable to assets associated with production or manufacturing operations or processes. Thus, for example, the cost of State and local property taxes imposed on a factory or other production facility and any State and local taxes imposed on inventory must be included in or excluded from the computation of the amount of inventoriable costs for tax purposes depending upon their treatment by a taxpayer in his financial reports.

(*b*) *Depreciation and depletion.* Depreciation reported in financial reports and cost depletion on assets associated with production or manufacturing operations or processes. In computing cost depletion under this section, the adjusted basis of such assets shall be reduced by cost depletion and not by percentage depletion taken thereon.

(*c*) *Employee benefits.* Pension and profit-sharing contributions representing current service costs otherwise allowable as a deduction under section 404, and other employee benefits incurred on behalf of labor associated with production or manufacturing operations or processes. These other benefits include workmen's compensation expenses, payments under a wage continuation plan described in section 105(d), amounts includible in the gross income of employees under nonqualified pension, profit-sharing and stock bonus plans, premiums on life and health insurance and miscellaneous benefits provided for employees such as safety, medical treatment, cafeteria, recreational facilities, membership dues, etc., which are otherwise allowable as deductions under chapter 1 of the Code.

(*d*) *Costs attributable to strikes, rework labor, scrap, and spoilage.* Costs attributable to strikes, rework labor, scrap and spoilage which are associated with production or manufacturing operations or processes.

(*e*) *General and administrative expenses.* General and administrative expenses (but not including any cost of selling or any return on capital) directly related to production or manufacturing operations or processes.

(*f*) *Officer's salaries.* Salaries paid to officers attributable to services performed relating to production or manufacturing operations or processes.

(*g*) *Insurance costs.* Insurance costs attributable to production or manufacturing operations or processes such as insurance on production machinery and equipment.

A change in the taxpayer's treatment in his financial reports of costs described in this subdivision which results in a change

in treatment of such costs for tax purposes shall constitute a change in method of accounting within the meaning of sections 446 and 481.

(3) *Exception.* In the case of a taxpayer whose method of accounting for production costs in his financial reports is not comparable to his method of accounting for such costs for tax purposes, such as a taxpayer using the percentage of completion method of accounting for long-term contracts in financial reports and the completed-contract method of accounting for such contracts for tax purposes, the following rules apply:

(i) *Indirect production costs included in inventoriable costs.* Indirect production costs which must enter into the computation of the amount of inventoriable costs (to the extent, and only to the extent, such costs are associated with production or manufacturing operations or processes) include:

(*a*) Repair expenses,
(*b*) Maintenance,
(*c*) Utilities,
(*d*) Rent,
(*e*) Indirect labor and production supervisory wages, including basic compensation, overtime pay, vacation and holiday pay, sick leave pay (other than payments pursuant to a wage continuation plan under section 105(d)), shift differential, payroll taxes and contributions to a supplemental unemployment benefit plan,
(*f*) Indirect materials and supplies,
(*g*) Tools and equipment not capitalized,
(*h*) Enginering and product development expenses (other than research and experimental expenses described in section 174 and the regulations thereunder),
(*i*) Costs of quality control and inspection,
(*j*) Taxes otherwise allowable as a deduction under section 164 (other than State and local and foreign income taxes),
(*k*) Depreciation reported for financial purposes and cost depletion,
(*l*) General and administrative expenses (but not including any cost of selling or any return on capital) directly related to production or manufacturing operations or processes,
(*m*) Salaries paid to officers attributable to services performed directly related to production or manufacturing operations or processes, and
(*n*) Any cost of insurance, such as insurance on production machinery and equipment.

(ii) *Indirect production costs not required to be included in inventoriable costs.* Expenses which are not required to be included in the computation of the amount of inventoriable costs include:

(*a*) Marketing expenses,
(*b*) Advertising expenses,
(*c*) Selling expenses,
(*d*) Other distribution expenses,
(*e*) Interest,
(*f*) Research and experimental expenses described in section 174 and the regulations thereunder,
(*g*) Losses under section 165 and the regulations thereunder,
(*h*) Percentage depletion in excess of cost depletion,
(*i*) Depreciation reported for Federal income tax purposes in excess of depreciation reported by the taxpayer in his financial reports,
(*j*) Income taxes attributable to income recived on the sale of inventory,
(*k*) Pension and profit-sharing contributions representing either past service costs or representing current service costs otherwise allowable as a deduction under section 404, and other employee benefits incurred on behalf of labor. These other benefits include workmen's compensation expenses, payments under a wage continuation plan described in section 105(d), amounts includible in the gross income of employees under nonqualified pension, profit-sharing and stock bonus plans, premiums on life and health insurance and miscellaneous benefits provided for employees such as safety, medical treatment, cafeteria, recreational facilities, membership dues, etc., which are otherwise allowable as deductions under chapter I of the Code, and
(*l*) Costs attributable to strikes, rework labor, scrap and spoilage.

(d) *Allocation methods*—(1) *In general.* Indirect production costs required to be included in the computation of the amount of inventoriable costs pursuant to paragraphs (b) and (c) of this paragraph must be allocated to goods in a taxpayer's ending inventory (determined in accordance with the taxpayer's method of identification) by the use of a method of allocation which fairly apportions such costs among the various items produced. Acceptable methods for allocating indirect production costs to the cost of goods in the ending inventory include the manufacturing burden rate method and the standard cost method. In addition, the practical capacity concept can be used in conjunction with either the manufacturing burden rate or standard cost method.

(2) *Manufacturing burden rate method*—(i) *In general.* Manufacturing burden rates may be developed in accordance with acceptable accounting principles and applied in a reasonable manner. In developing a manufacturing burden rate, the factors described in subdivision (ii) of this subparagraph may be taken into account. Furthermore, if the taxpayer chooses, he may allocate different indirect production costs on the basis of different manufacturing burden rates. Thus, for example, the taxpayer may use one burden rate for allocating rent and another burden rate for allocating utilities. The method used by the taxpayer in allocating such costs in his financial reports shall be given great weight in determining whether the taxpayer's method employed for tax purposes fairly allocates indirect production costs to the ending inventory. Any change in a manufacturing burden date which is merely a periodic adjustment to reflect current operating conditions, such as increases in automation or changes in operation, does not constitute a change in method of accounting under section 446. However, a change in the concept upon which such rates are developed does constitute a change in method of accounting requiring the consent of the Commissioner. The taxpayer shall maintain adequate records and working papers to support all manufacturing burden rate calculations.

(ii) *Development of manufacturing burden rate.* The following factors, among others, may be taken into account in developing manufacturing burden rates:

(*a*) The selection of an appropriate level of activity and period of time upon which to base the calculation of rates which will reflect operating conditions for purposes of the unit costs being determined;

(*b*) The selection of an appropriate statistical base such as direct labor hours, or machine hours, or a combination thereof, upon which to apply the overhead rate to determine production costs; and

(*c*) The appropriate budgeting, classification and analysis of expenses (for example, the analysis of fixed and variable costs).

(iii) *Operation of the manufacturing burden rate method.* (*a*) The purpose of the manufacturing burden rate method used in conjunction with the full absorption method of inventory costing is to allocate an appropriate amount of indirect production costs to a taxpayer's goods in ending inventory by the use of predetermined rates intended to approximate the actual amount of indirect production costs incurred. Accordingly, the proper use of the manufacturing burden rate method under this section requires that any difference between the total predetermined amount of indirect production costs allocated to the goods in ending inventory and the total amount of indirect production costs actually incurred and required to be allocated to such goods (i.e., the underapplied or overapplied burden) must be treated as an adjustment to the taxpayer's ending inventory in the taxable year in which such difference arises. However, if such adjustment is not significant in amount in relation to the taxpayer's total actual indirect production costs for the year then such adjustment need not be allocated to the taxpayer's goods in ending inventory unless such allocation is made in the taxpayer's financial reports. In addition, the taxpayer must treat both positive and negative adjustments consistently.

(*b*) Notwithstanding (*a*) of this subdivision, the practical capacity concept may be used to determine the total may be used to determine the total amount of fixed indirect production costs which must be allocated to goods in ending inventory. See subparagraph (4) of this paragraph.

(3) *Standard cost method*—(i) *In general.* A taxpayer may use the so-called "standard cost" method of allocating inventoriable costs to the goods in ending inventory, provided he treats variances in accordance with the proce-

dures prescribed in subdivision (ii) of this subparagraph. The method used by the taxpayer in allocating such costs in his financial reports shall be given great weight in determining whether the taxpayer's method employed for tax purposes fairly allocates indirect production costs to the ending inventory. For purposes of this subparagraph, a "net positive overhead variance" shall mean the excess of total standard (or estimated) indirect production costs over total actual indirect production costs and a "net negative overhead variance" shall mean the excess of total actual indirect production costs over total standard (or estimated) indirect production costs.

(ii) *Treatment of variances.* (*a*) The proper use of the standard cost method pursuant to this subparagraph requires that a taxpayer must reallocate to the goods in ending inventory a pro rata portion of any net negative overhead variances and any net negative direct production cost variances. The taxpayer must apportion such variances among his various items in ending inventory. However, if such variances are not significant in amount in relation to the taxpayer's total actual indirect production costs for the year then such variances need not be allocated to the taxpayer's goods in ending invenory unless such allocation is made in the taxpayer's financial reports. In addition, the taxpayer must treat both positive and negative variances consistently.

(*b*) Notwithstanding (*a*) of this subdivision, the practical capacity concept may be used to determine the total amount of fixed indirect production costs which must be allocated to goods in ending inventory. See subparagraph (4) of this paragraph.

(4) *Practical capacity concept*—(i) *In general.* Under the practical capacity concept, the percentage of practical capacity represented by actual production (not greater than 100 percent), as calculated under subdivision (ii) of this subparagraph, is used to determine the total amount of fixed indirect production costs which must be included in the taxpayer's computation of the amount of inventoriable costs. The portion of such costs to be included in the taxpayer's computation of the amount of inventoriable costs is then combined with variable indirect production costs and both are allocated to the goods in ending inventory in accordance with this paragraph. See the example in subdivision (ii)(*d*) of this subparagraph. The difference (if any) between the amount of all fixed indirect production costs and the fixed indirect production costs which are included in the computation of the amount of inventoriable costs under the practical capacity concept is allowable as a deduction for the taxable year in which such difference occurs.

(ii) *Calculation of practical capacity*—(*a*) *In general.* Practical capacity and theoretical capacity (as described in (*c*) of this subdivision) may be computed in terms of tons, pounds, yards, labor hours, machine hours, or any other unit of production appropriate to the cost accounting system used by a particular taxpayer. The determination of practical capacity and theoretical capacity should be modified from time to time to reflect a change in underlying facts and conditions such as increased output due to automation or other changes in plant operation. Such a change does not constitute a change in method of accounting under section 446.

(*b*) *Based upon taxpayer's experience.* In selecting an appropriate level of production activity upon which to base the calculation of practical capacity, the taxpayer shall establish the production operating conditions expected during the period for which the costs are being determined, assuming that the utilization of production facilities during operations will be approximately at capacity. This level of production activity is frequently described as practical capacity for the period and is ordinarily based upon the historical experience of the taxpayer. For example, a taxpayer operating on a 5-day, 8-hour basis may have a "normal" production of 100,000 units a year based upon 3 years of experience.

(*c*) *Based upon theoretical capacity.* Practical capacity may also be established by the use of "theoretical" capacity, adjusted for allowances for estimated inability to achieve maximum production, such as machine breakdown, idle time, and other normal work stoppages. Theoretical capacity is the level of production the manufacturer could reach if all machines and departments were operated continuously at peak efficiency.

(*d*) *Example.* The provisions of (*c*) of this subdivision may be illustrated by the following example:

Corporation X operates a stamping plant with a theoretical capacity of 50 units per hour. The plant actually operates 1960 hours per year based on an 8-hour day, 5 day week basis and 15 shutdown days for vacations and holidays. A reasonable allowance for down time (the time allowed for ordinary and necessary repairs and maintenance) is 5 percent of practical capacity before reduction for down time. Assuming no loss of production during starting up, closing down, or employee work breaks, under these facts and circumstances X may properly make a practical capacity computation as follows:

Practical capacity without allowance for down time based on theoretical capacity per hour is (1960×50)	98,000
Reduction for down time (98,000×5 percent)	4,900
Practical capacity	93,100

The 93,100 unit level of activity (i.e., practical capacity) would, therefore, constitute an appropriate base for calculating the amount of fixed indirect production costs to be included in the computation of the amount of inventoriable costs for the period under review. On this basis if only 76,000 units were produced for the period, the effect would be that approximately 81.6 percent (76,000, the actual number of units produced, divided by 93,100, the maximum number of units producible at practical capacity) of the fixed indirect production costs would be included in the computation of the amount of inventoriable costs during the year. The portion of the fixed indirect production costs not so included in the computation of the amount of inventoriable costs would be deductible in the year in which paid or incurred. Assume further that 7,600 units were on hand at the end of the taxable year and the 7,600 units were in the same proportion to the total units produced. Thus, 10 percent (7,600 units in inventory at the end of the taxable year, divided by 76,000, the actual number of units produced) of the fixed indirect production costs included in the computation of the amount of inventoriable costs (the above-mentioned 81.6 percent) and 10 percent of the variable indirect production costs would be included in the cost of the goods in the ending inventory, in accordance with a method aof allocation provided by this paragraph.

(e) *Transition to full absorption method of inventory costing*—(1) *In general*—(i) *Mandatory requirement.* A taxpayer not using the full absorption method of inventory costing, as prescribed by paragraph (a) of this section, must change to that method. A taxpayer not using the full absorption method of inventory costing, as prescribed by paragraph (a) of this section, who makes the special election provided in subdivision (ii) of this subparagraph during the transition period described in subdivision (ii) of this subparagraph need not change to the full absorption method of inventory costing for taxable years prior to the year for which such election is made, but only if no notice of deficiency under section 6212 has been issued for such years with respect to an issue involving inventory costing. The rules otherwise prescribed in sections 446 and 481 and the regulations thereunder shall apply to any taxpayer who fails to make the special election in subdivision (ii) of this subparagraph. The transition rules of this paragraph are available only to those taxpayers who change their method of inventory costing.

(ii) *Special election during 2-year-transition period.* If a taxpayer elects to change to the full absorption method of inventory costing during the transition period provided herein, he may elect on Form 3115 to change to such full absorption method of inventory costing and, in so doing, employ the transition procedures and adopt any of the transition methods prescribed in subparagraph (2) of this paragraph. Such election shall be made during the first 180 days of any taxable year beginning on or after (the date of adoption of these regulations as a Treasury decision) and before (2 years after the date of adoption of these regulations as a Treasury decision) (i.e., the "transition period") and the change in inventory costing method shall be made for the taxable year in which the election is made. Notwithstanding the preceding sentence if the taxpayer's prior returns are being examined by the Service prior to (the date of adoption of these regulations as a Treasury decision) but a statutory notice of deficiency has not been issued, and there is an issue involving a change in inventory costing method, the taxpayer may request the application of this regulation by agreeing to change

to the full absorption method for the first taxable year of the taxpayer ending after (the date of adoption of the Regulations as a Treasury decision).

(iii) *Change initiated by the Commissioner.* A taxpayer who properly makes an election under subdivision (ii) of this subparagraph shall be considered to have made a change in method of accounting not initiated by the taxpayer, notwithstanding the provisions of § 1.481–1(c)(5). Thus, any of the taxpayer's "pre-1954 inventory balances" with respect to such inventory shall not be taken into account as an adjustment under section 481. For purposes of this paragraph, a "pre-1954 inventory balance" is the net amount of the adjustments which would have been required if the taxpayer had made such change in his method of accounting with respect to his inventory in his first taxable year which began after December 31, 1953, and ended after August 16, 1954. See section 481(a)(2) and § 1.481–3.

(2) *Procedural rules for change.* If a taxpayer makes an election pursuant to subparagraph(1)(ii) of this paragraph, the Commissioner's consent will be evidenced by a letter of consent to the taxpayer, setting forth the values of inventory, as provided by the taxpayer, determined under the full absorption method of inventory costing, except to the extent that no determination of such values is necessary under subparagraph (3)(ii)(*b*) of this paragraph (the cutoff method), the amount of the adjustments (if any) required to be taken into account by section 481, and the treatment to be accorded to any such adjustments. Such full absorption values shall be subject to verification on examination by the District Director. The taxpayer shall preserve at his principal place of business all records, data, and other evidence relating to the full absorption values of inventory.

(3) *Transition methods.* In the case of a taxpayer who properly makes an election under subparagraph (1)(ii) of this paragraph during the transition period—

(i) *10-year adjustment period.* Such taxpayer may elect to take any adjustment required by section 481 with respect to any inventory being revalued under the full absorption method into account ratably over a period designated by the taxpayer at the time of such election, not to exceed the lesser of 10 taxable years commencing with the year of transition or the number of years the taxpayer has been on the inventory method from which he is changing. If the taxpayer dies or ceases to exist in a transaction other than one to which section 381(a) of the Code applies or if the taxpayer's inventory (determined under the full absorption method) on the last day of any taxable year is reduced by more than an amount equal to 33⅓ percent of the taxpayer's inventory (determined under the full absorption method) as of the beginning of the year of change, the entire amount of the section 481 adjustment not previously taken into account in computing income shall be taken into account in computing income for the taxable year in which such taxpayer so ceases to exist or such taxpayer's inventory is so reduced.

(ii) *Additional rules for LIFO taxpayers.* A taxpayer who uses the LIFO method of inventory identification may either—

(*a*) Employ the special transition rules described in subdivision (i) of this subparagraph. Accordingly, all LIFO layers must be revalued under the full absorption method and the section 481 adjustment must be computed for all items in all layers in inventory, but no pre-1954 inventory balances shall be taken into account as adjustments under section 481; or

(*b*) Employ a cutoff method whereby the full absorption method is only applied in costing layers of inventory acquired during all taxable years beginning with the year for which an election is made under subparagraph (1)(ii) of this paragraph.

(4) *Transition to full absorption method of inventory costing from a method more inclusive of indirect production costs*—(i) *Taxpayer has not previously changed to his present method pursuant to subparagraphs (1), (2), and (3) of this paragraph.* If a taxpayer wishes to change to the full absorption method of inventory costing (as prescribed by paragraph (a) of this section) from a method of inventory costing which is more inclusive of indirect production costs and he has not previously changed to his present method by use of the special transition rules provided by subparagraphs (1), (2), and (3) of this paragraph, he may elect on Form 3115 to change to the full absorption method of inventory costing and, in so doing, take into account any resulting section 481 adjustment generally over 10 taxable years commencing with the year of transition. The Commissioner's consent to such election will be evidenced by a letter of consent to the taxpayer setting forth the values of inventory, as provided by the taxpayer determined under the full absorption method of inventory costing, except to the extent that no determination of such values is necessary under subparagraph (3)(ii)(*b*) of this paragraph, the amount of the adjustments (if any) required to be taken into account by section 481, and the treatment to be accorded such adjustments, subject to terms and conditions specified by the Commissioner to prevent distortions of income. Such election must be made within the transition period described in subparagraph (1)(ii) of this paragraph. A change pursuant to this subparagraph shall be a change initiated by the taxpayer as provided by § 1.481–1(c)(5). Thus, any of the taxpayers "pre-1954 inventory balances" will be taken into account as an adjustment under section 481.

(ii) *Taxpayer has previously changed to his present method pursuant to subparagraphs (1), (2), and (3) of this paragraph or would satisfy all the requirements of subdivision (i) of this subparagraph but fails to elect within the transition period.* If a taxpayer wishes to change to the full absorption method of inventory costing (as prescribed by paragraph (a) of this section) from a method of inventory costing which is more inclusive of indirect production costs and he has previously changed to his present method pursuant to subparagraphs (1), (2), and (3) of this paragraph or he would satisfy the requirements of subdivision (i) of this subparagraph but he fails to elect within the transition period, he must secure the consent of the Commissioner prior to making such change.

[FR Doc.73–2754 Filed 2–12–73;8:45 am]

[26 CFR Part 1]

INCOME TAX

Domestic International Sales Corporations; Notice of Public Hearings

Public hearings on the provisions of the below listed proposed regulations will be held on March 13, 1973, at 10 a.m., e.s.t., and if necessary will continue on March 14, 1973, beginning at 10 a.m. in Room 3313, Internal Revenue Building, 1111Constitution Avenue NW., Washington, DC 20224. The public hearings will be in respect to:

(1) Proposed regulations under section 992 of the Internal Revenue Code of 1954 relating to requirements of a domestic international sales corporation (DISC), appearing in the FEDERAL REGISTER for September 12, 1972 (37 FR 18475).

(2) Proposed regulations under section 995 of the Internal Revenue Code of 1954 relating to foreign investment attributable to producer's loans, appearing in the FEDERAL REGISTER for September 15, 1972 (37 FR 18736).

(3) Proposed regulations under section 994 of the Internal Revenue Code of 1954 relating to inter-company pricing rules for DISC's, appearing in the FEDERAL REGISTER for September 21, 1972 (37 FR 19625).

(4) Proposed regulations under section 993 of the Internal Revenue Code of 1954 relating to qualified export receipts and producer's loans of a domestic international sales corporation (DISC), appearing in the FEDERAL REGISTER for October 4, 1972 (37 FR 20853).

(5) Proposed regulations under section 994 of the Internal Revenue Code of 1954 relating to marginal costing rules for intercompany pricing for DISC's, appearing in the FEDERAL REGISTER for December 20, 1972 (37 FR 28065).

(6) Proposed regulations under section 993 of the Internal Revenue Code of 1954 relating to qualified export receipts and producer's loans of a domestic international sales corporation (DISC), appearing in the FEDERAL REGISTER for December 22, 1972 (37 FR 28302).

(7) Proposed regulations under sections 995, 996 and 997 of the Internal Revenue Code of 1954 relating to the treatment of distributions to shareholders of domestic international sales corporations, appearing in the FEDERAL

REGISTER for December 29, 1972 (37 FR 28754).

(8) Proposed regulations under sections 246, 301, 901, 902, 922, 931, and 1014 of the Internal Revenue Code of 1954 relating to domestic international sales corporations, appearing in the FEDERAL REGISTER for January 5, 1973 (38 FR 883).

The rules of § 601.601(a)(3) of the Statement of Procedural Rules (26 CFR Part 601) shall apply with respect to such public hearings. 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 within the time prescribed in the respective notices of proposed rule making and who desire to present oral comments at the respective hearing on such proposed regulations should by February 27, 1973, submit an 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 hearings should notify the Commissioner, in writing, at the above address by March 6, 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.

An agenda showing the order of the hearings on the proposed regulations and the scheduling of the speakers will be made after outlines are received from the speakers. Copies of this agenda will be available free of charge at the hearings, and information with respect to its contents may be obtained on March 12, 1973, by telephoning (Washington, D.C.) 202—964-3935.

LEE H. HENKEL, Jr.,
Chief Counsel.

[FR Doc.73-2969 Filed 2-12-73;10:14 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1062]

[Docket No. AO 10-A46]

MILK IN THE ST. LOUIS-OZARKS MARKETING AREA

Decision on Proposed Amendments to Marketing Agreement and to Order

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the St. Louis-Ozarks marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at Bridgeton, Mo., on November 1, 1972, pursuant to notice thereof issued on October 10, 1972 (37 FR 21641).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on January 8, 1973 (38 FR 1281) filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications in the findings and conclusions:

1. The sixth paragraph is revised.
2. The 25th paragraph is revised.
3. Two paragraphs are added immediately following the 25th paragraph.

The material issue on the record of the hearing relates to reducing the location adjustment in Zone II of the marketing area.

FINDINGS AND CONCLUSIONS

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

The plus location adjustment applicable to the Class I price and uniform price at a plant in Zone II (the southeastern Missouri counties of Cape Girardeau, Bollinger, St. Francois, Perry, and Ste. Genevieve) should be reduced from 15 cents to 7 cents.

The hearing notice proposal was submitted by a handler at Cape Girardeau who operates the only regulated plant in Zone II. He proposed to eliminate the present plus 15-cent location adjustment, claiming that it places him at a disadvantage in competing for sales with those handlers under the St. Louis-Ozarks order whose Class I price is not subject to a plus location adjustment. Also, he testified that his producers, even without the plus 15-cent location adjustment, still would realize a better return than they could obtain by delivering their milk a greater distance to plants in St. Louis.

There was significant opposition at the hearing to removing the 15-cent location adjustment. Operators of regulated plants under the Memphis and Central Arkansas orders, who compete for sales with the Cape Girardeau handler in southeastern Missouri and in the Memphis area, claimed that removal of the plus 15-cent adjustment in Zone II would misalign the Class I price applicable at the Cape Girardeau location with the Class I prices under other orders.

Spokesmen for a cooperative representing a majority of the producers under the Memphis and Central Arkansas orders contended that removal of the plus 15-cent location adjustment would jeopardize the supply of the Cape Girardeau handler, because Cape Girardeau area producers would ship instead to nearby plants under the other orders where they could realize a higher return for their deliveries.

A Paducah order handler and the principal cooperative under that order also opposed removing the plus 15-cent location adjustment at Cape Girdardeau. They claimed that it would give the Cape Girardeau handler an advantage over Paducah handlers in their common sales areas and would cause an inappropriate alignment of prices between the two orders.

A major cooperative under the St. Louis-Ozarks order represents all but one of the producers supplying the Cape Girardeau handler. This cooperative stated its concern that producers at Cape Girardeau should receive a reasonable return, but pointed to the lower prices east, west, and north of Cape Girardeau and to the importance to orderly marketing of equitable treatment of handlers who compete with distributors in neighboring markets. Reference was made to the longstanding controversy over the price level at Cape Girardeau and hope was expressed that, insofar as the hearing would permit, a price might be provided at Cape Girardeau that will assure an adequate supply for plants so located and at the same time provide for proper alinement of prices among the competing markets. It suggested that any change in location pricing resulting from the hearing should be directed particularly to achieving comparable Class I prices at Cape Girardeau under both the St. Louis-Ozarks and Memphis orders. As a cooperative association, it expressed its interest in obtaining the maximum practicable returns for its members.

A cooperative whose members ship to St. Louis-Ozarks regulated plants, and that also operates a distributing plant regulated by the Southern Illinois order, similarly opposed eliminating the plus 15-cent location adjustment. Its spokesman proposed, however, to reduce the location adjustment 7 or 8 cents, stating that such a reduction would more appropriately align the Class I price at Cape Girardeau with the Southern Illinois order Class I price.

Besides his distribution in Zone II of the St. Louis-Ozarks marketing area, the Cape Girardeau handler proposing the price reduction sells in the Memphis marketing area, in the Missouri portion of the Paducah marketing area, and in several counties in southeastern Missouri that are not in any Federal order marketing area. His sales in the Paducah marketing area are, however, not a significant proportion of his total Class I distribution or of the total Class I sales in that marketing area.

Currently, Class I distribution from the Cape Girardeau plant in the Memphis marketing area is only slightly less than its sales in the St. Louis-Ozarks marketing area. In fact, in some months (but not for 3 consecutive months) the plant's sales in the Memphis marketing area have been more than in the St. Louis-Ozarks marketing area. Both orders specify that a plant's distribution in an other order marketing area must exceed those in the order under which it is currently regulated for 3 consecutive

months before it may be regulated by the other order.

The Cape Girardeau plant has been a fully regulated plant under the St. Louis-Ozarks order (or its predecessor, the St. Louis order) since February 1, 1965. The plus 15-cent location adjustment at Cape Girardeau has been effective since February 1, 1965, when the five counties in Zone II were added to the marketing area of the St. Louis order (which became the St. Louis-Ozarks order October 1, 1968). The decision of the Assistant Secretary on November 5, 1964 (28 FR 15130), concluded that the plus 15-cent adjustment in Zone II was necessary to insure an adequate supply for plants in such area and to improve the alignment of prices among orders regulating competing handlers.

The St. Louis-Ozarks Class I price and those in the nearby Federal order markets are computed by adding stated amounts, commonly referred to as Class I differentials, to the basic formula price (Minnesota-Wisconsin manufacturing milk price). The St. Louis-Ozarks Class I differential of $1.60 is applicable in the St. Louis metropolitan area, the principal population center under the order. With the plus 15-cent location adjustment, the applicable Class I differential at Cape Girardeau is $1.75. Under both the Memphis and Central Arkansas orders the Class I differential (over the same basic formula price) is $1.94.

The Class I differential applicable at the Cape Girardeau plant, if regulated by the Memphis order, would be $1.67. This results from subtracting from the $1.94 Class I differential the 27-cent location adjustment that applies at a plant 175 miles from Memphis. In effect, if the Cape Girardeau plant were regulated by the Memphis order, its Class I price would be 8 cents less ($1.67 versus $1.75) than is now provided under the St. Louis-Ozarks order.

Cape Girardeau, which is near the main north-south highway between St. Louis and Memphis, is about 175 miles from Memphis. In view of relatively small differences between the plant's volumes of sales under the two orders in recent months, there is the possibility that at least at times it could become a fully regulated plant under the Memphis order.

Paragould is about 85 miles northwest of Memphis and 148 miles south of Cape Girardeau. The Class I price differential at the Paragould location under the Central Arkansas order is $1.805, or 15 cents higher than the price that would be applicable under such order for a plant regulated thereby and located at Cape Girardeau. A principal competitor of the Cape Girardeau handler for sales in southeastern Missouri is a handler at Paragould, Arkansas, regulated by the Central Arkansas order.

The Class I price in the Paducah marketing area is 10 cents higher than at Cape Girardeau. Paducah, the principal city in the Paducah marketing area, is about 70 miles southeast of Cape Girardeau. While the Cape Girardeau handler has no Class I distribution in the city of Paducah, he has limited competition for sales with handlers under that order in the southeastern Missouri counties of the Paducah marketing area.

Although the Cape Girardeau handler competes for sales with St. Louis handlers in the Cape Girardeau vicinity, he has no distribution of his own in the St. Louis metropolitan area. Neither does he compete for sales with handlers regulated under the nearby Southern Illinois marketing area, in or outside such area.

The alternatives available to producers delivering their milk to the Cape Girardeau plant are not limited to plants located in St. Louis. The economic value of their milk may be expected to be more affected by the best of their opportunities pricewise than by their lowest-priced alternative outlets. The Paragould, Ark., plant is an outlet for additional quantities of milk on a direct-delivery basis. The Cape Girardeau producers are situated to take advantage of this outlet. The return to such producers after the haul to Paragould would be significantly more than if the milk were delivered to St. Louis. Also, the higher blend price under the Central Arkansas order at the Paragould plant could reasonably be expected to return to such producers more than they would realize at Cape Girardeau after a 15-cent reduction, as was proposed. Consequently, there can be no strong presumption that such producers would gravitate to the lowest-priced outlets in the region.

It was concluded in a previous decision on the St. Louis-Ozarks order that price alignment among regulated markets where intermarket handler competition occurs is an important factor to be considered by the Secretary in his efforts to achieve market stability for producers under a given order and reasonable market allocation of available milk supplies where market milksheds tend to overlap. These intermarket relationships involving St. Louis-Ozarks with Memphis, Central Arkansas and Paducah have been referred to herein above.

The primary problem of market price alignment on this record relates to the St. Louis-Ozarks-Memphis relationship. The Cape Girardeau handler, as previously indicated, sells approximately as much milk in the Memphis marketing area as in his home market at Cape Girardeau.

The Class I price relationship between this order and the Memphis order has changed significantly since Zone II was added to the marketing area. From February 1965 through July 1968 the Memphis Class I price exceeded the St. Louis Zone II Class I price an average of 61 cents. Since July 1968 the Memphis Class I price has been 19 cents more than the Zone II Class I price in each month.

When Zone II was added to the marketing area, the existing differences between the monthly Class I price under the St. Louis and Memphis orders was a matter considered in establishing the plus 15-cent location adjustment. The revised basis of pricing at Cape Girardeau herein provided gives recognition to the current relationship of prices in the St. Louis-Ozarks and Memphis orders.

The handler competition between these markets calls for a close price alinement for the purposes described above. The plus location adjustment of 7 cents proposed herein for Cape Girardeau will promote orderly marketing by providing a Class I price at Cape Girardeau equivalent to that prevailing for the same location under the Memphis order.

It was found further in a prior decision on the St. Louis-Ozarks order that the greater the distance that an order market is situated geographically from the heavy production region of the country, the higher the Class I price tends to be. For the St. Louis-Ozarks market and other markets to the south of St. Louis-Ozarks, the Chicago milkshed is an important alternative source of supply when outside milk is needed for fluid use.

A basic reason for this is that local supplies for those markets farther removed from the Chicago milkshed tend to be less adequate for their year-round needs than those nearer the Chicago production area. In 1971, for example, the Class I utilization of producer deliveries under the Memphis, Central Arkansas and Paducah orders was 85 percent, 89 percent, and 74 percent, respectively. Under the St. Louis-Ozarks and Southern Illinois orders, Class I utilization of producer receipts was 64 percent and 60 percent, respectively, for the same period. These conditions are reflected in the relative prices of the Memphis, Central Arkansas and Paducah markets. The Memphis, Central Arkansas, and Paducah Class I pricesa re 34 cents, 34 cents, and 25 cents, respectively, more than the Zone I Class I price in the SRt. Louis-Ozarks order.

Cape Girardeau is farther from Chicago than St. Louis proper. The 7-cent-plus location adjustment adopted gives reasonable recognition to the greater distance, and consequent cost of delivery, to Cape Girardeau from a basic source of alternative supplies.

In an exception to the recommended decision, a handler contended that the plus location adjustment at Cape Girardeau should be determined solely on the basis of its greater distance (than St. Louis) from the city of Chicago. As calculated by him, the location adjustment at Cape Girardeau would be 12 cents (based at a rate of 1.5 cents for each 10 miles of the 79-mile greater distance to Cape Girardeau from Chicago). Two other handlers, in exceptions, pointed to testimony by the witness of a cooperative that on the basis of distance from Eau Claire, Wisconsin, in the heart of the Chicago milkshed, a price 16.5 cents higher than at St. Louis would be warranted at Cape Girardeau.

One economic condition that may affect determination as to the propriety of a price proposal for a particular market or location is the cost involved in substituting alternative supplies for producer milk priced under the order. A representative price at the alternative source plus reasonable transportation

cost allowance (a figure commonly used is 1.5 cents per hundredweight per 10 miles) is a measure of such cost. Obviously, such alternative cost is but one of the economic conditions that affect market supply and demand for milk or its products in a given marketing area. In carrying out statutory objectives, the determination of an appropriate minimum price may not be reached on this one factor or condition to the exclusion of other economic conditions found to affect market supply and demand.

Since Cape Girardeau is about 65 miles farther from Chicago than St. Louis proper, the 7-cent plus adjustment adopted is reasonable in respect of the greater distance, and consequent cost of delivery, to such location from the basic source of alternative supplies.

Both the proponent Cape Girardeau handler and a Paducah order handler contended that there is misalignment of prices between the Paducah order and St. Louis-Ozarks order at Cape Girardeau, primarily because the Paducah Class I price is too high relative to the Class I price under the St. Louis-Ozarks order. The level of the Paducah price was not, of course, an issue at this hearing. However, a proposal to reduce the Paducah Class I price 15 cents was considered at a hearing held in Paducah December 12, 1972 (37 FR 24760). Official notice is here taken of the fact of that hearing. If an adjustment in the Class I price differential of the Paducah order is warranted, the appropriate action can be taken on the basis of that hearing.

The available supply of milk relative to local Class I needs at Cape Girardeau approximates that for total deliveries and total Class I utilization under the St. Louis-Ozarks order. That is, about 65 percent of producer deliveries are utilized in Class I. Consequently, the 8-cent reduction in the location adjustment at Cape Girardeau adopted in this decision should not impair the maintenance of an adequate supply of milk at that location, but will tend to promote orderly marketing by assisting producers delivering to Cape Girardeau to maintain this nearby outlet for their milk.

Rulings on Proposed Findings and Conclusions

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

General Findings

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

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

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

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

Rulings on Exceptions

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

Marketing Agreement and Order

Annexted hereto and made a part hereof are two documents, a marketing agreement regulating the handling of milk, and an order amending the order regulating the handling of milk in the St. Louis-Ozarks marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

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

Determination of Producer Approval and Representative Period

December 1972 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the St. Louis-Ozarks marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on February 8, 1973.

Clayton Yeutter,
Assistant Secretary.

Order[14] amending the order, regulating the handling of milk in the St. Louis-Ozarks marketing area.

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 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.* 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 St. Louis-Ozarks marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of parctice and procedure (7 CFR Part 900).

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

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

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

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

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[1] Filed as part of the original document.

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

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the St. Louis-Ozarks marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on January 8, 1973, and published in the FEDERAL REGISTER on January 11, 1973 (38 FR 1281) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein:

In § 1062.53, paragraph (b) is revised as follows:

§ 1062.53 Location differentials to handlers.

* * * * *

(b) In Zone II of the marketing area, shall be the Zone I price plus a location adjustment of 7 cents;

* * * * *

[FR Doc.73-2853 Filed 2-12-73;8:45 am]

[7 CFR Part 1079]

MILK IN THE DES MOINES, IOWA MARKETING AREA

Notice of Proposed Suspension or Termination of Certain Provisions of the Order

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), the suspension or termination of certain provisions of the order regulating the handling of milk in the Des Moines, Iowa, marketing area is being considered.

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension or termination should file the same with the Hearing Clerk, Room 112-A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than February 20, 1973. All documents filed should be in quadruplicate.

All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The provisions proposed to be suspended or terminated are as follows:

In § 1079.44, all of paragraph (c), and in paragraph (d) the provisions "located not more than 150 miles by the shortest highway distance, as determined by the market administrator, from the nearest of the Post Offices of Corydon, Creston, Des Moines, Grinnell, Jefferson, and Ottumwa."

Statement of consideration. The proposed action would continue the effect of previous suspensions making inoperative the automatic Class I classification of milk transferred or diverted from a pool plant to a nonpool plant located more than 150 miles from the nearest of the six basing pointed listed above.

Proponent, a cooperative association, has supplied a pool distributing plant with milk produced in the vicinity of Caledonia, Minn. When this milk supply is not needed at the pool distributing plant it is moved to a nonpool manufacturing plant located in the production area.

Caledonia is more than 150 miles from the nearest of the basing points. The provisions providing for automatic Class I classification of milk moved to a nonpool plant so located have been suspended since September 1971. The suspension permits classifying milk so disposed of on the basis of its actual use and, therefore, facilitates the economical disposition of reserve milk supplies produced beyond 150 miles to nearby manufacturing plants for Class II use.

Deletion of provisions providing mileage limitations on transfers and diversions of milk for Class II use is proposed in the recommended decision for 33 orders (including this order) issued August 28, 1972 (37 FR 19482).

Proponent requests action continuing the effect of the present suspension which expires February 28, 1973, to enable it to continue providing an orderly marketing program for its member producers in the Caledonia area who have been associated with the Des Moines market.

Signed at Washington, D.C., on February 7, 1973.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.73-2852 Filed 2-12-73;8:45 am]

Commodity Credit Corporation

[7 CFR Part 1464]

TOBACCO

Proposed Loan and Purchase Program for 1973 Crop

Notice is hereby given that the Secretary of Agriculture, under the authority of sections 106, 401, and 403 of the Agricultural Act of 1949, as amended (7 U.S.C. 1445, 1421, and 1423), and sections 4 and 5 of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b, 714c), proposes to make determinations relative to a support program for the 1973 crop of tobacco.

The Agricultural Act of 1949, as amended, requires the Secretary to make support available on any crop of tobacco for which marketing quotas have not been disapproved by producers. Under section 106 of the Act, the level of support in cents per pound for each crop of each kind of tobacco for which marketing quotas are in effect, or for which marketing quotas are not disapproved, is mandatory at the support level for the 1959 crop of such kind of tobacco, multiplied by the ratio of the average of the index of prices paid by farmers for the 3 calendar years immediately preceding the calendar year in which the marketing year begins for which the support level is being determined to the average index of prices paid by farmers for the 1959 calendar year. The average of the index of prices paid for calendar years 1969-72 will be used in computing the 1973 tobacco support levels. This average is 411. The average index of prices paid for the calendar year 1959 is 298. The resulting ratio is 1.38. Thus, the support level for the 1973 crop of each eligible kind of tobacco will be 138 percent of the 1959 crop support level. Prior to the beginning of the marketing season for each kind of tobacco, pursuant to section 403 of the Act, Commodity Credit Corporation will issue proposed advance rates for the various types and grades of tobacco, and comments on such rates may be made at that time.

No change is contemplated in the method of supporting tobacco through loans on all kinds of tobacco and purchases of Puerto Rican tobacco. Regulations currently in effect with respect to the tobacco price support program are set forth at 7 CFR Part 1464.

Prior to making determinations relating to this notice, consideration will be given to data, views, and recommendations which are submitted in writing to the Director, Tobacco Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. In order to be sure of consideration, all submissions must be received by the Director not later than March 14.

All written submissions made pursuant to this notice will be made available for public inspection at the office of the Director during the regular business hours (8:15 a.m. to 4:45 p.m.) (7 CFR 1.27(b)).

Signed at Washington, D.C., on February 7, 1973.

KENNETH E. FRICK,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc.73-2856 Filed 2-12-73;8:45 am]

Commodity Exchange Authority

[17 CFR Part 1]

CONTRACT MARKETS

Filing of Statement for Continuing Designation

A proposal was published in the FEDERAL REGISTER on November 14, 1972 (37 FR 24117), pursuant to the authority of sections 5, 6, 8, and 8a of the Commodity Exchange Act (7 U.S.C. 7, 8, 12, 12a), to issue a regulation setting forth certain conditions and requirements which must be met by contract markets for their continued designation as contract market. Interested persons were given an opportunity to request a hearing or make written submissions on the matter on or before January 15, 1973. After considering all statements and requests for hearing received pursuant to the notice, the proposed regulation is amended as set

forth below. Opportunity for the filing of statements or request for hearing on the amended proposition is provided following the text of the amended proposed regulation. Persons who requested a hearing on the original proposal should renew their request if they wish a hearing on the amended proposal.

The purpose of the amended proposed regulation is to establish requirements whereby each contract market would file, at stated periodic intervals, a statement and supporting data showing the provisions that it has made to meet the designation requirements and conditions of sections 5 and 5a of the Commodity Exchange Act (7 U.S.C. 7, 7a). This is to afford the contract market opportunity to show (1) how the provisions of an existing futures contract reflect current marketing conditions, and (2) how their bylaws, rules, regulations, and resolutions carry out the requirements of sections 5 and 5a.

As amended, the proposed regulation would read as follows:

§ 1.50 Filing of information by contract markets.

(a) Each contract market shall file with the Commodity Exchange Authority, at least once every 5 years, a statement with supporting data showing the provisions that it has made to continue to comply with the conditions and requirements for designation as a contract market for a specified commodity. Such statement shall be responsive to the provisions of sections 5 and 5a of the Act. The supporting data shall include any information which will assist the Act Administrator in evaluating the effectiveness of the provisions described in the statement.

(b) The contract market shall file the required information for each commodity at least once every 5 years but not less than 90 days after the effective date of this regulation, in accordance with a schedule showing dates of required filing established by the Act Administrator and which will be provided by him to each contract market, and every 5 years after the date of the first filing: *Provided,* That a contract market need not file earlier than 5 years after the effective date of its designation, unless so requested upon special call by the Act Administrator.

(c) The information required in paragraph (a) of this section also shall be filed within 90 days after a special call by the Act Administrator.

(d) Any failure by a contract market to continue to comply with the conditions and requirements for designation as a contract market as set forth in sections 5 and 5a of the Act, and any failure or refusal to file the information required by this regulation shall be cause for action by the Commodity Exchange Commission under sections 5b, 6(a) or 6b of the Act (7 U.S.C. 7b, 8(a), 13a).

If any interested person desires a hearing with reference to this amended proposed regulation, he should make a request to that effect stating the reasons therefor, addressed to the Administrator, Commodity Exchange Authority, U.S. Department of Agriculture, Washington, D.C. 20250, on or before April 16, 1973.

Written statements with reference to the subject matter of this amended proposal may be submitted by any interested person. Such statements should be mailed to the Administrator of the Commodity Exchange Authority prior to April 16, 1973.

The transcript of the proceedings at any hearing which may be held and all written submissions made pursuant to this notice and the notice of November 14, 1972, on this matter will be made available for public inspection in the Office of the Administrator, Commodity Exchange Authority, during regular business hours (7 CFR 1.27(b)).

Issued February 8, 1973.

ALEX C. CALDWELL,
Administrator,
Commodity Exchange Authority.

[FR Doc.73-2857 Filed 2-12-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 18]

MILK AND CREAM

Proposed Standards of Identity; Extension of Time for Filing Comments

In the matter of revising existing standards and establishing new identity standards for milk and cream (21 CFR Part 18):

A notice of proposed rule making in the above-identified matter published in the FEDERAL REGISTER of September 9, 1972 (37 FR 18392), provided for the filing of comments within 60 days following its publication date. This time was subsequently extended to February 6, 1973 (37 FR 23363, November 2, 1972).

The Commissioner has received several requests for an additional extension of such time and, good reason therefor appearing, the time for filing comments in this matter is extended to July 1, 1973. This extension will not effect the common effective date proposed in the FEDERAL REGISTER of January 19, 1973 (38 FR 2163) for compliance with various new labeling requirements for packaged food nor will any additional extensions of time for filing comments on these proposed revisions to 21 CFR Part 18 be granted.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: February 6, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.73-2763 Filed 2-12-73;8:45 am]

[21 CFR Part 19]

SPICED, FLAVORED STANDARDIZED CHEESES

Definition and Standard of Identity

Notice is given that a petition has been filed by the National Cheese Institute, Inc., 110 North Franklin St., Chicago, IL 60606, proposing that a standard of identity be established for natural cheeses which contain added spice, or flavoring, or both, but in other respects conform to existing natural cheese standards of identity.

Presently natural cheeses for which there are no standards of identity may be spiced in accordance with the standards of identity for spiced cheeses (21 CFR 19.670) and for part-skim spiced cheeses (21 CFR 19.675). In addition, the standard of identity for provolone cheese (21 CFR 19.590) provides for smoke flavoring, the standard of identity for sap sago cheese (21 CFR 19.637) provides for the use of dried clover, and the standard of identity for colby cheese (21 CFR 19.510) provides for smoke flavoring in the cheese.

The purpose of the proposal is to establish under a single new section a definition and standard of identity which would permit the addition of spices, or flavoring, or both, to each of the standardized natural cheeses without specifically amending each natural cheese standard. The labeling provisions are designed to assist the consumer in distinguishing the new cheese product from the traditional natural cheese, and require that the common or usual name of the added characterizing spice and/or flavor, be included on the principal display panel as part of the name of the cheese. The proposed standard would permit only safe and suitable spices and flavorings so as to create new and distinctive foods. For an ingredient in cheese to be safe and suitable it must meet the requirements of the Federal Food, Drug, and Cosmetic Act and appropriate regulations. 21 CFR 19.499 states that "* * * the phrase 'safe and suitable' when used to describe ingredients of cheese or cheese products means that such ingredients shall be functionally suitable substances that are not food additives as defined in section 201(s) of the Federal Food, Drug, and Cosmetic Act; or if they are food additives as so defined, they shall be used in conformity with regulations established pursuant to section 409 of the act."

It should be recognized that the safety of any prior sanctioned substance, such as smoke flavoring, as well as any generally recognized as safe substance (GRAS) are being reviewed in accordance with the notice which appeared in the FEDERAL REGISTER of October 23, 1971 (36 FR 20546). In addition, a proposed procedure for the regulation of ingredients subject to prior sanctions, was published in the FEDERAL REGISTER of August 12, 1972 (37 FR 16407), and earlier on June 25, 1971, a proposed regulation for GRAS substances was published (36

FR 12093). Notice will be given in the FEDERAL REGISTER of any changes in the status of the ingredients now under review.

In addition to the above, grounds set forth in the petitioner's proposal are that (1) the cheese industry has successfully experimented with the addition of various spices and flavors to standardized natural cheeses, for example, caraway seeds in Gouda and Edam cheese, and walnut or almond flavorings in semisoft cheeses, and that (2) tests have also indicated that a smoke flavored Swiss or cheddar cheese would be both feasible and desirable.

The Commissioner of Food and Drugs recognizes the desire of consumers that complete ingredient information be given on labels of standardized foods. Statutory authority does not exist to require declaration of the mandatory ingredients in such foods. Careful consideration is presently being given to the revision of present standards of identity for natural cheeses. The need for revision of these standards stems from the decision of the Commissioner (1) to require that all optional ingredients in standardized foods be listed on an appropriate information panel of the package label and (2) to update the standards.

While the following proposal is essentially that of the petitioner, the Commissioner on his own initiative has reworded certain portions of the original proposal so as to be consistent with the act and regulations promulgated thereunder.

Accordingly, it is proposed that Part 19 be amended by adding a new section to read as follows:

§ 19.____ Spiced, flavored standardized cheeses; identity; label statement of optional ingredients.

(a) Except as otherwise provided for herein and in applicable sections in this part, a spiced or flavored standardized cheese conforms to the applicable definitions, standard of identity and requirements for label statement of optional ingredients prescribed for that specific natural cheese variety promulgated pursuant to section 401 of the Act. In addition a spiced and/or flavored standardized cheese shall contain one or more safe and suitable spices and/or flavorings, in such proportions as are reasonably required to accomplish their intended effect, provided that no combination of ingredients shall be used to simulate the flavor of cheese of any age or variety.

(b) The name of a spiced or flavored standardized cheese is:

(1) (i) "____ with ____," the first blank being filled in with the name of the cheese variety and the second blank being filled in with the common or usual name or names of the spice(s) and/or characterizing flavor(s) used, in order of predominance by weight. Alternatively the words "with added" may be used in place of the word "with."

(ii) Alternatively the name of such food is the name of the cheese variety preceded by the common or usual name(s) of the spice(s) and/or characterizing flavor(s) used.

(iii) If a clear aqueous solution prepared by condensing or precipitating wood smoke in water is added to the cheese, the name of the cheese variety is immediately followed by the words "with added smoke flavoring." If used in combination with spice(s) and/or flavor(s) the words shall appear in order of predominance as prescribed in Paragraph (b) (1) (i) of this section.

(2) If the flavoring used is wholly or predominantly natural, the common or usual name of the characterizing flavor followed by the word "flavored" or "flavoring" will be used, e.g., "Swiss with Walnut Flavoring" or "Walnut Flavored Swiss."

(3) If the flavoring used is wholly or predominantly artificial, the word "artificial" shall precede the name of the characterizing flavor used, e.g., "Swiss with Artificial Walnut Flavoring" or "Artificial Walnut Flavored Swiss."

(4) The full name of the food shall appear on the principal display panel in the same size, style, and color of type.

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and in accordance with authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), interested persons are invited to submit their views in writing (preferably in quintuplicate) regarding this proposal on or before April 16, 1973. Such views and comments should be addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, MD 20852, and may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: February 4, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73-2627 Filed 2-12-73;8:45 am]

[21 CFR Part 141]

VANCOMYCIN

Proposed Change of Test Organism Used in Potency Assay Method

The Commissioner of Food and Drugs concludes that the antibiotic drug regulations should be amended as set forth below to revise the vancomycin potency assay method by providing for a change of the test organism from *Bacillus cereus* var. *mycoides* (ATCC 11778) to *Bacillus subtilis* (ATCC 6633). Use of organism *B. subtilis* (ATCC 6633) results in zones of inhibition that are sharper and clearer than those produced by the use of the organism *B. cereus* var. *mycoides* (ATCC 11778). This change of the test organism would necessitate a change in the incubation temperature for the plates.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and under authority delegated to him (21 CFR 2.120), the Commissioner of Food and Drugs proposes that Part 141 be amended in § 141.110 *Microbiological agar diffusion assay* in the table in paragraph (a) for the item vancomycin by changing the entry in the column "Test organism" from "G" to "H" and by changing the entry in the column "Incubation temperature for the plates" from "30" to "37."

Interested persons may, on or before April 16, 1973, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: February 5, 1973.

MARY A. MCENIRY,
Assistant to the Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc.73-2764 Filed 2-12-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72-GL-83]

TRANSITION AREAS AND AIRWAYS

Designation, Alteration, Deletion, and Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation regulations so as to designate a transition area within the boundary of the State of Minnesota; alter the transition areas at Albert Lea, Alexandria, Benson, Fairbault-Owatonna, Fergus Falls, Jackson, Mankato, Marshall, Montevideo, Morris, New Ulm, Pipestone, Redwood Falls, St. Cloud, Windom, Brainerd, Duluth, Fairmont, Minneapolis, and Worthington, Minn.; Fargo and Sioux Falls, S. Dak.; Grantsburg and Osceola, Wis.; and Spirit Lake, Iowa. Transition area deletions at Darwin, Hope, and Madison, Minn. are being considered and airway alterations are proposed.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018. All communications received on or before March 15, 1973, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the regional air traffic division chief. Any data, views, or arguments presented

during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The controlled airspace required by the Minneapolis Air Route Traffic Control Center to properly control aircraft within the State of Minnesota is extensive and is presently listed in many citations. It has varying floors that are difficult for the pilot and controller to define and use effectively. The installation of radar in the Rochester Tower will require an additional 1,200-foot transition area. To clarify the designated airspace and reduce the number of citations, we propose to designate a 1,200-foot transition area in the State of Minnesota, south of parallel 46°30′ and within the State of Wisconsin, northeast of Minneapolis, bounded by victor airways 55, 78, and 13. We also propose to reduce the floor of airways in this area that are higher than 1,200 feet above ground to the regular 1,200 AGL floor.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation regulations as hereinafter set forth:

In § 71.181 (38 FR 435), the following transition area is added:

MINNESOTA

That airspace extending upward from 1,200 feet above the surface within the boundary of the State of Minnesota south of parallel 46°30′.

In § 71.181 (38 FR 435), the following transition areas are amended by deleting reference to that airspace extending upward from 1,200 feet above the surface:

Albert Lea, Minn.	Marshall, Minn.
Alexandria, Minn.	Montevideo, Minn.
Benson, Minn.	Morris, Minn.
Fairbault-Owatonna, Minn.	New Ulm, Minn.
	Pipestone, Minn.
Fergus Falls, Minn.	Redwood Falls, Minn.
Jackson Minn.	St. Cloud, Minn.
Mankato, Minn.	Windom, Minn.

In § 71.181 (38 FR 435), the following transition areas are deleted:

Madison, Minn.	Hope, Minn.
Darwin, Minn.	

In § 71.181 (38 FR 435), the following transition areas are amended as indicated:

Brainerd, Minn.—Delete all after "1,200 feet above the surface" and insert in place "within a 31½-mile radius of the VORTAC north of parallel 46°30′ and west of V161".

Duluth, Minn.—Add "and the portion in Minnesota south of parallel 46°30′ "

Fairmont, Minn.—Delete all after "18½ miles southeast of the airport" and insert "excluding the portion in Minnesota".

Fargo, S.D.—Add "excluding that portion in Minnesota south of parallel 46°30′ ".

Grantsburg, Wis.—Add "excluding the portion in Minnesota".

Minneapolis, Minn.—Delete all after "1,200 feet above the surface" and insert in place "within the State of Wisconsin bounded by V13, V55, and V78".

Osceola, Wis.—Add "excluding that portion in Minnesota".

Sioux Falls, N. Dak.—Add "excluding that portion in Minnesota".

Spirit Lake, Iowa—Add "excluding that portion in Minnesota".

Worthington, Minn.—Delete "within 9½ miles west and 4½ miles east of the Worthington VOR 358° radial extending from the VOR to 18½ miles north of the VOR; and", and add at end of description "excluding the portion in Minnesota".

In § 71.123 (38 FR 307), the following airways are amended as follows:

V2—Delete "25 miles, 50 miles, 30 MSL Alexandria, Minn. including an N alternate from Fargo, 25 miles, 52 miles, 30 MSL Alexandria, 5 miles, 70 miles 25 MSL", and insert in place "Alexandria, Minn".

V24—Delete "15 miles, 64 miles, 33 MSL".

V55—Delete "9 miles, 55 miles, 25 MSL" and 9 miles, 45 miles, 26 MSL".

V82—Delete "11 miles, 52 miles, 25 MSL".

V161—Delete "14 miles, 52 miles, 25 MSL".

V171—Delete "6 miles, 51 miles, 27 MSL".

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Des Plaines, Ill., on January 23, 1973.

LYLE K. BROWN,
Director, Great Lakes Region.

[FR Doc.73-2795 Filed 2-12-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-GL-1]

CONTROL ZONE AND TRANSITION AREA

Proposed Designation and Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a control zone and to revise the transition area at Anderson, Ind.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018. All communications received on or before March 15, 1973, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

A non-Federal tower has been established at Anderson, Ind., with weather reporting capability during the hours the tower is in operation. Because of this capability, the airport manager has requested a control zone be established. In addition, the transition area requires revision because of changes in transition area criteria since it was established.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.171 (38 FR 351), the following control zone is added:

ANDERSON, IND.

Within a 5-mile radius of Anderson Municipal Airport (latitude 40°06′30″ N., longitude 85°36′55″ W.) and within 3.5 miles either side of the 298° bearing from Anderson Municipal Airport, extending from the 5-mile radius to 7.5 miles northwest of the airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

In § 71.181 (38 FR 435), the following transition area is amended to read:

ANDERSON, IND.

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Anderson Municipal Airport (latitude 40°06′30″ N., longitude 85°36′55″ W.) and within 4 miles each side of the 298° bearing from the airport, extending from the 8.5-mile radius to 12 miles northwest of the airport; excluding the airspace that overlies the Muncie transition area.

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].

Issued in Des Plaines, Ill., on January 23, 1973.

LYLE K. BROWN,
Director, Great Lakes Region.

[FR Doc.73-2796 Filed 2-12-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-GL-3]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Dayton, Ohio (Montgomery County).

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Divsion, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018. All communications received on or before March 15, 1973, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

A review of the controlled airspace designated to protect the approach procedures into Montgomery County Airport indicates a requirement for a slightly increased transition area. Accordingly, it is necessary to alter the Dayton transition area to comply with this requirement to adequately protect aircraft executing approach procedures into Montgomery County Airport.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (38 FR 435), the following transition area is amend to read:

DAYTON, OHIO (MONTGOMERY COUNTY)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Montgomery County Airport (latitude 39°35'21" N., longitude 84°13'21" W.), and within 3 miles each side of the Montgomery County VOR 145° radial extending from the 6-mile radius area to 8.5 miles southeast of the VOR; within 3 miles each side of the 027° radial extending from the 6-mile radius area to 8.5 miles northeast excluding the portions which overlie the Middletown and Dayton, Ohio, transition areas.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)].

Issued in Des Plaines, Ill., on January 23, 1973.

LYLE K. BROWN,
Director, Great Lakes Region.

[FR Doc.73-2798 Filed 2-12-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 72-GL-82]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the control zone and transition area at Mankato, Minn.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, 2300 East Devon Avenue, Des Plaines, IL 60018. All communications received on or before March 15, 1973, will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

Since designation of controlled airspace at Mankato, Minn., a new instrument approach procedure has been developed for the Mankato Airport, Mankato, Minn. Accordingly, it is necessary to alter the Mankato, Minn., control zone and transition area to adequately protect aircraft executing the new procedure.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.171 (38 FR 351), the following control zone is amended to read:

MANKATO, MINN.

Within a 5-mile-radius of Mankato Municipal Airport (latitude 44°13'25" N., longitude 93°55'06" W.); within 2 miles each side of the Mankato VOR 166° radial, extending from the 5-mile-radius zone to 8 miles south of the VOR; within 3 miles each side of the Mankato VOR 329° radial, extending from the 5-mile-radius zone to 8 miles northwest of the VOR. This control zone is effective during the specific dates and times established in advance by a notice to airmen. The effective date and time will thereafter be continuously published in the Airmen's Information Manual.

In § 71.181 (37 FR 2143), the following transition area is amended to read:

MANKATO, MINN.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Mankato Municipal Airport (latitude 44°13'25" N., longitude 93°55'06" W.).

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Des Plaines, Ill., on January 22, 1973.

R. O. ZIEGLER,
Acting Director, Great Lakes Region.

[FR Doc.73-2799 Filed 2-12-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-GL-2]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Portsmouth, Ohio.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018. All communications received on or before March 15, 1973, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

A review of the transition area designated for Portsmouth, Ohio, indicates a requirement to extend the width of the south extension and change the name of the airport in the citation. Accordingly, it is necessary to alter the Portsmouth, Ohio, transition area to comply with the requirement.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (38 FR 435), the following transition area is amended to read:

PORTSMOUTH, OHIO

That airspace extending upward from 700 feet above the surface within an 8 mile radius of the Greater Portsmouth Regional Airport (latitude 38°50'26" N., longitude 82°50'52" W.); within 3 miles each side of a 177° bearing from the airport extending from the 8 mile radius area to 12 miles south of the airport.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Des Plaines, Ill., on January 23, 1973.

LYLE K. BROWN,
Director,
Great Lakes Region.

[FR Doc.73-2797 Filed 2-12-73;8:45 am]

ATOMIC ENERGY COMMISSION

[10 CFR Parts 30, 40, 70]

TRANSFER OF RADIOACTIVE MATERIAL

Proposed Requirements

The Atomic Energy Commission has under consideration amendments to its regulations in 10 CFR Parts 30, 40 and 70 to specify requirements for the transfer by licensees of byproduct material, source material and special nuclear material.

Section 30.3 of 10 CFR Part 30 provides, in pertinent part, that except for certain exemptions no person shall transfer or receive byproduct material except as authorized in a specific or general license. Sections 40.3 of 10 CFR Part 40 and 70.3 of 10 CFR Part 70 provide essentially the same requirements for the transfer and receipt of source material and special nuclear material, respectively. Although it is the responsibility of suppliers of radioactive materials licensed by the Commission to determine that a transferee is authorized to receive the type, form, and quantity of material being transferred, the Commission's regulations do not presently contain specific provisions as to how suppliers shall make this determination.

In its licensee inspection and enforcement program, the Commission has found that licensees have possessed types, forms, or quantities of byproduct material which were not authorized by their licenses and, in other cases, that unlicensed persons have received radioactive material from AEC licensed suppliers. It is proposed, therefore, to establish a specific requirement that licensees must verify that transferees are authorized to receive the type, form, and quantity of material being transferred and to provide guidance in the regulations to licensees concerning acceptable methods of such verification.

The AEC has, pursuant to section 274 of the Atomic Energy Act, as amended, transferred certain of its regulatory authority over radioactive material to 24 of the States which are referred to as Agreement States. Licensees may transfer radioactive material to persons in Agreement States who are licensed or otherwise authorized by the States to receive it.

In the proposed amendments which follow, a new § 30.41 would be added and §§ 40.51 and 70.42 would be revised to (1) list the various types of transfers of byproduct, source, and special nuclear materials which are authorized, (2) require transferors to verify that the transferees are authorized to receive the type, form, and quantity of material to be transferred, and (3) provide guidance on acceptable methods for such verification.

The methods listed in proposed §§ 30.41(d), 40.51(d), and 70.42(d) for verification of appropriate authorization for transferees to receive material are, with the exception of the use of information compiled by a reporting service from Commission or Agreement State records, the methods which are frequently used already by many suppliers of radioactive materials.

Pursuant to the Atomic Energy Act of 1954, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Parts 30, 40, and 70 is contemplated. All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendments should send them to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, by March 30, 1973. Copies of comments on the proposed amendments may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, DC.

PART 30—RULES OF GENERAL APPLICABILITY TO LICENSING OF BYPRODUCT MATERIAL

1. Paragraph (c) of § 30.34 of 10 CFR Part 30 is amended by adding a period in the second sentence after the words "and import byproduct material" and by deleting the balance of the sentence. The paragraph, as revised, will read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(c) Each person licensed by the Commission pursuant to the regulations in this part and Parts 31–36 shall confine his possession and use of the byproduct material to the locations and purposes authorized in the license. Except as otherwise provided in the license, a license issued pursuant to the regulations in this part and Parts 31–36 of this chapter shall carry with it the right to receive, acquire, own, possess, and import byproduct material. Preparation for shipment and transport of byproduct material shall be in accordance with the provisions of Part 71 of this chapter.

* * * * *

2. A new § 30.41 is added to 10 CFR Part 30 to read as follows:

§ 30.41 Transfer of byproduct material.

(a) No licensee shall transfer byproduct material except as authorized pursuant to this section.

(b) Except as otherwise provided in his license and subject to the provisions of paragraphs (c) and (d) of this section, any licensee may transfer byproduct material:

(1) To the Commission;

(2) To the Agency in any Agreement State which regulates radioactive materials pursuant to an agreement with the Atomic Energy Commission under section 274 of the Act;

(3) To any person exempt from the licensing requirements of the Act and regulations in this part to the extent permitted under such exemption;

(4) To any person in an Agreement State, subject to the jurisdiction of that State, who has been exempted from the licensing requirements and regulations of that State, to the extent permitted under such exemption;

(5) To any person authorized to receive such byproduct material under terms of a specific license or a general license or their equivalents issued by the Commission or an Agreement State; or

(6) As otherwise authorized by the Commission in writing.

(c) Before transferring byproduct material to a specific licensee of the Commission or an Agreement State or to a general licensee who is required to register with the Commission or with an Agreement State, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of byproduct material to be transferred.

(d) The following methods for the verification required by paragraph (c) of this section are acceptable:

(1) The transferor may have in his possession and read a current copy of the transferee's specific license or registration certificate;

(2) The transferor may have in his possession a written certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of byproduct material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date;

(3) For emergency shipments the transferor may accept oral certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of byproduct material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date: *Provided*, That the oral certification is confirmed in writing within 10 days;

(4) The transferor may obtain other sources of information compiled by a reporting service from official records of the Commission or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registrations; or

(5) When none of the methods of verification described in subparagraphs (1) to (4) of this paragraph are readily available or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the byproduct material.

PART 40—LICENSING OF SOURCE MATERIAL

3. Paragraph (c) of § 40.41 of 10 CFR Part 40 is amended by adding a period in the second sentence after the words "and import source material" and by deleting the balance of the sentence. The paragraph, as revised, will read as follows:

§ 40.41 Terms and conditions of licenses.

* * * * *

(c) Each person licensed by the Commission pursuant to the regulations in this part shall confine his possession and use of source material to the locations and purposes authorized in the license. Except as otherwise provided in the license, a license issued pursuant to the regulations in this part shall carry with it the right to receive, possess, use and import source material. Preparation for shipment and transport of source material shall be in accordance with the provisions of Part 71 of this chapter.

* * * * *

Section 40.51 of 10 CFR Part 40 is amended to read as follows:

§ 40.51 Transfer of source material.

(a) No licensee shall transfer source material except as authorized pursuant to this section.

(b) Except as otherwise provided in his license and subject to the provisions of paragraphs (c) and (d) of this section, any licensee may transfer source material:

(1) To the Commission;

(2) To the Agency in any Agreement State which regulates radioactive materials pursuant to an agreement with the Atomic Energy Commission under section 274 of the Atomic Energy Act;

(3) To any person exempt from the licensing requirements of the Act and regulations in this part to the extent permitted under such exemption;

(4) To any person in an Agreement State subject to the jurisdiction of that State who has been exempted from the licensing requirements and regulations of that State, to the extent permitted under such exemption;

(5) To any person authorized to receive such source material under terms of a specific license or a general license or their equivalents issued by the Commission or an Agreement State; or

(6) As otherwise authorized by the Commission in writing.

(c) Before transferring source material to a specific licensee of the Commission or an Agreement State or to a general licensee who is required to register with the Commission or with an Agreement State, the licensee transferring the material shall verify that the transferee's license authorizes receipt of the type, form, and quantity of source material to be transferred.

(d) The following methods for the verification required by paragraph (c) of this section are acceptable:

(1) The transferor may have in his possession and read a current copy of the transferee's specific license or registration certificate;

(2) The transferor may have in his possession a written certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of source material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

(3) For emergency shipments the transferor may accept oral certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of source material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date: *Provided*, That the oral certification is confirmed in writing within 10 days;

(4) The transferor may obtain other sources of information compiled by a reporting service from official records of the Commission or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registrations; or

(5) When none of the methods of verification described in subparagraphs (1) to (4) of this paragraph are readily available or when a transferor desires to cerify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the source material.

PART 70—SPECIAL NUCLEAR MATERIAL

5. Paragraph (a) of § 70.41 of 10 CFR Part 70 is amended by changing the words "possess, use and transfer" in the second sentence to "possess and use". The paragraph, as revised, will read as follows:

§ 70.41 Authorized use of special nuclear material.

(a) Each licensee shall confine his possession and use of special nuclear material to the locations and purposes authorized in his license. Except as otherwise provided in the license, each license issued pursuant to the regulations in this part shall carry with it the right to receive title to, own, acquire receive, possess and use special nuclear material. Preparation for shipment and transport of special nuclear material shall be in accordance with the provisions of Part 71 of this chapter.

* * * * *

6. Section 70.42 of 10 CFR Part 70 is amended to read as follows:

§ 70.42 Transfer of special nuclear material.

(a) No licensee shall transfer special nuclear material except as authorized pursuant to this section.

(b) Except as otherwise provided in his license and subject to the provisions of paragraphs (c) and (d) of this section, any licensee may transfer special nuclear material:

(1) To the Commission;

(2) To the Agency in any Agreement State which regulates radioactive materials pursuant to an agreement with the Atomic Energy Commission under section 274 of the Atomic Energy Act, if the quantity transferred is not sufficient to form a critical mass;

(3) To any person authorized to receive such special nuclear material under terms of a specific license or a general license or their equivalents issued by the Commission or an Agreement State; or

(4) As otherwise authorized by the Commission in writing.

(c) Before transferring special nuclear material to a specific licensee of the Commission or an Agreement State or to a general licensee who is required to register with the Commission or with an Agreement State, the licensee transferring the material shall verify that the transferee's license authorizes receipt of the type, form, and quantity of special nuclear material to be transferred.

(d) The following methods for the verification required by paragraph (c) of this section are acceptable:

(1) The transferor may have in his possession and read a current copy of the transferee's specific license or registration certificate;

(2) The transferor may have in his possession a written certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of special nuclear material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date;

(3) For emergency shipments the transferor may accept oral certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of special nuclear material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date: *Provided*, That the oral certification is confirmed in writing within 10 days;

(4) The transferor may obtain other sources of information compiled by a reporting service from official records of the Commission or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registrations; or

(5) When none of the methods of verification described in subparagraphs (1) to (4) of this paragraph are readily available or when a transferor desires to verify that information received by one of

such methods is correct or up-to-date, the transferor may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the special nuclear material.

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201)

Dated at Germantown, Md., this 5th day of February 1973.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-2785 Filed 2-12-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 2, 89]

[Docket No. 19643]

MEDICAL PAGING SYSTEMS IN HOSPITALS

Order Extending Time for Filing Comments

In the matter of amendment to Parts 2 and 89 to allocate 157.450 MHz to the special emergency radio service for medical paging systems in hospitals, Docket No. 19643, RM-1884.

1. The American Hospital Association (AHA) has requested a 90-day extension of the period for filing comments in response to the notice of proposed rule making released November 29, 1972, in the above-entitled matter. The present comment and reply comment periods expire February 8, 1973, and February 23, 1973, respectively.

2. To support its request, the AHA notes that to prepare meaningful comments in this proceeding, "a special advisory committee composed of members directly concerned with communications problems in hospitals and the health care industry, with representatives from all sections of the United States," has been organized and requires an additional period for coordination and presentation of its views.

3. The notice requests a number of specific comments related to hospital radiocommunication requirements, and it appears that an additional period for comments from representative organizations is justified. However, an extension of 90 days, in addition to the 70 days already provided for comments, is excessive and unreasonably delays the administrative rulemaking process. It appears that an additional 45-day period is adequate, and the request is granted to this extent.

4. *Accordingly, it is ordered,* Pursuant to section 4(i) of the Communications Act of 1934, as amended, and § 0.331(b)(4) of the Commission's rules, that the time for filing comments and reply comments in the above-entitled proceeding is extended to March 25, 1973, and April 10, 1973, respectively.

Adopted and released: February 7, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] IRVING BROWNSTEIN,
Acting Chief, Safety and Special Radio Services Bureau.

[FR Doc.73-2833 Filed 2-12-73;8:45 am]

[47 CFR Part 73]

[Docket No. 19622; FCC 73-136]

PRIME TIME ACCESS RULE

Order Extending Time for Reply Comments

In the matter of consideration of the operation of, and possible changes in, the "prime time access rule", § 73.658(k) of the Commission's rules, Docket No.: 19622, RM-1967, RM-1935, RM-1940, RM-1929, Petitions of National Broadcasting Company, Inc., Midland Television Corp., Kingstip Communications, Inc., MCA, Inc.

1. Comments in the above-entitled proceeding were due and were filed on January 15, 1973. Reply comments are presently due February 12, 1973. The Commission has received a "Motion for Extension of Time" filed by Metromedia, Inc., one of the parties filing initial comments herein, asking that the time for reply comments be extended 2 weeks, or to and including Monday, February 26, 1973. In support of its request, Metromedia notes that the volume of initial comments is rather large, and that they contain a good deal of research data which must be analyzed, as well as contentions or parties, on both sides of the basic questions involved, which also require analysis. It is stated that additional time would be helpful to the Commission, since parties could better focus on the issues which must be decided.

2. Metromedia is correct in its observations as to the nature of the initial comments as a whole; and it appears that adequate opportunity for the preparation of reply comments might well be helpful to the Commission in getting more information concerning, and reaching a sound resolution of, the important matters involved in this proceeding. Accordingly, we grant the extension as requested.

3. In view of the foregoing: *It is ordered,* That the time for filing reply comments in this proceding is extended, to and including February 26, 1973.

Adopted: January 31, 1973.

Released: February 6, 1973.

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

[FR Doc.73-2832 Filed 2-12-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR, Parts 230, 240]

[File No. 4-149; Release Nos. 33-5361, 34-9973]

EXEMPTION OF CERTAIN VARIABLE LIFE INSURANCE CONTRACTS AND THEIR ISSUERS FROM FEDERAL SECURITIES LAWS

Withdrawals of Proposed Rules

The Securities and Exchange Commission this day has published a release on the Petition for Issuance and Amendment of Rules and Rulemaking Proceeding Therefor filed by the American Life Convention and the Life Insurance Association of America.[1] That release indicated the Commission's findings as to the status of variable life insurance contracts, related interests and participations therein, and the issuers thereof and their related persons under the Federal securities laws. That release also announced the adoption of Rule 3c-4 [17 CFR 270.3c-4] under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) and Rule 202-1 [17 CFR 275.202-1] under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.). As indicated in that release, the Commission has determined not to adopt proposed Rule 157 [§ 230.157] under the Securities Act of 1933 (15 U.S.C. 70a et seq.) and proposed Rules 3a12-4 and 15c1-4 [§§ 240.3a12-4, 240.15c1-4] under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the reasons stated therein.

Accordingly, proposed Rule 157 (§ 230.157) under the Securities Act of 1933 (15 U.S.C. 70a et seq.) and proposed Rules 3a12-4 (§ 240.3a12-4) and 15c1-4 (§ 240.15c1-4) under the Securities Exchange Act (15 U.S.C. 78a et seq.) are hereby withdrawn.[2]

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

JANUARY 31, 1973.

[FR Doc.73-2811 Filed 2-12-73;8:45 am]

[1] Securities Act Release No. 5360, Securities Exchange Act Release No. 9972, Investment Company Act Release No. 7644, Investment Advisors Act Release No. 359 [38 FR 4317]

[2] Proposed §§ 230.157, 240.3a12-4 and 240.15c1-4 appeared in 37 FR 5511.

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

Office of the Secretary

[Administrative Ruling 73-1]

REVENUE SHARING ENTITLEMENT FUNDS

Limits on Use to Retire Indebtedness of Units of Local Government

Advice has been requested by units of local government whether revenue sharing entitlement funds may be used for repayment of debt, such as a bond issue and, if so, the manner in which the provisions of the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512) and regulations issued pursuant thereto (31 CFR Part 51) would apply to such transaction.

It is the determination of the Department of the Treasury that repayment of debt qualifies as a proper expenditure of revenue sharing funds provided that the following guidelines as set forth in the Report of the Committee on Ways and Means, House of Representatives Report No. 92-1018 (Part 1), dated April 26, 1972, are complied with:

1. Revenue sharing entitlement funds are not used to pay any interest incurred because of the debt.

2. The debt was originally incurred for a "priority expenditure" purpose by a unit of local government as defined under section 103 of the Act.

3. The actual expenditure from the proceeds of the indebtedness (i.e. for materials, contractors, etc.) was made on or after January 1, 1972 (the beginning of the initial entitlement period).

4. The actual expenditures from proceeds of the indebtedness were not expended in violation of any restrictions enumerated in Subpart D of 31 CFR Part 51.

This determination shall be applicable to all debt retirement transactions of units of local government effected with revenue sharing entitlement funds after February 15, 1973.

[SEAL] GRAHAM WATT,
Director,
Office of Revenue Sharing.

FEBRUARY 9, 1973.

[FR Doc.73-2904 Filed 2-9-73;11:44 am]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

PRIVATE SECURITY ADVISORY COUNCIL

Establishment

The Law Enforcement Assistance Administration hereby determines that the establishment of the Private Security Advisory Council, as identified hereinafter, is in the public interest and necessary and appropriate for the purposes of the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90-351, as amended by Public Law 91-644, and the Administration establishes this committee in accordance with the provisions of the Federal Advisory Committee Standards Act, Public Law 92-463, and LEAA Notice N 1300.2.

1. Designation: Private Security Advisory Council.

2. Purposes: To advise LEAA on the development of effective programs and policies relating to private protection services and improving cooperation between public law enforcement agencies and private security services and to make recommendation for State and local government in the implementation of private security laws.

3. Establishment date and termination date: The Council is established effective 30 days after publication of this notice and will terminate within 2 years.

4. Meetings: Quarterly or more frequently as required.

5. Membership: The membership shall include LEAA employees, officers and employees of public law enforcement agencies and officers of organizations representing law enforcement personnel, officers and employees of private security businesses, manufacturers engaged in private security activities and users of private security services and equipment.

6. The Council will operate pursuant to the provisions of the Federal Advisory Committee Standards Act, Public Law 92-463, LEAA Notice N 1300.2, OMB Circular No. A-63 and any additional orders and directives issued in implementation of the Act.

JERRIS LEONARD,
Administrator.

[FR Doc.73-2757 Filed 2-12-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA STATE ADVISORY BOARD

Notice of Meeting

FEBRUARY 5, 1973.

Notice is hereby given that the California State Advisory Board to the Bureau of Land Management will hold its annual meeting March 6-7, 1973, at the Rodeway Inn, 3425 Orange Grove Avenue, North Highlands, CA. The agenda for the meeting will include consideration of cooperative planning and management of off-road vehicle use, progress on the King Range National Conservation Area, and draft regulations on wild free-roaming horses and burros.

The meeting will be open to the public. There will be time available for a limited number of brief statements by members of the public. Anyone wishing to make an oral statement should inform the Advisory Board chairman prior to the meeting of the Board. Any interested person may file a written statement with the Board for its consideration. The Advisory Board Cochairmen are Dr. Gerhard N. Rostvold, Post Office Box 312, Claremont, CA 91711, and J. R. Penny, California State Director, Bureau of Land Management. Written statements should be submitted to the Board c/o State Director (912), Bureau of Land Management, 2800 Cottage Way, Room E-2841, Sacramento, CA 95825.

E. J. PETERSEN,
Acting State Director.

[FR Doc.73-2824 Filed 2-12-73;8:45 am]

Office of Hearings and Appeals

[Docket No. M 73-19]

CANNELTON INDUSTRIES, INC.

Petition for Modification of Safety Standard

Notice is hereby given that, pursuant to section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, Cannelton Industries, Inc., Cannelton, W. Va. 25036, has filed a petition to modify the application of the safety standard set out in section 314(f) of the Act to its Pocahontas No. 3 and Pocahontas No. 4 mines.

Said section 314(f) states:

> All haulage equipment acquired by an operator of a coal mine on or after 1 year after the operative date of this title shall be equipped with automatic couplers which couple by impact and uncouple without the necessity of persons going between the ends of such equipment. All haulage equipment without automatic couplers in use in a mine on the operative date of this title shall also be equipped within 4 years after the operative date of this title.

Petitioner states that the system of coupling described in its petition, under which mine cars cannot be coupled while in motion, guarantees to miners the same measure of protection as would automatic couplers.

Parties interested in this petition shall file their answer or comments and their request for a hearing, if they wish one, on or before March 15, 1973, with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, VA 22203. Copies of the petition are available for inspection at that address.

JAMES M. DAY,
Director, Office of Hearings and Appeals.

FEBRUARY 5, 1973.

[FR Doc.73-2770 Filed 2-12-73;8:45 am]

[Docket No. M 73-20]

PLATEAU MINING CO.

Petition for Modification of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), the Plateau Mining Co. has filed a petition to modify the application of 30 CFR 77.1605(k) to its Star Point Nos. 1 and 2 Mines.

30 CFR 77.1605(k) reads as follows: "(k) Berms or guards shall be provided on the outer bank of elevated roadways."

Petitioner asks that the standard be modified because the mines and related facilities concerned are at an elevation of 7,650 feet to 8,550 feet, and large amounts of snow fall at this elevation during the winter months. Petitioner states that the road servicing the mining area is approximately 7,000 feet in length, 65 percent of which is blacktopped, the upper portion being dirt and gravel. Snow removal is accomplished by applying a coal dust-salt mixture to facilitate melting and by pushing snow off the road. Installation of a berm would make it impossible to push snow off the road and necessitate closing the road during the winter months. Also, during the spring months with periods of alternative freezing and thawing, the berm would trap the runoff and force water down the roadway creating impossible conditions for travel. Petitioner contends that a berm would thus create a safety hazard.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before March 15, 1973. Such request or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 6432 Federal Building, Salt Lake City, Utah 84111. Copies of the petition are available for inspection at that address.

JAMES M. DAY,
Director,
Office of Hearings and Appeals.

FEBRUARY 5, 1973.

[FR Doc.73-2769 Filed 2-12-73;8:45 am]

Office of the Secretary

[INT—FES 73-5]

PROPOSED DEEP GEOTHERMAL TEST WELL—GEOTHERMAL RESOURCE INVESTIGATIONS, IMPERIAL VALLEY, CALIF.

Availability of Supplement to the Final Environmental Statement

Pursuant to section 102(2(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a supplement to the final environmental statement for the proposed Deep Geothermal Test Well—Geothermal Resource Investigations, Imperial Valley, Calif.

The environmental statement concerns the drilling of additional test wells in the East Mesa area of Imperial Valley to more fully evaluate the geothermal potential of Federal lands within the valley.

Copies are available for inspection at the following locations:

Office of Ecology, Room 7620, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, telephone 202—343-4991.

Division of Engineering Support, Technical Services Branch, E&R Center, Denver Federal Center, Denver, Colo. 80225, telephone 303—234-3007.

Office of the Regional Director, Bureau of Reclamation, Post Office Box 427, Nevada Highway and Park Street, Boulder City, NV 89005, telephone 702—293-8560.

Southern California Planning Office, Bureau of Reclamation, Post Office Box 1303, 528 Mountain View Avenue, San Bernardino, CA 92402, telephone 714—884-3111, ext. 441.

Single copies of the supplement to the final environmental statement may be obtained on request to the Commissioner of Reclamation or the Regional Director. In addition, copies may be purchased from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151. Please refer to the statement number above.

Dated: February 6, 1973.

WILLIAM W. LYONS,
Deputy Assistant Secretary
of the Interior.

[FR Doc.73-2772 Filed 2-12-73;8:45 am]

[INT-FES 73-6]

PROPOSED LONG DRAW RESERVOIR ENLARGEMENT PROJECT, COLORADO

Availability of Final Environmental Statement

An application under the Small Reclamation Projects Act for the Water Supply and Storage Co. Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the Long Draw Reservoir Enlargement Project, Colorado.

The environmental statement concerns the enlargement of an existing Company reservoir and lining portions of the Grand River Ditch to reduce seepage losses above the reservoir. The Company intends to provide supplemental irrigation water to 37,425 acres owned by farmers living north and east of the city of Fort Collins in Larimer County, Colo. The Company applied for a loan and grant under the Small Reclamation Projects Act and plans to begin construction in the summer of 1973.

Copies are available for inspection at the following locations:

Office of Ecology, Room 7620, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, telephone (202) 343-4991.

Division of Engineering Support, Technical Services Branch, E&R Center, Denver Federal Center, Denver, Colo. 80225, telephone (303) 234-3007.

Office of the Regional Director, Bureau of Reclamation, Building 20, Denver Federal Center, Denver, Colo. 80225, telephone (303) 234-3779.

Single copies of the final environmental statement may be obtained on request to the Commissioner of Reclamation or the regional director. In addition, copies may be purchased from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151. Please refer to the statement number above.

Dated: February 7, 1973.

W. W. LYONS,
Deputy Assistant Secretary
of the Interior.

[FR Doc.73-2773 Filed 2-12-73;8:45 am]

National Park Service

[FES 73-7]

PROPOSED WILDERNESS CLASSIFICATION FOR HALEAKALA NATIONAL PARK, HAWAII

Aailability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act, the Department of the Interior has prepared a final environmental statement for Proposed Wilderness Classification for Haleakala National Park, Hawaii.

The final environmental statement considers the designation of 19,270 acres of Haleakala National Park as wilderness.

Copies are available from or for inspection at the following locations:

Western Regional Office, National Park Service, 450 Golden Gate Avenue, Post Office Box 36063, San Francisco, CA 94102.

Haleakala National Park, Post Office Box 456, Kahului, Maui, HI 96732.

Hawaii Group, National Park Service, Pacific International Building, 677 Ala Moana Boulevard, Suite 512, Honolulu, HI 06813.

Dated February 7, 1973.

W. W. LYONS,
Deputy Assistant Secretary
of the Interior.

[FR Doc.73-2774 Filed 2-12-73;8:45 am]

[DES 73-4]

PROPOSED WILDERNESS DESIGNATION FOR LANDS WITHIN CRATER LAKE NATIONAL PARK, OREG.

Availability of Draft Environmental Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act, the Department of the Interior has prepared a draft environmental statement for the proposed wilderness designation for lands within Crater Lake National Park, Oreg., and invites written comment on or before March 30, 1973. Written comment should be addressed to the Director, Pacific Northwest Region or the Superintendent, Crater Lake National Park at the addresses given below.

The draft environmental statement considers the designation of 115,900 acres of Crater Lake National Park as wilderness.

Copies are available from or for inspection at the following locations:

Office of the Director, Pacific Northwest Regional Office, National Park Service, 523 Fourth and Pike Building, Seattle, Wash. 98101.

Office of the Superintendent, Crater Lake National Park, Post Office Box 7, Crater Lake, OR 97604.

Dated: February 7, 1973.

W. W. LYONS,
Deputy Assistant Secretary of the Interior.

[FR Doc.73-2771 Filed 2-12-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

CONTROLLER, ET AL.

Delegation of Authority Regarding Blanket Insurance Policy

The following officers of Commodity Credit Corporation are designated to act for me for the purpose of receiving, in accordance with the requirements of paragraph 1 of CCC Blanket Insurance Policy No. 34176 executed by Commodity Credit Corporation with the Appalachian Insurance Co., Providence, R.I., effective December 1, 1972, any information on which a warehouseman's liability may be based for a failure of the warehouseman to perform any of his obligations under the Bean Storage Agreement (Form CCC-28), Uniform Grain Storage Agreement (Form CCC-25) and Uniform Rice Storage Agreement (Form CCC-26) and all modifications of such agreements or to perform any other of his obligations as a warehouseman in connection with commodities stored or handled under such agreements:

Controller.
Treasurer.
Assistant Treasurer, who is the Chief, Kansas City Claims Field Office, Fiscal Division, ASCS.
Assistant Treasurer, who is Assistant Chief, Kansas City Claims Field Office, Fiscal Division, ASCS.

(Sec. 4, 62 Stat. 1070, as amended, 15 U.S.C. 714b)

Effective date. This delegation of authority shall be effective on February 13, 1973.

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

E. J. PERSON,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc.73-2802 Filed 2-12-73;8:45 am]

DIRECTOR, ASCS COMMODITY OFFICE ET AL., KANSAS CITY, MO.

Delegation of Authority Regarding Blanket Insurance Policy

Persons occupying the following positions in the ASCS Commodity Office, Kansas City, Mo., are designated to act for me in the purpose of receiving, in accordance with the requirements of paragraph 1 of CCC Blanket Insurance Policy No. 34176 executed by Commodity Credit Corporation with Appalachian Insurance Co., Providence, R.I., effective December 1, 1972, any information on which a warehouseman's liability may be based for a failure of the warehouseman to perform any of his obligations under the Bean Storage Agreement (Form CCC-28), Uniform Grain Storage Agreement (Form CCC-25) and Uniform Rice Storage Agreement (Form CCC-26) and all modifications of such agreements or to perform any other of his obligations as a warehouseman in connection with commodities stored or handled under such agreements:

Director.
Deputy Director, Program.
Deputy Director, Management.
Chief, Bulk Grain Division.
Assistant Chief, Bulk Grain Division.
Chief, Bulk Grain Storage Contract Division.
Assistant Chief, Bulk Grain Storage Contract Division.
Chief, Rice and Dry Beans Division.
Chief, Fiscal Settlement Division.
Chief, Claims Establishment and Collections Branch, Fiscal Settlement Division.

(Section 4, 62 Stat. 1070, as amended, 15 U.S.C. 714b)

Effective date. This delegation of authority shall be effective on February 13, 1973.

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

E. J. PERSON,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc.73-2803 Filed 2-12-73;8:45 am]

DIRECTOR, AND DEPUTY DIRECTOR, ASCS COMMODITY OFFICE, KANSAS CITY, MO.

Delegation of Authority Regarding Blanket Insurance Policy

The following persons in the ASCS Commodity Office, Kansas City, Mo., are designated (as Contracting Officers of Commodity Credit Corporation) to decide, in accordance with paragraph 13 of CCC Blanket Insurance Policy No. 34176, issued by the Appalachian Insurance Co. of Providence, R.I., effective December 1, 1972, any dispute concerning a question of fact with respect to a claim of Commodity Credit Corporation under this policy which is not disposed of by agreement:

Director, Kansas City ASCS Commodity Office.
Deputy Director, Programs, Kansas City ASCS Commodity Office.

(Section 4, 62 Stat. 1070, as amended, 15 U.S.C. 714b)

Effective date. This delegation of authority shall be effective on February 13, 1973.

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

E. J. PERSON,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc.73-2804 Filed 2-12-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DESI 5564]

CERTAIN DERMATOLOGIC LIQUID PREPARATION; COPPER UNDECYLENATE, UNDECYLENIC ACID AND DIOCTYL SODIUM SULFOSUCCINATE

Followup to Drug Efficacy Study

In a notice (DESI 5564) published in the FEDERAL REGISTER of September 17, 1971 (36 FR 18599) the Commissioner of Food and Drugs announced his conclusions pursuant to a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the combination prescription drug described below stating that the drug is regarded as possibly effective and lacking substantial evidence of effectiveness for the labeled indications. The possibly effective indications have been reclassified as lacking substantial evidence of effectiveness in that no new evidence of effectiveness of the drug has been submitted pursuant to the notice.

NDA 6-114; Decupryl liquid containing 10 percent copper undecylenate, 5 percent undecylenic acid, and dioctyl sodium sulfosuccinate; formerly marketed by Cooper Laboratories, Inc. (successor to Tilden-Yates Laboratories, Inc.), 2900 North 17th Street, Philadelphia, Pa. 19132.

A notice was published in the FEDERAL REGISTER of February 8, 1972 (37 FR 2852), withdrawing approval of NDA 6-114, including all amendments and supplements thereto, on the grounds that reports required under section 505(j) of the Act (21 U.S.C. 355(j)) and §§ 130.13 and 130.35 (e) and (f) of the new drug regulations (21 CFR 130.13 and 130.35) had not been submitted. At that time no final effectiveness classification of the drug had yet been made.

Accordingly, this notice is published to inform any person interested in identical, related, or similar products of the final effectiveness classification of this article.

All identical, related, or similar products, not the subject of an approved new drug application, are covered by the new drug application reviewed and are subject to this notice. See 21 CFR 130.40 (37 FR 23185, Oct. 31, 1972). Any person who wishes to determine whether a specific product is covered by this notice should write to the Food and Drug Administration, Bureau of Drugs, Office of Compliance (BD-300), 5600 Fishers Lane, Rockville, Md. 20852.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-53, as amended; 21 U.S.C. 352, 355) and the Administrative Procedure Act (5

U.S.C. 554), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: February 6, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.73-2765 Filed 2-12-73;8:45 am]

[Docket No. FDC-D-586; NADA No. 7-130V]

CURTS LABORATORIES, INC.

Sulfadac; Opportunity for Hearing

In an announcement published in the FEDERAL REGISTER of July 9, 1970 (35 FR 11071, DESI 7055V), the Commissioner of Food and Drugs announced the conclusions of the Food and Drug Administration following evaluation of a report received from the National Academy of Sciences—National Research Council, Drug Efficacy Study Group, on Sulfadac, new animal drug application (NADA) No. 7-130V; marketed by Curts Laboratories, Inc., 812 Woodswether Road, Kansas City, MO 64105.

Said announcement invited the holder of said new animal drug application and any other interested persons to submit pertinent data on the drugs effectiveness. No supplemental new animal drug application or other data have been submitted in response to said announcement.

Therefore, notice is given to the holder of the NADA and to any other interested person that the Commissioner proposes to issue an order under section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) withdrawing approval of NADA No. 7-130V and all amendments and supplements thereto on the grounds that new information before him with respect to the drug evaluated together with the evidence available to him at the time of approval of the application, shows there is a lack of substantial evidence that the drug will have all the effects purported or represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

All identical, related, or similar products not the subject of an approved new animal drug application are covered by the NADA reviewed. Any manufacturer or distributor of such an identical, related, or similar product is an interested person who may in response to this notice submit data and information, request that the NADA not be withdrawn, request a hearing, and participate as a party in any hearing. Any person who wishes to determine whether a specific product is covered by this notice should write to the Bureau of Veterinary Medicine, Division of Compliance, 5600 Fishers Lane, Rockville, MD 20852.

In accordance with the provisions of section 512 of the act and the regulations promulgated thereunder (21 CFR Part 135), the Commissioner hereby gives the applicant and any other interested person an opportunity for a hearing to show why approval of the NADA should not be withdrawn.

On or before March 15, 1973, the applicant and any other interested person is required to file with the Hearing Clerk, Food and Drug Administration, Room 6-88, 5600 Fishers Lane, Rockville, MD 20852, a written appearance electing whether or not to avail himself of the opportunity for a hearing. Failure of an applicant or any other interested person to file a written appearance of election by March 15 will constitute an election by him not to avail himself of the opportunity for a hearing.

If no person elects to avail himself of the opportunity for a hearing, the Commissioner without further notice will enter a final order withdrawing approval of the application.

If an applicant or any other interested person elects to avail himself of the opportunity for a hearing, he must file, on or before March 15, 1973, a written appearance requesting the hearing, giving the reasons why approval of the NADA should not be withdrawn, together with a well-organized and full-factual analysis of the data he is prepared to prove in support of his opposition. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing (21 CFR 135.15(b)).

All identical, related, or similar products not the subject of an approved new animal drug applicaton are covered by the NADA reviewed. Any manufacturer or distrbutor of such an identical, related, or similar product is an interested person who may in response to this notice submit data and informtaion, request that the NADA not be withdrawn, request a hearing, and particpate as a party in any hearing. Any person who wishes to determine whether a specific product is covered by this notice should write to the Bureau of Veterinary Medicine, Division

[illegible]

If review of the data submitted by an applicant or any other interested person warrants the conclusion that there exists substantial evidence demonstrating efficacy of the product for the labeling claims involved, the Commissioner will rescind this notice of opportunity for a hearing.

If review of the data in the application and data submitted by the applicant or any other interested person in a request for a hearing, together with the reasoning and factual analysis in a request for a hearing, warrants the conclusion that no genuine and substantial issue of fact precludes the withdrawal of approval of the application, the Commissioner will enter an order of withdrawal making findings and conclusions on such data.

If upon the request of the new animal drug applicant or any other interested person, a hearing is justified, the issues will be defined, an administrative law judge will be named, and he shall issue, as soon as practicable after the expiration of such 30 days, a written notice of the time and place at which the hearing will commence. All persons interested in identical, related, or similar products covered by the NADA will be afforded an opportunity to appear at the hearing, file briefs, present evidence, cross-examine witnesses, submit suggested findings of fact, and otherwise participate as a party. The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process the Commissioner finds entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in his appearance.

Requests for a hearing and/or elections not to request a hearing may be seen in the Office of the Hearing Clerk (address given above) during regular business hours, Monday through Friday.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 343-351; 21 U.S.C. 360b(e)) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: February 6, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.73-2766 Filed 2-12-73;8:45 am]

[Docket No. FDC-D-584; NADA No. 7-736V]

JENSEN-SALSBERY LABORATORIES

Anthol (Antheline Plus Toluene); Opportunity for Hearing

In an announcement published in the FEDERAL REGISTER of February 1, 1969 (34 FR 1608), the Commissioner of Food and Drugs announced the conclusions of the Food and Drug Administration following evaluation of a report received from the National Academy of Sciences—National Research Council, Drug Efficacy Study Group, on Anthol, new animal drug application (NADA) No. 7-736V; marketed by Jensen-Salsbery Laboratories, 520 West 21st Street, Kansas City, MO 64141. The announcement invited the holder of said NADA and any other interested persons to submit revised labeling or adequate documentation in support of the labeling used.

Jensen-Salsbery Laboratories responded to the announcement by submitting draft labeling. By letters of September 15, 1969, and September 18, 1972, the Food and Drug Administration requested final printed labeling for the product, Anthol. Final printed labeling has not been submitted.

Therefore, notice is given to the holder of the NADA and to any other interested person that the Commissioner proposes to issue an order under section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) withdrawing approval of NADA No. 7-736V and all amendments and supplements thereto on the grounds that new information before him with respect to the drug evaluated together with the evidence available to him at the time of approval of the application, shows there is a lack of sub-

stantial evidence that the drug will have all the effects purported or represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

All identical, related, or similar products not the subject of an approved new animal drug application are covered by the NADA reviewed. Any manufacturer or distributor of such an identical, related, or similar product is an interested person who may in response to this notice submit data and information, request that the NADA not be withdrawn, request a hearing, and participate as a party in any hearing. Any person who wishes to determine whether a specific product is covered by this notice should write to the Bureau of Veterinary Medicine, Division of Compliance, 5600 Fishers Lane, Rockville, MD 20852.

In accordance with the provisions of section 512 of the Act and the regulations promulgated thereunder (21 CFR Part 135), the Commissioner hereby gives the applicant and any other interested person an opportunity for a hearing to show why approval of the NADA should not be withdrawn.

The applicant and any interested person is required to file, on or before March 15, 1973, with the Hearing Clerk, Food and Drug Administration, Room 6–88, 5600 Fishers Lane, Rockville, MD 20852, a written appearance electing whether or not to avail himself of the opportunity for a hearing. Failure of an applicant or any other interested person to file a written appearance of election by March 15 will constitute an election by him not to avail himself of the opportunity for a hearing.

If no person elects to avail himself of the opportunity for a hearing, the Commissioner without further notice will enter a final order withdrawing approval of the application.

If an applicant or any other interested person elects to avail himself of the opportunity for a hearing, he must file, on or before March 15, 1973, a written appearance requesting the hearing, giving the reasons why approval of the NADA should not be withdrawn, together with a well-organized and full-factual analysis of the data he is prepared to prove in support to his opposition. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing (21 CFR 135.15(b)).

If review of the data submitted by an applicant or any other interested person warrants the conclusion that there exists substantial evidence demonstrating efficacy of the product for the labeling claims involved, the Commissioner will rescind this notice of opportunity for a hearing.

If review of the data in the application and the data submitted by the applicant or any other interested person in a request for a hearing, together with a reasoning and factual analysis warrants the conclusion that no genuine and substantial issue of fact precludes the withdrawal of approval of the application, the Commissioner will enter an order of withdrawal making findings and conclusions on such data.

If, upon the request of the new animal drug applicant or any other interested person, a hearing is justified, the issues will be defined, an administrative law judge will be named, and he shall issue, as soon as practicable after March 15, 1973, a written notice of the time and place at which the hearing will commence. All persons interested in identical, related, or similar products covered by the NADA will be afforded an opportunity to appear at the hearing, file briefs, present evidence, cross-examine witnesses, submit suggested findings of fact, and otherwise participate as a party. The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process the Commissioner finds entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in his appearance.

Requests for a hearing and/or elections not to request a hearing may be seen in the office of the hearing clerk (address given above) during regular business hours, Monday through Friday.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 343–351; 21 U.S.C. 360b(e)) and under the authority delegated to the Commissioner (21 CFR 2.120).

Dated: February 6, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.73-2767 Filed 2-12-73;8:45 am]

Health Services and Mental Health Administration

RESEARCH SCIENTIST DEVELOPMENT REVIEW COMMITTEE

Cancellation of Meeting

In FR Doc. 73–1690 appearing at page 2783 of the FEDERAL REGISTER for Monday, January 30, 1973, the meeting of the "Research Scientist Development Review Committee" has been canceled.

Dated: February 6, 1973.

ANDREW J. CARDINAL,
Acting Associate Administrator for Management, Health Services and Mental Health Administration.

[FR Doc.73-2768 Filed 2-12-73;8:45 am]

ARMY AND AIR FORCE EXCHANGE AND MOTION PICTURE SERVICES

CIVILIAN ADVISORY COMMITTEE

Notice of Meeting

FEBRUARY 5, 1973.

The Civilian Advisory Committee to the Board of Directors, Army and Air Force Exchange and Motion Picture Services, will hold a closed meeting on February 21, 1973, in the Board Room, Headquarters, Army and Air Force Exchange Service, 3911 Walton Walker Boulevard, Dallas, TX 75222.

The agenda for the meeting will include discussions of exchange operations in Southeast Asia, capital expenditure projects, exchange price adjustment actions, the new car sales program, and amendment of the Service Contract Act of 1965.

Any persons desiring information about the committee may telephone (202—697–3336) or write the Executive Secretary, Board of Directors, Army and Air Force Exchange and Motion Picture Services, Room 5E483, the Pentagon, Washington, D.C. 20310.

CHARLES F. O'DONNELL, Jr.,
Colonel, USA,
Executive Secretary, AAFEMPS.

[FR Doc.73-2760 Filed 2-12-73;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket Nos. 50–373; 50–374]

COMMONWEALTH EDISON CO.

Assignment of Members of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority in 10 CFR § 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for these proceedings (LaSalle Units 1 and 2).

Alan S. Rosenthal, Chairman.
Dr. John H. Buck, Member.
William C. Parler, Member.

Dated: February 7, 1973.

WILLIAM L. WOODARD,
Executive Secretary, Atomic Safety and Licensing Appeal Panel.

[FR Doc.73-2807 Filed 2-12-73;8:45 am]

[Docket No. PRM–20–4]

DELTA AIRLINES, INC.

Notice of Filing of Petition for Rule Making

Notice is hereby given that Delta Air Lines, Inc., Hartsfield Atlanta International Airport, Atlanta, Ga., by letter dated December 27, 1972, has filed with the Atomic Energy Commission a petition for rule making. The petitioner requests that the Commission amend its regulations to require consignees of Type B packages of radioactive material shipments by air transportation to effect prompt pickup from the carrier upon notice of arrival at the destination airport, and to monitor such shipments for external contamination without delay.

The petitioner notes that the Department of Transportation has issued a regulation requiring pretender leakage tests on Type B packages of radioactive materials in liquid form destined for air transportation. The petitioner contends that it is unlikely that full compliance with this regulation can be assured, and that

additional pickup and monitoring rules are needed to insure safety.

The petitioner further contends that the Department of Transportation disclaims jurisdiction over consignees of air transportation of radioactive material shipments and, hence, it is only through the Commission's power that a government-prescribed requirement for early pickup and monitor can be effected upon consignees.

The petitioner indicates that it would be preferable and would better serve the public's needs if requirements for prompt pickup by the consignee of Type B packages of radioactive material from the carrier and prompt monitoring of such shipments for external contamination were prescribed by Federal regulation rather than by the carrier tariffs. The petitioner states also that issuance of the requested rule would assist in achieving uniformity throughout the industry at an earlier date than might be possible if this particular matter continued to be dealt with in individual company tariffs.

The petitioner also notes that the requested rule making action is in accord with recommendations of the National Transportation Safety Board set out in "Special Study of the Carriage of Radioactive Materials by Air," adopted April 26, 1972, and released June 28, 1972.

A copy of the petition for rule making is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC A copy of the petition may be obtained by writing the Rules and Proceedings Branch at the below address.

All interested persons who desire to submit written comments or suggestions concerning the petition for rule making should send their comments to the Rules and Proceedings Branch, Office of Administration-Regulation, U.S. Atomic Energy Commission, Washington, D.C. 20545, on or before April 16, 1973.

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

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-2759 Filed 2-12-73;8:45 am]

HIGH ENERGY PHYSICS PANEL ET AL.

Extension of Existence

On February 1, 1973, the Atomic Energy Commission in accordance with Public Law 92-463, 92d Congress, 2d session determined:

1. That the following advisory committees will be continued for a period not to exceed January 5, 1975:

High Energy Physics Panel (Division of Physical Research).
Standing Committee on Controlled Thermonuclear Research (Division of Controlled Thermonuclear Research).
Advisory Committee on Medical Uses of Isotopes (Director of Regulation).
Advisory Committee on Plant and Nuclear Materials Security (Directorate of Regulatory Standards/Division of Nuclear Materials Security).
Historical Advisory Committee (Office of the Secretary).
Atomic Energy Labor-Management Advisory Committee (Division of Labor Relations).
Senior Utility Steering Committee (Division of Reactor Development and Technology).
Senior Utility Technical Advisory Committee (Division of Reactor Development and Technology).
Committee of Senior Reviewers (Division of Classification).
Light Water Reactor Safety Research Coordinating Committee (Division of Reactor Development and Technology).

2. The regulations governing the operation of advisory committees are approved by the Commission.

Dated at Germantown, Md., this 5th day of February 1973.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-2758 Filed 2-12-73; 8:45 am]

[Docket No. 50-322]

LONG ISLAND LIGHTING CO.

Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority in 10 CFR 2.787 (a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this proceeding (Shoreham Nuclear Power Station) to consist of the following members:

Alan S. Rosenthal, Chairman; Dr. John H. Buck, Member; Michael C. Farrar, Member.

Dated: February 7, 1973.

WILLIAM L. WOODARD,
Executive Secretary, Atomic Safety and Licensing Appeal Panel.

[FR Doc.73-2816 Filed 2-12-73;8:45 am]

[Docket No. 50-367]

NORTHERN INDIANA PUBLIC SERVICE CO.

Notice of Availability of Final Environmental Statement for the Bailly Generating Station Nuclear 1

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that the Final Environmental Statement prepared by the Commission's Directorate of Licensing, related to the Bailly Generating Station Nuclear 1, to be constructed by Northern Indiana Public Service Co., in Porter County, Ind., is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, DC 20545, and in the West Chester Township Public Library, 125 South Second Street, Chesterton, IN 46304. The final Environmental Statement is also being made available at the Office of the Governor, 206 State House, Indianapolis, IN 46204, and at the Lake-Porter County Regional Transportation and Planning Commission, 9290 Taft Place, Crown Point, IN 46307.

The notice of availability of the Draft Environmental Statement for Bailly Generating Station Nuclear 1 facility, and requests for comments from interested persons, was published in the FEDERAL REGISTER on July 20, 1972, 37 FR 14428. The comments received from Federal, State, and local officials and interested members of the public have been included as appendices to the Final Environmental Statement.

Single copies of the Final Statement may be obtained by writing the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Md., this 6th day of February 1973.

For the Atomic Energy Commission.

G. W. KNIGHTON,
Chief, Environmental Projects Branch 1, Directorate of Licensing.

[FR Doc.73-2830 Filed 2-12-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 24977]

ALASKA AIRLINES, INC. AND WESTERN AIR LINES, INC.

Notice of Prehearing Conference

In re: States-Alaska and Intra-Alaska fare increases proposed by Alaska Airlines, Inc. and Western Air Lines, Inc.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on February 27, 1973, at 10 a.m. (local time), in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Administrative Law Judge James S. Keith.

In order to facilitate the conduct of the conference parties are instructed to submit one copy to each party and four copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statement of positions of parties; and (5) proposed procedural dates. The Bureau of Economics will circulate its material on or before February 20, 1973, and the other parties on or before February 23, 1973. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Economics, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., February 7, 1973.

[SEAL] RALPH L. WISER,
Chief Administrative Law Judge.

[FR Doc.73-2840 Filed 2-12-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

ENVIRONMENTAL IMPACT STATEMENTS AND OTHER ENVIRONMENTAL ACTIONS

Availability of EPA Comments

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment contained in the following appendices during the period from December 30, 1972, to January 18, 1973.

Appendix I contains a listing of draft environmental impact statements reviewed and commented upon in writing during this reviewing period. The list includes the Federal agency responsible for the statement, the number and title of the statement, the classification of the nature of EPA's comments as defined in appendix II, and the EPA source for copies of the comments as set forth in appendix V.

Appendix II contains the definitions of the classifications of EPA's comments on the draft environmental impact statements as set forth in appendix I.

Appendix III contains a listing of final environmental impact statements reviewed and commented upon in writing during this reviewing period. The listing will include the Federal agency responsible for the statement, the number and title of the statement, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in appendix V.

Appendix IV contains a listing of proposed Federal agency regulations, legislation proposed by Federal agencies, and any other proposed actions reviewed and commented upon in writing pursuant to section 309(a) of the Clean Air Act, as amended, during the referenced reviewing period. The listing includes the Federal agency responsible for the proposed action, the title of the action, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in appendix V.

Appendix V contains a listing of the names and addresses of the sources for copies of EPA comments listed in appendices I, III, and IV.

Copies of the EPA Order 1640.1, setting forth the policies and procedures for EPA's review of agency actions, may be obtained by writing the Public Inquiries Branch, Office of Public Affairs, Environmental Protection Agency, Washington, D.C. 20460. Copies of the draft and final environmental impact statements referenced herein are available from the originating Federal department or agency or from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

Dated: February 5, 1973.

SHELDON MEYERS,
Director,
Office of Federal Activities.

APPENDIX I

DRAFT ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN DECEMBER 30, 1972 AND JANUARY 18, 1973

Responsible Federal agency	Title and identifying number	General nature of comments	Source for copies of comments
Corps of Engineers (civil works)	D-COE-21025-OH: Confined disposal facility, Toledo Harbor, Ohio.	ER-2	F
Do	D-COE-30011-VA: Virginia Beach erosion control, hurricane protection, Virginia.	LO-2	D
Do	D-COE-30047-AL: Dredging of dead-reef shells, Mobile Bay, Ala.	3	E
Do	D-COE-32075-FL: Miami navigation project, Florida	3	E
Do	D-COE-32076-PA: Woodcock Creek Lake, French Creek Basin, Pa.	LO-2	D
Do	D-COE-32079-KY: Camp Ground Lake, Salt River Basin, Ky.	3	E
Do	D-COE-32294-FL: Intracoastal waterway, Florida	LO-2	E
Do	D-COE-32308-AL: Navigation, Alabama River, Ala	LO-1	E
Do	D-COE-32401-KY: Temporary Navigation Lock and Dam 53, Ohio River, Illinois and Kentucky.	LO-1	E
Do	D-COE-35027-CA: Maintenance dredging of Redwood City Harbor, Calif.	3	J
Do	D-COE-35046-IA: Perry Creek, Iowa	LO-2	H
Do	D-COE-35049-NY: Maintenance dredging of Broux River, N.Y.	ER-2	C
Do	D-COE-36174-NY: Flood control project for Ardsley, N.Y.	ER-2	C
Do	D-COE-36184-AR: Norfork Lake, Arkansas and Missouri.	LO-1	G
Department of Agriculture	D-DOA-36035-IN: Lost River Watershed, Indiana	3	F
Do	D-DOA-61101-OR: Skyline Basin winter sports development, Oregon.	LO-2	K
Department of Commerce	D-DOC-24020-MA: Sewerage system, Greenfield, Mass.	LO-2	B
Do	D-DOC-24021-CT: Improvements to water supply, Winchester, Conn.	LO-2	B
Department of Defense	D-DOD-11020-WA: Seattle bulk mail facility, Washington.	LO-1	K
Do	D-DOD-35053-FL: Santa Rosa Island, Fla., redredge of channel, Florida.	LO-1	E
Department of the Interior	D-DOI-36117-NB: South Fork Watershed, Pawnee and Richardson Counties, Nebr.	LO-1	H
Department of Transportation	D-DOT-40386-MI: Reconstruction of M-43, Kalamazoo, Van Buren, Mich.	LO-2	F
Do	D-DOT-40498-FL: Seminole and Volusia Counties, State Road 415.	LO-1	E
Do	D-DOT-40409-FL: Lake County, Fla., State Road 50	LO-1	E
Do	D-DOT-40430-AK: F-044-1 (5) and (6) Tudor and Muldoon Rds., Alaska.	LO-2	K
Do	D-DOT-40431-AK: Northern Lights Boulevard Couplet, Alaska.	LO-2	K
Do	D-DOT-40432-FL: State Road 438, Orange County, Fla.	LO-1	E
Do	D-DOT-40433-FL: State Rt. 83, Pinellas County, Fla	LO-1	E
Do	D-DOT-40434-NC: U.S.-52 Davidson-Forsyth Counties, N.C.	LO-1	E
Do	D-DOT-40435-AL: F-248 (11) Shelby and Talladega Counties, Ala.	LO-1	E
Do	D-DOT-40439-OH: State Road 56, Athens, Ohio	LO-1	F
Do	D-DOT-40440-AZ: Is. Defense Highway 40 Bypass, Winslow, Ariz.	LO-2	J
Do	D-DOT-41363-AL: U.S. 280, Tallapoosa and Coosa Counties, Ala.	LO-1	E
Do	D-DOT-41577-AL: Mobile and Baldwin Counties, Ala.	ER-2	E
Do	D-DOT-41580-MN: T.H. 169, Chisholm to Kinney, St. Louis County, Minn.	LO-1	F
Do	D-DOT-41585-IL: IL 161, Marion County, Ill. (Indiana and adjacent).	ER-2	F
Do	D-DOT-41587-NC: Surry-Yadkin-Wilkes Counties, N.C.	LO-1	E
Do	D-DOT-41588-CA: Int. 5, 1.8 miles north on Black Blvd. and Slate Creek, Calif.	LO-1	J
Do	D-DOT-41606-NC: Henderson County, U.S.-25/I-26, North Carolina.	LO-1	E
Do	D-DOT-41618-KY: Mt. Tabor Road, Fayette County, Lexington, Ky.	LO-1	E
Do	D-DOT-41619-SC: Columbus St.-Bogard St., Charleston County, Charleston, S.C.	LO-1	E
Do	D-DOT-41654-MN: T.H. 169, Chisholm to Kinney, St. Louis County, Minn.	LO-1	F
Do	D-DOT-41655-MN: T.H. 212, Yellow Medicine Chippewa and Renville, Minn.	LO-1	F
Do	D-DOT-50036-OH: Bridge, Erie County, Milan, Ohio	LO-1	F
Do	D-DOT-51033-CO: New runway and accessories at Stapleton International Airport, Colo.	LO-2	I
Do	D-DOT-51034-NB: VII-204, Falls City Airport, Nebr	LO-2	H
Do	D-DOT-51198-IL: Columbus Airport, Franklin City, Ill.	LO-2	F
Do	D-DOT-51205-MO: Mansfield Municipal Airport, Mansfield, Mo.	LO-1	H
Do	D-DOT-51206-KS: Wichita Municipal Airport, Wichita, Kans.	LO-1	H
Do	D-DOT-51207-MO: Piedmont Municipal Airport, Piedmont, Mo.	LO-1	H
General Services Administration	D-GSA-81020-CA: Disposal of Lewiston Government Camp, Calif.	LO-2	J
Department of Housing and Urban Development	D-HUD-86001-OH: Brookwood New Community, Montgomery County, Ohio.	ER-2	F

APPENDIX II—DEFINITION OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

ENVIRONMENTAL IMPACT OF THE ACTION

LO—Lack of objection.
EPA has no objections to the proposed action as described in the draft impact statement; or suggests only minor changes in the proposed action.

ER—Environmental reservations.
EPA has reservations concerning the environmental effects of certain aspects of the

proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these aspects.

EU—Environmentally unsatisfactory.

EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

ADEQUACY OF THE IMPACT STATEMENT

Category 1—Adequate.

The draft impact statement adequately sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

Category 2—Insufficient information.

EPA believes that the draft impact statement does not contain sufficient information to assess fully the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft statement.

Category 3—Inadequate.

EPA believes that the draft impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonably available alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

If a draft impact statement is assigned a Category 3, no rating will be made of the project or action, since a basis does not generally exist on which to make such a determination.

APPENDIX III

FINAL ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN DECEMBER 30, 1972 AND JANUARY 18, 1973

Responsible Federal agency	Title and identifying number	General nature of comments	Source for copies of comments
Tennessee Valley Authority.	F-TVA-52025-OO: Control of Eurasian Watermilfoil.	No major objections are raised on the proposed project. EPA recommends the use of mechanical or biological controls, the exercise of caution in the application of 2, 4-D near water supply intakes, and the creation of an active control technology research program.	A
Corps of Engineers...	F-COE-30030-FL: Beach erosion control, Brevard County, Fla.	No objections raised on proposed project. Final statement satisfactorily responds to comments made by EPA during review of the draft statement.	E
Department of Agriculture.	F-DOA-36183-NC: Tallulah Creek Watershed, Graham County, N.C.	.....do.....	E
Department of Transportation.	F-DOT-41626-AL: Jefferson County, 8th Ave., Birmingham, Ala.	.....do.....	E

APPENDIX IV

REGULATIONS, LEGISLATION AND OTHER FEDERAL AGENCY ACTIONS FOR WHICH COMMENTS WERE ISSUED BETWEEN DECEMBER 30, 1972 AND JANUARY 18, 1973

Agency	Title	General nature of comments	Source for copies of comments
FMC.....	Federal Maritime Commission's procedures for implementing NEPA.	Commended initiatives taken by FMC in considering solid waste disposal practices in decision making.	A

APPENDIX V

SOURCES FOR COPIES OF EPA COMMENTS

A. Director, Office of Public Affairs
Environmental Protection Agency
401 M Street SW.
Washington, DC 20460

B. Director of Public Affairs
Region I
Environmental Protection Agency
Room 2303
John F. Kennedy Federal Building
Boston, MA 02203

C. Director of Public Affairs
Region II
Environmental Protection Agency
Room 847
26 Federal Plaza
New York, NY 10007

D. Director of Public Affairs
Region III
Environmental Protection Agency
Curtis Building, Sixth and Walnut Streets
Philadelphia, PA 19106

E. Director of Public Affairs
Region IV
Environmental Protection Agency
Suite 300
1421 Peachtree Street NE.
Atlanta, GA 30309

F. Director of Public Affairs
Region V
Environmental Protection Agency
1 North Wacker Drive
Chicago, IL 60606

G. Director of Public Affairs
Region VI
Environmental Protection Agency
1600 Patterson Street
Dallas, TX 75201

H. Director of Public Affairs
Region VII
Environmental Protection Agency
1735 Baltimore Street
Kansas City, MO 64108

I. Director of Public Affairs
Region VIII
Environmental Protection Agency
Lincoln Tower, Room 916
1860 Lincoln Street
Denver, CO 80203

J. Director of Public Affairs
Region IX
Environmental Protection Agency
100 California Street
San Francisco, CA 94102

K. Director of Public Affairs
Region X
Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101

[FR Doc.73-2632 Filed 2-12-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

STEERING COMMITTEE OF THE FEDERAL/STATE-LOCAL ADVISORY COMMITTEE

Notice of Open Meeting

FEBRUARY 2, 1973.

The Steering Committee of the Cable Television Federal/State-Local Advisory Committee will hold open meetings on February 15 and 16, 1973. The meetings will begin at 10 a.m. and will be held in Room A110 of the FCC Annex, 1229 20th Street, Washington, DC.

The agenda for these meetings will be the continuation of a discussion of issues to be included in the final Advisory Committee report.

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

[FR Doc.73-2834 Filed 2-12-73;8:45 am]

FEDERAL HOME LOAN BANK BOARD

[No. 73-178]

ESTABLISHMENT OF BRANCH OFFICES AND MOBILE FACILITIES IN ILLINOIS

Statement of Policy Regarding Applications

FEBRUARY 7, 1973.

The Federal Home Loan Bank Board, in considering its policy regarding applications by Federal savings and loan associations for permission to establish de novo branch offices, mobile facilities, and satellite offices in Illinois, has determined that commercial banks in Illinois are conducting affiliate operations. Accordingly, under the Board's statement of policy set out in paragraph (b)(1) of § 556.5 of the rules and regulations for the Federal Savings and Loan System (12 CFR 556.5(b)(1)), de novo branch offices, mobile facilities, and satellite offices of Federal associations in Illinois are now, for the first time, permitted by the Board. However, in order to effect an orderly transition, the Board hereby imposes the following limitations with respect to applications by Federal associations for permission to establish de novo branch offices, mobile facilities, and satellite offices in Illinois:

1. The Board will process and consider only such applications as are filed on or after February 1, 1973.

2. During 1973, the Board will process and consider only one such application by each association; this limitation will apply with respect to any such application filed on or before December 31, 1973. If more than one such application is filed during 1973, all but the earliest application will be returned to the applicant.

3. In connection with the approval of any such application, the Board will provide, as a condition of such approval, that the branch office, mobile facility, or

satellite office applied for shall not be opened prior to July 1, 1973.

By the Federal Home Loan Bank Board.

[SEAL] JACK CARTER,
Secretary.

[FR Doc.73-2851 Filed 2-12-73;8:45 am]

FOREST PRODUCTS CO., INC., ET AL.

Notice of Receipt of Application for Approval of Acquisition of Control of Four Corners Savings and Loan Association

FEBRUARY 8, 1973.

Notice is hereby given that the Federal Savings and Loan Insurance Corporation has received an application from the Savings Financial Corp., Albuquerque, N. Mex., a savings and loan holding company controlled by Forest Products Co., Inc., and McNary Lumber Co., Inc., for approval of acquisition of control of Four Corners Savings and Loan Association, Albuquerque, N. Mex., 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, said acquisition to be effected by an exchange of stock of Savings Financial Corp. for stock of Four Corners Savings and 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 15, 1973.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary,
Federal Home Loan Bank Board.

[FR Doc.73-2825 Filed 2-12-73;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CI73-519]

DORCHESTER EXPLORATION, INC.

Notice of Application

FEBRUARY 7, 1973.

Take notice that on January 26, 1973, Dorchester Exploration, Inc. (Applicant), 1204 Vaughn Building, Midland, Tex. 79701, filed in Docket No. CI73-519 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Northern Natural Gas Co. from acreage in Hemphill County, Tex., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is selling natural gas within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and that it proposes to continue said sale for 1 year from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant proposes to sell an average of 15,000 Mcf of gas per day, subject to proportionate reduction to Applicant's 50-percent interest, at 40 cents per Mcf at 14.65 p.s.i.a.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before February 23, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-2719 Filed 2-12-73;8:45 am]

FEDERAL RESERVE SYSTEM

ALABAMA BANCORPORATION

Acquisition of Bank

Alabama Bancorporation, Birmingham, Ala., 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 Commercial National Bank of Anniston, Anniston, Ala. 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 Atlanta. 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 March 5, 1973.

Board of Governors of the Federal Reserve System, February 5, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2808 Filed 2-12-73;8:45 am]

EXCHANGE BANCORPORATION, INC.

Acquisition of Bank

Exchange Bancorporation, Inc., Tampa, Fla., 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 Edison National Bank in Fort Meyers, Fort Meyers, Fla. 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)).

Exchange Bancorporation, Inc., is also engaged in the following nonbank activities: Providing travel services at various bank subsidiaries. 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 Atlanta. 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 March 6, 1973.

Board of Governors of the Federal Reserve System, February 7, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2817 Filed 2-12-73;8:45 am]

FIRST PENNSYLVANIA CORP.

Proposed Acquisitions of Aliquippa Finance Corp., Ellwood Finance Corp., and Beaver Falls Consumer Discount Co., Inc.

First Pennsylvania Corp., Philadelphia, Pa., has applied, in separate applications, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of (1) Aliquippa Finance Corp., Aliquippa, Pa.; (2) Ellwood Finance Corp., Ellwood City, Pa.; and (3) Beaver Falls Consumer Discount Co., Inc., Beaver Falls, Pa. Notice of the applications was published in the following newspapers of general circulation:

The Beaver County Times, Bridgewater, Pa., December 13, 1972.
The News-Tribune, Beaver Falls, Pa., December 12, 1972.
Ellwood City Ledger, Ellwood City, Pa., December 12, 1972.

Applicant states that the proposed subsidiaries would engage in the activities of making, acquiring, and servicing con-

sumer loans, including the sale of credit insurance directly related to such loans. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of these proposals can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on these questions should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why these matters should not be resolved without a hearing.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Philadelphia.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 28, 1973.

Board of Governors of the Federal Reserve System, February 5, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2809 Filed 2-12-73;8:45 am]

OAK, INC.

Formation of One-Bank Holding Company

Oak, Inc., Omaha, Nebr., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 90 percent of the voting shares of Scroggin and Company Bank, Oak, Nebr. The factors that are considered in acting on the appliication are set forth in section 3(c) of the Act (12 U.S.C. 1842 (c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than February 26, 1973.

Board of Governors of the Federal Reserve System, February 6, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2818 Filed 2-12-73;8:45 am]

PENINSULAR HOLDING CORPORATION OF MICHIGAN

Order Approving Formation of Bank Holding Company

Peninsular Holding Corporation of Michigan, Grand Rapids, Mich., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of formation of a bank holding company through acquisition of 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to Union Bank and Trust Company (National Association), Grand Rapids, Mich. (Bank).

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant is a nonoperating company, recently formed for the purpose of acquiring Bank ($286.9 million deposits). (Banking data are as of June 30, 1972.) Bank is the second largest in Kent County holding 21.9 percent of the deposits in commercial banks in that county; the largest bank holds 49.3 percent of county deposits. Consummation of the proposal would have no adverse effects on the other banks in the area. Since Applicant has no present operations or subsidiaries, it appears that consummation of the proposal would not significantly affect existing or potential competition. Competitive considerations are consistent with approval of the application.

Applicant's management is capable; its financial condition is dependent on that of Bank which is deemed to be satisfactory. Prospects for both Applicant and Bank are favorable particularly in view of Applicant's commitment to contribute $4 million to the equity capital accounts of Bank within 90 days of the effective date of this Order and to inject an additional $1 million in equity capital into Bank by June 30, 1974. Banking factors are therefore consistent with approval of the application. Considerations relating to the convenience and needs of the community are also consistent with approval of the application. It is the Board's judgment that the transaction would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the effective date of this Order or (b) later than 3 months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Chicago pursuant to delegated authority.

By order of the Board of Governors,[1] effective February 6, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-2820 Filed 2-12-73;8:45 am]

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Brimmer, Sheehan, and Bucher.

SCHROEDER-GOODENOW MANAGEMENT CO.

Formation of One-Bank Holding Company

Schroeder-Goodenow Management Co., Exira, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent of the voting shares (less directors' qualifying shares) of Exchange State Bank, Exira, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than February 28, 1973.

Board of Governors of the Federal Reserve System, February 7, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2821 Filed 2-12-73;8:45 am]

STATE STREET BOSTON FINANCIAL CORP.

Acquisition of Bank

State Street Boston Financial Corporation, Boston, Mass., 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 Union National Bank, Lowell, Mass. 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 Boston. 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 March 5, 1973.

Board of Governors of the Federal Reserve System, February 6, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-2822 Filed 2-12-73;8:45 am]

VIRGINIA NATIONAL BANKSHARES, INC.

Acquisition of Bank

Virginia National Bankshares, Inc., Norfolk, Va., 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 Virginia Trust Company, Richmond, Va. 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 Richmond. 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 March 5, 1973.

Board of Governors of the Federal Reserve System, February 5, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-2823 Filed 2-12-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 24D-3000]

AMERICAN SCIENTIFIC INDUSTRIES INTERNATIONAL

Order Permanently Suspending Exemption

FEBRUARY 6, 1973.

I. American Scientific Industries International (formerly C V 100 Products, Inc.; formerly 4 Spectra, Inc.) (Issuer), 1980 Columbia Road, Orem, UT 84057, a Utah corporation, filed with the Commission on July 27, 1970, a notification on Form 1-A and an offering circular relating to a proposed offering of 1,250,000 shares of $0.01 par value common stock at $0.10 per share, for an aggregate offering price of $125,000 for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) thereof, and Regulation A promulgated thereunder. The offering circular was later amended to reflect an offering of 2 million shares of $0.01 par value common stock of 4 Spectra, Inc. at $0.10 per share, for an aggregate offering price of $200,000. Centaur Securities, Ltd., 333 South Second East, Salt Lake City, UT 84111, was designated as the underwriter of the offering. A Form 2-A Report filed by the Issuer pursuant to Rule 260 of Regulation A stated that the offering of 4 Spectra, Inc. common stock commenced on January 15, 1971, that the offering was completed on April 7, 1971, and that all 2 million shares being offered were sold.

II. The Commission on August 29, 1972, temporarily suspended the Regulation A exemption of the Issuer, stating that it had reasonable cause to believe, from information reported to it by the staff, that:

(A) The Issuer's offering circular omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, particularly with respect to the following:

(1) The failure to disclose that the Issuer would loan $12,000 from the proceeds of the Regulation A offering to David R. Nemelka, the secretary-treasurer and a director of the Issuer, for his personal use; and

(2) The failure to disclose that the Issuer would purchase 20,000 shares of a speculative and unseasoned security and disburse $20,000 for such purchase from the proceeds of the Regulation A offering.

(B) The terms and conditions of Regulation A had not been complied with in that:

(1) The Issuer filed a Form 2-A which failed to disclose the use of $20,000 of the proceeds of the offering to purchase common stock and the use of $12,000 of the proceeds of the offering to make a loan to one of its officers and directors.

(C) The offering was made in violation of section 17(a) of the Securities Act of 1933, as amended.

III. Issuer's request for a hearing having been withdrawn and no other request for a hearing having been made within 30 days after the entry of an order temporarily suspending the exemption of Issuer under Regulation A, the Commission finds that it is in the public interest and for the protection of investors that the exemption of Issuer be permanently suspended, therefore,

It is ordered, Pursuant to Rule 261 of the general rules and regulations under the Securities Act of 1933, that the exemption of American Scientific Industries International under Regulation A be, and it hereby is, permanently suspended.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-2776 Filed 2-12-73;8:45 am]

[File No. 24NY-6981]

AMERICAN TRUCK SERVICE CLUB, INC.

Order Permanently Suspending Exemption

FEBRUARY 6, 1973.

I. American Truck Service Club, Inc. (ATSC), 26 Platt Street, New York, New York 10038, incorporated in the State of Delaware on May 1, 1968, filed with the Commission on November 20, 1969, a notification on Form 1-A and an offering circular relating to an offering of 50,000 units, each unit consisting of one share of common stock and four warrants, at $6 per unit for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, pursuant to the provisions of section 3(b) thereof and Regulation A promulgated thereunder.

Kenneth Bove & Co., Inc., a registered broker-dealer having its principal place of business in New York City, was named as underwriter. The offering was to be conducted on a "best efforts all or none" basis. The offering commenced on March 16, 1970, and according to the Form 2-A filed by ATSC was completed on April 2, 1970.

II. The Commission on April 18, 1972, temporarily suspended the Regulation A exemption of ATSC, stating that it had reasonable cause to believe, from information reported to it by the staff, that:

A. The notification and offering circular of ATSC contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading with respect to:

(1) The names of the actual promoters, affiliates and principal stockholders of ATSC;

(2) The criminal records of two of the affiliates and principal stockholders of ATSC;

(3) The sale of unregistered securities of ATSC by its affiliates;

(4) Liabilities of ATSC which arose as a result of loans made to ATSC by and on behalf of its control persons;

(5) The use of proceeds of its public offering to repay loans made to it by and on behalf of its controlling persons;

(6) The number of its shares owned by its principal stockholders; and

(7) The actual method of distribution for its offering pursuant to Regulation A.

B. The Regulation A exemption was not available to ATSC because Martin Clare, a promoter and affiliate of ATSC connected with it at that time, had been convicted of a crime specified in Rule 252(d)(1) within 10 years of the filing of ATSC's Notification.

C. The offering was made in violation of sections 5 and 17 of the Securities Act of 1933.

III. ATSC having consented to a permanent suspension order without admitting or denying any of the allegations contained in the temporary suspension order dated April 18, 1972, and no request for a hearing having been made within 30 days after the entry of an order temporarily suspending the exemption of ATSC under Regulation A, the Commission finds that it is in the public interest and for the protection of investors that the exemption of ATSC be permanently suspended, therefore,

It is ordered, Pursuant to Rule 261 of the general rules and regulations under the Securities Act of 1933, that the exemption of American Truck Service Club, Inc., under Regulation A be, and it hereby is, permanently suspended.

By the Commission.

RONALD F. HUNT,
Secretary.

[FR Doc.73-2775 Filed 2-12-73;8:45 am]

[70-5293]

CONSOLIDATED NATURAL GAS CO. ET AL.

Allocation of Consolidated Tax Liabilities

Consolidated Natural Gas Co. (Consolidated), New York, N.Y., a registered holding company, and two of its wholly owned nonutility subsidiary companies, CNG Development Co. Ltd. (CNG Ltd.) and CNG Producing Co. (CNG Company), Pittsburgh, Pa., have filed a joint declaration with this Commission pursuant to section 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 (Act) and Rule 45 promulgated thereunder regarding the following transactions.

Consolidated and its subsidiary companies join annually in filing a consolidated Federal income tax return. The

present declaration states that, under the circumstances hereinafter set forth, certain inequities in the allocation of the group's consolidated income tax liabilities would result if the allocation were effected pursuant to the exemptive provisions of Rule 45(b)(6) under the Act; and in accordance with subparagraph (a) of Rule 45 declarants request authorization for the tax years 1972 and 1973 to allocate consolidated Federal income taxes in a manner other than prescribed by Rule 45(b)(6).

In 1972, Consolidated organized CNG, Ltd., an Alberta (Canada) corporation, and CNG Company, a Delaware corporation, for the purpose of engaging in the exploration and development of Canadian natural gas reserves and supplies in an effort to obtain future supplies of gas for the Consolidated system; and in connection therewith Consolidated was authorized to acquire, for cash, shares of capital stock of these companies to finance such activities. (See Holding Company Act Release Nos. 17559 and 17813, issued May 1, 1972 and December 19, 1972, respectively). These exploration and development activities, it is stated, require substantial amounts of capital, and it may take several years before newly discovered gas reserves can be transported to market and sold. In addition, CNG Company is participating in the further development of domestic supplies of gas, the particulars of which will be the subject of a separate filing with the Commission.

With respect to their Canadian activities, the filing states that in the years 1972 and 1973, CNG, Ltd., and CNG Company will have invested an estimated aggregate of $15,500,000; that this is expected to result in aggregate deductible tax losses for those years amounting to approximately $12,775,000 for dry hole and intangible drilling costs; that such losses, in turn, will be included in the consolidated tax returns, giving rise to reductions of $2,200,000 and $4 million in the consolidated tax liabilities of 1972 and 1973, respectively; and that in the year 1974 similarly-generated tax losses (with commensurate savings in consolidated taxes) are estimated at $10,100,000. Under the tax allocation provisions of Rule 45(b)(6), these tax savings would flow to the other companies in the consolidated tax group and would thereby be rendered unavailable to CNG, Ltd., and CNG Company for use in their exploration and development activities.

It is further stated that but for certain legal and other disqualifying barriers, the System's exploration and development efforts in Canada would have been undertaken directly by Consolidated Gas Supply Corp. (Supply Corporation), Consolidated's principal gas supply subsidiary company; that Supply Corporation, having taxable income, could thereby have utilized tax losses from the Canadian operations and would thus have had the resultant tax-savings funds available for use in future exploration and development of gas supplies; but that, since CNG, Ltd., and CNG Producing had to be formed for the Canadian operations, the tax-loss benefits from their operations would instead be diverted to companies other than these two producing companies in the consolidated tax group under the provisions of Rule 45(b)(6).

For the foregoing reasons, in order to avoid claimed inequities which would otherwise result, declarants seek authorization pursuant to Rule 45(a) to allocate consolidated taxes applicable to the years 1972 and 1973 in a manner other than prescribed by Rule 45(b)(6). The authorization sought would, in effect, grant CNG, Ltd., and CNG Company tax credits for the reduction of consolidated Federal income taxes in those 2 years resulting from tax losses incurred by them as a result of their exploration and development programs. This would be effectuated in accordance with the following procedure:

1. When the operations of any producing subsidiary company, direct or indirect, of Consolidated results in a tax loss, then the consolidated Federal income tax to be allocated among the system companies would be based upon the tax that would result had the company incurring the loss been excluded from the consolidated Federal income tax return.

2. The funds retained by virtue of the reduction in tax resulting from inclusion of that tax loss in the consolidated Federal income tax return would be remitted to the company or companies sustaining such tax loss.

3. In future years, when any such producing company has taxable income, it may be entitled to tax credits as a result of the net operating loss carryback and carryover provisions of section 172(b) of the 1954 Internal Revenue Code, in order to comply with the separate return limitations required by Rule 45(b)(6). Any credits remitted under paragraph 2 would be applied to reduce any credits in future years to which such company may become entitled under the separate return limitations of Rule 45(b)(6).

4. Subject to paragraph 3, in no event will the tax allocated to any subsidiary company of Consolidated exceed the amount of tax of such company computed as if such company had always filed its tax returns on a separate return basis.

5. For purposes of the consolidated income tax regulations, CNG Ltd. is regarded as a domestic corporation. Accordingly, CNG, Ltd., will be treated as such for purposes of the proposed tax allocation under Rule 45.

No State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (Holding Company Act Release No. 17852), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings ahe necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration be permitted to become effective.

It is ordered, Pursuant to the applicable provisions of the Act and rules thereunder, tha said declaration be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-2777 Filed 2-12-73;8:45 am]

[File No. 500-1]

DCS FINANCIAL CORP.

Order Suspending Trading

FEBRUARY 6, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.10 par value, and all other securities of DCS Financial Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from February 7, 1973, through February 16, 1973.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-2778 Filed 2-12-73;8:45 am]

[File No. 500-1]

GOODWAY INC.

Order Suspending Trading

FEBRUARY 6, 1973.

The Common stock, $0.10 par value of Goodway Inc. being traded on the American Stock Exchange, pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Goodway Inc. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to sections 19(a)(4) and 15(c)(5) of the Securities exchange and otherwise than on a nasuch securities on the above mentioned exchange and otherwise than on a na-

tional securities exchange be summarily suspended, this order to be effective for the period from February 7, 1973 through February 16, 1973.

By the Commission.

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

[FR Doc.73-2813 Filed 2-12-73;8:45 am]

[811-1821]

J. M. HARTWELL & ASSOCIATES HEDGE FUND, INC.

Filing of Application

Notice is hereby given that J. M. Hartwell & Associates Hedge Fund, Inc. (Applicant), 345 Park Avenue, New York, N.Y., 10022, a nondiversified, closed-end management investment company registered under the Investment Company Act of 1940 (the Act), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was organized as a Delaware corporation on February 20, 1969. On February 28, 1969, Applicant filed with the Commission a Form N-8A Notification of Registration pursuant to section 8(a) of the Act. On July 31, 1969, Applicant filed with the Commission a Form N-8B-1 Registration Statement pursuant to section 8 of the Act. Applicant's shares were subsequently offered privately to a limited group of investors, but no public offering of Applicant's shares was made.

The application states that on October 27, 1972, Applicant, by unanimous consent of its Board of Directors, resolved to dissolve the Applicant and to submit to its shareholders a proposal for dissolution; that on November 6, 1972, at a Special Meeting of Stockholders called pursuant to written notice, holders of a majority of the outstanding shares of Applicant approved the winding up and dissolution of Applicant; that on December 28, 1972, Applicant filed with the Secretary of State of the State of Delaware a Certificate of Dissolution, in accordance with Delaware law, thereby terminating the existence of Applicant, except for limited purposes specified in the General Corporation Law of Delaware; and that on December 27, 1972, Applicant, in accordance with its plan of liquidation, distributed to its shareholders a final liquidating distribution consisting of cash and securities in cancellation of all issued and outstanding shares.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than March 2, 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 of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated abeve. Proof of such service (by affidavit, or in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

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

[FR Doc.73-2779 Filed 2-12-73;8:45 am]

[70-5307]

MICHIGAN WISCONSIN PIPE LINE CO.

Proposed Solicitation of Bondholders' Consent

Notice is hereby given that Michigan Wisconsin Pipe Line Co. (Michigan Wisconsin), One Woodward Avenue, Detroit, Michigan 48226, a subsidiary company of American Natural Gas Co., a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a), 7 and 12(e) of the Act and Rules 62 and 65 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.

Michigan Wisconsin proposes to amend its mortgage and deed of trust dated as of September 1, 1948, as heretofore supplemented and amended by 25 supplemental indentures (Indenture) to First National City Bank of New York, as trustee. The proposed amendment would (a) immediately increase the aggregate principal amount of bonds of all series which may at any one time be outstanding under and secured by the Indenture from $500 million to $750 million, and (b) provide that such aggregate principal amount of bonds, which may at any one time be outstanding, may thereafter be increased from time to time by a supplemental indenture or indentures executed and delivered to the trustee by Michigan Wisconsin pursuant to authorization by its Board of Directors, without the further consent of the bondholders. No change is proposed in any of the other provisions of the Indenture relating to or restricting the issue and authentication of bonds.

The declaration states that the $500 million limitation was placed in the Indenture solely for the purpose of complying with the laws of certain states in which Michigan Wisconsin had property and which required specification of the amount of bonds which might be outstanding under the mortgage; that in 1948, when the initial series of bonds was issued, the $500 million limitation seemed more than ample for any bonds to be issued in the then foreseeable future; that due to the great expansion of the company during recent years requiring the construction of substantial additional facilities and the impact of inflation on construction costs, the amount of outstanding bonds, as of December 31, 1972, has reached approximately $413 million; and that the proposed amendment will permit the issuance of additional bonds to finance substantial future capital expenditures necessary for the providing of gas supplies to the company's market area.

It is further stated that in the opinion of counsel for Michigan Wisconsin, the proposed amendment will satisfy any relevant state law requirements related to specification of the maximum principal amount of bonds to be issued and secured by the Indenture. The proposed amendment of the Indenture will require the written consent of holders of at least 66⅔ percent in principal amount of Michigan Wisconsin's outstanding First Mortgage Pipe Line Bonds; and the company proposes to solicit the consent of its bondholders through the use of solicitation material submitted herein.

Expenses to be incurred in connection with the proposed transactions are estimated at $57,000, including $5,000 for counsel fees and $12,000 for the fee of the trustee and its counsel. The declaration states that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Michigan Wisconsin has requested that the effectiveness of its declaration with respect to the solicitation of consent from its bondholders be accelerated as provided in Rule 62.

Notice is further given that any interested person may, not later than March 7, 1973, request in writing that a hearing be held with respect to the proposed

amendment to the Indenture, 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 addressed: Secretary, Securities and Exchange Commission, Washington, DC 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.

It appearing to the Commission that the declaration insofar as it proposes the solicitation of bondholders' consent should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered, That the declaration regarding the proposed solicitation of the bondholders' consent be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-2781 Filed 2-12-73;8:45 am]

[70-5304]

MIDDLE SOUTH UTILITIES, INC.

Proposed Issuance and Sale of Common Stock

Notice is hereby given that Middle South Utilities, Inc. (Middle South), 280 Park Avenue, New York, NY 10017, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a) and 7 and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Middle South proposes to issue and sell, pursuant to the competitive bidding requirements of Rule 50 promulgated under the Act, 3,500,000 authorized but unissued shares of its common stock, $5 par value, to underwriters or investment bankers who will agreee to promptly make a public offering thereof. The net proceeds to be derived from the sale of the common stock (presently estimated to be approximately $91 million) will be applied to the repayment of Middle South's then outstanding bank loans. It is presently estimated that such bank loans will amount to $90 million. Any balance of the proceeds will be added to Middle South's treasury, in partial replenishment thereof for loans heretofore made by Middle South to its wholly-owned service subsidiary company, Middle South Services, Inc., and to its wholly owned operating company, Arkansas-Missouri Power Co.

It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction. The fees and expenses to be incurred in connection with the transaction are estimated at $135,000 including Middle South's counsel fees of $27,500, auditor's fees $8,500, and fees of the Service Company for financial and accounting services of $3,000. Fees and expenses of counsel for the underwriters, estimated at $15,000, will be paid by the successful bidders.

Notice is further given that any interested person may, not later than March 2, 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 addressed: 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.73-2780 Filed 2-12-73;8:45 am]

[70-5297]

PENNSYLVANIA POWER CO.

Notice of Proposed Issuance and Sale of Notes to Banks and Guaranty of Notes of Nonaffiliate Company

Notice is hereby given that Pennsylvania Power Co. (Pennsylvania Power), an electric utility subsidiary company of Ohio Edison Co., a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating section 6(b) of the Act as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

Pennsylvania Power proposes that for the balance of 1973 the aggregate amount of short-term notes within the meaning of section 6(b) of the Act which the company may issue, renew, or guarantee, without prior approval of the Commission, be increased from 5 percent to 10 percent of the principal amount and par value of the other securities of the company then outstanding. It is stated that expenditures required in connection with Ohio Edison's construction program and other purposes will require short-term bank borrowings up to approximately $5,500,000 (or more if projected financings are delayed). The lending banks and the participation of each are as follows:

First National Bank of Lawrence County, New Castle, Pa	$600,000
Peoples Bank of Western Pennsylvania, New Castle, Pa	200,000
McDowell National Bank, Sharon, Pa	500,000
Merchants and Manufacturers National Bank, Sharon, Pa	250,000
First Seneca Bank and Trust Co., Oil City, Pa	1,200,000
Northwest Pennsylvania Bank and Trust Co., Oil City, Pa	400,000
First National Bank of Mercer County, Greenville, Pa	300,000
First National City Bank, New York, N.Y	1,300,000
Mellon Bank, N.A., Pittsburgh, Pa	750,000
Total	5,500,000

The interest rate on the notes will be the prime rate of the First National Bank of Lawrence County. It is stated that Pennsylvania Power is not required to maintain compensating balances with any of these participating banks. However, it has been keeping working balances at each of these banks and if such amounts were maintained with the participating banks as compensating balances during 1973, the effective interest cost of the company of borrowings under the line of credit would be 6.76 percent, assuming a prime rate of 6 percent.

Pennsylvania Power also proposes to guarantee up to $7,524,335 of short-term borrowings of Quarto Mining Co. to finance the continuing development of an existing coal mine and other new

mines from which Pennsylvania Power and certain other companies are supplied coal for their jointly owned generating stations. It is expected that these short-term borrowings will expire on October 31, 1973.

The fees and expenses in connection with the proposed transactions are estimated at $3,700, including legal fee of $1,500. The application states that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested persons may, not later than March 5, 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 application 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 addressed: 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 applicant 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 application, as filed or as it may be amended, may be granted 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.73-2814 Filed 2-12-73;8:45 am]

[70-5296]

PHILADELPHIA ELECTRIC POWER CO. AND SUSQUEHANNA POWER CO.

Proposed Increase in Short-Term Note Borrowing

Notice is hereby given that Philadelphia Electric Co. (PECo.), an exempt Market Street, Philadelphia, PA 19101, a registered holding company and a public-utility subsidiary company of Philadelphia Electric Co. (PEPCo), an exempt holding company, and PEPCo's wholly owned subsidiary company, Susquehanna Power Co. (SPCo), a public-utility company, have filed a declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a), 6(b), and 7 of the Act and Rule 70 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.

As of December 31, 1972, PEPCo had outstanding $2.1 million principal amount of unsecured promissory notes issued to banks pursuant to the exemptive provisions of the first sentence of section 6(b) of the Act. PEPCo proposes to issue and sell, from time to time through December 31, 1974, to the banks named below, additional notes so that the aggregate principal amount to be outstanding at any time will not exceed $5 million. SPCo proposes to issue and sell, from time to time to December 31, 1974, to the banks named below, its promisory notes; the aggregate principal amount to be outstanding at any time will not exceed $8 million. All the notes will mature not later than 9 months from the respective dates of issue and may be prepaid at any time without premium. The interest rate on the proposed notes will be the prime commercial rate in effect on the date of issuance. There are no specific requirements for compensating balances in conjunction with the proposed bank loans. The parent (PEPCo) maintains normal working balances with all of said lending banks, which also do not require compensating balances for said parent. Such working balances average approximately 15.5 percent of the average amount of short-term notes outstanding. Assuming a Prime interest rate of 6 percent per annum and assuming that the balances maintained were required as compensating balances, the effective cost of short-term notes will be approximately 7.1 percent.

The prospective borrowings will be obtained from the following banks, with the maximum limits as to the combined borrowings of both companies at any one time:

	Maximum borrowing
The First Pennsylvania Banking & Trust Co.	$3,000,000
Girard Bank	3,000,000
Industrial Valley Bank & Trust Co.	1,000,000
The Fidelity Bank	3,000,000
The Philadelphia National Bank	3,000,000
Provident National Bank	2,000,000
Central Penn National Bank	1,000,000
American Bank & Trust Co.	1,000,000
Southeast National Bank	1,000,000

PEPCo proposes to utilize the proceeds of the contemplated borrowings for construction expenditures and for sinking fund payments. SPCo proposes to utilize the proceeds of the contemplated borrowings for intermediate financing of its future improvements, including recreational facilities at its project.

The declaration states that there are no fees, commissions, or expenses in connection with the proposed transactions and that no State commission or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

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 addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should 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 the declarants 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 amended or as it may be further 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.73-2782 Filed 2-12-73;8:45 am]

[File No. 24C-3297]

SCHOOL BUS AIRLINES OF AMERICA, INC.

Order Permanently Suspending Exemption

FEBRUARY 6, 1973.

I. School Bus Airlines of America, Inc. (Issuer), Suite 521-522, 4 North Main Street, Dayton, OH 45402, incorporated in the State of Ohio on May 8, 1969, filed with the Chicago Regional Office on May 27, 1971, a notification on Form 1-A, and an offering circular pertaining to a proposed offering of 250,000 shares of $.10 par value common stock at $.50 per share for an aggregate offering price of $125,000 (24C-3297). The offering commenced on June 29, 1971.

This filing was made for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, pursuant to the provisions of section 3(b) thereof and Regulation A promulgated thereunder.

II. The Commission on August 17, 1972, temporarily suspended the Regulation A exemption of the Issuer, stating that it had reasonable cause to believe, from information reported to it by the staff, that:

A. The Issuer's offering circular contained untrue statements of material facts and omitted to state material facts

necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to the following:

1. The Issuer's failure to establish an escrow for proceeds of the offering, contingent on the sale of all 250,000 shares offered.

2. The Issuer's failure to terminate the sale of shares after the expiration of 45 days after the commencement of the offering.

3. The Issuer's failure to return all funds in full, since all 250,000 shares were not sold within the 45-day offering period; and

4. The contingent liability arising from the sale of 157,268 shares of the Issuer's stock in violation of section 5 of the Securities Act of 1933.

B. The terms and conditions of Regulation A had not been complied with in that:

1. The notification failed to disclose that approximately 157,268 shares of the Issuer were sold prior to the clearance date of the offering, in addition to the 50,000 shares which were disclosed in Item 9 as being sold prior to the clearance date; and

2. The Issuer failed to file a report on Form 2-A within 30 days after the end of each 6-month period following the date of the original offering circular.

C. The offering was made in violation of section 17 of the Securities Act of 1933.

III. Issuer having consented to a permanent suspension order without admitting or denying any of the allegations contained in the temporary suspension order dated August 17, 1972, an earlier request for a hearing having been canceled and no other request for a hearing having been made within 30 days after the entry of an order temporarily suspending the exemption of Issuer under Regulation A, the Commission finds that it is in the public interest and for the protection of investors that the exemption of Issuer be permanently suspended, therefore,

It is ordered, Pursuant to Rule 261 of the general rules and regulations under the Securities Act of 1933, that the exemption of School Bus Airlines of America, Inc., under Regulation A be, and it hereby is, permanently suspended.

By the Commission.

RONALD F. HUNT,
Secretary.

[Filed Doc.73-2783 Filed 2-12-73;8:45 am]

TARIFF COMMISSION

[TEA-W-178]

LYNCH CORP.

Workers' Petition for a Determination; Investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of the Symphonic Electronic Corporation Division, Lowell, Mass., of the Lynch Corp., New York, N.Y., the U.S. Tariff Commission, on February 8, 1973, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with radio-phonograph and radio-phonograph-tape player combinations (of the types provided for in item 685.30 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed on or before February 23, 1973.

The petition filed in this case is available for inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and F Streets, NW., Washington, D.C., and at the New York City office of the Tariff Commission located in room 437 of the customhouse.

By order of the Commission.

Issued February 8, 1973.

KENNETH R. MASON,
Secretary.

[FR Doc.73-2839 Filed 2-12-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 178]

ASSIGNMENT OF HEARINGS

FEBRUARY 8, 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.

I & S No. 8814 Sub-1, general increase, the Alaska Railroad, I & S No. 8814 Sub 2, increased rates and charges from and to Alaska, now being assigned pre-hearing conference Feb. 14, 1973, at the offices of the Interstate Commerce Commission, Washington, D.C.

I & S No. 8809, switching charges at Peoria or Pekin, Ill., now assigned Mar. 5, 1973, at Chicago, Ill., is canceled.

I & S M 26509, general increases, Jan. 1973, Pacific Northwest Territory, now being assigned Mar. 9, 1973, at Seattle, Wash., in a hearing room to be later designated.

No. 35480, Colorado intrastate freight rates and charges, 1971, now being assigned Mar. 19, 1973, at Denver, Colo., will be held in room 1430, Federal Building, 1961 Stout Street.

MC-96925 Sub 4, Jacksonville Transfer & Storage, Inc., now being assigned hearing Mar. 26, 1973 (1 week), at Tallahassee, Fla. in a hearing room to be later designated.

MC 61592 Sub 280, Jenkins Truck Line, Inc., now being assigned hearing Apr. 2, 1973 (1 day), at Chicago, Ill., in a hearing room to be later designated.

MC 61231 Sub 68, Ace Lines, Inc., now being assigned hearing, Apr. 4, 1973 (3 days), at Chicago, Ill., in a hearing room to be later designated.

MC 114211 Sub 160, Warren Transport, Inc., continued to Feb. 26, 1973, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC-124606 Sub 2, Ford Truck Line, Inc., now assigned Feb. 20, 1973, at Nashville, Tenn., is postponed indefinitely.

MC-F-11651, LaPorte Transit Co., Inc.—purchase—Cooper Cartage, now being assigned hearing Apr. 9, 1973 (1 week), at Chicago, Ill., in a hearing room to be later designated.

MC 51146 Sub 268, Schneider Transport, Inc., now assigned continued hearing Mar. 26, 1973, at Chicago, Ill. is advanced to Mar. 12, 1973, will be held in room 1086A, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Ill.

MC-123048 Sub 226, Diamond Transportation System, Inc., now assigned Feb. 28, 1973, at Washington, D.C., is canceled and transferred to modified procedure.

MC 108136 Sub 15, Valley Cab Co., Inc., now being assigned hearing Mar. 19, 1973 (3 days), at Hartford, Conn., in a hearing room to be later designated.

AB 5 Sub 52, Cleveland, Cincinnati, Chicago, and St. Louis Railway Co.; and George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees of the property of Penn Central Transportation Co., debtor, abandonment between Hillsboro and Litchfield, Montgomery County, Ill., now being assigned Apr. 9, 1973 (2 days), at Litchfield, Ill., in a hearing room to be later designated.

MC 112617 Sub 299, Liquid Transporters, Inc., now being assigned hearing Apr. 16, 1973 (2 days), at Louisville, Ky., in a hearing room to be later designated.

MC 109014 Sub 6, Great Southern Coaches, Inc., now being assigned Apr. 11, 1973 (3 days), at St. Louis, Mo., in a hearing room to be later designated.

MC 29120 Sub 131, All-American Transport, Inc., now being assigned Apr. 16, 1973 (1 week), at St. Louis, Mo., in a hearing room to be later designated.

AB-5 Sub 49, George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees of the Penn Central Transportation Co., debtor, abandonment New Milford and Canaan, Litchfield County, Conn., now being assigned hearing Mar. 22, 1973 (2 days), at New Milford, Conn., in a hearing room to be later designated.

MC-F-11487, Auclair Transportation, Inc.—control and merger—Paul V. Adams Trucking, Inc., MC 9429 Sub 6, Paul V. Adams Trucking, Inc., MC-F-11552, Auclair Transportation, Inc.—purchase (portion)—Bonded Trucking & Rigging, Inc., FD 27182, Auclair Transportation, Inc., notes, now being assigned hearing Mar. 26, 1973 (3 days), at Boston, Mass., in a hearing room to be later designated.

MC 59124 Sub 16, Maiers Motor Freight Co., now being assigned hearing Apr. 9, 1973 (2 days), at Louisville, Ky., in a hearing room to be later designated.

MC 112617 Sub 300, Liquid Transporters, Inc., and MC 117344 Sub 221, The Maxwell Co., now being assigned hearing Apr. 11, 1973 (3 days), at Louisville, Ky., in a hearing room to be later designated.

AB-5 Sub 94, George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees of the property of Penn Central Transportation Co., debtor, abandonment between Zionsville and Lebanon, Boone County, Ind., now being assigned hearing Apr. 19, 1973 (2 days), at Indianapolis, Ind., in a hearing room to be later designated.

AB-5 Sub 70, George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees of the property of Penn Central Transportation Co., debtor, abandonment between Uniontown and South Uniontown, Fayette County, Pa., now assigned Feb. 12, 1973, at Uniontown, Pa., is canceled.

MC-52022 Sub 6, Santini Brothers, Inc., now being assigned hearing Apr. 10, 1973 (3 days), at Tallahassee, Fla., in a hearing room to be later designated.

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

[FR Doc.73-2835 Filed 2-12-73;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

FEBRUARY 8, 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 28, 1973.

FSA No. 42617—*Carbolic Acid (Phenol) from Points in Louisiana and Texas.* Filed by Southwestern Freight Bureau, Agent (No. B-380), for interested rail carriers. Rates on acid, carbolic (phenol), in tank car loads, as described in the application, from specified points in Louisiana and Texas, to East St. Louis, Ill., and St. Louis, Mo.

Grounds for relief—Market competition.

Tariffs—Supplements 29 and 170 to Southwestern Freight Bureau, Agent, tariffs I.C.C. 5044 and 4899. Rates are published to become effective on March 14, 1973.

FSA No. 42619—*Carbon Gas or Oil Blacks to Points in Official Territory.* Filed by Traffic Executive Association-Eastern Railroads, Agent (E.R. No. 3031), for interested rail carriers. Rates on blacks (carbon gas or oil blacks), in multiple wall paper bags, in boxcars, as described in the application, from North Atlantic ports of Albany, N.Y., Baltimore, Md., Boston, Mass., New York, N.Y., Norfolk, Va., Philadelphia, Pa., Richmond, Va., and points grouped therewith, to points in official territory, including northern Illinois and southern Wisconsin.

Grounds for relief—Port equalization.

Tariffs—Traffic Executive Association-Eastern Railroads, Agent, tariff I.C.C. C-948, and supplement 1 thereto. Rates are published to become effective on March 24, 1973.

FSA No. 42620—*Joint Water-Rail Container Rates—Mitsui O.S.K. Lines, Ltd.* Filed by Mitsui O.S.K. Lines, Ltd. (No. 4) (M.O.L. Series), for itself and interested rail carriers. Rates on general commodities, between ports in Hong Kong, Japan, and Korea, on the one hand, and rail stations on the U.S. Atlantic and Gulf seaboard, on the other.

Grounds for relief—Water competition.

AGGREGATE-OF-INTERMEDIATES

FSA No. 42618—*Carbolic Acid (Phenol) from Points in Louisiana and Texas.* Filed by Southwestern Freight Bureau, Agent (No. B-381), for interested rail carriers. Rates on acid, carbolic (phenol), in tank car loads, as described in the application, from specified points in Louisiana and Texas, to East St. Louis, Ill., and St. Louis, Mo.

Grounds for relief—Maintenance of depressed rates without use of such rates as factors in constructing combination rates.

Tariffs—Supplements 29 and 170 to Southwestern Freight Bureau, Agent, tariffs I.C.C. 5044 and 4899. Rates are published to become effective on March 14, 1973.

By the Commission.

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

[FR Doc.73-2837 Filed 2-12-73;8:45 am]

[Notice 208]

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 March 5, 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-73974. By order entered November 10, 1972, the Motor Carrier Board approved the transfer to Transport Express, Inc., Holly, Colo., of the operating rights set forth in Certificates Nos. MC-107799 (Sub-No. 4), and MC-107799 (Sub-No. 6), issued by the Commission October 22, 1968, and December 2, 1969, respectively, to J. O. Ringgenberg, Inc., Dodge City, Kans., authorizing the transportation of: Anhydrous ammonia, from specified points in Kansas, Texas, Nebraska, and Iowa, to points in Colorado, Wyoming, Texas, Oklahoma, Missouri, Nebraska, Iowa, Kansas, South Dakota, Illinois, Minnesota, and North Dakota. Grady L. Fox, 222 Amarillo Building, Amarillo, Tex. 79101, attorney for applicants.

No. MC-FC-73975. By order of November 13, 1972, the Motor Carrier Board approved the transfer to Pat's Transfer, Inc., Hershey, Nebr., of Certificate No. MC-18352 issued to Howard McConnell, Hershey, Nebr., authorizing the transportation of: Commodities of a general commodity nature, between specified points and areas in Nebraska, Colorado, Iowa, and Wyoming. Robert E. Roeder, attorney, Post Office Box 908, North Platte, NE 69101.

No. MC-FC-74021. By order of November 22, 1972, the Motor Carrier Board approved the transfer to Bob's Delivery Service, Inc., Santa Fe Springs, Calif., of Certificate of Registration No. MC-120590 (Sub-No. 1), issued July 23, 1968, to Mildred C. O'Donell, doing business as Bob's Delivery Service, Los Angeles, Calif., evidencing a right to engage in transportation in interstate commerce as described in certificate granted in decision No. 60069, dated May 9, 1960, transferred and reissued pursuant to decision No. 73016 dated September 6, 1967, by Public Utilities Commission of California. Donald Murchison, 9454 Wilshire Boulevard, Suite 400, Glendale Federal Building, Beverly Hills, CA 90212, attorney for applicants.

No. MC-FC-74026. By order of November 9, 1972, the Motor Carrier Board approved the transfer to Dressing Transport, Inc., Wilson, N.Y., of the operating rights in Permit No. MC-135124 (Sub-No. 1), issued March 23, 1972, to Charles Murray, Freemont, Ohio, authorizing the transportation of various commodities from and to points in New York, New Hampshire, Massachusetts, Connecticut, Pennsylvania, New Jersey, Maryland, Ohio, Michigan, Illinois, Florida, Georgia, South Carolina, Maine, Vermont, Rhode

Island, West Virginia, Kentucky, Wisconsin, North Carolina, and the District of Columbia. Ronald W. Malin, Bankers Trust of Jamestown Building, Jamestown, N.Y. 14701, attorney for applicants.

No. MC-FC-74030.[1] By order entered November 9, 1972, the Motor Carrier Board approved the transfer to Leo Montgomery and Norma Montgomery, doing business as A-1 Montgomery Van Lines, Vallejo, Calif., of the operating rights set forth in Certificate No. MC-127360 (Sub-No. 2), issued February 12, 1970, to John W. Roy, Jr., doing business as American Moving & Storage Co., Oakland, Calif., authorizing the transportation of used household goods, between points in Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, and Solano Countries, Calif., with certain specified restrictions. Alan F. Wohlstetter, 1700 K Street NW., Washington DC 20006, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-2836 Filed 2-12-73;8:45 am]

[1] Through inadvertence the above-numbered proceedings was not published in the November 29, 1972 FEDERAL REGISTER as indicated in the orders.

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.

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