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PART I

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HIGHLIGHTS OF THIS ISSUE

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

REMINDERS

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

Rules Going Into Effect Today

federal register

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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

Department of Housing and Urban Development

Correction

In FR Doc. 73-3747 appearing on page 5256 in the issue for Thursday, February 27, 1973, the following should be inserted as the first clause of the first sentence of the second paragraph: "Effective on February 27, 1973,".

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. K]

PART 211—CORPORATIONS ENGAGED IN FOREIGN BANKING AND FINANCING UNDER THE FEDERAL RESERVE ACT

Dealing in Securities

The Board of Governors has ruled that a foreign subsidiary of an Edge Act corporation that engages in the business of buying and selling securities outside the United States may participate, as an incident to that business, in international arbitrage under a joint arrangement with a member firm of the New York Stock Exchange, in accordance with Rule 437 of the exchange. International arbitrage involves the business of buying and selling securities in one market with the intent of reversing such transactions in a market in a country different from that in which the original transaction has taken place, in order to profit from price differences between such markets, and which business is not casual, but contains the element of continuity.

The Board's ruling relates to the Edge Act (section 25(a) of the Federal Reserve Act) and the Board's Regulation K. It sets forth special restrictions on the foreign subsidiary's participation intended to limit the activity to bona fide arbitrage incidental to a foreign securities business, as well as special reporting requirements to monitor activities undertaken pursuant to such ruling. To publish its ruling, the Board has issued the following interpretation:

§ 211.109 International joint account arbitrage incidental to securities business abroad.

(a) A question has been raised with the Board as to whether a foreign subsidiary of a corporation organized under section 25(a) of the Federal Reserve Act (an Edge corporation) may participate with a member firm of the New York Stock Exchange in the operation of an international arbitrage joint account of the kind authorized by rule 437 of the New York Stock Exchange with permission of the Exchange. The Edge corporation's investment in the foreign subsidiary was made subject to the Board's standard condition that the subsidiary should not engage in any activities that would not be permissible if it were a corporation organized under section 25(a) not "engaged in banking" within the meaning of § 211.2(d) of this part (regulation K). For the reasons hereinafter stated, the Board believes that, under appropriate conditions, such participation in an international arbitrage account is not prohibited by either section 25(a) of the Federal Reserve Act or regulation K.

(b) The foreign subsidiary on whose behalf the inquiry was made was a foreign bank that is engaged in the business of dealing in securities outside the United States, including securities that are issued by corporations chartered in the United States and are listed on the New York Stock Exchange. The international arbitrage joint account will be operated in accordance with the rules of the New York Stock Exchange. The foreign bank would post to the joint account transactions executed by it in foreign markets in securities listed on the Exchange. Purchases and sales in foreign markets would be made primarily from or to foreign-owned financial institutions dealing in securities. The member firm of the Exchange would execute orders on the Exchange reversing those transactions on the same business day, thereby eliminating long or short positions in the joint account before the end of the New York trading day. The foreign bank and the member firm would share equally in profits and losses on the operations of the account.

(c) The question posed involves an interpretation of paragraph 10 of section 25(a) and § 211.5(b) of regulation K. Paragraph 10 of section 25(a) prohibits an Edge corporation from carrying on any part of its business in the United States except such as, in the Board's judgment, shall be incidental to its international or foreign business. (With regard to the permissible operations of foreign subsidiaries of Edge corporations, the effect of paragraph 10, under the Board's standard condition mentioned above, is to duplicate the prohibition contained in paragraph 8 of section 25(a) against investment by an Edge corporation in any corporation transacting any business in the United States except such as, in the Board's judgment, may be incidental to its international or foreign business.) Section 211.5(b) of regulation K prohibits an Edge corporation, with certain exceptions not material to this ruling, from engaging in the business of selling or distributing securities in the United States or underwriting any portion thereof so sold or distributed.

(d) International arbitrage involves engaging in the business of buying or selling securities in one market with the intent of reversing such transactions in a market in a country different from that in which the original transaction has taken place, in order to profit from price differences between such markets. In the Boards' judgment, the participation by a foreign subsidiary of an Edge corporation in an international arbitrage joint account, as described above, with a member firm of the New York Stock Exchange would not place that foreign subsidiary in the business of selling or distributing securities in the United States, or involve it in carrying on any part of its business in the United States except such as may be incidental to its international or foreign business, if the account is operated subject to the following restrictions: (1) Transactions in the United States shall be confined to those that reverse prior transactions initiated in foreign markets, (2) purchases and sales of securities outside the United States shall be made only from or to foreign residents not controlled by any U.S. company, (3) transactions shall be confined to bona fide arbitrage as defined for purposes of rule 437 of the New York Stock Exchange, (4) the joint account shall be regularly settled between the participants at no greater than quarterly intervals, and (5) in no event will orders be placed for the joint account in securities being underwritten by the foreign subsidiary. Under such circumstances, the Board is of the opinion that a foreign subsidiary of an Edge corporation may engage in international joint account arbitrage as an incident to its dealings in securities outside the United States consistently with section 25(a) and regulation K.

(e) Full information concerning the volume and the nature of the transactions in such an account and enabling assessment of compliance with the foregoing restrictions shall be available and will be reviewed during examinations of an Edge corporation whose foreign subsidiary participates in an international arbitrage joint account. Such information shall be retained in the Edge corporation's records for at least 3 years after such transactions are executed.

[Interprets and applies 12 U.S.C. 615]

By order of the Board of Governors of the Federal Reserve System, February 22, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-4042 Filed 3-2-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 72-RM-3]

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

Alteration of Control Zone

On January 19, 1973, a notice of proposed rule making was published in the FEDERAL REGISTER (38 FR 1937) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Sheridan, Wyo., control zone, Sheridan, Wyo.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No objections have been received and the proposed amendment is hereby adopted without change.

Effective date. This amendment shall be effective 0901 G.m.t., May 24, 1973.

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

Issued in Aurora, Colo., on February 23, 1973.

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

In § 71.171 (38 FR 351) the description of the Sheridan, Wyo., control zone is amended to read as follows:

Within a 5-mile radius of the Sheridan County Airport (latitude 44°46'25" N., longitude 106°55'15" W.); within 4 miles each side of the Sheridan VORTAC 312° and 327° radials, extending from the 5-mile-radius zone to 11.5 miles northwest of the VORTAC; and within 4 miles each side of the Sheridan VORTAC 140° radial extending from the 5-mile-radius zone to 24½ miles southeast of the VORTAC.

[FR Doc.73-4069 Filed 3-2-73;8:45 am]

[Airspace Docket No. 72-SW-82]

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 Fayetteville, Ark., control zone.

On January 9, 1973, a notice of proposed rule making was published in the FEDERAL REGISTER (38 FR 1124) stating the Federal Aviation Administration proposed to alter the Fayetteville, Ark., control zone.

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

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

In § 71.171 (38 FR 351), the Fayetteville, Ark., control zone is amended, in part, by adding "and within 2 miles each side of the Fayetteville ILS localizer north course 349° bearing extending from the 5.5-mile-radius zone to 11.5 miles north of the localizer site (latitude 35°59'37.5" N., longitude 94°10'02" W.).

(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 20, 1973.

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

[FR Doc.73-4070 Filed 3-2-73;8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

Subchapter A—Economic Regulations

[Reg. ER-790, Amdt. 19]

PART 221—CONSTRUCTION, PUBLICATION, FILING, AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Stay of Effective Date of Certain Provisions of ER-779

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 27th day of February 1973.

Part 221 of the Board's regulations (14 CFR Part 221) contains provisions[1] which require certificated air carriers and foreign air carriers which avail themselves of limitations on liability to passengers for death or personal injury, and for loss, damage to, or delay in the delivery of passenger baggage under the Warsaw Convention to give notice of such limitations in the form of a ticket and sign notice. The dollar limitations specified in these notices are intended to reflect the minimum liability requirements of the convention, which are based on a gold standard. In light of the 1972 devaluation of the dollar in relation to gold,[2] the Board issued ER-779,[3] amending the subject provisions to accurately restate the dollar limitations currently allowable under the convention.

Although these amendments became effective on December 18, 1972, the Board determined to allow carriers until March 15, 1973, to revise their ticket notices to reflect the dollar amounts specified in ER-779, but to permit them to do so prior to that date.

[1] Sections 221.175 (Special notice of limited liability for death or injury under the Warsaw Convention) and 221.176 (Notice of limited liability for baggage; alternative consolidated notice of liability limitations).

[2] The enacted devaluation became effective May 8, 1972. Public Law 92-268, Mar. 31, 1972.

[3] Adopted Nov. 14, 1972, 37 FR 24657.

As a result of recent Presidential action, it now appears that there will soon be enacted a further devaluation of the dollar. Because such devaluation will render the dollar limits specified in ER-779 obsolete, no regulatory purpose would be served by requiring carriers who have not already revised their ticket stock in compliance with that regulation to do so now.

In light of the foregoing, the Board hereby stays until further notice the effectiveness of ER-779, insofar as it requires carriers to revise their passenger tickets, by March 15, 1973, to express the convention dollar limitations in the amounts specified therein. Those carriers who have already so revised their ticket stock, as permitted by ER-779, will not be considered to be in violation of the applicable notice provisions of §§ 221.175 and 221.176, insofar as such revised ticket stock is used, until further notice.

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324)

Effective: February 27, 1973.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.73-4118 Filed 3-2-73;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 8832]

PART 13—PROHIBITED TRADE PRACTICES

The Hearst Corp., et al.

Subpart—Advertising falsely or misleadingly: § 13.75 *Free goods or services;* § 13.15 *Individual's special selection or situation;* § 13.155 *Prices:* 13.155–40 Exaggerated as regular and customary; 13.155–70 Percentage savings; 13.155–95 Terms and conditions. Subpart—Coercing and intimidating: § 13.350 *Customers or prospective customers.* Subpart—Furnishing means and instrumentalities of misrepresentation or deception: § 13.1055 *Furnishing means and instrumentalities of misrepresentation or deception.* Subpart—Misrepresenting oneself and goods—Business Status, Advantages or Connections: § 13.1390 *Concealed subsidiary, fictitious collection agency, etc.;* — Goods: § 13.1625 *Free goods or services;* § 13.1663 *Individual's special selection or situation;* § 13.1697 *Opportunities in product or service;* § 13.1757 *Surveys;* — Prices: § 13.1805 *Exaggerated as regular and customary;* § 13.1823 *Terms and conditions.* Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1870 *Nature;* § 13.1892 *Sales Contract, right-to-cancel provision;* § 13.1905 *Terms and conditions:* 13.1905–50 Sales contract. Subpart—Securing signatures wrongfully: § 13.2175 *Securing signatures wrongfully.* Subpart—Threatening infringement

suits, not in good faith: § 13.2264 *Delinquent debt collection.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45). [Cease and desist order, The Hearst Corporation, et al., New York, N.Y., Docket No. 8832, Jan. 22, 1973].

In the Matter of the Hearst Corp., a Corporation, Periodical Publishers' Service Bureau, Inc., a Corporation, and International Magazine Service of the Mid-Atlantic, Inc., a Corporation

Consent order requiring a Baltimore, Md., magazine subscription firm, one of the respondents in this case, among other things to cease misrepresenting the purpose of the call or solicitation; misrepresenting the persons or class of persons afforded the opportunity of purchasing respondent's products or services; representing that any merchandise or service is free or that any merchandise is available for a price less than customary or regular; misrepresenting the savings accorded purchasers; failing to cancel subscriptions when representations have been made that said subscription is cancellable; misrepresenting the terms or conditions of payments; misrepresenting the nature, kind or legal characteristics of any document; attempting to harass or intimidate customers in order to effect payment of any account; and failing to give customers a 3-day cooling-off period in which to cancel subscriptions. Respondent is further ordered to cease making sales solicitations through third parties who do not agree to be bound by the order; dealing with any who continue on their own the prohibited practices; and must institute a program of continuing surveillance to determine dealer compliance.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

I. *It is ordered*, That respondent International Magazine Service of the Mid-Atlantic, Inc., a corporation, and its successor or assigns, and its officer, representatives, employees, franchisees, licensees, salesmen, agents or solicitors, and the representatives, employees, franchisees, licensees, salesmen, agents or solicitors engaged by or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution to consumers (the term consumer is defined as the party to whom said merchandise or service is offered or extended who is a natural person, and the merchandise or services which are the subject of the transaction are primarily for personal, family, or household purpose) of magazines or any other publications or merchandise or subscriptions to purchase any such magazines or services or in the collection or attempted collection of any delinquent or other subscription contract or other accounts, in Commerce, as "Commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that respondent is primarily conducting or participating in a survey, quiz or is engaged in any activity other than soliciting business; or misrepresenting, in any manner, the purpose of the call or solicitation.

2. Representing, directly or indirectly, that any offer to sell said products or services is being made only to specially selected persons; or misrepresenting, in any manner, the persons or class of persons afforded the opportunity of purchasing respondent's products or services.

3. Representing, directly or indirectly, that any merchandise or service is free or without cost, or is provided as a gift to either the subscriber or a person designated by him, or without cost or charge in connection with the purchase of, or agreement to purchase, any merchandise or service unless the stated price of the merchandise or service required to be purchased in order to obtain such free merchandise or gifts is the same or less than the customary and usual price at which such merchandise or service required to be purchased has been sold separately from such free gift item, and in the same combination if more than one item is required to be purchased, for a substantial period of time in the recent and regular course of business in the area in which the representation is made; provided, that nothing herein shall prevent respondent from continuing to sell or offer to sell "split orders" under which the subscriber designates one or more of the magazines to which he or she is subscribing and directs that such magazine or magazines be sent to a third person or persons rather than the subscriber without such third person or persons paying any part of the price of the subscription contract.

4. Representing, directly or indirectly, that any price for any merchandise or service covers only the cost of mailing, handling, editing, printing, or any other element of cost, or is at or below cost; or that any price is a special or reduced price unless it constitutes a significant reduction from an established selling price at which such merchandise or service has been sold in substantial quantities by respondent in the same combination of items in the recent and regular course of their business; or misrepresenting, in any manner, the savings which will be accorded or made available to purchasers.

5. Refusing or failing upon request to cancel a contract when the representation has been made, either directly or indirectly, that the contract will be cancellable.

6. Representing, directly or indirectly, that subscriptions may never be cancelled or refusing to cancel such subscriptions on the grounds that respondent has forwarded such subscriptions to the publishers and respondent is committed to the publishers for the term of the contract or for any other deceptive reason.

7. Failing, clearly and conspicuously to reveal at the outset of the initial contact and of all subsequent contacts of prospective purchasers, whether by telephone, written or printed communications, or person-to-person, that the purpose of such contact or solicitation is to sell magazines or periodical subscriptions, products, or services, as the case may be.

8. Making any reference or statement concerning "50 cents per week", "60 months", or any other statement as to a sum of money or duration or period of time in connection with a subscription contract or other purchase agreement which does not in fact provide, at the option of the purchaser, for the payment of the stated sum, at the stated duration or period of time; or misrepresenting in any manner, the terms, conditions, method, rate or time of payment actually made available to purchaser or prospective purchasers.

9. Representing, directly or indirectly, that a subscription contract or purchase agreement is a "preference list", "guarantee", "route slip" or any kind of document other than a contract or agreement; or misrepresenting, in any manner, the nature, kind, or legal charteristic of any document: *Provided however*, That when a contract included a guarantee, respondent may represent it to be a contract and guarantee.

10. Failing to reveal orally and in writing clearly and conspicuously to each purchaser or prospective purchaser before execution, the identity, nature, and legal import of any document they are requested or required to execute in connection with the purchase of any product or service.

11. Attempting, by the use of telephone calls or any other means, to harass or intimidate customers in order to effect payment of any account.

12. Representing, directly or indirectly, that in the event of nonpayment or delinquency of any account or debt arising from any subscription contract or purchase agreement, the general or public credit rating or standing of any person may be adversely affected, unless respondent refers the information concerning such delinquency to a bona fide credit agency.

13. Failing clearly and conspicuously to disclose in each contact with a debtor or alleged debtor that the collection agency to which the delinquent account will be referred, or that said collection agency which is contacting the delinquent debtor or alleged debtor, is an operating division of the respondent, and is not an independent, bona fide collection agency, unless in fact such collection agency is an independent, bona fide collection agency.

14. Representing, either directly or indirectly, that legal action may be instituted unless respondent in good faith intends to institute legal actions against each delinquent debtor or alleged debtor to whom such representation is made or misrepresenting, in any manner, the action or results of any action which may be taken to effect payment of any such account or debt.

15. Contracting for any sale in the form of a subscription contract or purchase agreement which shall become

binding on the purchaser prior to a period of time not less than 3 business days after the date of signing by the purchaser.

16. Failing to disclose orally prior to the time of sale and in writing on any subscription contract or other agreement, with conspicuousness and clarity, that the purchaser may rescind or cancel the subscription by directing or mailing a notice of cancellation to respondent's address within 3 business days after the date of sale.

17. Failing to provide a separate and clearly understandable form which the purchaser may use as a notice of cancellation.

18. Failing to include on the cover of each coupon book furnished to a subscriber:

(a) A statement showing the total number of coupons in the book, the dollar amount of each such coupon; and

(b) A legend stating:

Check the number of coupons in this book and their amounts against your original subscription contract.

19. Failing to furnish to each subscriber at the time of his signing of the subscription contract a duplicate original of the contract showing the exact number and name of the magazines or other publication to which the purchaser is subscribing, the number of issues for each and the total price for each magazine and for all such magazines: *Provided, however,* As an alternative, the price for each magazine may be furnished on a separate schedule attached to each of said contracts.

20. Failing to furnish with each coupon book initially provided to each subscriber, a copy of the final sales contract: *Provided,* That as an alternative, as long as the authenticity of the subscriber's signature is not in dispute, respondent may furnish a separate written statement identifying the magazines being subscribed to, the number of issues for each, and a complete statement of the payment terms.

21. Failing or refusing to cancel, at the subscriber's or purchaser's sole option, all or any portion of such a subscription contract or purchase contract whenever respondent in good faith has determined that a misrepresentation prohibited by this order has been made to such subscriber: *Provided,* That if a cancellation is effected, evidence that respondent has cancelled a contract shall not be admissible in any proceeding brought to recover penalties for alleged violation of any other paragraph of this order.

22. In the event any magazine covered by such a subscription contract ceases publication during the term of the contract, failing to apprise subscribers to such magazine pursuant to such contract of its discontinuance and to offer such subscribers equivalent value through the opportunity to substitute therefor one or more magazines not covered by the contract or extend the subscription term(s) of a magazine or magazines covered by the contract.

23. Failing to clearly, conspicuously, and adequately designate and disclose both orally, and in writing on the subscription contract on the same side of the page and above or adjacent to the place for the customer's signature:

(a) The total cash price,

(b) The downpayment,

(c) The unpaid balance of the cash price,

(d) The amount financed, if any,

(e) The rate of finance charge, if any, expressed as the annual percentage rate, and

(f) The number, amount and due dates or period of payments scheduled to satisfy the payment of the contract.

24. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may be misled or deceived in the manner or by the acts and practices prohibited by this order.

It is further ordered:

(a) That respondent herein deliver, in person or by registered mail, a copy of this decision and order to each of its present and future dealers or franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, or other representatives who sell, promote or distribute the products or services included in this order; provided, however, that respondent may require its present and future dealers, franchisees, licensees, or other agents to deliver a copy of this decision and order to each of their employees, salesmen, agents, solicitors, independent contractors or other representatives.

(b) That respondent provide each person so described in paragraph (a) above with a form, returnable to the respondent and to the Commission, clearly stating his intention to be bound by and to conform his business practices to the requirements of this order.

(c) That respondent inform all such present and future dealers or franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, or other representatives who sell, promote or distribute the products or services included in this order that the respondent shall not use any third party, or the services of any third party for the solicitation of magazine subscription or other products or services unless such third party agrees to and does file notice with the respondent and the Commission that it will be bound by the provisions contained in this order.

(d) If such party will not agree to so file said notice with respondent and the Commission and be bound by the provisions of the Order, the respondent shall not use such third party to sell or solicit subscriptions or other products or services.

(e) That respondent so inform the persons so engaged that the respondent is obligated by this order to discontinue dealing with these persons who continue on their own the deceptive acts or practices prohibited by this Order.

(f) That respondent institute a program of continuing surveillance adequate to reveal whether the business operation of each of said persons engaged conform to the requirements of this Order; and

(g) That respondent discontinue dealing with the persons so engaged, revealed by the aforesaid program of surveillance, who continue on their own deceptive acts or practices prohibited by this Order; provided, that if remedial action is taken, evidence of such dismissal or termination shall not be admissible in any proceeding brought to recover penalties for alleged violation of any other paragraph of this Order.

It is further ordered, That respondent herein shall notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution which may affect compliance obligations arising out of the Order.

It is further ordered, That respondent herein shall, within sixty (60) days after service upon it of this Order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this Order.

Issued: January 22, 1973.

By the Commission, with Chairman Kirkpatrick not participating.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.73-4088 Filed 3-2-73;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER C—DRUGS

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Phenylbutazone

The Commissioner of Food and Drugs has evaluated new animal drug applications (45-514V and 45-515V) filed by Fort Dodge Laboratories, Inc., Fort Dodge, Iowa 50501, proposing the safe and effective use of phenylbutazone injection and phenylbutazone tablets for the treatment of dogs and horses. The applications are 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), Parts 135b and 135c are amended as follows:

1. Part 135b is amended in § 135b.47 by adding a new paragraph (e) as follows:

§ 135b.47 Phenylbutazone injection.

* * * * *

(e) (1) *Specifications.* Phenylbutazone injection contains 100 milligrams of

phenylbutazone in each milliliter of sterile aqueous solution.

(2) *Sponsor.* See code No. 017 in § 135.501(c) of this chapter.

(3) *Conditions of use.* (i) It is administered intravenously as an aid in relieving inflammation associated with musculoskeletal conditions such as arthritides (osteoarthritis) in horses and dogs and intervertebral disc syndrome in dogs.

(ii) It is administered to horses at a dosage level of 1 to 2 grams of phenylbutazone per 1,000 pounds of body weight daily for a maximum of 5 successive days. It is administered to dogs at a dosage level of 10 milligrams of phenylbutazone per pound of body weight daily for a maximum of 2 successive days.

(iii) Not for use in horses intended for food.

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

2. Part 135c is amended in § 135c.57 by adding a new paragraph (e) as follows:

§ 135c.57 Phenylbutazone tablets and boluses.

* * * * *

(e) (1) *Specifications.* The drug is in tablet form with each tablet containing 100 milligrams or 1 gram of phenylbutazone per tablet.

(2) *Sponsor.* See code No. 017 in § 135.501(c) of this chapter.

(3) *Conditions of use.* (i) It is used as an aid in relieving inflammation associated with musculoskeletal conditions such as arthritides (osteoarthritis) in the horse and dogs and intervertebral disc syndrome in dogs.

(ii) It is administered to dogs at a dosage level of 20 milligrams per pound of body weight in three divided doses daily with a maximum dosage level of 800 milligrams per day regardless of body weight. Dosage should be reduced as symptoms regress. It is used in horses at a dosage level of 2 to 4 grams per 1,000 pounds of body weight but not to exceed 4 grams per animal daily. The dosage should be gradually reduced to a maintenance dosage, the lowest dosage required to produce clinical response.

(iii) Not for use in horses intended for food.

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

Effective date. This order shall be effective March 5, 1973.

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

Dated: February 26, 1973.

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

[FR Doc.73-4053 Filed 3-2-73;8:45 am]

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Chlorpromazine Hydrochloride

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (10-905V) filed by Pitman-Moore, Inc., Washington Crossing, N.J. 08560, proposing the safe and effective use of chlorpromazine hydrochloride tablets and injection for the treatment of 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), Parts 135b and 135c are amended as follows:

1. Part 135b is amended by adding a new section as follows:

§ 135b.80 Chlorpromazine hydrochloride injection.

(a) *Specifications.* Chlorpromazine hydrochloride injection contains 25 milligrams of chlorpromazine hydrochloride in each milliliter.

(b) *Sponsor.* See code No. 066 in § 135.501(c) of this chapter.

(c) *Conditions of use.* (1) It is administered either intramuscularly or intravenously to dogs and cats as a tranquilizer, potentiator, and antiemetic with a sedating effect.

(2) It is administered to dogs and cats intravenously at a dosage level of 25 milligrams per 12.5 to 100 pounds body weight. It is administered intramuscularly at a dosage level of 25 milligrams per 8 pounds to 50 pounds body weight. It is administered one to four times daily depending upon size of dose and the needs of the patient.

(3) It is not to be used in conjunction with organophosphates and/or procaine hydrochloride since phenothiazines may potentiate the toxicity of organophosphates and the activity of procaine hydrochloride.

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

2. Part 135c is amended by adding a new section as follows:

§ 135c.105 Chlorpromazine hydrochloride.

(a) *Specifications.* The drug is in tablet form with the tablets containing clorpromazine hydrochloride as the active drug ingredient.

(b) *Sponsor.* See code No. 066 in § 135.501(c) of this chapter.

(c) *Conditions of use.* (1) The drug is administered orally to dogs and cats as a tranquilizer, potentiator, and antiemetic with a sedating effect.

(2) It is administered orally to dogs and cats at a dosage level of one tablet containing 10 milligrams of chlorpromazine hydrochloride per 7 pounds body weight or at a dosage level of one tablet containing 25 milligrams of chlorpromazine hydrochloride per 17 pounds body weight. It is administered one to four times daily depending upon the size of the dose and the needs of the patient.

(3) It is not to be used in conjunction with organophosphates and/or procaine hydrochloride since phenothiazines may potentiate the toxicity of organophosphates and the activity of procaine hydrochloride.

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

Effective date. This order shall be effective March 5, 1973.

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

Dated: February 26, 1973.

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

[FR Doc.73-4052 Filed 3-2-73;8:45 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Trichlorfon Oral Veterinary

The Commissioner of Food and Drugs has evaluated a new animal drug application (48-915V) filed by Ralston Purina Co., Checkerboard Square, St. Louis, Mo. 63199, proposing the safe and effective use of trichlorfon as an anthelmintic for use in horses. 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), § 135c.39 is amended in paragraph (b) by substituting a code number for the present firm name and adding thereto an additional code number as follows:

§ 135c.39 Trichlorfon oral veterinary.

* * * * *

(b) *Sponsor.* See code Nos. 047 and 048 in § 135.501(c) of this chapter.

* * * * *

Effective date. This order shall be effective on March 5, 1973.

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

Dated: February 26, 1973.

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

[FR Doc.73-4054 Filed 3-2-73;8:45 am]

Title 24—Housing and Urban Development

CHAPTER IX—OFFICE OF INTERSTATE LAND SALES REGISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-73-226]

PART 1700—INTRODUCTION

Subpart B—Delegations of Basic Authority and Functions

ASSISTANT DEPUTY ADMINISTRATOR

The delegations of Basic Authority and Functions published July 1, 1972, 37 FR

13097, are amended to add responsibility as follows:

1. Add § 1700.95, to read as follows:

§ 1700.95 Assistant Deputy Administrator.

The Assistant Deputy Administrator is designated by the Administrator to perform routine matters concurrently with the Deputy Administrator.

Effective date. This amendment is effective on March 5, 1973.

GEORGE K. BERNSTEIN,
Interstate Land Sales Administrator.

[FR Doc.73-4148 Filed 3-2-73;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7262]

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

Disallowance of Interest on Certain Indebtedness Incurred by Corporatons To Acquire Stock or Assets of Another Corporation

By a notice of proposed rule making appearing in the FEDERAL REGISTER for May 4, 1972 (37 FR 9030), amendments of the Income Tax Regulations (26 CFR Part 1) were proposed in order to provide rules under section 279 enacted by the Tax Reform Act of 1969, relating to interest on indebtedness incurred by a corporation to acquire stock or assets of another corporation. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, certain changes were made and the proposed amendments of the regulations subject to the changes indicated below are adopted by this document:

Section 279 was enacted to provide specific rules for determining whether interest paid on an obligation in the context of a corporate acquisition, is deductible. It provides that a corporation is not to be allowed an interest deduction with respect to certain types of indebtedness which it issues as consideration for the acquisition of stock in another corporation, or the acquisition of assets of another corporation.

Under the proposed regulations, obligations issued within 12 months prior or subsequent to an acquisition were deemed to be used to provide consideration for the acquisition. In addition, if at the time of the issuance of an obligation the issuing corporation anticipated an acquisition or at the time of an acquisition the issuing corporation foresaw the need to issue obligations for its future economic needs then the obligation was deemed to be used to provide consideration for the acquisition.

The final regulations pursuant to comments pointing out that the rule was beyond the scope of the statute, has abandoned the 12-month presumption. Instead, whether an obligation is issued to provide consideration will depend on the facts and circumstances. As an illustration of the facts and circumstances test, the final regulations couple the anticipation and the foreseeable tests that appeared in the proposed notice with a provision that an obligation will not be deemed issued to provide consideration unless it would not have been issued otherwise.

Where the corporation, which issued the obligation, is a member of an affiliated group, the affiliated group is to be treated as the issuing corporation. The final regulations are more explicit as to how affiliated groups are treated as the issuing corporation. Thus, with respect to the 5-percent stock ownership rule of section 279(d)(5), and in determining "control" for purposes of section 279, the holdings of each member of the affiliated group are added together. Also a retesting as provided in section 279(c) is to be done if any member of the affiliated group issues another obligation to acquire additional stock or assets of the acquired corporation.

The rule that appeared in the proposed regulations with respect to the exemption for acquisitions of certain foreign corporations has been modified. The provision that gross income from sources without the United States shall not include income which is effectively connected with a U.S. trade or business, has been eliminated. The final regulations adhere to the traditional rules of income from sources without the United States. Additionally, corporations whose gross income includes 50 percent or more of foreign personal holding company income are no longer excluded from the exemption applicable to foreign corporations.

The final regulations relieve corporations with an interest deduction of $5 million or less on obligations issued to provide consideration for an acquisition, of the reporting requirements that appeared in the proposed regulations. Since section 279 disallows an interest deduction only when the deduction is in excess of $5 million it was felt unnecessary to require a statement of taxpayers with an interest deduction of a lesser amount.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

On May 4, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 FR 9030) to amend the regulations to provide rules under section 279 enacted by the Tax Reform Act of 1969 relating to interest on indebtedness incurred by a corporation to acquire stock or assets of another corporation. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below.

PARAGRAPH 1. Section 1.279-1 as set forth in the May 4, 1972, notice of proposed rule making, is amended by revising the first sentence therein. Such revised provision reads as set forth below.

PAR. 2. Paragraphs (a)(2), (b)(1), and (c) of § 1.279-2, as set forth in the May 4, 1972, notice of proposed rule making, are amended by revising the language immediately following subdivision (iv) of paragraph (a)(2), by revising the last sentence in subparagraph (1) of paragraph (b), by redesignating examples (1), (2), and (3) of paragraph (c) as examples (2), (3), and (4), respectively, and by inserting immediately before redesignated example (2) new example (1). Such revised and added provisions read, as set forth below.

PAR. 3. Paragraphs (b) (2), (3), (5) and (g)(3) of § 1.279-3, as set forth in the May 4, 1972, notice of proposed rule making, are amended by revising paragraphs (b) (2) and (3), by adding two sentences at the end of subdivision (i) of paragraph (b)(5), and by eliminating the last two sentences from paragraph (g)(3). Such revised and added provisions read, as set forth below.

PAR. 4. Paragraphs (b)(1) and (c)(2) of § 1.279-4, as set forth in the May 4, 1972, notice of proposed rule making, are amended by revising paragraph (b)(1) and by revising example (2) of paragraph (c)(2). Such revised provisions read, as set forth below.

PAR. 5. Paragraphs (b)(2), (d)(1), (e)(1), and (h) of § 1.279-5, as set forth in the May 4, 1972 notice of proposed rule making, are amended by adding two sentences at the end of subdivision (i) of paragraph (b)(2), by adding a sentence at the end of subdivision (ii) of paragraph (d)(1), by revising the penultimate sentence of that portion of paragraph (e)(1) that immediately follows subdivision (ii) and by revising paragraph (h). Such revised and added provisions read, as set forth below.

PAR. 6. Paragraph (a) of § 1.279-6, as set forth in the May 4, 1972 notice of proposed rule making, is amended by adding a sentence at the end thereof. Such revised provision reads, as set forth below.

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

JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved: February 26, 1973.

JOHN H. HALL,
Deputy Assistant Secretary of the Treasury.

The following new sections are added immediately after § 1.278-1:

§ 1.279 Statutory provisions; disallowance of interest on certain indebtedness incurred by corporation to acquire stock or assets of another corporation.

SEC. 279. *Interest on indebtedness incurred by corporation to acquire stock or assets of another corporation*—(a) *General rules.* No deduction shall be allowed for any interest paid or incurred by a corporation during the taxable year with respect to its corporate acquisition indebtedness to the extent that such interest exceeds—

(1) $5 million, reduced by

(2) The amount of interest paid or incurred by such corporation during such year on obligations (A) issued after December 31,

1967, to provide consideration for an acquisition described in paragraph (1) of subsection (b), but (B) which are not corporate acquisition indebtedness.

(b) *Corporate acquisition indebtedness.* For purposes of this section, the term "corporate acquisition indebtedness" means any obligation evidenced by a bond, debenture, note, or certificate or other evidence of indebtedness issued after October 9, 1969, by a corporation (hereinafter in this section referred to as "issuing corporation") if—

(1) Such obligation is issued to provide consideration for the acquisition of—

(A) Stock in another corporation (hereinafter in this section referred to as "acquired corporation"), or

(B) Assets of another corporation (hereinafter in this section referred to as "acquired corporation") pursuant to a plan under which at least two-thirds (in value) of all the assets (excluding money) used in trades and businesses carried on by such corporation are acquired,

(2) Such obligation is either—

(A) Subordinated to the claims of trade creditors of the issuing corporation generally, or

(B) Expressly subordinated in right of payment to the payment of any substantial amount of unsecured indebtedness, whether outstanding or subsequently issued, of the issuing corporation,

(3) The bond or other evidence of indebtedness is either—

(A) Convertible directly or indirectly into stock of the issuing corporation, or

(B) Part of an investment unit or other arrangement which includes, in addition to such bond or other evidence of indebtedness, an option to acquire, directly or indirectly, stock in the issuing corporation, and

(4) As of a day determined under subsection (c)(1), either—

(A) The ratio of debt to equity (as defined in subsection (c)(2)) of the issuing corporation exceeds 2 to 1, or

(B) The projected earnings (as defined in subsection (c)(3)) do not exceed three times the annual interest to be paid or incurred (determined under subsection (c)(4)).

(c) *Rules for application of subsection (b)(4).* For purposes of subsection (b)(4)—

(1) *Time of determination.* Determinations are to be made as of the last day of any taxable year of the issuing corporation in which it issues any obligation to provide consideration for an acquisition described in subsection (b)(1) of stock in, or assets of, the acquired corporation.

(2) *Ratio of debt to equity.* The term "ratio of debt to equity" means the ratio which the total indebtedness of the issuing corporation bears to the sum of its money and all its other assets (in an amount equal to their adjusted basis for determining gain) less such total indebtedness.

(3) *Projected earnings.*

(A) The term "projected earnings" means the "average annual earnings" (as defined in subparagraph (B)) of—

(i) The issuing corporation only, if clause (ii) does not apply, or

(ii) Both the issuing corporation and the acquired corporation, in any case where the issuing corporation has acquired control (as defined in section 368(c)), or has acquired substantially all of the properties, of the acquired corporation.

(B) The average annual earnings referred to in subparagraph (A) is, for any corporation, the amount of its earnings and profits for any 3-year period ending with the last day of a taxable year of the issuing corporation described in paragraph (1), computed without reduction for—

(i) Interest paid or incurred,

(ii) Depreciation or amortization allowed under this chapter,

(iii) Liability for tax under this chapter, and

(iv) Distributions to which section 301(c)(1) applies (other than such distributions from the acquired to the issuing corporation),

and reduced to an annual average for such 3-year period pursuant to regulations prescribed by the Secretary or his delegate. Such regulations shall include rules for cases where any corporation was not in existence for all of such 3-year period or such period includes only a portion of a taxable year of any corporation.

(4) *Annual interest to be paid or incurred.* The term "annual interest to be paid or incurred" means—

(A) If subparagraph (B) does not apply, the annual interest to be paid or incurred by the issuing corporation only, determined by reference to its total indebtedness outstanding, or

(B) If projected earnings are determined under clause (ii) of paragraph (3)(A), the annual interest to be paid or incurred by both the issuing corporation and the acquired corporation, determined by reference to their combined total indebtedness outstanding.

(5) *Special rules for banks and lending or finance companies.* With respect to any corporation which is a bank (as defined in section 581) or is primarily engaged in a lending or finance business—

(A) In determining under paragraph (2) the ratio of debt to equity of such corporation (or of the affiliated group of which such corporation is a member), the total indebtedness of such corporation (and the assets of such corporation) shall be reduced by an amount equal to the total indebtedness owed to such corporation which arises out of the banking business of such corporation, or out of the lending or finance business of such corporation, as the case may be;

(B) In determining under paragraph (4) the annual interest to be paid or incurred by such corporation (or by the issuing and acquired corporations referred to in paragraph (4)(B) or by the affiliated group of which such corporation is a member) the amount of such interest (determined without regard to this paragraph) shall be reduced by an amount which bears the same ratio to the amount of such interest as the amount of the reduction for the taxable year under subparagraph (A) bears to the total indebtedness of such corporation; and

(C) In determining under paragraph (3)(B) the average annual earnings, the amount of the earnings and profits for the 3-year period shall be reduced by the sum of the reductions under subparagraph (B) for such period.

For purposes of this paragraph, the term "lending or finance business" means a business of making loans or purchasing or discounting accounts receivable, notes, or installment obligations.

(d) *Taxable years to which applicable.* In applying this section—

(1) *First year of disallowance.* The deduction of interest on any obligation shall not be disallowed under subsection (a) before the first taxable year of the issuing corporation as of the last day of which the application of either subparagraph (A) or subparagraph (B) of subsection (b)(4) results in such obligation being corporate acquisition indebtedness.

(2) *General rule for succeeding years.* Except as provided in paragraphs (3), (4), and (5), if an obligation is determined to be corporate acquisition indebtedness as of the last day of any taxable year of the issuing corporation, it shall be corporate acquisition indebtedness for such taxable year and all subsequent taxable years.

(3) *Redetermination where control, etc., is acquired.* If an obligation is determined to be corporate acquisition indebtedness as of the close of a taxable year of the issuing corporation in which clause (i) of subsection (c)(3)(A) applied, but would not be corporate acquisition indebtedness if the determination were made as of the close of the first taxable year of such corporation thereafter in which clause (ii) of subsection (c)(3)(A) could apply, such obligation shall be considered not to be corporate acquisition indebtedness for such later taxable year and all taxable years thereafter.

(4) *Special 3-year rule.* If an obligation which has been determined to be corporate acquisition indebtedness for any taxable year would not be such indebtedness for each of any 3 consecutive taxable years thereafter if subsection (b)(4) were applied as of the close of each of such 3 years, then such obligation shall not be corporate acquisition indebtedness for all taxable years after such 3 consecutive taxable years.

(5) *Five-percent stock rule.* In the case of obligations issued to provide consideration for the acquisition of stock in another corporation, such obligations shall be corporate acquisition indebtedness for a taxable year only if at some time after October 9, 1969, and before the close of such year the issuing corporation owns 5 percent or more of the total combined voting power of all classes of stock entitled to vote of such other corporation.

(e) *Certain nontaxable transactions.* An acquisition of stock of a corporation of which the issuing corporation is in control (as defined in section 368(c)) in a transaction in which gain or loss is not recognized shall be deemed an acquisition described in paragraph (1) of subsection (b) only if immediately before such transaction (1) the acquired corporation was in existence, and (2) the issuing corporation was not in control (as defined in section 368(c)) of such corporation.

(f) *Exemption for certain acquisitions of foreign corporations.* For purposes of this section, the term "corporate acquisition indebtedness" does not include any indebtedness issued to any person to provide consideration for the acquisition of stock in, or assets of, any foreign corporation substantially all of the income of which, for the 3-year period ending with the date of such acquisition or for such part of such period as the foreign corporation was in existence, is from sources without the United States.

(g) *Affiliated groups.* In any case in which the issuing corporation is a member of an affiliated group, the application of this section shall be determined, pursuant to regulations prescribed by the Secretary or his delegate, by treating all of the members of the affiliated group in the aggregate as the issuing corporation, except that the ratio of debt to equity of, projected earnings of, and annual interest to be paid or incurred by any corporation (other than the issuing corporation determined without regard to this subsection) shall be included in the determinations required under subparagraphs (A) and (B) of subsection (b)(4) as of any day only if such corporation is a member of the affiliated group on such day, and, in determining projected earnings of such corporation under subsection (c)(3), there shall be taken into account only the earnings and profits of such corporation for the period during which it was a member of the affiliated group. For purposes of the preceding sentence, the term "affiliated group" has the meaning assigned to such term by section 1504(a), except that all corporations other than the acquired corporation shall be treated as includable corporations (without any exclusion under section 1504(b)) and

the acquired corporation shall not be treated as an includable corporation.

(h) *Changes in obligation.* For purposes of this section—

(1) Any extension, renewal, or refinancing of an obligation evidencing a preexisting indebtedness shall not be deemed to be the issuance of a new obligation.

(2) Any obligation which is corporate acquisition indebtedness of the issuing corporation is also corporate acquisition indebtedness of any corporation which becomes liable for such obligation as guarantor, endorser, or indemnitor or which assumes liability for such obligation in any transaction.

(i) *Certain obligations issued after October 9, 1969.* For purposes of this section, an obligation shall not be corporate acquisition indebtedness if issued after October 9, 1969, to provide consideration for the acquisition of—

(1) Stock or assets pursuant to a binding written contract which was in effect on October 9, 1969, and at all times thereafter before such acquisition, or

(2) Stock in any corporation where the issuing corporation, on October 9, 1969, and at all times thereafter before such acquisition, owned at least 50 percent of the total combined voting power of all classes of stock entitled to vote of the acquired corporation.

Paragraph (2) shall cease to apply when (at any time on or after October 9, 1969) the issuing corporation has acquired control (as defined in section 368(c)) of the acquired corporation.

(j) *Effect on other provisions.* No inference shall be drawn from any provision in this section that any instrument designated as a bond, debenture, note, or certificate or other evidence of indebtedness by its issuer represents an obligation or indebtedness of such issuer in applying any other provision of this title.

[Sec. 279 as added by section 411(a), Tax Reform Act of 1969 (83 Stat. 604)]

§ 1.279–1 General rule; purpose.

An obligation issued to provide a consideration directly or indirectly for a corporate acquisition, although constituting a debt under section 385, may have characteristics which make it more appropriate that the participation in the corporation which the obligation represents be treated for purposes of the deduction of interest as if it were a stockholder interest rather than a creditors interest. To deal with such cases, section 279 imposes certain limitations on the deductibility of interest paid or incurred on obligations which have certain equity characteristics and are classified as corporate acquisition indebtedness. Generally, section 279 provides that no deduction will be allowed for any interest paid or incurred by a corporation during the taxable year with respect to its corporate acquisition indebtedness to the extent such interest exceeds $5 million. However, the $5 million limitation is reduced by the amount of interest paid or incurred on obligations issued under the circumstances described in section 279(a)(2) but which are not corporate acquisition indebtedness. Section 279(b) provides that an obligation will be corporate acquisition indebtedness if it was issued under certain circumstances and meets the four tests enumerated therein. Although an obligation may satisfy the conditions referred to in the preceding sentence, it may still escape classification as corporate acquisition indebtedness if the conditions as described in sections 279(d)(3), (4), and (5), 279(f), or 279(i) are present. However, no inference should be drawn from the rules of section 279 as to whether a particular instrument labeled a bond, debenture, note, or other evidence of indebtedness is in fact a debt. Before the determination as to whether the deduction for payments pursuant to an obligation as described in this section is to be disallowed, the obligation must first qualify as debt in accordance with section 385. If the obligation is not debt under section 385, it will be unnecessary to apply section 279 to any payments pursuant to such obligation.

§ 1.279–2 Amount of disallowance of interest on corporate acquisition indebtedness.

(a) *In general.* Under section 279(a), no deduction is allowed for any interest paid or incurred by a corporation during the taxable year with respect to its corporate acquisition indebtedness to the extent that such interest exceeds—

(1) $5 million, reduced by

(2) The amount of interest paid or incurred by such corporation during such year on any obligation issued after December 31, 1967, to provide consideration directly or indirectly for an acquisition described in section 279(b)(1) but which is not corporate acquisition indebtedness. Such an obligation is not corporate acquisition indebtedness if it—

(i) Was issued prior to October 10, 1969, or

(ii) Was issued after October 9, 1969, but does not meet any one or more of the tests of section 279(b) (2), (3), or (4), or

(iii) Was originally deemed to be corporate acquisition indebtedness but is no longer so treated by virtue of the application of paragraphs (3) or (4) of section 279(d), or

(iv) Is specifically excluded from treatment as corporate acquisition indebtedness by virtue of sections 279(d)(5), (f), or (i).

The computation of the amount by which the $5 million limitation described in this paragraph is to be reduced with respect to any taxable year is to be made as of the last day of the taxable year in which an acquisition described in section 279(b)(1) occurs. In no case shall the $5 million limitation be reduced below zero.

(b) *Certain terms defined.* When used in section 279 and the regulations thereunder—

(1) The term "issued" includes the giving of a note or other evidence of indebtedness to a bank or other lender as well as an issuance of a bond or debenture. In the case of obligations which are registered with the Securities and Exchange Commission, the date of issue is the date on which the issue is first offered to the public. In the case of obligations which are not so registered, the date of issue is the date on which the obligation is sold to the first purchaser.

(2) The term "interest" includes both stated interest and unstated interest (such as original issue discount as defined in paragraph (a)(1) of § 1.163-4 and amounts treated as interest under section 483).

(3) The term "money" means cash and its equivalent.

(4) The term "control" shall have the meaning assigned to such term by section 368(c).

(5) The term "affiliated group" shall have the meaning assigned to such term by section 1504(a), except that all corporations other than the acquired corporation shall be treated as includible corporations (without any exclusion under section 1504(b)) and the acquired corporation shall not be treated as an includible corporation. This definition shall apply whether or not some or all of the members of the affiliated group file a consolidated return.

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

Example (1). On March 4, 1973, X Corporation, a calendar year taxpayer, issues an obligation which satisfies the test of section 279(b)(1) but fails to satisfy either of the tests of section 279(b) (2) or (3). Since at least one of the tests of section 279(b) is not satisfied the obligation is not corporate acquisition indebtedness. However, since the test of section 279(b)(1) is satisfied, the interest on the obligation will reduce the $5 million limitation provided by section 279(a)(1).

Example (2). On January 1, 1969, X Corporation, a calendar year taxpayer, issues an obligation, which satisfies all the tests of section 279(b), requiring it to pay $3.5 million of interest each year. Since the obligation was issued before October 10, 1969, the obligation cannot be corporate acquisition indebtedness, and a deduction for the $3.5 million of interest attributable to such obligation is not subject to disallowance under section 279(a). However, since the obligation was issued after December 31, 1967, in an acquisition described in section 279(b)(1), under section 279(a)(2) the $3.5 million of interest attributable to such obligation reduces the $5 million limitation provided by section 279(a)(1) to $1.5 million.

Example (3). Assume the same facts as in example (2). Assume further that on January 1, 1970, X Corporation issues more obligations which are classified as corporate acquisition indebtedness and which require X Corporation to pay $4 million of interest each year. For 1970 the amount of interest paid or accrued on corporate acquisition indebtedness, which may be deducted is $1.5 million ($5 million maximum provided by section 279(a)(1) less $3.5 million, the reduction required under section 279(a)(2)). Thus, $2.5 million of the $4 million interest incurred on a corporate acquisition indebtedness is subject to disallowance under section 279(a) for the taxable year 1970.

Example (4). Assume the same facts as in example (3). Assume further that on the last day of each of the taxable years 1971, 1972, and 1973 of X Corporation neither of the conditions described in section 279(b)(4) was present.

Under these circumstances, such obligations for all taxable years after 1973 are not corporate acquisition indebtedness under section 279(d)(4). Therefore, the $2.5 million of interest previously not deductible is now deductible for all taxable years after 1973. Although such obligations are no longer

treated as corporate acquisition indebtedness, the interest attributable thereto must be applied in further reduction of the $5 million limitation. The $5 million limitation of section 279(a)(1) is therefore reduced to zero. While the limitation is at the zero level any interest paid or incurred on corporate acquisition indebtedness will be disallowed.

§ 1.279–3 Corporate acquisition indebtedness.

(a) *Corporate acquisition indebtedness.* For purposes of section 279, the term "corporate acquisition indebtedness" means any obligation evidenced by a bond, debenture, note, or certificate or other evidence of indebtedness issued after October 9, 1969, by a corporation (referred to in section 279 and the regulations thereunder as "issuing corporation") if the obligation is issued to provide consideration directly or indirectly for the acquisition of stock in, or certain assets of, another corporation (as described in paragraph (b) of this § 1.279–3), is "subordinated" (as described in paragraph (c) of this § 1.279–3), is "convertible" (as described in paragraph (d) of this § 1.279–3), and satisfies either the ratio of debt to equity test (as described in paragraph (f) of § 1.279–5) or the projected earnings test (as described in paragraph (d) of § 1.279–5).

(b) *Acquisition of stock or assets.* (1) Section 279(b)(1) describes one of the tests to be satisfied if an obligation is to be classified as corporate acquisition indebtedness. Under section 279(b)(1), the obligation must be issued to provide consideration directly or indirectly for the acquisition of—

(i) Stock (whether voting or nonvoting) in another corporation (referred to in section 279 and the regulations thereunder as "acquired corporation"), or

(ii) Assets of another corporation (referred to in section 279 and the regulations thereunder as "acquired corporation") pursuant to a plan under which at least two-thirds (in value) of all the assets (excluding money) used in trades or businesses carried on by such corporation are acquired.

The fact that the corporation that issues the obligation is not the same corporation that acquires the acquired corporation does not prevent the application of section 279. For example, if X Corporation acquires all the stock of Y Corporation through the utilization of an obligation of Z Corporation, a wholly owned subsidiary of X Corporation, this section will apply.

(2) *Direct or indirect consideration.* Obligations are issued to provide direct consideration for an acquisition within the meaning of section 279(b)(1) where the obligations are issued to the shareholders of an acquired corporation in exchange for stock in such acquired corporation or where the obligations are issued to the acquired corporation in exchange for its assets. The application of the provisions of this subsection relating to indirect consideration for an acquisition of stock or assets depends upon the facts and circumstances surrounding the acquisition and the issuance of the obligations. Obligations are issued to provide indirect consideration for an acquisition of stock or assets within the meaning of section 279(b)(1) where (i) at the time of the issuance of the obligations the issuing corporation anticipated the acquisition of such stock or assets and the obligations would not have been issued if the issuing corporation had not so anticipated such acquisition, or where (ii) at the time of the acquisition the issuing corporation foresaw or reasonably should have foreseen that it would be required to issue obligations, which it would not have otherwise been required to issue if the acquisition had not occurred, in order to meet its future economic needs.

(3) *Stock acquisition.* (i) For purposes of section 279, an acquisition in which the issuing corporation issues an obligation to provide consideration directly or indirectly for the acquisition of stock in the acquired corporation shall be treated as a stock acquisition within the meaning of section 279(b)(1)(A). Where the stock of one corporation is acquired from another corporation and such stock constitutes at least two-thirds (in value) of all the assets (excluding money) of the latter corporation, such acquisition shall be deemed an asset acquisition as described in section 279(b)(1)(B) and subparagraph (4) of this section. If the issuing corporation acquires less than two-thirds (in value) of all the assets (excluding money) used in trades or businesses carried on by the acquired corporation within the meaning of section 279(b)(1)(B) and subparagraph (4) of this paragraph and such assets include stock of another corporation, the acquisition of such stock is a stock acquisition within the meaning of section 279(b)(1)(A) and of this subparagraph. In such a case the amount of the obligation which is characterized as corporate acquisition indebtedness shall bear the same relationship to the total amount of the obligation issued as the fair market value of the stock acquired bears to the total of the fair market value of the assets acquired and stock acquired, as of the date of acquisition. For rules with respect to acquisitions of stock, where the total amount of stock of the acquired corporation held by the issuing corporation never exceeded 5 percent of the total combined voting power of all classes of stock of the acquired corporation entitled to vote, see § 1.279–4(b)(1).

(ii) If the issuing corporation acquired stock of an acquired corporation in an acquisition described in section 279(b)(1)(A), and liquidated the acquired corporation under section 334(b)(2) and the regulations thereunder before the last day of the taxable year in which such stock acquisition is made, such obligation issued to provide consideration directly or indirectly to acquire such stock of the acquired corporation shall be considered as issued in an acquisition described in section 279(b)(1)(B).

(4) *Asset acquisition.* (i) For purposes of section 279, an acquisition in which the issuing corporation issues an obligation to provide consideration directly or indirectly for the acquisition of assets of an acquired corporation pursuant to a plan under which at least two-thirds of the gross value of all the assets (excluding money) used in trades and businesses carried on by such acquired corporation are acquired shall be treated as an asset acquisition within the meaning of section 279(b)(1)(B). For purposes of section 279(b)(1)(B), the gross value of any acquired asset shall be its fair market value as of the day of its acquisition. In determining the fair market value of an asset, no reduction shall be made for any liabilities, mortgages, liens, or other encumbrances to which the asset or any part thereof may be subjected. For purposes of this subparagraph, an asset which has been actually used in the trades and businesses of a corporation but which is temporarily not being used in such trades and businesses shall be treated as if it is being used in such manner. For purposes of this paragraph, the day of acquisition will be determined by reference to the facts and circumstances surrounding the transaction.

(ii) For purposes of the two-thirds test described in section 279(b)(1)(B), the stock of any corporation which is controlled by the acquired corporation shall be considered as an asset used in the trades and businesses of such acquired corporation.

(5) *Certain nontaxable transactions.* (i) Under section 279(e), an acquisition of stock of a corporation of which the issuing corporation is in control in a transaction in which gain or loss is not recognized shall be deemed an acquisition described in section 279(b)(1)(A) only if immediately before such transaction the acquired corporation was in existence, and the issuing corporation was not in control of such corporation. If the issuing corporation is a member of an affiliated group, then in accordance with section 279(g), the affiliated group shall be treated as the issuing corporation. Thus, any stock of the acquired corporation, owned by members of the affiliated group, shall be aggregated in determining whether the issuing corporation was in control of the acquired corporation.

(ii) The $5 million limitation provided by section 279(a)(1) is not reduced by the interest on an obligation issued in a transaction which, under section 279(e), is deemed not to be an acquisition described in section 279(b)(1).

(iii) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). On January 1, 1973, W Corporation, a calendar year taxpayer, issues to the public 10,000 10 year convertible bonds each with a principal of $1,000 for $9 million. On June 6, 1973, W Corporation transfers the $9 million proceeds of such bond issue to X Corporation in exchange for X Corporation's common stock in a transaction that satisfies the provisions of section 351(a). On December 31, 1973, W Corporation's ratio of debt to equity is 1½ to 1 and its project earnings exceed three times the annual interest to be paid or incurred. Immediately prior

to the transaction between the two corporations W Corporation owned no stock in X Corporation which had been in existence for several years. However, immediately after this transaction W Corporation is in control of X Corporation. Since X Corporation, the acquired corporation, was in existence and W Corporation, the issuing corporation, was not in control of X Corporation immediately before the section 351 transaction (a transaction in which gain or loss is not recognized) and since W Corporation is now in control of X Corporation, the acquisition of X Corporation's common stock by W Corporation is not protected from treatment as an acquisition described in section 279(b)(1)(A). However, the obligation will not be deemed to be corporate acquisition indebtedness since the test of section 279(b)(4) is not met. The interest on the obligation will reduce the $5 million limitation of section 279(a).

Example (2). Assume the facts are the same as described in example (1), except that X Corporation was not in existence prior to June 6, 1973, but rather is newly created by W Corporation on such date. Since X Corporation, the acquired corporation, was not in existence before June 6, 1973, the date on which W Corporation, the issuing corporation, acquired control of X Corporation in a transaction on which gain or loss is not recognized, the acquisition is not deemed to be an acquisition described in section 279(b)(1)(A). Thus, under the provisions of subdivision (ii) of this subparagraph, the $5 million limitation provided by section 279(a)(1) will not be reduced by the yearly interest incurred on the convertible bonds issued by W Corporation.

Example (3). Assume that the facts are the same as described in example (1), except that W Corporation was in control of X Corporation immediately before the transaction. Since W Corporation was in control of X Corporation immediately before the section 351(a) transaction and is in control of X Corporation after such transaction, the result will be the same as in example (2).

(c) *Subordinated obligation*—(1) *In general.* An obligation which is issued to provide consideration for an acquisition described in secton 279(b)(1) is subordinated within the meaning of section 279(b)(2) if it is either—

(i) Subordinated to the claims of trade creditors of the issuing corporation generally, or

(ii) Expressly subordinated in right of payment to the payment of any substantial amount of unsecured indebtedness, whether outstanding or subsequently issued, of the issuing corporation,

irrespective of whether such subordination relates to payment of interest, or principal, or both. In applying section 279(b)(2) and this paragraph in any case where the issuing corporation is a member of an affiliated group of corporations, the affiliated group shall be treated as the issuing corporation.

(2) *Expressly subordinated obligation.* In applying subparagraph (1)(ii) of this paragraph, an obligation is considered expressly subordinated whether the terms of the subordination are provided in the evidence of indebtedness itself, or in another agreement between the parties to such obligation. An obligation shall be considered to be expressly subordinated within the meaning of subparagraph (1)(ii) of this paragraph if such obligation by its terms can become subordinated in right of payment to the payment of any substantial amount of unsecured indebtedness which is outstanding or which may be issued subsequently. However, an obligation shall not be considered expressly subordinated if such subordination occurs solely by operation of law, such as in the case of bankruptcy laws. For purposes of this paragraph, the term "substantial amount of unsecured indebtedness" means an amount of unsecured indebtedness equal to 5 percent or more of the face amount of the obligations issued within the meaning of section 279(b)(1).

(d) *Convertible obligation.* An obligation which is issued to provide consideration directly or indirectly for an acquisition described in section 279(b)(1) is convertible within the meaning of section 279(b)(3) if it is either—

(1) Convertible directly or indirectly into stock of the issuing corporation, or

(2) Part of an investment unit or other arrangement which includes, in addition to such bond or other evidence of indebtedness, an option to acquire directly or indirectly stock in the issuing corporation. Stock warrants or convertible preferred stock included as part of an investment unit constitute options within the meaning of the preceding sentence. Indebtedness is indirectly convertible if the conversion feature gives the holder the right to convert into another bond of the issuing corporation which is then convertible into the stock of the issuing corporation.

In any case where the corporation which in fact issues an obligation to provide consideration for an acquisition described in section 279(b)(1) is a member of an affiliated group, the provisions of section 279(b)(3) and this paragraph are deemed satisfied if the stock into which either the obligation or option which is part of an investment unit or other arrangement is convertible, directly or indirectly, is stock of any member of the affiliated group.

(e) *Ratio of debt to equity and projected earnings test.* For rules with respect to the application of section 279(b)(4) (relating to the ratio of debt to equity and the ratio of projected earnings to annual interest to be paid or incurred), see paragraphs (d), (e), and (f) of § 1.279-5.

(f) *Certain obligations issued after October 9, 1969*—(1) *In general.* Under section 279(i), an obligation shall not be corporate acquisition indebtedness if such obligation is issued after October 9, 1969, to provide consideration for the acquisition of—

(i) Stock or assets pursuant to a binding written contract which was in effect on October 9, 1969, and at all times thereafter before such acquisition, or

(ii) Stock in any corporation where the issuing corporation, on October 9, 1969, and at all times thereafter before such acquisition, owned at least 50 percent of the total combined voting power of all classes of stock entitled to vote of the acquired corporation.

Subdivision (ii) of this subparagraph shall cease to apply when (at any time on or after October 9, 1969) the issuing corporation has acquired control of the acquired corporation. The interest attributable to any obligation which satisfies the conditions stated in the first sentence of this subparagraph shall reduce the $5 million limitation of section 279(a)(1).

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

Example (1). On September 5, 1969, M Corporation, a calendar year taxpayer, entered into a binding written contract with N Corporation to purchase 20 percent of the voting stock of N Corporation. The contract was in effect on October 9, 1969, and at all times thereafter before the acquisition of the stock on January 1, 1970. Pursuant to such contract M Corporation issued on January 1, 1970, to N Corporation an obligation which satisfies the tests of section 279(b) requiring it to pay $1 million of interest each year. However, under the provisions of subparagraph (1)(i) of this paragraph, such obligation is not corporate acquisition indebtedness since it was issued to provide consideration for the acquisition of stock pursuant to a binding written contract which was in effect on October 9, 1969, and at all times thereafter before such acquisition. The $1 million of yearly interest on the obligation reduces the $5 million limitation provided for in section 279(a)(1) to $4 million since such interest is attributable to an obligation which was issued to provide consideration for the acquisition of stock in an acquired corporation.

Example (2). On October 9, 1969, O Corporation, a calendar year taxpayer, owned 50 percent of the total combined voting power of all classes of stock entitled to vote of P Corporation. P Corporation has no other class of stock. On January 1, 1970, while still owning such voting stock O Corporation issued to the shareholders of P Corporation to provide consideration for an additional 40 percent of P Corporation's voting stock an obligation which satisfied the tests of section 279(b) requiring it to pay $4 million of interest each year. Hence, O Corporation acquired control of P Corporation, and the provisions of subparagraph (1)(ii) of this paragraph ceased to apply to O Corporation. Thus, 75 percent of the obligation issued by O Corporation to provide consideration for the stock of P Corporation is not corporate acquisition indebtedness (that is, of the 40 percent of the voting stock of P Corporation which was acquired, only 30 percent was needed to give O Corporation control). Since 25 percent of the obligation is corporate acquisition indebtedness, $1 million of interest attributable to such obligation is subject to disallowance under section 279(a) for the taxable year 1970. The remaining $3 million of interest attributable to the obligation will reduce the $5 million limitation provided by in section 279(a)(1).

(g) *Exemptions for certain acquisitions of foreign corporations*—(1) *In general.* Under section 279(f), the term "corporate acquisition indebtedness" does not include any indebtedness issued to any person to provide consideration directly or indirectly for the acquisition

of stock in, or assets of, any foreign corporation substantially all the income of which, for the 3-year period ending with the date of such acquisition or for such part of such period as the foreign corporation was in existence, is from sources without the United States. The interest attributable to any obligation excluded from treatment as corporate acquisition indebtednes by reason of this paragraph shall reduce the $5 million limitation of 279(a)(1).

(2) *Foreign corporation.* For purposes of this paragraph, the term "foreign corporation" shall have the same meaning as in section 7701(a)(5).

(3) *Income from sources without the United States.* For purposes of this paragraph, the term "income from sources without the United States" shall be determined in accordance with sections 862 and 863. If more than 80 percent of a foreign corporation's gross income is derived from sources without the United States, such corporation shall be considered to be deriving substantially all of its income from sources without the United States.

§ 1.279–4 Special rules.

(a) *Special 3-year rule.* Under section 279(d)(4), if an obligation which has been deemed to be corporate acquisition indebtedness for any taxable year would not be such indebtedness for each of any 3 consecutive taxable years thereafter if the ratio of debt to equity and the ratio of projected earnings to annual interest to be paid or incurred of section 279(b)(4) were rpplied as of the close of each of such 3 years, then such obligation shall not be corporate acquisition indebtedness for any taxable years after such 3 consecutive taxable years. The test prescribed by section 279(b)(4) shall be applied as of the close of any taxable year whether or not the issuing corporation issues any obligation to provide consideration for an acquisition described in section 279(b)(1) in such taxable year. Thus, for example, if a corporation, reporting income on a calendar year basis, has an obligation outstanding as of December 31, 1975, which was classified as a corporate acquisition indebtedness as of the close of 1972 and such obligation would not have been classified as corporate acquisition indebtedness as of the close of 1973, 1974, and 1975 because neither of the conditions of section 279(b)(4) were present as of such dates, then such obligation shall not be corporate acquisition indebtedness for 1976 and all taxable years thereafter. Such obligation shall not be reclassified as corporate acquisition indebtedness in any taxable year following 1975, even if the issuing corporation issues more obligations (whether or not found to be corporate acquisition indebtedness) in such later years to provide consideration for the acquisition of additional stock in, or assets of, the same acquired corporation with respect to which the original obligation was issued. The interest attributable to such obligation shall reduce the $5 million limitation provided by section 279(a)(1) for 1976 and all taxable years thereafter.

(b) *Five percent stock rule*—(1) *In general.* Under section 279(d)(5), if an obligation issued to provide consideration for an acquisition of stock in another corporation meets the tests of section 279(b), such obligation shall be corporate acquisition indebtedness for a taxable year only if at sometime after October 9, 1969, and before the close of such year the issuing corporation owns or has owned 5 percent or more of the total combined voting power of all classes of stock entitled to vote in the acquired corporation. If the issuing corportation is a member of an affiliated group, then in accordance with section 279(g) the affiliated group shall be treated as the issuing corporation. Thus, any stock of the acquired corporation owned by members of the affiliated group shall be aggregated to determine if the percentage limitation provided by this subparagraph is exceeded. Once an obligation is deemed to be corporate acquisition indebtedness for all taxable years thereafter unless the provisions of section 279(d)(3) or (4) apply, notwithstanding the fact that the issuing corporation owns less than 5 percent of the combined voting power of all classes of stock entitled to vote of the acquired corporation in any or all taxable years thereafter.

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

Example (1). Corporation Y uses the calendar year as its taxable year and has only one class of stock outstanding. On June 1, 1972, X Corporation which is also a calendar year taxpayer and which has never been a shareholder of Y Corporation acquires from the shareholders of Y Corporation 4 percent of the stock of Y Corporation in exchange for obligations which satisfy the conditions of section 279(b). At no time during 1972 does X Corporation own 5 percent or more of the stock of Y Corporation. Accordingly, under the provisions of subparagraph (1) of this paragraph, for 1972 the obligations issued by X Corporation to provide consideration for the acquisition of Y Cerporation's stock do not constitute corporate acquisition indebtedness.

Example (2). Assume the same facts as in example (1). Assume further that on February 24, 1973, X Corporation acquires from the shareholders of Y Corporation an additional 7 percent of the stock of Y Corporation in exchange for obligations which satisfy all of the tests of section 279(b). On December 28, 1973, X Corporation sells all of its stock in Y Corporation. For 1973, the obligations issued by X Corporation in 1972 and in 1973 constitute corporate acquisition indebtedness since X Corporation at some time after October 9, 1969, and before the close of 1973 bwned 5 percent or more of the voting stock of Y Corporation. Furthermore, such obligations shall be corporate acquisition indebtedness for all taxable years thereafter unless the special provisions of section 279(d)(3) or (4) could apply.

(c) *Changes in obligation*—(1) *In general.* Under section 279(h), for purposes of section 279—

(i) Any extension, renewal, or refinancing of an obligation evidencing a preexisting indebtedness shall not be deemed to be the issuance of a new obligation, and

(ii) Any obligation which is corporate acquisition indebtedness of the issuing corporation is also corporate acquisition indebtedness of any corporation which in any transaction or by operation of law assumes liability for such obligation or becomes liable for such obligation as guarantor, endorser, or indemnitor.

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

Example (1). On January 1, 1971, X Corporation, which files its return on the basis of a calendar year, issues an obligation, which satisfies the tests of section 279(b), and is deemed to be corporate acquisition indebtedness. On January 1, 1973, an agreement is concluded between X Corporation and the holder of the obligation whereby the maturity date of such obligation is extended until December 31, 1979. Under the provisions of subparagraph (1)(i) of this paragraph such extended obligation is not deemed to be a new obligation, and still constitutes corporate acquisition indebtedness.

Example (2). On June 12, 1971, X Corporation, a calendar year taxpayer, issued convertible and subordinated obligations to acquire the stock of Z Corporation. The obligations were deemed corporate acquisition indebtedness on December 31, 1971. On March 4, 1973, X Corporation and Y Corporation consolidated to form XY Corporation in accordance with State law. Corporation XY is liable for the obligations issued by X Corporation by operation of law and the obligations continue to be corporate acquisition indebtedness. In 1975 XY Corporation exchanges its own nonconvertible obligations for the obligations X Corporation issued. The obligations of XY Corporation issued in exchange for those of X Corporation will be deemed to be corporate acquisition indebtedness.

§ 1.279–5 Rules for application of section 279(b).

(a) *Taxable years to which applicable*—(1) *First year of disallowance.* Under section 279(d)(1), the deduction of interest on any obligation shall not be disallowed under section 279(a) before the first taxable year of the issuing corporation as of the last day of which the application of either section 279(b)(4)(A) or (B) results in such obligation being classified as corporate acquisition indebtedness. See section 279(c)(1) and paragraph (b)(2) of this section for the time when an obligation is subjected to the test of section 279(b)(4).

(2) *General rule for succeeding years.* Under section 279(d)(2), except as provided in paragraphs (3), (4), and (5) of section 279(d), if an obligation is determined to be corporate acquisition indebtedness as of the last day of any taxable year of the issuing corporation, such obligation shall be corporate acquisition indebtedness for such taxable year and all subsequent taxable years.

(b) *Time of determination*—(1) *In general.* The determination of whether an obligation meets the conditions of section 279(b)(1), (2), and (3) shall be made as of the day on which the obligation is issued.

(2) *Ratio of debt to equity, projected earnings, and annual interest to be paid or incurred.* (i) Under section 279(c)(1), the determination of whether an obligation meets the conditions of

section 279(b)(4) is first to be made as of the last day of the taxable year of the issuing corporation in which it issues the obligation to provide consideration directly or indirectly for an acquisition described in section 279(b)(1) of stock in, or assets of, the acquired corporation. An obligation which is not corporate acquisition indebtedness only because it does not satisfy the test of section 279(b)(4) in the taxable year of the issuing corporation in which the obligation is issued for stock in, or assets of, the acquired corporation may be subjected to the test of section 279(b)(4) again. A retesting will occur in any subsequent taxable year of the issuing corporation in which the issuing corporation issues any obligation to provide consideraton directly or indirectly for an acquisition described in section 279(b)(1) with respect to the same acquired corporation, irrespective of whether such subsequent obligation is itself classified as corporate acquisition indebtedness. If the issuing corporation is a member of an affiliated group, then in accordance with section 279(g) the affiliated group shall be treated as the issuing corporation. Thus, if any member of the affiliated group issues an obligation to acquire additional stock in, or assets of, the acquired corporation, this paragraph shall apply.

(ii) For purposes of section 279(b)(4) and this paragraph, in any case where the issuing corporation is a member of an affiliated group (see section 279(g) and § 1.279-6 for rules regarding application of section 279 to certain affiliated groups) which does not file a consolidated return and all the members of which do not have the same taxable year, determinations with respect to the ratio of debt to equity of, and projected earnings of, and annual interest to be paid or incurred by, any member of the affiliated group shall be made as of the last day of the taxable year of the corporation which in fact issues the obligation to provide consideration for an acquisition described in section 279(b)(1).

(3) *Redetermination where control or substantially all the properties have been acquired.* Under section 279(d)(3), if an obligation is determined to be corporate acquisition indebtedness as of the close of a taxable year of the issuing corporation in which section 279(c)(3)(A)(i) (relating to the projected earnings of the issuing corporation only) applied, but would not be corporate acquisition indebtedness if the determination were made as of the close of the first taxable year of such corporation thereafter in which section 279(c)(3)(A)(ii) (relating to the projected earnings of both the issuing corporation and the acquired corporation) could apply, such obligation shall be considered not to be corporate acquisition indebtedness for such later taxable year and all taxable years thereafter. Where an obligation ceases to be corporate acquisition indebtedness as a result of the application of this paragraph, the interest on such obligation shall not be disallowed under section 279(a) as a deduction for the taxable year in which the obligation ceases to be corporate acquisition indebtedness and all taxable years thereafter. However, under section 279(a)(2) the interest paid or incurred on such obligation which is allowed as a deduction will reduce the $5 million limitation provided by section 279(a)(1).

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

Example (1). In 1971, X Corporation, which files its Federal income tax return on the basis of a calendar year, issues its obligations to provide consideration for the acquisition of 15 percent of the voting stock of both Y Corporation and Z Corporation. Y Corporation and Z Corporation each have only one class of stock. When issued, such obligations satisfied the tests prescribed in section 279(b)(1), (2), and (3) and would have constituted corporate acquisition indebtedness but for the test prescribed in section 279(b)(4). On December 31, 1971, the application of section 279(b)(4) results in X Corporation's obligations issued in 1971 not being treated as corporate acquisition indebtedness for that year.

Example (2). Assume the same facts as in example (1), except that in 1972, X Corporation issues more obligations which come within the tests of section 279(b)(1), (2), and (3) to acquire an additional 10 percent of the voting stock of Y Corporation. No stock of Z Corporation is acquired after 1971. The application of section 279(b)(4)(B) (relating to the projected earnings of X Corporation) as of the end of 1972 results in the obligations issued in 1972 to provide consideration for the acquisition of the stock of Y Corporation being treated as corporate acquisition indebtedness. Since X Corporation during 1972 did issue obligations to acquire more stock of Y Corporation, under the provisions of section 279(c)(1) and subparagraph (2) of this paragraph the obligations issued by X Corporation in 1971 to acquire stock in Y Corporation are again tested to determine whether the test of section 279(b)(4) with respect to such obligations is satisfied for 1972. Thus, since such obligations issued by X Corporation to acquire Y Corporation's stock in 1971 previously came within the provisions of section 279(b)(1), (2), and (3) and the projected earnings test of section 279(b)(4)(B) is satisfied for 1972, all of such obligations are to be deemed to constitute corporate acquisition indebtedness for 1972 and subsequent taxable years. The obligations issued in 1971 to acquire stock in Z Corporation continue not to constitute corporate acquisition indebtedness.

Example (3). Assume the same facts as in examples (1) and (2). In 1973, X Corporation issues more obligations which come within the tests of section 279(b)(1), (2), and (3) to acquire more stock (but not control) in Y Corporation. On December 31, 1973, it is determined with respect to X Corporation that neither of the conditions described in section 279(b)(4) are present. Thus, the obligations issued in 1973 do not constitute corporate acquisition indebtedness. However, the obligations issued in 1971 and 1972 by X Corporation to acquire stock in Y Corporation continue to be treated as corporate acquisition indebtedness.

Example (4). Assume the same facts as in example (3), except that X Corporation acquires control of Y Corporation in 1973. Since X Corporation has acquired control of Y Corporation, the average annual earnings (as defined in section 279(c)(3)(B) and the annual interest to be paid or incurred (as provided by section 279(c)(4)) of both X Corporation and Y Corporation under section 279(c)(3)(A)(ii) are taken into account in computing for 1973 the ratio of projected earnings to annual interest to be paid or incurred described in section 279(b)(4)(B). Assume further that after applying section 279(b)(4)(B) the obligations issued in 1973 escape treatment as corporate acquisition indebtedness for 1973. Under section 279(d)(3), all of the obligations issued by X Corporation to acquire stock in Y Corporation in 1971 and 1972 are removed from classification as corporate acquisition indebtedness for 1973 and all subsequent taxable years.

Example (5). In 1975, M Corporation, which files its Federal income tax return on the basis of a calendar year, issues its obligations to acquire 30 percent of the voting stock of N Corporation. N Corporation has only one class of stock. Such obligations satisfy the tests prescribed in section 279(b)(1), (2), and (3). Additionally, as of the close of 1975, M Corporation's ratio of debt to equity exceeds the ratio of 2 to 1 and its projected earnings do not exceed three times the annual interest to be paid or incurred. The obligations issued by M Corporation are corporate acquisition indebtedness for 1975 since all the provisions of section 279(b) are satisfied. In 1976 M Corporation issues its obligations to acquire from the shareholders of N Corporation an additional 60 percent of the voting stock of N Corporation, thereby acquiring control of N Corporation. However, with respect to the obligations issued by M Corporation in 1975, there is no redetermination under section 279(d)(3) and subparagraph (3) of this paragraph as to whether such obligations may escape classification as corporate acquisition indebtedness because in 1975 it was the ratio of debt to equity test which caused such obligations to be corporate acquisition indebtedness. If in 1975, M Corporation met the conditions of section 279(b)(4) solely because of the ratio of projected earnings to annual interest to be paid or incurred described in section 279(b)(4)(B), its obligation issued in 1975 could be retested in 1976.

(c) *Acquisition of stock or assets of several corporations.* An issuing corporation which acquires stock in, or assets of, more than one corporation during any taxable year must apply the tests described in section 279(b)(1), (2), and (3) separately with respect to each obligation issued to provide consideration for the acquisition of the stock in, or assets of, each such acquired corporation. Thus, if an acquisition is made with obligations of the issuing corporation that satisfy the tests described in section 279(b)(2) and (3) and obligations that fail to satisfy such tests, only those obligations satisfying such tests need be further considered to determine whether they constitute corporate acquisition indebtedness. Those obligations which meet the test of section 279(b)(1) but which are not deemed corporate acquisition indebtedness shall be taken into account for purposes of determining the reduction in the $5 million limitation of section 279(a)(1).

(d) *Ratio of debt to equity and projected earnings*—(1) *In general.* One of the four tests to determine whether an obligation constitutes corporate acquisition indebtedness is contained in section 279(b)(4). An obligation will meet the test of section 279(b)(4) if, as of a day

determined under section 279(c)(1) and paragraph (b)(2) of this section, either—

(i) The ratio of debt to equity (as defined in paragraph (f) of this section) of the issuing corporation exceeds 2 to 1, or

(ii) The projected earnings (as defined in subparagraph (2) of this paragraph) of the issuing corporation, or of both the issuing corporation and acquired corporation in any case where subparagraph (2)(ii) of this paragraph is applicable, do not exceed three times the annual interest to be paid or incurred (as defined in paragraph (e) of this section) by such issuing corporation, or, where applicable, by such issuing corporation and acquired corporation. Where paragraphs (d)(2)(ii) and (e)(1)(ii) of this section are applicable in computing projected earnings and annual interest to be paid or incurred, 100 percent of the acquired corporation's projected earnings and annual interest to be paid or incurred shall be included in such computation, even though less than all of the stock or assets of the acquired corporation have been acquired.

(2) *Projected earnings.* The term "projected earnings" means the "average annual earnings" (as defined in subparagraph (3) of this paragraph) of—

(i) The issuing corporation only, if subdivision (ii) of this subparagraph, does not apply, or

(ii) Both the issuing corporation and the acquired corporation, in any case where the issuing corporation as of the close of its taxable year has acquired control, or has acquired substantially all of the properties, of the acquired corporation.

For purposes of subdivision (ii) of this subparagraph, an acquisition of "substantially all of the properties" of the acquired corporation means the acquisition of assets representing at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by the acquired corporation immediately prior to the acquisition.

(3) *Average annual earnings.* (i) The term "average annual earnings" referred to in subparagraph (2) of this paragraph is, for any corporation, the amount of its earnings and profits for any 3-year period ending with the last day of a taxable year of the issuing corporation in which it issues any obligation to provide consideration for an acquisition described in section 279(b)(1), computed without reduction for—

(a) Interest paid or incurred,

(b) Depreciation or amortization allowed under chapter 1 of the Code,

(c) Liability for tax under chapter 1 of the Code, and

(d) Distributions to which section 301(c)(1) apply (other than such distributions from the acquired corporation to the issuing corporation),

and reduced to an annual average for such 3-year period. For the rules to determine the amount of earnings and profits of any corporation, see section 312 and the regulations thereunder.

(ii) Except as provided for in subdivision (iii) of this subparagraph, for purposes of subdivision (i) of this subparagraph in the case of any corporation, the earnings and profits for such 3-year period shall be reduced to an annual average by dividing such earnings and profits by 36 and multiplying the quotient by 12. If a corporation was not in existence during the entire 36-month period as of the close of the taxable year referred to in subdivision (i) of this subparagraph, its average annual earnings shall be determined by dividing its earnings and profits for the period of its existence by the number of whole calendar months in such period and multiplying the quotient by 12.

(iii) Where the issuing corporation acquires substantially all of the properties of an acquired corporation, the computation of earnings and profits of such acquired corporation shall be made for the period of such corporation beginning with the first day of the 3-year period of the issuing corporation and ending with the last day prior to the date on which substantially all of the properties were acquired. In determining the number of whole calendar months for such acquired corporation where the period for determining its earnings and profits includes 2 months which are not whole calendar months and the total number of days in such 2 fractional months exceeds 30 days, the number of whole calendar months for such period shall be increased by one. Where the number of days in the 2 fractional months total 30 days or less such fractional months shall be disregarded. After the number of whole calendar months is determined, the calculation for average annual earnings shall be made in the same manner as described in the last sentence of subdivision (ii) of this subparagraph.

(e) *Annual interest to be paid or incurred.*—(1) *In general.* For purposes of section 279(b)(4)(B), the term "annual interest to be paid or incurred" means—

(i) If subdivision (ii) of this subparagraph does not apply, the annual interest to be paid or incurred by the issuing corporation only, for the taxable year beginning immediately after the day described in section 279(c)(1), determined by reference to its total indebtedness outstanding as of such day, or

(ii) If projected earnings are determined under paragraph (d)(2)(ii) of this section, the annual interest to be paid or incurred by both the issuing corporation and the acquired corporation for 1 year beginning immediately after the day described in section 279(c)(1), determined by reference to their combined total indebtedness outstanding as of such day. However, where the issuing corporation acquires substantially all of the properties of the acquired corporation, the annual interest to be paid or incurred will be determined by reference to the total indebtedness outstanding of the issuing corporation only (including any indebtedness it assumed in the acquisition) as of the day described in section 279(c)(1).

The term "annual interest to be paid or incurred" refers to both actual interest and unstated interest. Such unstated interest includes original issue discount as defined in paragraph (a)(1) of § 1.163-4 and amounts treated as interest under section 483. For purposes of this paragraph and paragraph (f) of this section (relating to the ratio of debt to equity), the indebtedness of any corporation shall be determined in accordance with generally accepted accounting principles. Thus, for example, the indebtedness of a corporation includes short-term liabilities, such as accounts payable to suppliers, as well as long-term indebtedness. Contingent liabilities, such as those arising out of discounted notes, the assignment of accounts receivable, or the guarantee of the liability of another, shall be included in the determination of the indebtedness of a corporation if the contingency is likely to become a reality. In addition, the indebtedness of a corporation includes obligations issued by the corporation, secured only by property of the corporation, and with respect to which the corporation is not personally liable. See section 279(g) and § 1.279-6 for rules with respect to the computation of annual interest to be paid or incurred in regard to members of an affiliated group of corporations.

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

Example (1). Corporation X's earnings and profits calculated in accordance with section 279(c)(3)(B) for 1972, 1971, and 1970 respectively were $29 million, $23 million, and $20 million. The interest to be paid or incurred during the calendar year of 1973 as determined by reference to the issuing corporation's total outstanding indebtedness as of December 31, 1972, was $10 million. By dividing the sum of the earnings and profits for the 3 years by 36 (the number of whole calendar months in the 3-year period) and multiplying the quotient by 12, the average annual earnings for X Corporation is $24 million. Since the projected earnings of X Corporation do not exceed by three times the annual interest to be paid or incurred (they exceed by only 2.4 times), one of the circumstances described in section 279(b)(4) is present.

Example (2). On March 1, 1972, W Corporation acquires substantially all of the properties of Z Corporation in exchange for W Corporation's bonds which satisfy the tests of section 279(b)(2) and (3). W Corporation files its income tax returns on the basis of fiscal years ending June 30. Z Corporation, which was formed on September 1, 1969, is a calendar year taxpayer. The earnings and profits of W Corporation for the last 3 fiscal years ending June 30, 1972, calculated in accordance with the provisions of section 279(c)(3)(B) were $300 million, $400 million, and $380 million, respectively. The average annual earnings of W Corporation is $360 million ($1,080 million÷36×12). The earnings and profits of Z Corporation calculated in accordance with the provisions of section 279(c)(3)(B) were $4 million for the period of September 1, 1969 to December 31, 1969, $10 million and $14 million for the calendar years of 1970 and 1971, respectively, and $2 million for the period of January 1, 1972, through February 29, 1972, or a total of $30 million. To arrive at the average annual earnings, the sum of the earnings and profits,

$30 million, must be divided by 30 (the number of whole calendar months that Z Corporation was in existence during W Corporation's 3-year period ending with the day prior to the date substantially all the assets were acquired) and the quotient is multiplied by 12, which results in an average annual earnings of $12 million ($30 million÷30×12) for Z Corporation. The combined average annual earnings of W Corporation and Z Corporation is $372 million. The interest for the fiscal year ending June 30, 1973, to be paid or incurred by W Corporation on its outstanding indebtedness as of June 30, 1972, is $110 million. Since the projected earnings exceed the annual interest to be paid or incurred by more than three times, the obligation will not be corporate acquisition indebtedness, unless the issuing corporation's debt to equity ratio exceeds 2 to 1.

(f) *Ratio of debt to equity*—(1) *In general.* The condition described in section 279(b)(4)(A) is present if the ratio of debt to equity of the issuing corporation exceeds 2 to 1. Under section 279(c)(2), the term "ratio of debt to equity" means the ratio which the total indebtedness of the issuing corporation bears to the sum of its money and all its other assets (in an amount equal to adjusted basis for determining gain) less such total indebtedness. For the meaning of the term "indebtedness", see paragraph (e)(1) of this section. See section 279(g) and § 1.279–6 for rules with respect to the computation of the ratio of debt to equity in regard to an affiliated group of corporations.

(2) *Examples.* The provisions of section 279(b)(4)(A) and this paragraph may be illustrated by the following example:

Example (1). On June 1, 1971, X Corporation, which files its federal income tax returns on a calendar year basis, issues an obligation for $45 million to the shareholders of Y Corporation to provide consideration for the acquisition of all of the stock of Y Corporation. Such obligation has the characteristics of corporate acquisition indebtedness described in section 279(b)(2) and (3). The projected earnings of X Corporation and Y Corporation exceed 3 times the annual interest to be paid or incurred by those corporations and, accordingly, the condition described in section 279(b)(4)(B) is not present. Also, on December 31, 1971, X Corporation has total assets with an adjusted basis of $150 million (including the newly acquired stock of Y Corporation having a basis of $45 million) and total indebtedness of $90 million. Hence, X Corporation's equity is $60 million computed by subtracting its $90 million of total indebtedness from its $150 million of total assets. Since X Corporation's ratio of debt to equity of 1.5 to 1 ($90 million of total indebtedness over $60 million equity) does not exceed 2 to 1, the condition described in section 279(b)(4)(A) is not present. Therefore, X Corporation's obligation for $45 million is not corporate acquisition indebtedness because on December 31, 1971, neither of the conditions specified in section 279(b)(4) existed.

(g) *Special rules for banks and lending or finance companies*—(1) *Debt to equity and projected earnings.* Under section 279(c)(5), with respect to any corporation which is a bank (as defined in section 581) or is primarily engaged in a lending or finance business, the following rules are to be applied:

(i) In determining under paragraph (f) of this section the ratio of debt to equity of such corporation (or of the affiliated group of which such corporation is a member), the total indebtedness of such corporation (and the assets of such corporation) shall be reduced by an amount equal to the total indebtedness owed to such corporation which arises out of the banking business of such corporation, or out of the lending or finance business of such corporation, as the case may be;

(ii) In determining under paragraph (e) of this section the annual interest to be paid or incurred by such corporation (or by the issuing corporation and acquired corporation referred to in section 279(c)(4)(B) or by the affiliated group of corporations of which such corporation is a member), the amount of such interest (determined without regard to this subparagraph) shall be reduced by an amount which bears the same ratio to the amount of such interest as the amount of the reduction for the taxable year under subdivision (i) of this subparagraph bears to the total indebtedness of such corporation; and

(iii) In determining under section 279(c)(3)(B) the average annual earnings, the amount of the earnings and profits for the 3-year period shall be reduced by the sum of the reductions under subdivision (ii) of this subparagraph for such period.

For purposes of this paragraph, the term "lending or finance business" means a business of making loans or purchasing or discounting accounts receivable, notes, or installment obligations. Additionally, the rules stated in this paragraph regarding the application of the ratio of debt to equity, the determination of the annual interest to be paid or incurred, and the determination of the average annual earnings also apply if the bank or lending or finance company is a member of an affiliated group of corporations. However, the rules are to be applied only for purposes of determining the debt, equity, projected earnings and annual interest of the bank or lending or finance company which then are taken into account in determining the debt to equity ratio and ratio of projected earnings to annual interest to be paid or incurred by the affiliated group as a whole. Thus, these rules are to be applied to reduce the bank's or lending or finance corporation's indebtedness, annual interest to be paid or incurred, and average annual earnings which are taken into account with respect to the group, but are not to reduce the indebtedness of, annual interest to be paid or incurred by, and average annual earnings of, any corporation in the affiliated group which is not a bank or a lending or finance company. In determining whether any corporation which is a member of an affiliated group is primarily engaged in a lending or finance business, only the activities of such corporation, and not those of the whole group, are to be taken into account. See § 1.279–6 for the application of section 279 to certain affiliated groups of corporations.

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

Example (1). As of the close of the taxable year, X Bank has a total indebtedness of $100 million, total assets of $115 million, and $80 million is owed to X Bank by its customers. Bank X's indebtedness is $20 million ($100 million total indebtedness less $80 million owed to the X Bank by its customers) and its assets are $35 million ($115 million total assets less $80 million owed to the bank by its customers). If its annual interest to be paid or incurred is $5 million, such amount is reduced by $4 million

$$\left(\$5 \text{ million interest to be paid or incurred} \times \frac{\$80 \text{ million owed to X Bank by its customers}}{\$100 \text{ million total indebtedness.}}\right)$$

Thus, X Bank's annual interest to be paid or incurred is $1 million.

Example (2). Assume the same facts as in example (1). X Bank has earnings and profits of $23 million for the 3-year period used to determine projected earnings. In computing the average annual earnings, the $23 million amount will be reduced by $12 million (three times the $4 million reduction of interest in example (1), assuming that the reduction was the same for each year). Thus X Bank's earnings and profits for such 3-year period are $11 million ($23 million total earnings and profits less $12 million reduction).

(h) *Statement to be attached to return.* In any case where any corporation claims a deduction in excess of $5 million for interest paid or incurred during the taxable year on obligations issued to provide consideration for acquisitions described in section 279(b)(1) of stock in, or assets of, an acquired corporation, the corporation shall attach to its return for such taxable year a statement which includes the particular provisions of section 279 and, in sufficient detail, the facts establishing that such obligations were not corporate acquisition indebtedness, or that the amount of the deduction for interest on its corporate acquisition indebtedness did not exceed the amount of interest which may be deducted on such obligations under section 279(a).

§ 1.279–6 Application of section 279 to certain affiliated groups.

(a) *In general.* Under section 279(g), in any case in which the issuing corporation is a member of an affiliated group, the application of section 279 shall be determined by treating all of the members of the affiliated group in the aggregate as the issuing corporation, except that the ratio of debt to equity of, projected earnings of, and the annual interest to be paid or incurred by any corporation (other than the issuing corporation determined without regard to this paragraph) shall be included in the determinations required under section 279(b)(4) as of any day only if such corporation is a member of the affiliated group on such day, and, in determining projected earnings of such corporation under section 279(c)(3), there shall be

taken into account only the earnings and profits of such corporation for the period during which it was a member of the affiliated group. The total amount of an affiliated member's assets, indebtedness, projected earnings, and interest to be paid or incurred will enter into the computation required by this section, irrespective of any minority ownership in such member.

(b) *Aggregate money and other assets.* In determining the aggregate money and all the other assets of the affiliated group, the money and all the other assets of each member of such group shall be separately computed and such separately computed amounts shall be added together, except that adjustments shall be made, as follows:

(1) There shall be eliminated from the aggregate money and all the other assets of the affiliated group intercompany receivables as of the date described in section 279(c)(1);

(2) There shall be eliminated from the total assets of the affiliated group any amount which represents stock ownership in any member of such group;

(3) In any case where gain or loss is not recognized on transactions between members of an affiliated group under paragraph (d)(3) of this section, the basis of any asset involved in such transaction shall be the transferor's basis;

(4) The basis of property received in a transaction to which § 1.1502-31(b) applies shall be the basis of such property determined under such section; and

(5) There shall be eliminated from the money and all the other assets of the affiliated group any other amount which, if included, would result in a duplication of amounts in the aggregate money and all the other assets of the affiliated group.

(c) *Aggregate indebtedness.* For purposes of applying section 279(c), in determining the aggregate indebtedness of an affiliated group of corporations the total indebtedness of each member of such group shall be separately determined, and such separately determined amounts shall be added together, except that there shall be eliminated from such total indebtedness as of the date described in section 279(c)(1)—

(1) The amount of intercompany accounts payable,

(2) The amount of intercompany bonds or other evidences of indebtedness, and

(3) The amount of any other indebtedness which, if included, would result in a duplication of amounts in the aggregate indebtedness of such affiliated group.

(d) *Aggregate projected earnings.* In the case of an affiliated group of corporations (whether or not such group files a consolidated return under section 1501), the aggregate projected earnings of such group shall be computed by separately determining the projected earnings of each member of such group under paragraph (d) of § 1.279-5, and then adding together such separately determined amounts, except that—

(1) A dividend (a distribution which is described in section 301(c)(1) other than a distribution described in section 243(c)(1)) distributed by one member to another member shall be eliminated, and

(2) In determining the earnings and profits of any member of an affiliated group, there shall be eliminated any amount of interest income received or accrued, and of interest expense paid or incurred, which is attributable to intercompany indebtedness,

(3) No gain or loss shall be recognized in any transaction between members of the affiliated group, and

(4) Members of an affiliated group who file a consolidated return shall not apply the provisions of § 1.1502-18 dealing with inventory adjustments in determining earnings and profits for purposes of this section.

(e) *Aggregate interest to be paid or incurred.* For purposes of section 279(c)(4), in determining the aggregate annual interest to be paid or incurred by an affiliated group of corporations, the annual interest to be paid or incurred by each member of such affiliated group shall be separately calculated under paragraph (e) of § 1.279-5, and such separately calculated amounts shall be added together, except that any amount of annual interest to be paid or incurred on any intercompany indebtedness shall be eliminated from such aggregate interest.

§ 1.279-7 Effect on other provisions.

Under section 279(j), no inference is to be drawn from any provision in section 279 and the regulations thereunder that any instrument designated as a bond, debenture, note, or certificate or other evidence of indebtedness by its issuer represents an obligation or indebtedness of such issuer in applying any other provision of this title. Thus, for example, an instrument, the interest on which is not subject to disallowance under section 279 could, under section 385 and the regulations thereunder, be found to constitute a stock interest, so that any amounts paid or payable thereon would not be deductible.

[FR Doc.73-4097 Filed 3-2-73;8:45 am]

Title 36—Parks, Forests and Memorials

CHAPTER I—NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

Ozark National Scenic Riverways, Missouri; Boating, Scuba Diving, Spelunking

A proposal was published at page 20562 of the FEDERAL REGISTER of September 30, 1972, to add § 7.83 to Title 36 of the Code of Federal Regulations. The effect of the proposal is to establish needed restrictions on certain visitor activities within the boundaries of the Ozark National Scenic Riverways.

Interested persons were given 30 days for submitting written comments, suggestions, or objections with respect to the proposed amendment. In addition, a public meeting was held at Eminence, Mo., on November 10, 1972 to receive public comments. As a result of the comments received, the proposed regulations are being adopted with the following changes: restrictions concerning vessel motor horsepower, river zoning pertaining to the use of vessels with motors, solo diving, and cave entry have been deleted pending further study. No major revisions were made in the retained portions of previously published proposal.

Accordingly, the proposed regulations are hereby adopted as set forth below. They will take effect April 4, 1973.

§ 7.83 Ozark National Scenic Riverways.

(a) *Boating.* A vessel, commonly referred to as a "jet boat" is prohibited on the Current River and the tributaries thereof and the Jacks Fork River within the boundaries of Ozark National Scenic Riverways.

(b) *Scuba Diving.* (1) Scuba diving is prohibited within all springs and spring branches on federally owned land within the boundaries of Ozark National Scenic Riverways without a written permit from the superintendent.

(2) *Permits.* The superintendent may issue written permits for scuba diving in springs within the boundaries of the Ozark National Scenic Riverways; *Provided,*

(i) That the permit applicant will be engaged in scientific or educational investigations which will have demonstrable value to the National Park Service in its management or understanding of riverways resources.

RANDALL R. POPE,
Superintendent,
Ozark National Scenic Riverways.

[FR Doc.73-4050 Filed 3-2-73;8:45 am]

CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE

RECREATION IN NATIONAL FORESTS

Redesignation of Existing Regulations

Due to the complexity of Part 251, Land Uses, six additional parts, 290 through 295, are added to Chapter II, Title 36 of the Code of Federal Regulations. Several sections are transferred to these new parts from Part 251 and redesignated with new section numbers. These are existing regulations scattered throughout Part 251 which pertain to recreation in the National Forests. They are being redesignated for better public understanding and ease of use. There are no changes to the existing regulations.

The new parts are shown below in outline form. If a section has been transferred to one of these parts from Part 251, its former section number is also shown.

PART 290—RECREATION MANAGEMENT
[RESERVED]

PART 291—OCCUPANCY AND USE OF DEVELOPED SITES AND AREAS OF CONCENTRATED PUBLIC USE

Section		Former section No.
291.1	[Reserved]	
291.2		251.90
291.3		251.91
291.4		251.92
291.5		251.93

Section	Former section No.
291.6	251.94
291.7	251.95
291.8	251.96
291.9	251.25a

PART 292—NATIONAL RECREATION AREAS

Section	Former section No.
292.1–292.10 [Reserved]	
292.11	251.40
292.12	251.41
292.13	251.42
292.14–292.19 [Reserved]	

PART 293—WILDERNESS—PRIMITIVE AREAS

Section	Former section No.
293.1	251.70
293.2	251.71
293.3	251.72
293.4	251.73
293.5	251.74
293.6	251.75
293.7	251.76
293.8	251.77
293.9	251.78
293.10	251.79
293.11	251.80
293.12	251.81
293.13	251.82
293.14	251.83
293.15	251.84
293.16	251.85
293.17	251.86

PART 294—SPECIAL AREAS

Section	Former section No.
294.1	251.22
294.2(a)	251.26
294.2(b)	251.27
294.2(c)	251.28
294.2(d)	251.29
294.2(e)	251.30
294.2(f)	251.31

PART 295—USE OF OFF-ROAD VEHICLES [RESERVED]

PARTS 296–299 [RESERVED]

NOTE: By order published at 30 FR 5631, April 21, 1965, such lands as are described under § 294.1, "shall continue to be managed, insofar as is not inconsistent with the Wilderness Act of September 3, 1964 (Public Law 88-577, 78 Stat. 890), under the applicable regulations * * * in effect on September 3, 1964 * * * until such time as amendments can be promulgated with specific reference to the Wilderness Act."

In accordance with the exceptions to rule making procedures in 5 U.S.C. 553 and USDA policy (36 FR 13804), it has been found and determined that advance notice and request for comments would be unnecessary.

Effective date. This redesignation takes place on March 5, 1973.

T. K. COWDEN,
Assistant Secretary of Agriculture.

FEBRUARY 22, 1973.

In 36 CFR Chapter II, Part 251 is amended and new Parts 290–299 are added as set forth below.

PART 251—LAND USES

In Part 251, §§ 251.22, 251.25a, 251.26–251.30, 251.40–251.42, 251.70–251.86, 251.90–251.96 are deleted.

PART 290—RECREATION MANAGEMENT [RESERVED]

PART 291—OCCUPANCY AND USE OF DEVELOPED SITES AND AREAS OF CONCENTRATED PUBLIC USE

Sec.
291.1 General applicability. [Reserved]
291.2 Definitions.
291.4 Sanitation.
291.5 Public behavior, preservation of public property and resources.
291.6 Audio devices.
291.7 Occupancy of developed recreation sites.
291.8 Vehicles.
291.9 Admission fees and special recreation use fees.

AUTHORITY: Sec. 1, 30 Stat. 35, as amended, 62 Stat. 100, sec. 1, 33 Stat. 628; 16 U.S.C. 551, 472, unless otherwise noted.

§ 291.1 General applicability. [Reserved]

§ 291.2 Definitions.

The following definitions shall apply to all regulations in §§ 291.2 through 291.8:

(a) The term "developed recreation sites" means all improved observation, swimming, boating, camping, and picnic sites.

(b) The word "sites" refers to recreation sites.

(c) The term "areas of concentrated public recreation use" means those areas identified by a posted map delineating its boundaries.

(d) The word "areas" refers to areas of concentrated public recreation use.

(e) The term "camping equipment" includes tent or vehicle used to accommodate the camper, the vehicles used for transport, and the associated camping paraphernalia.

§ 291.4 Sanitation.

The following acts are prohibited at developed recreation sites and posted areas of concentrated public recreation use.

(a) Failing to dispose of all garbage, including paper, cans, bottles, waste materials, and rubbish by removal from the site or area, or disposal at places provided for such disposition.

(b) Draining or dumping refuse or waste from any trailer or other vehicle except in places or receptacles provided for such uses.

(c) Cleaning fish or food, or washing clothing or articles of household use at hydrants or at water faucets located in restrooms.

(d) Polluting or contaminating water supplies or water used for human consumption.

(e) Depositing, except into receptacles provided for that purpose, any body waste in or on any portion of any comfort station or any public structure, or depositing any bottles, cans, cloths, rags, metal, wood, stone, or other damaging substance in any of the fixtures in such stations or structures.

(f) Using refuse containers or other refuse facilities for dumping household or commercial garbage or trash brought as such from private property.

§ 291.5 Public behavior, preservation of public property and resources.

The following acts are prohibited at developed recreation sites and posted areas of concentrated public recreation use.

(a) Inciting or participating in riots, or indulging in boisterous, abusive, threatening, or indecent conduct.

(b) Destroying, defacing, or removing any natural feature or plant .

(c) Destroying, injuring, defacing, removing, or disturbing in any manner any public building, sign, equipment, marker, or other structure or property.

(d) Selling or offering for sale any merchandise without the written consent of the Forest Supervisor.

(e) Distributing any handbills, or circulars, or posting, placing, or erecting any bills, notices, papers, or advertising devices or matter of any kind without the written consent of the Forest Supervisor.

(f) Discharging firearms, firecrackers, rockets, or any other fireworks.

§ 291.6 Audio devices.

The following acts are prohibited at developed recreation sites and posted areas of concentrated public recreation use.

(a) Operating or using any audio devices, including radio, television, and musical instruments, and other noise producing devices, such as electrical generator plants and equipment driven by motors or engines, in such a manner and at such times so as to disturb other persons.

(b) Operating or using public address systems, whether fixed, portable, or vehicle mounted, except when such use or operation has been approved by the Forest Supervisor in writing.

(c) Installing aerial or other special radiotelephone or television equipment unless approved by the Forest Supervisor in writing.

§ 291.7 Occupancy of developed recreation sites.

The following acts are prohibited within developed recreation sites.

(a) Occupying a site for other than primarily recreation purposes.

(b) Entering or using a site or a portion of a site closed to public use. Notices establishing closure shall be posed in such locations as will reasonably bring them to the attention of the public.

(c) Erecting or using unsightly or inappropriate structures.

(d) Occupying a site with camping equipment prohibited by the Forest Supervisor. Notices establishing limitations on the kind or type of camping equipment shall be posted in such locations as will reasonably bring them to the attention of the public.

(e) Building a fire outside of stoves, grills, fireplaces, or outside of fire rings provided for such purpose.

(f) Camping overnight in places restricted to day use only.

(g) Before departure, failing to remove their camping equipment or to clean their rubbish from the place occupied by the person or persons.

(h) Pitching tents or parking trailers or other camping equipment except in places provided for such purposes.

(i) Camping within a campground for a longer period of time than that established by the Forest Supervisor. Notices establishing limitations on the period of time persons may camp within a campground shall be posted in such locations as will reasonably bring them to the attention of the public.

(j) Leaving a camp unit unoccupied during the first night after camping equipment has been set up, or leaving unattended camping equipment for more than 24 hours thereafter, without permission of a Forest Officer. Unattended camping equipment which is not removed within the prescribed time limit is subject to impoundment in accordance with the provisions of § 261.16 of this chapter.

(k) Failing to maintain quiet in campgrounds between the hours of 10 p.m. and 6 a.m.

(l) Entering or remaining in campground closed during established night periods to persons other than those who occupy the campground for camping purposes or persons visiting those campers. Notices establishing the period of closure shall be posted in such locations as will reasonably bring them to the attention of the public.

(m) Bringing a dog, cat, or other animal into the site unless it is crated, caged, or upon a leash not longer than 6 feet, or otherwise under physical restrictive control at all times.

(n) Bringing animals, other than Seeing Eye dogs, to a developed swimming beach.

(o) Bringing saddle, pack, or draft animals into the site unless it has been developed to accommodate them and is posted accordingly.

§ 291.8 Vehicles.

The following are prohibited at developed recreation sites.

(a) Driving motor vehicles in excess of posted speeds.

(b) Driving or parking any vehicle or trailer except in places developed for this purpose.

(c) Driving any vehicle carelessly and heedlessly disregarding the rights or safety of others, or without due caution and at a speed, or in a manner, so as to endanger, or be likely to endanger, any person or property.

(d) Driving bicycles, motorbikes, and motorcycles on trails within developed recreation sites.

(e) Driving motorbikes, motorcycles, or other motor vehicles on roads in developed recreation sites for any purpose other than access into, or egress out of, the site.

(f) Operating a motor vehicle at any time without a muffler in good working order, or operating a motor vehicle in such a manner as to create excessive or unusual noise or annoying smoke, or using a muffler cutoff, bypass, or similar device.

(g) Excessively accelerating the engine of a motor vehicle or motorcycle when such vehicle is not moving or is approaching or leaving a stopping place.

§ 291.9 Admission fees and special recreation use fees.

(a) Fees will be charged for admission or entrance to designated units of national recreation areas administered by the Department of Agriculture as provided by section 4(a) of the Land and Water Conservation Fund Act of 1965, as amended. Such fees shall be established by the Chief, Forest Service, or his delegate. Admission or entrance into any designated area of a national recreation area without payment of the established fee is prohibited.

(b) Special recreation use fees will be charged for the use of sites, facilities, equipment, or services furnished at Federal expense as provided by section 4(b) of the Land and Water Conservation Fund Act of 1965, as amended. Such fees shall be established by the Chief, Forest Service, or his delegate. Use of sites, facilities, equipment or services without payment of the established special recreation use fee is prohibited.

(c) Clear notice that an admission or entrance fee or special recreation use fee has been established shall be prominently posted at each area and at appropriate locations therein and shall be included in publications distributed at such areas. Any violation of this section is punishable by a fine of not more than $100.

(Sec. 4, 86 Stat. 459)

PART 292—NATIONAL RECREATION AREAS

Subpart A—General [Reserved]

Sec.
292.1–292.10 [Reserved]

Subpart B—Whiskeytown-Shasta-Trinity National Recreation Area

Sec.
292.11 Introduction.
292.12 General provisions; procedures.
292.13 Standards.

Subpart C—Sawtooth National Recreation Area—Private Lands [Reserved]

Subpart D—Sawtooth National Recreation Area—Federal Lands [Reserved]

AUTHORITY: Sec. 1, 30 Stat. 35, as amended, 62 Stat. 100, Sec. 1, 33 Stat. 628; 16 U.S.C. 551, 472, unless otherwise noted.

Subpart A—General [Reserved]

§§ 292.1–292.10 [Reserved]

Subpart B—Whiskeytown-Shasta-Trinity National Recreation Area

§ 292.11 Introduction.

(a) Administration of the Shasta and Clair Engle-Lewiston Units will be coordinated with the other purposes of the Central Valley Project of the Bureau of Reclamation and of the recreation area as a whole so as to provide for: (1) Public outdoor recreation benefits; (2) conservation of scenic, scientific, historic, and other values contributing to public enjoyment; and (3) the management, utilization, and disposal of renewable natural resources which in the judgment of the Secretary of Agriculture will promote or is compatible with, and does not significantly impair, public recreation and conservation of scenic, scientific, historic, or other values contributing to public enjoyment.

(b) The Secretary may not acquire without consent of the owner any privately owned "improved property" or interests therein within the boundaries of these units, so long as the appropriate local zoning agency shall have in force and applicable to such property a duly adopted, valid, zoning ordinance that is approved by the Secretary. This suspension of the Secretary's authority to acquire "improved property" without the owner's consent would automatically cease: (1) If the property is made the subject of a variance or exception to any applicable zoning ordinance that does not conform to the applicable standards contained in §§ 292.11–292.13; or (2) if such property is put to any use which does not conform to any applicable zoning ordinance approved by the Secretary.

(c) "Improved property" as used in §§ 292.11–292.13, means any building or group of related buildings, the actual construction of which was begun before February 7, 1963, together with not more than three acres of land in the same ownership on which the building or group of buildings is situated, but the Secretary may exclude from such "improved property" any shore or waters, together with so much of the land adjoining such shore or waters, as he deems necessary for public access thereto.

(d) Sections 292.11–292.13 specify the standards with which local zoning ordinances for the Shasta and Clair Engle-Lewiston Units must conform if the "improved property" or unimproved property proposed for development as authorized by the Act within the boundaries of the units is to be exempt from acquisition by condemnation. The objectives of §§ 292.11–292.13 are to: (1) Prohibit new commercial or industrial uses other than those which the Secretary considers to be consistent with the purposes of the act establishing the national recreation area; (2) promote the protection and development of properties in keeping with the purposes of that Act by means of use, acreage, setback, density, height or other requirements; and (3) provide that the Secretary receive notice of any variance granted under, or any exception made to, the application of the zoning ordinance approved by him.

(e) Following promulgation of §§ 292.11–292.13 in final form, the Secretary is required to approve any zoning ordinance or any amendment to an approved zoning ordinance submitted to him which conforms to the standards contained in the regulations in effect at the time of adoption of the ordinance or amendment.

(f) Any owner of unimproved property who proposes to develop his property for service to the public may submit to the Secretary a development plan setting forth the manner in which and the time by which the property is to be developed and the use to which it is proposed to be put. If the Secretary determines that the development and the use of the property conforms to approved

zoning ordinances, and serves the purposes of the National Recreation Area and that the property is not needed for easements and rights-of-way for access, utilities, or facilities, or for administration sites, campgrounds, or other areas needed for use by the United States for visitors, he may in his discretion issue to such owner a certification that so long as the property is developed, maintained, and used in conformity with approved zoning ordinances the Secretary's authority to acquire the property without the owner's consent is suspended.

§ 292.12 General provisions; procedures.

(a) *Approval of zoning ordinances and development plans.* (1) All validly adopted zoning ordinances and amendments thereto pertaining to the Shasta and Clair Engle-Lewiston Units may be submitted by the county of origin to the Secretary for written approval relative to their conformance with the applicable standards of §§ 292.11–292.13. Within 60 days following submission, the county will be notified of the Secretary's approval or disapproval of the zoning ordinances or amendments thereto. If more than 60 days are required, the county will be notified of the expected delay and of the additional time deemed necessary to reach a decision. The Secretary's approval shall remain effective so long as the zoning ordinances or amendments thereto remain in effect as approved.

(2) Development plans pertaining to unimproved property within the Shasta and Clair Engle-Lewiston Units may be submitted by the owner to the Secretary for determination as to whether they conform with approved zoning ordinances and whether the planned use and development would serve the Act. Within 30 days following submission of such plans the Secretary will approve or disapprove the plans or, if more than 30 days are required, will notify the applicant of the expected delay and of the additional time deemed necessary.

(b) *Amendment of ordinances.* Amendments of approved ordinances may be furnished in advance of their adoption to the Secretary for written decision as to their conformance with applicable standards of §§ 292.11–292.13.

(c) *Variances or exceptions to application of ordinances.* (1) The Secretary shall be given written notice of any variance granted under, or any exception made to, the application of a zoning ordinance or amendment thereto approved by him.

(2) The County, or private owners of improved property, may submit to the Secretary proposed variances or exceptions to the application of an approved zoning ordinance or amendment thereto for written advice as to whether the intended use will make the property subject to acquisition without the owner's consent. Within 30 days following his receipt of such a request, the Secretary will advise the interested party or parties as to his determination. If more than 30 days are required by the Secretary for such determination, he shall so notify the interested party or parties stating the additional time required and the reasons therefore.

(d) *Certification of property.* Where improvements and land use of improved property conform with approved ordinances, or with approved variances from such ordinances, certification that the Secretary's authority to acquire the property without the owner's consent is suspended may be obtained by any party in interest upon request to the Secretary. Where the development and use of unimproved property for service to the public is approved by the Secretary, certification that the authority to acquire the property without the owner's consent is suspended may be issued to the owner.

(e) *Effect of noncompliance.* Suspension of the Secretary's authority to acquire any improved property without the owner's consent will automatically cease if (1) such property is made the subject of variance or exception to any applicable zoning ordinance that does not conform to the applicable standard in the Secretary's regulation, (2) such property is put to a use which does not conform to any applicable zoning ordinance, or, as to property approved by the Secretary for development, a use which does not conform to the approved development plan or (3) the local zoning agency does not have in force a duly adopted, valid, zoning ordinance that is approved by the Secretary in accordance with the standards of §§ 292.11–292.13.

(f) *Nonconforming commercial or industrial uses.* Any existing commercial or industrial uses not in conformance with approved zoning ordinances shall be discontinued within 10 years from the date such ordinances are approved: *Provided, however,* That with the approval of the Secretary such 10-year period may be extended by the county for a prescribed period sufficient to allow the owner reasonable additional time to amortize investments made in the property before November 8, 1965.

§ 292.13 Standards.

(a) The standards set forth in §§ 292.11–292.13 shall apply to the Shasta and Clair Engle-Lewiston Units, which are defined by the boundary descriptions in the notice of the Secretary of Agriculture of July 12, 1966 (31 FR 9469), and to a strip of land outside the National Recreation Area on either side of Federal Aid Secondary Highway Numbered 1089, as more fully described in 2(a) of the act establishing the recreation area (79 Stat. 1296).

(b) New industrial or commercial uses: new industrial or commercial uses will be prohibited in any location except under the following conditions:

(1) The industrial use is such that its operation, physical structures, or waste byproducts would not have significant adverse impacts on surrounding or nearby outdoor recreation, scenic and esthetic values. Industrial uses having an adverse impact include, but are not limited to, cement production, gravel extraction operations involving more than one-fourth acre of surface, smelters, sand, gravel and aggregate processing plants, fabricating plants, pulpmills, and commercial livestock feeder yards.

(2) (i) The commercial use is for purposes of providing food, lodging, automotive or marine maintenance facilities and services to accommodate recreationists and the intended land occupancy and physical structures are such that they can be harmonized with adjacent land development and surrounding appearances in accordance with approved plans and schedules.

(ii) This standard provides for privately owned and operated businesses whose purposes and physical structures are in keeping with objectives for use and maintenance of the area's outdoor recreation resources. It precludes establishment of drive-in theaters, zoos, and similar nonconforming types of commercial entertainment.

(c) Protection of roadsides: Provisions to protect natural scenic qualities and maintain screening along public travel routes will include:

(1) Prohibition of new structural improvements or visible utility lines within a strip of land extending back not less than 150 feet from both sides of the centerline of any public road or roadway except roads within subdivisions or commercial areas. In addition to buildings, this prohibition pertains to above-ground power and telephone lines, borrow pits, gravel, or earth extraction areas, and quarries.

(2) Retention of trees and shrubs in the above-prescribed roadside strips to the full extent that is compatible with needs for public safety and road maintenance. Wholesale clearing by chemical or other means for fire control and other purposes will not be practiced under this standard.

(d) Protection of shorelines: Provisions to protect scenic qualities and reduce potentials for pollution of public reservoirs will include: Prohibition of structures within 300 feet horizontal distance from highwater lines of reservoirs other than structures the purpose of which is to service and accommodate boating or to facilitate picnicking and swimming: *Provided,* That exceptions to this standard may be made upon showing satisfactory to the Secretary that proposed structures will not conflict with scenic and antipollution considerations.

(e) Property development: Location and development of structures will conform with the following minimum standards:

(1) *Commercial development.* (i) Stores, restaurants, garages, service stations, and comparable business enterprises will be situated in centers zoned for this purpose unless they are operated as part of a resort or hotel. Commercial centers will be of sufficient size that expansion of facilities or service areas is not dependent upon use of public land.

(ii) Sites outside designated commercial centers will be used for resort development contingent upon case by case concurrence of the responsible county officials and the Secretary that such use is, in all aspects, compatible with the

purposes for establishing the recreation area.

(iii) Structures for commercial purposes, inclusive of isolated resorts or motels, will not exceed two stories height at front elevation, and will be conventional architecture and will utilize colors, nonglare roofing materials, and spacing or layout that harmonizes with forested settings. Except for signs, structures designed primarily for purposes of calling attention to products or service will not be permitted.

(2) *Residential development.* (i) Locations approved for residential development will be buffered by distance, topography, or forest cover from existing or planned public use areas such as trailer parks, campgrounds, or organization sites. Separation will be sufficient to avoid conflicts resulting from intervisibility, noise, and proximity that is conducive to private property trespass.

(ii) Requirements for approval of residential areas will include: (*a*) Construction of access when main access would otherwise be limited to a road constructed by the United States primarily to service publicly owned recreation developments; (*b*) limitation of residences to single-family units situated at a density not exceeding two per acre, but any lot of less than a half-acre may be used for residential purposes if, on or before promulgation of §§ 292.11–292.13, such lot was in separate ownership or was delineated in a county-approved plat that constitutes part of a duly recorded subdivision; (*c*) use of set-backs, limitations to natural terrain, neutral exterior colors, nonglare roofing materials, and limitations of building heights fully adequate to harmonize housing development with the objective of the National Recreation Area as set forth in the act.

(3) *Signs and signing.* Only those signs may be permitted which (i) do not exceed 1 square foot in area for any residential use; (ii) do not exceed 40 square feet in area, 8 feet in length, and 15 feet maximum height from ground for any other use, including advertisement of the sale or rental of property; and (iii) which are not illuminated by any neon or flashing device. Commercial signs may be placed only on the property on which the advertised use occurs, or on the property which is advertised for sale or rental. Signs shall be subdued in appearance, harmonizing in design and color with the surroundings and shall not be attached to any tree or shrub. Nonconforming signs may continue for a period not to exceed 2 years from the date a zoning ordinance containing these limitations is adopted.

Subpart C—Sawtooth National Recreation Area—Private Lands

§§ 292.14–292.16 [Reserved]

Subpart D—Sawtooth National Recreation Area—Federal Lands

§§ 292.17–292.19 [Reserved]

PART 293—WILDERNESS—PRIMITIVE AREAS

Sec.

AUTHORITY: Sec. 1, 30 Stat. 35, as amended, 62 Stat. 100, sec. 1, 33 Stat. 628; 16 U.S.C. 551, 472, unless otherwise noted.

§ 293.1 Definition.

National Forest Wilderness shall consist of those units of the National Wilderness Preservation System which at least 30 days before the Wilderness Act of September 3, 1964, were designated as Wilderness and Wild under Secretary of Agriculture's Regulations U–1 and U–2 (§§ 251.20, 251.21), the Boundary Waters Canoe Area as designated under Regulation U–3 (§ 294.1), and such other areas of the National Forests as may later be added to the System by act of Congress. Sections 293.1 to 293.15 apply to all National Forest units now or hereafter in the National Wilderness Preservation System, including the Boundary Waters Canoe Area, Superior National Forest, except as that area is subject to § 293.16.

§ 293.2 Objectives.

Except as otherwise provided in the regulations in this part, National Forest Wilderness shall be so administered as to meet the public purposes of recreational, scenic, scientific, educational, conservation, and historical uses; and it shall also be administered for such other purposes for which it may have been established in such a manner as to preserve and protect its wilderness character. In carrying out such purposes, National Forest Wilderness resources shall be managed to promote, perpetuate, and, where necessary, restore the wilderness character of the land and its specific values of solitude, physical and mental challenge, scientific study, inspiration, and primitive recreation. To that end:

(a) Natural ecological succession will be allowed to operate freely to the extent feasible.

(b) Wilderness will be made available for human use to the optimum extent consistent with the maintenance of primitive conditions.

(c) In resolving conflicts in resource use, wilderness values will be dominant to the extent not limited by the Wilderness Act, subsequent establishing legislation, or the regulations in this part.

§ 293.3 Control of uses.

To the extent not limited by the Wilderness Act, subsequent legislation establishing a particular unit, or the regulations in this part, the Chief, Forest Service, may prescribe measures necessary to control fire, insects, and disease and measures which may be used in emergencies involving the health and safety of persons or damage to property and may require permits for, or otherwise limit or regulate, any use of National Forest land, including, but not limited to, camping, campfires, and grazing of recreation livestock.

§ 293.4 Maintenance of records.

The Chief, Forest Service, in accordance with section 3(a)(2) of the Wilderness Act, shall establish uniform procedures and standards for the maintenance and availability to the public of records pertaining to National Forest Wilderness, including maps and legal descriptions; copies of regulations governing Wilderness; and copies of public notices and reports submitted to Congress regarding pending additions, eliminations, or modifications. Copies of such information pertaining to National Forest Wilderness within their respective jurisdictions shall be available to the public in the appropriate offices of the Regional Foresters, Forest Supervisors, and Forest Rangers.

§ 293.5 Establishment, modification, or elimination.

National Forest Wilderness will be established, modified, or eliminated in accordance with the provisions of sections 3 (b), (d), and (e) of the Wilderness Act. The Chief, Forest Service, shall arrange for issuing public notices, appointing hearing officers, holding public hearings, and notifying the Governors of the States concerned and the governing board of each county in which the lands involved are located.

(a) At least 30 days' public notice shall be given of the proposed action and intent to hold a public hearing. Public notice shall include publication in the FEDERAL REGISTER and in a newspaper of general circulation in the vicinity of the land involved.

(b) Public hearings shall be held at locations convenient to the area affected. If the land involved is in more than one State, at least one hearing shall be held in each State in which a portion of the land lies.

(c) A record of the public hearing and the views submitted subsequent to public notice and prior to the close of the public hearing shall be included with any recommendations to the President and to the Congress with respect to any such action.

(d) At least 30 days before the date of the public hearing, suitable advice shall be furnished to the Governor of each State and the governing board of each county or, in Alaska, the borough

in which the lands are located, and Federal departments and agencies concerned; and such officers or Federal agencies shall be invited to submit their views on the proposed action at the hearing or in writing by not later than 30 days following the date of the hearing. Any views submitted in response to such advice with respect to any proposed Wilderness action shall be included with any recommendations to the President and to the Congress with respect to any such action.

§ 293.6 Commercial enterprises, roads, motor vehicles, motorized equipment, motorboats, aircraft, aircraft landing facilities, airdrops, structures, and cutting of trees.

Except as provided in the Wilderness Act, subsequent legislation establishing a particular Wilderness unit, or §§ 294.2 (b), 294.2(c), and 294.2(e), paragraphs (c) and (d) of this section, and §§ 293.7, 293.8, and 293.12 through 293.16, inclusive, and subject to existing rights, there shall be in National Forest Wilderness no commercial enterprises; no temporary or permanent roads; no aircraft landing strips; no heliports or helispots, no use of motor vehicles, motorized equipment, motorboats, or other forms of mechanical transport; no landing of aircraft; no dropping of materials, supplies, or persons from aircraft; no structures or installations; and no cutting of trees for nonwilderness purposes.

(a) "Mechanical transport," as herein used, shall include any contrivance which travels over ground, snow, or water on wheels, tracks, skids, or by floatation and is propelled by a nonliving power source contained or carried on or within the device.

(b) "Motorized equipment," as herein used, shall include any machine activated by a nonliving power source, except that small battery-powered, hand-carried devices such as flashlights, shavers, and Geiger counters are not classed as motorized equipment.

(c) The Chief, Forest Service, may authorize occupancy and use of National Forest land by officers, employees, agencies, or agents of the Federal, State, and county governments to carry out the purposes of the Wilderness Act and will prescribe conditions under which motorized equipment, mechanical transport, aircraft, aircraft landing strips, heliports, helispots, installations, or structures may be used, transported, or installed by the Forest Service and its agents and by other Federal, State, or county agencies or their agents, to meet the minimum requirements for authorized activities to protect and administer the Wilderness and its resources. The Chief may also prescribe the conditions under which such equipment, transport, aircraft, installations, or structures may be used in emergencies involving the health and safety of persons, damage to property, or other purposes.

(d) The Chief, Forest Service, may permit, subject to such restrictions as he deems desirable, the landing of aircraft and the use of motorboats at places within any Wilderness where these uses were established prior to the date the Wilderness was designated by Congress as a unit of the National Wilderness Preservation System. The Chief may also permit the maintenance of aircraft landing strips, heliports, or helispots which existed when the Wilderness was designated by Congress as a unit of the National Wilderness Preservation System.

§ 293.7 Grazing of livestock.

(a) The grazing of livestock, where such use was established before the date of legislation which includes an area in the National Wilderness Preservation System, shall be permitted to continue under the general regulations covering grazing of livestock on the National Forests and in accordance with special provisions covering grazing use in units of National Forest Wilderness which the Chief of the Forest Service may prescribe for general application in such units or may arrange to have prescribed for individual units.

(b) The Chief, Forest Service, may permit, subject to such conditions as he deems necessary, the maintenance, reconstruction, or relocation of those livestock management improvements and structures which existed within a Wilderness when it was incorporated into the National Wilderness Preservation System. Additional improvements or structures may be built when necessary to protect wilderness values.

§ 293.8 Permanent structures and commercial services.

Motels, summer homes, stores, resorts, organization camps, hunting and fishing lodges, electronic installations, and similar structures and uses are prohibited in National Forest Wilderness. The Chief, Forest Service, may permit temporary structures and commercial services within National Forest Wilderness to the extent necessary for realizing the recreational or other wilderness purposes, which may include, but are not limited to, the public services generally offered by packers, outfitters, and guides.

§ 293.9 Poisons and herbicides.

Poisons or herbicides will not be used to control wildlife, fish, insects, or plants within any Wilderness except by or under the direct supervision of the Forest Service or other agency designated by the Chief, Forest Service; however, the personal use of household-type insecticides by visitors to provide for health and sanitation is specifically excepted from this prohibition.

§ 293.10 Jurisdiction over wildlife and fish.

Nothing in the regulations in this part shall be construed as affecting the jurisdiction or responsibility of the several States with respect to wildlife and fish in the National Forests.

§ 293.11 Water rights.

Nothing in the regulations in this part constitutes an expressed or implied claim or denial on the part of the Department of Agriculture as to exemption from State water laws.

§ 293.12 Access to surrounded State and private lands.

States or persons, and their successors in interest, who own land completely surrounded by National Forest Wilderness shall be given such rights as may be necessary to assure adequate access to that land. "Adequate access" is defined as the combination of routes and modes of travel which will, as determined by the Forest Service, cause the least lasting impact on the primitive character of the land and at the same time will serve the reasonable purposes for which the State and private land is held or used. Access by routes or modes of travel not available to the general public under the regulations in this part shall be given by written authorization issued by the Forest Service. The authorization will prescribe the means and the routes of travel to and from the privately owned or State-owned land which constitute adequate access and the conditions reasonably necessary to preserve the National Forest Wilderness.

§ 293.13 Access to valid mining claims or valid occupancies.

Persons with valid mining claims or other valid occupancies wholly within National Forest Wilderness shall be permitted access to such surrounded claims or occupancies by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such claims or occupancies surrounded by National Forest Wilderness. The Forest Service will, when appropriate, issue permits which shall prescribe the routes of travel to and from the surrounded claims or occupancies, the mode of travel, and other conditions reasonably necessary to preserve the National Forest Wilderness.

§ 293.14 Mining, mineral leases, and mineral permits.

Notwithstanding any other provisions of the regulations in this part, the U.S. mining laws and all laws pertaining to mineral leasing shall extend to each National Forest Wilderness for the period specified in the Wilderness Act or subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System.

(a) Whoever hereafter locates a mining claim in National Forest Wilderness shall within 30 days thereafter file a written notice of his Post Office address and the location of that mining claim in the office of the Forest Supervisor or District Ranger having jurisdiction over the National Forest land on which the claim is located.

(b) Holders of unpatented mining claims validly established on any National Forest Wilderness prior to inclusion of such unit in the National Wilderness Preservation System shall be accorded the rights provided by the U.S. mining

laws as then applicable to the National Forest land involved. Persons locating mining claims in any unit of National Forest Wilderness on or after the date on which the said unit was included in the National Wilderness Preservation System shall be accorded the rights provided by the U.S. mining laws as applicable to the National Forest land involved and subject to provisions specified in the establishing legislation. All claimants shall comply with reasonable conditions prescribed by the Chief, Forest Service, for the protection of National Forest resources in accordance with the general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as wilderness and so as to provide for the preservation of its wilderness character; and a performance bond may be required.

(1) Prior to commencing operation or development of any mining claim, or to cutting timber thereon, mining claimants shall file written notice in the office of the Forest Supervisor or District Ranger having jurisdiction over the land involved. Unless within 20 days after such notice is given the Forest Service requires the claimant to furnish operating plans or to accept a permit governing such operations, he may commence operation, development, or timber cutting.

(2) No claimant shall construct roads across National Forest Wilderness unless authorized by the Forest Service. Application to construct a road to a mining claim shall be filed with the Forest Service and shall be accompanied by a plat showing the location of the proposed road and by a description of the type and standard of the road. The Chief, Forest Service, shall, when appropriate, authorize construction of the road as proposed or shall require such changes in location and type and standard of construction as are necessary to safeguard the National Forest resources, including wilderness values, consistent with the use of the land for mineral location, exploration, development, drilling, and production and for transmission lines, waterlines, telephone lines, and processing operations, including, where essential, the use of mechanical transport, aircraft or motorized equipment.

(3) Claimants shall cut timber on mining claims within National Forest Wilderness only for the actual development of the claim or uses reasonably incident thereto. Any severance or removal of timber, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management and in such a manner as to minimize the adverse effect on the wilderness character of the land.

(4) All claimants shall, in developing and operating their mining claims, take those reasonable measures, including settling ponds, necessary for the disposal of tailings, dumpage, and other deleterious materials or substances to prevent obstruction, pollution, excessive siltation, or deterioration of the land, streams, ponds, lakes, or springs, as may be directed by the Forest Service.

(5) On mining claims validly established prior to inclusion of the land within the National Wilderness Preservation System, claimants shall, as directed by the Forest Service and if application for patent is not pending, take all reasonable measures to remove any improvements no longer needed for mining purposes and which were installed after the land was designated by Congress as Wilderness and, by appropriate treatment, restore, as nearly as practicable, the original contour of the surface of the land which was disturbed subsequent to the date this section is adopted and which is no longer needed in performing location, exploration, drilling, and production and promote its revegetation by natural means. On such part of the claim where restoration to approximately the original contour is not feasible, restoration for such part shall provide a combination of bank slopes and contour gradient conducive to soil stabilization and revegetation by natural means.

(6) On claims validly established after the date the land was included within the National Wilderness Preservation System, claimants shall, as directed by the Forest Service, take all reasonable measures to remove improvements no longer needed for mining purposes and, by appropriate treatment, restore, as near as practicable, the original contour of the surface of the land which was disturbed and which is no longer needed in performing location and exploration, drilling and production, and to revegetate and to otherwise prevent or control accelerated soil erosion.

(c) The title to timber on patented claims validly established after the land was included within the National Wilderness Preservation System remains in the United States, subject to a right to cut and use timber for mining purposes. So much of the mature timber may be cut and used as is needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available. The cutting shall comply with the requirements for sound principles of forest management as defined by the National Forest rules and regulations and set forth in stipulations issued by the Chief, Forest Service, which as a minimum incorporate the following basic principles of forest management:

(1) Harvesting operations shall be so conducted as to minimize soil movement and damage from water runoff; and

(2) Slash shall be disposed of and other precautions shall be taken to minimize damage from forest insects, disease, and fire.

(d) Mineral leases, permits, and licenses covering lands within National Forest Wilderness will contain reasonable stipulations for the protection of the wilderness character of the land consistent with the use of the land for purposes for which they are leased, permitted, or licensed. The Chief, Forest Service, shall specify the conditions to be included in such stipulations.

(e) Permits shall not be issued for the removal of mineral materials commonly known as "common varieties" under the Materials Act of July 31, 1947, as amended and supplemented (30 U.S.C. 601–604).

§ 293.15 Prospecting for minerals and other resources.

The Chief, Forest Service, shall allow any activity, including prospecting, for the purpose of gathering information about minerals or other resources in National Forest Wilderness except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment, and except, further, that:

(a) No person shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the United States mining laws and laws pertaining to mineral leasing cease to apply to the specific Wilderness, nor shall any person after such date have any preference in applying for a mineral lease, license, or permit.

(b) No overland motor vehicle or other form of mechanical overland transport may be used in connection with prospecting for minerals or any activity for the purpose of gathering information about minerals or other resources except as authorized by the Chief, Forest Service.

(c) Any person desiring to use motorized equipment, to land aircraft, or to make substantial excavations for mineral prospecting or for other purposes shall apply in writing to the office of the Forest Supervisor or District Ranger having jurisdiction over the land involved. Excavations shall be considered "substantial" which singularly or collectively exceed 200 cubic feet within any area which can be bounded by a rectangle containing 20 surface acres. Such use or excavation may be authorized by a permit issued by the Forest Service. Such permits may provide for the protection of National Forest resources, including wilderness values, protection of the public, and restoration of disturbed areas, including the posting of performance bonds.

(d) Prospecting for water resources and the establishment of new reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest and the subsequent maintenance of such facilities, all pursuant to section 4(d)(4)(1) of the Wilderness Act, will be permitted when and as authorized by the President.

§ 293.16 Special provisions governing the Boundary Waters Canoe Area, Superior National Forest.

Subject to existing private rights, the lands now owned or hereafter acquired by the United States within the Boundary Waters Canoe Area of the Superior National Forest, Minn., as formerly designated under Reg. U–3 (§ 294.1) and incorporated into the National Wilderness Preservation System under the

Wilderness Act of September 3, 1964, shall be administered in accordance with this regulation for the general purpose of maintaining, without unnecessary restrictions on other uses, including that of timber, the primitive character of the Area, particularly in the vicinity of lakes, streams, and portages.

(a) In the management of the timber resources of the Boundary Waters Canoe Area, two zones are established:

(1) An Interior Zone, in which there will be no commercial harvesting of timber. The boundaries of this zone are defined on an official map dated the same date as that on which this regulation is promulgated, which map shows the specific boundaries established January 12, 1965, and the boundaries of the additional area which is to be progressively added by the Chief of the Forest Service between January 12, 1965, and December 31, 1975.

(2) A Portal Zone which will include all the Boundary Waters Canoe Area not designated as Interior Zone. Timber harvesting is permitted in the Portal Zone under conditions designed to protect and maintain primitive recreational values. Timber within 400 feet of the shorelines of lakes and streams suitable for boat or canoe travel or any portage connecting such waters will be specifically excluded from harvesting, and timber harvesting operations will be designed to avoid unnecessary crossings of portages. Timber sale plans will incorporate suitable provisions for prompt and appropriate cover restoration.

(b) Except as provided in the Wilderness Act, in this section and in §§ 294.2 (b), (c) and (e), and subject to existing private rights, there shall be no commercial enterprises and no permanent roads within the Boundary Waters Canoe Area and there shall be no temporary roads, no use of motor vehicles, motorized equipment, or motorboats, no landing of aircraft, and no other form of mechanical transport.

(1) All uses that require the erection of permanent structures and all permanent structures except as herein provided, are prohibited in the Boundary Waters Canoe Area. The Chief, Forest Service, may permit temporary structures and commercial services within the Boundary Waters Canoe Area to the extent necessary for realizing the recreational or other wilderness purposes, which may include the public services generally offered by outfitters and guides.

(2) In the Portal Zone temporary roads and the use of motorized equipment and mechanical transport for the authorized travel and removal of forest products will be permitted in accordance with special conditions established by the Chief, Forest Service; but such use of the roads for other purposes is prohibited.

(3) The overland transportation of any watercraft by mechanical means, including the use of wheels, rollers, or other devices, is prohibited except that mechanical transport and necessary attendant facilities may be permitted, in accordance with special conditions established by the Chief, Forest Service, over portages along the International Boundary, including the Loon River Portage, when acquired; Beatty Portage and Prairie Portage; the other major portages into Basswood Lake; namely, Four Mile and Fall-Newton-Pipestone Bay Portages; and the Vermilion-Trout Lake Portage. Mechanical transport over Four Mile and Fall-Newton-Pipestone Bay Portages may be suspended, modified, or revoked upon acquisition by the United States of all lands on Basswood Lake, and the expiration of rights reserved in connection with the acquisition of such lands.

(4) No motor or other mechanical device capable of propelling a watercraft through water shall be transported by any means across National Forest land except over routes designated by the Chief, Forest Service, who shall cause a list and a map of all routes so designated, and any special conditions governing their use, to be maintained for public reference in the offices of the Regional Forester, the Forest Supervisor, and the Forest Rangers having jurisdiction.

(5) Except for holders of reserved rights, no watercraft, motor, mechanical device, or equipment not used in connection with a current visit may be stored on or moored to National Forest land and left unattended.

(6) No amphibious craft of any type and no watercraft designed for or used as floating living quarters shall be moored to, used on, or transported over National Forest land.

(7) The Chief, Forest Service, may permit the use of motor-driven ice and snow craft on routes over which motors may be transported, as authorized in subparagraph (4) of this paragraph; and over the Crane Lake-Little Vermilion Lake Winter Portage; and over the Saganaga Lake Winter Portage, in sections 18–19, T. 66 N., R. 4 W. The Chief shall cause a list and a map of routes over which use of ice and snow craft is permitted, and any special conditions governing their use, to be maintained for public reference in the offices of the Regional Forester, the Forest Supervisor, and the Forest Rangers having jurisdiction.

(8) In order to permit customary use of the Boundary Waters Canoe Area to continue pending a permanent solution to the change of water levels resulting from the failure of Prairie Portage Dam and notwithstanding the provisions of subparagraphs (3) and (5) of this paragraph until December 31, 1969, use of portage wheels to transport boats across the temporary portage between Moose Lake and Newfound Lake may be permitted, and permits may be issued for the storage of boats and related equipment in the vicinity of this temporary portage to the extent consistent with the operating practices of the permittees prior to the failure of Prairie Portage Dam as determined by the Forest Supervisor; and notwithstanding the provisions of subparagraph (1) of this paragraph, a structure to maintain normal water levels in Moose Lake is authorized.

(c) No permanent or semipermanent camp may be erected or used on National Forest land except as authorized in connection with a reserved right, or in the Portal Zone in connection with the harvest and removal of timber and other forest products.

(d) Public use of certain existing improvements within and adjacent to the boundaries of the Boundary Waters Canoe Area, to wit:

Road—sections 8, 9, 10, and 11, T. 61 N., R. 9 W.
Road and railroad—section 3, T. 61 N., R. 8 W.
Road and powerline—section 22, T. 64 N., R. 1 W.

is recognized and may continue, subject to general authority of the Chief, Forest Service, with respect to roads and public utility improvements, in accordance with the general purpose of maintaining without unnecessary restrictions on other uses, the primitive character of the Area.

(e) To the extent not limited by the Wilderness Act, the Chief, Forest Service, may prescribe measures necessary to control fire, insects, and disease; measures necessary to protect and administer the Area; measures which may be used in emergencies involving the health and safety of persons, or damage to property; and may require permits for, or otherwise limit or regulate, and use of National Forest land, including camping and campfires. The Chief may authorize occupancy and use of National Forest land by officers or agencies of the Federal Government, the State of Minnesota, and the Counties of St. Louis, Lake, and Cook, and will prescribe conditions under which motorized equipment, mechanical transport, or structures may be used, transported, or installed by the Forest Service and its agents and by other Federal, State, or County agencies, to meet the minimum requirements for protection and administration of the Area and its resources.

(f) Nothing in this regulation shall be construed as affecting the jurisdiction or responsibility of the State of Minnesota with respect to wildlife and fish in the National Forest.

(g) The State of Minnesota, other persons, and their successors in interest owning land completely surrounded by National Forest land shall be given such rights as may be necessary to assure adequate access to that land. Such rights may be recognized in stipulations entered into between the Forest Service and the private owner or State. Such stipulations may prescribe the means and the routes of travel to and from the privately owned or State land which constitute adequate access and any other conditions reasonably necessary for the preservation of the primitive conditions within the Boundary Waters Canoe Area.

(78 Stat. 890, 16 U.S.C. 1131–1136; 74 Stat. 215, 16 U.S.C. 528–531; 46 Stat. 1020, 16 U.S.C. 577–577c)

§ 293.17 National Forest Primitive Areas.

(a) Within those areas of National Forests classified as "Primitive" on the

effective date of the Wilderness Act, September 3, 1964, there shall be no roads or other provision for motorized transportation, no commercial timber cutting, and no occupancy under special-use permit for hotels, stores, resorts, summer homes, organization camps, hunting and fishing lodges, or similar uses: *Provided*, That existing roads over National Forest lands reserved from the public domain and roads necessary for the exercise of a statutory right of ingress and egress may be allowed under appropriate conditions determined by the Chief, Forest Service.

(b) Grazing of domestic livestock, development of water storage projects which do not involve road construction, and improvements necessary for the protection of the National Forests may be permitted, subject to such restrictions as the Chief, Forest Service, deems desirable. Within Primitive Areas, when the use is for other than administrative needs of the Forest Service, use by other Federal agencies when authorized by the Chief, and in emergencies, the landing of aircraft and the use of motorboats are prohibited on National Forest land or water unless such use by aircraft or motorboats has already become well established, the use of motor vehicles is prohibited, and the use of other motorized equipment is prohibited except as authorized by the Chief. These restrictions are not intended as limitations on statutory rights of ingress and egress or of prospecting, locating, and developing mineral resources.

(78 Stat. 890, 16 U.S.C. 1131-1136; 74 Stat. 215, 16 U.S.C. 528-531)

PART 294—SPECIAL AREAS

Sec.
294.1 Recreation areas.
294.2 Navigation of aircraft within airspace reservation over certain areas of Superior National Forest in Minnesota.

AUTHORITY: Sec. 1, 30 Stat. 35, as amended, 62 Stat. 100, sec. 1, 33 Stat. 628; 16 U.S.C. 551, 472, unless otherwise noted.

§ 294.1 Recreation areas.

Suitable areas of national forest land, other than wilderness or wild areas, which should be managed principally for recreation use may be given special classification as follows:

(a) Areas which should be managed principally for recreation use substantially in their natural condition and on which, in the discretion of the officer making the classification, certain other uses may or may not be permitted may be approved and classified by the Chief of the Forest Service or by such officers as he may designate if the particular area is less than 100,000 acres. Areas of 100,000 acres or more will be approved and classified by the Secretary of Agriculture.

(b) Areas which should be managed for public recreation requiring development and substantial improvements may be given special classification as public recreation areas. Areas in single tracts of not more than 160 acres may be approved and classified by the Chief of the Forest Service or by such officers as he may designate. Areas in excess of 160 acres will be classified by the Secretary of Agriculture. Classification hereunder may include areas used or selected to be used for the development and maintenance as camp grounds, picnic grounds, organization camps, resorts, public service sites (such as for restaurants, filling stations, stores, horse and boat liveries, garages, and similar types of public service accommodations), bathing beaches, winter sports areas, lodges, and similar facilities and appurtenant structures needed by the public to enjoy the recreation resources of the national forests. The boundaries of all areas so classified shall be clearly marked on the ground and notices of such classification shall be posted at conspicuous places thereon. Areas classified under this section shall thereby be set apart and reserved for public recreation use and such classification shall constitute a formal closing of the area to any use or occupancy inconsistent with the classification.

§ 294.2 Navigation of aircraft within airspace reservation over certain areas of Superior National Forest in Minnesota.

(a) *Description of areas.* Sections 294.2(b) to 294.2(f), inclusive, apply to those areas of land and water in the Counties of Cook, Lake, and St. Louis, State of Minnesota, within the exterior boundaries of the Superior National Forest, which have heretofore been designated by the Secretary of Agriculture as the Superior Roadless Area, the Little Indian Sioux Roadless Area, and the Caribou Roadless Area, respectively, and to the airspace over said areas and below the altitude of 4,000 feet above sea level. Said areas are more particularly described in the Executive order setting apart said airspace as an airspace reservation (E.O. 10092, Dec. 17, 1949; 3 CFR 1949 Supp.). Copies of said Executive order may be obtained on request from the Forest Supervisor, Superior National Forest, Duluth, Minnesota (hereinafter called "Forest Supervisor").

(b) *Emergency landing and rescue operations.* The pilot of any aircraft landing within any of said areas for reasons of emergency or for conducting rescue operations, shall inform the Forest Supervisor within seven days after the termination of the emergency or the completion of the rescue operation as to the date, place, and duration of landing, and the type and registration number of the aircraft.

(c) *Low flights.* Any person making a flight within said airspace reservation for reasons of safety or for conducting rescue operations shall inform the Forest Supervisor within seven days after the completion of the flight or the rescue operation as to the date, place, and duration of flight, and the type and registration number of the aircraft.

(d) *Permits.* Permits for the navigation of aircraft within said airspace reservation until January 1, 1952, for the purpose of direct travel to and from private lands within any of said areas will be issued by the Forest Supervisor to the pilot or owner of such lands whenever it is shown by the applicant to the satisfaction of the Forest Supervisor that air travel was a customary means of ingress to and egress from such lands prior to December 17, 1949. No person shall navigate an aircraft within said airspace reservation except as authorized by such permit or by the provisions of §§ 294.2(b), 294.2(c), and 294.2(e). Upon request of the Forest Supervisor the reports, records, and other information as to any flights made pursuant to such permits shall be made available, *Provided*, That no such request shall be made after October 31, 1957.

(e) *Official flights.* The provisions of §§ 294.2(b), 294.2(c), and 294.2(d) will not apply to flights made for conducting or assisting in the conduct of official business of the United States, the State of Minnesota or of Cook, St. Louis or Lake County, Minnesota.

(f) *Conformity with law.* Nothing in these regulations shall be construed as permitting the operation of aircraft contrary to the provisions of the Civil Aeronautics Act of 1938 (52 Stat. 973), as amended, or any rule, regulation or order issued thereunder.

PART 295—USE OF OFF-ROAD VEHICLES [RESERVED]

PARTS 296–299 [RESERVED]

[FR Doc.73-3703 Filed 3-2-73;8:45 am]

Title 46—Shipping

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 72-149R]

SUBCHAPTER B—MERCHANT MARINE OFFICERS AND SEAMEN

PART 10—LICENSING OF OFFICERS AND MOTORBOAT OPERATORS AND REGISTRATION OF STAFF OFFICERS

SUBCHAPTER T—SMALL PASSENGER VESSELS (UNDER 100 GROSS TONS)

PART 187—LICENSING

Requirements for Original Licenses

The purpose of the regulations in this document is to relax the visual acuity requirements for an original license as a deck engineer, or radio officer, or as an operator licensed under Part 10 or 187 of Title 46, Code of Federal Regulations. This change also affects the physical requirements for an endorsement as seaman because the visual acuity requirements for:

(1) An able seaman are the same as for an original license as a deck officer (46 CFR 12.05-5(b));

(2) A qualified member of the engine department are the same as for an original license as an engineer (46 CFR 12.15-5(b)); and

(3) A tankerman are the same as for an original license as an engineer, except the color vision test is the same as required for a deck officer (46 CFR 12.20-3(b)).

These amendments were proposed in a notice of proposed rule making published in the March 1, 1972, issue of the FEDERAL REGISTER (37 FR 4292) and in the Marine Safety Council Public Hearing Agenda, dated March 27, 1972. The proposed amendments were identified as item 7 in the notice and the agenda. A supplemental notice of proposed rule making was published in the December 8, 1972, issue of the FEDERAL REGISTER (37 FR 26124) to advise the public that the relaxation of the visual acuity requirements proposed on March 1, 1972, would, by cross reference, also affect the requirements for applicants for endorsements as able seaman, qualified member of the engine department, and tankerman. The public was given 30 additional days in which to submit written comments on the original notice and the supplemental notice. Interested persons were also given the opportunity to make oral statements at the public hearing which was held on March 27, 1972, in Washington, D.C.

Nine written comments were received. Seven of these comments supported the proposal, five of which suggested even further relaxation of the requirements. One comment opposed the proposal and suggested that there should be no standards for corrected vision but a stricter standard for uncorrected vision. The final commenter requested additional information. No oral comments were made at the public hearing.

An applicant for an original license must pass a physical examination that includes an eye test. Present regulations provide a visual acuity standard and allow a relaxation by the Commandant of the standard when the circumstances of the case so warrant. Coast Guard records indicate that such relaxations have been granted.

A comparison of the Coast Guard visual acuity standards with similar standards of other Government agencies discloses that in some cases the standards for merchant marine personnel are the most stringent. Such stringency was considered necessary because:

(1) After the original merchant marine license is issued, there is no subsequent examination for visual acuity; (2) the license qualifies the holder for service at sea that is comparable to line duty in the armed services; and (3) the license authorizes service on smaller vessels where, especially in bad weather, undue reliance on eye glasses would be undesirable. However, in view of the technological advances made in navigational aids and the lack of statistics to indicate that poor vision has materially contributed to any marine casualty, some relaxation of the visual acuity requirements is justified.

Seven of the comments received approved the proposal, five of which proposed that the corrected vision requirements in the present regulations be retained. These commenters pointed out that technical advances in navigational aids have made the dependence on normal eyesight less important than in the past. In addition, the commenters agree that operators and officers have proven themselves capable of performing satisfactorily under the present requirements.

In view of the comments received, the propostd uncorrected vision requirements have been adopted but the corrected requirements of the present regulations have been retained. The present corrected vision requirements are as follows:

License	One eye	Other eye
Deck	20/20	20/40
Engineer	20/30	20/50
Motorboat operator	20/20	20/40
Radio officer	20/30	20/50

In consideration of the foregoing, Chapter I of Title 46, Code of Federal Regulations, is amended as follows:

1. By amending § 10.02–5(e) by revising subparagraph (5) and the first and second sentences of subparagraph (3) to read as follows:

§ 10.02–5 Requirements for original licenses.

* * * * *

(e) *Physical examination* * * *.

(3) For an original license as master, mate, or pilot, the applicant must have uncorrected vision of at least 20/100 in both eyes correctable to at least 20/20 in one eye and 20/40 in the other. * * *

* * * * *

(5) For an original license as engineer, the applicant must have uncorrected vision of at least 20/100 in both eyes correctable to at least 20/30 in one eye and 20/50 in the other.

* * * * *

2. By revising § 10.13–15(c) to read as follows:

§ 10.13–15 Physical examinations for original licenses.

* * * * *

(c) For an original license as radio officer, the applicant must have uncorrected vision of at least 20/100 in both eyes correctable to at least 20/30 in one eye and 20/50 in the other. An applicant for an original license who has monocular vision and has served as a radio operator on merchant vessels of the United States with such vision may be issued a license if:

(1) He complies with the sections of this part that apply to the rating he seeks; and

(2) The vision in his remaining eye is at least 20/30 uncorrected.

* * * * *

3. By amending § 10.20–7(a) by revising the first and second sentences of subparagraph (2) to read as follows:

§ 10.20–7 Physical examination requirements.

(a) * * *

(2) For an original license as motorboat operator, the applicant must have uncorrected vision of at least 20/100 in both eyes correctable to at least 20/20 in one eye and 20/40 in the other. * * *

* * * * *

4. By amending § 187.10–15 by revising the first and second sentences of paragraph (c) to read as follows:

§ 187.10–15 Physical examination.

* * * * *

(c) For an original license as operator the applicant must have uncorrected vision of at least 20/100 in both eyes correctable to at least 20/20 in one eye and 20/40 in the other. * * *

* * * * *

(R.S. 4405, as amended, R.S. 4462, R.S. 4438, as amended; sec. 3, 70 Stat. 152, sec. 12, 85 Stat. 217, sec. 6(b)(1), 80 Stat. 937; 46 U.S.C. 375, 416, 224, 390(b), 1461(e), 49 U.S.C. 1655(b)(1); 49 CFR 1.46 (b) and (o)(1))

Effective date. These amendments become effective April 4, 1973.

Dated: February 27, 1973.

C. R. BENDER,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc.73-4083 Filed 3-2-73;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 18651; FCC 73-220]

PART 1—PRACTICE AND PROCEDURE

PART 73—RADIO BROADCAST SERVICES

AM Station Assignment Standards and Relationship Between AM and FM Broadcast Services

Report and order. In the matter of amendment of Part 73 of the Commission's rules, regarding AM station assignment standards and the relationship between the AM and FM broadcast services, Docket No. 18651.

1. This matter concerns the adoption of new rules to govern the assignment of standard broadcast, or "AM" facilities, both new stations and major changes in existing facilities. The proceeding was begun by notice of proposed rule making and Memorandum Opinion and Order adopted September 4, 1969, FCC 69-960, 34 FR 14384 (Sept. 13, 1969), 17 R.R. 2d 1524. Previously, in July 1968, a "freeze" had been imposed on the acceptance of applications for new AM stations and major changes, pending the formulation, proposal and adoption of rules to govern this service in the future.[1] Comments and reply comments in response to the notice were filed until early April 1970.

[1] Report and Order adopted July 18, 1968, FCC 68-739, 33 FR 10343, 13 R.R. 2d 1667. The "freeze" applied to all new and major change applications except change applications required by circumstances beyond the applicant's control (e.g., inability to continue at its present transmitter site), applications which are mutually exclusive with AM renewal applications, applications necessary to comply with international commitments, and applications for Class IV power increases where new international agreements make them possible (the latter provision was relaxed somewhat in 1969 along with the notice). The "freeze" has been waived in a few cases.

I. CONSIDERATIONS UNDERLYING THE "FREEZE" AND NOTICE PROPOSAL

2. The 1968 "freeze" Report and Order expressed in substance the following considerations: Since the adoption of new and somewhat more restrictive rules in 1964 (Docket 15084), applications have continued to flow in, and, while they do not present problems of degradation of existing service through interference (one of the important objectives of the Docket 15084 was to adopt rules under which such degradation would be minimized), stations authorized pursuant to these rules have been less than successful in improving AM service generally in two important respects: Reduction of "unserved area" [2] and provision of first local outlets in communities of significant size (while a majority of the stations being authorized as of mid 1968 were first stations, the size of places to which they were assigned was quite small, with a median population of 2,850). Also, since virtually all of the applications recently granted were for daytime-only facilities, they do nothing to improve service at night, where the really substantial unserved area exists. The Report and Order stated that this situation necessitated a study to determine whether there is still a significant national need for new AM stations or for major changes in existing stations, except in underserved areas, whether the remaining frequency space should be conserved for developing areas or to eradicate "unserved area", whether any future allocation system should view AM and FM as a single aural service, and whether the traditional "demand" basis of AM assignments is an efficient use of spectrum space. Since a continuing flood of applications would frustrate the objectives of the forthcoming rule making, on these basic questions, the "freeze" was adopted.

3. The September 1969 notice herein expressed these concepts in more concrete form. A quite restrictive rule was proposed, which would have prohibited the filing of applications for new stations unless the proposed operation would provide a first primary aural service to 25 percent of the area or population within the proposed primary service contour, and, if the application were for changed facilities, the area or population for which the station provided the only service would be increased. In determining the extent of present aural service, signals from existing FM stations of 1 mv./m. or greater would be taken into account.[3] Also, a test of FM channel availability would be included with respect to applications for new AM stations or new nighttime facilities (though not for changes in facilities on the same frequency): the AM application would not be accepted if there is available in the community an FM channel which the applicant could use and achieve substantially the same coverage of unserved area. This would include unoccupied FM channels assigned to the community in the FM Table of Assignments (§ 73.202 of the rules), unoccupied and available for use in the community because of assignment at a nearby community (§ 73.203 (b), the "10-mile" or "15-mile" rule), or susceptible of assignment in a reasonably simple rule-making proceeding involving no other changes in the Table.[4]

4. It was recognized that these very restrictive tests would sharply curtail the flow of applications, and, indeed, this was one of the express purposes of the proposal: To prevent the large-scale depletion of the limited AM spectrum space remaining until a more near optimum plan for utilizing it can be arrived at. It was emphasized (notice, para. 29) that the proposed rules "are not necessarily those which will govern the acceptance of applications for new and increased AM facilities for the indefinite future," but their adoption would give the Commission time to evaluate the over-all picture of aural development and to stimulate FM, with a further look at these developments in a few years. Meantime, we would authorize only stations clearly designed to improve service substantially.

5. The notice also emphasized certain other considerations, including the importance of stimulating FM development. It was stated that FM provides a superior service in a number of ways—full-time as opposed to the daytime-only service contemplated by the great majority of AM applications, usually a wider and more reliable service than a nighttime AM operation will provide, a service otherwise technically superior, with stereo and SCA potential—as well as being cheaper for the Commission to authorize and, except as compared to Class IV stations, cheaper for applicants to design and construct (AM directional antennas are expensive to design, evaluate, build and "prove out"). The notice also referred to the same consideration mentioned in the "freeze" Report and Order as to the relatively small contribution which current AM grants appear to be making to the improvement of aural service generally, nearly all of them representing daytime facilities with their inherent limitations, providing first or second local outlets in many cases but often only to very small communities (with most places of substantial size already having them). It was stated that while the provision of "first local outlets" is still of importance, "in our judgment it does not warrant, in itself, acceptance in the near future of applications providing no other substantial service benefit." (Notice, para. 31.) It was also pointed out that large-scale grant of applications for daytime-only facilities tends to preclude use of the channel and adjacent channels for full-time operations, which would bring service generally much more needed. With respect to increases in nighttime facilities—which have not up to now been subject to a "25 percent unserved area" test—it was stated that while these are sought on the ground that they are needed to cover expanding urban areas at night, often this is an excuse to propose facilities serving areas well removed from the station's city. (Notice, para. 19.)

6. The Notice also discussed certain subjects which the Commission hopes to explore in the course of its evaluation of the total AM picture. These included: (1) The possibility of requiring, in AM, a "preclusion showing", somewhat similar to that required with many petitions for additional FM assignments, showing what uses of the channel and adjacent channels would be precluded by the proposal, and what other assignment possibilities exist to meet such future needs and uses; and (2) the possible formulation of rules designed to cut down the tremendously burdensome and expensive work involved in the processing of AM applications, for example a rule to the effect that when one application providing certain service benefits has been accepted (e.g., one which would serve unserved area or provide a first local outlet), no other conflicting application would be accepted unless it would provide at least as great benefits. The notice also invited comments on some alternative approaches in various respects (notice, para. 33(a) to (e)): Attaching more importance to providing a second service as well as a first; possibly requiring service to only a smaller percentage of "unserved area"; provision of first or second local outlets as well as a first or second primary service, ways of avoiding intentionally inefficient proposals designed to meet the "25 percent" test simply by serving an unduly limited area; and possible exclusion of "distant" signals in determining whether an area is presently served, on the theory that service from a distant source, while it may be technically good, is not equal to a closer service in being meaningful to listeners.

II. A BRIEF HISTORY OF AM ALLOCATION RULES

7. Historically, and at present, except to the extent the "freeze" prevails, AM applications have been accepted and considered on a "demand" basis: an applicant chooses and proposes a particular

[2] The term "unserved" where used herein means area or population not receiving AM primary service, daytime or nighttime as the case may be. The term "white area", used traditionally and in the Notice to express this concept, has been confusing at times, and therefore is not used herein, "unserved area" meaning the same thing. We are retaining the traditional term "gray" to refer to area or population receiving only one primary service, since the only other likely expression, "underserved", is not sufficiently precise.

[3] The proposed rule itself would not have included in this criterion service from noncommercial educational stations, although comments on this were invited. The 25 percent "unserved area" test would relate to daytime area where the AM application is for daytime facilities, either daytime or nighttime area where the application is for a new Class IV station, and otherwise to nighttime area.

[4] Thus, the criteria involving FM actually were two separate tests: The present existence of FM service, and the availability of an unoccupied FM channel. Some commenting parties confused the two, as discussed below.

community, frequency, power and directional or nondirectional mode of operation, and his application is evaluated on this basis. Assuming he is qualified in non-technical respects, and his application does not involve objectionable interference to other stations or receive objectionable interference to an extent prohibited by the rules, it is granted. In general, no consideration is given to other possible uses of the channel (or of adjacent channels) in the area, or to other possible frequencies, powers or directional modes which the applicant could employ and which might represent a more efficient allocation. This contrasts sharply with the approach used in assigning "commercial" FM and all television stations. In these services, channel assignments are listed in Tables of assignments (§§ 73.202 for FM and 73.606 for TV), one or more assignments being listed for these communities throughout the United States. An applicant must apply for one of these assignments, either for a station in the listed community or for an unlisted community within a short distance.[5] These assignments have been made, and must be used, on the basis of minimum mileage separations between stations on the same and adjacent channels (e.g., in "Zone I", the Northeast, 170 miles co-channel for VHF TV and 155 miles for UHF TV, 150 miles for Class B FM stations and 65 miles for Class A FM stations). These separations are based on the assumption that all stations operate with maximum facilities and, on that assumption and given interference ratios, are designed to afford stations a reasonably large interference-free coverage area. Directional antennas are not used in TV and FM as an assignment tool, although they are used by a number of stations to increase signal strength in certain directions and avoid wasting coverage in others (e.g., over water). The preengineered tables of assignments are designed both to provide for an adequate number of channels in each community and area, and a high degree of efficiency of channel usage.

8. This planned approach has two great advantages over the "demand" system: it permits the reservation of channels to meet anticipated future needs and developments rather than allowing immediate demand to determine the disposition of spectrum space; and, by assuming maximum facilities, it permits stations to increase their facilities in an orderly fashion even where they start modestly. In AM, by contrast, stations are often "squeezed in," the assignment being made possible only by a combination of minimum power and, sometimes, a rather elaborate directional antenna intended to minimize interference to other stations; this presents problems when the station later wishes to increase its facilities. On the other hand, the AM approach obviously has a great deal more flexibility, and probably permits assignments in more places than are possible under the other system.

9. *Changes adopted in 1964 for AM assignments.* Prior to 1964, AM assignments were made on the basis of "normally protected" contours; an applicant's proposal would be accepted and considered even if it involved some "objectionable interference," as defined in the rules, to existing stations, and if that was the case, a hearing was normally required in which the service gains and the interference detriment could be weighed (§ 73.24(b) which still applies to applications which were filed before the adoption of the new rules). The rules (§ 73.28(d), adopted in 1954 to replace and modify the earlier engineering standards),[6] also provided a test to insure that an operation would either be a reasonably efficient one or one providing a significant service benefit: The so-called "10-percent rule," to the effect that a proposal must either provide interference-free service to at least 90 percent of the population within its normally protected contour, or, for nighttime operation, that the station must either be a first local nighttime AM outlet or provide a first primary service to 25 percent of the area within its interference-free contour.

10. Following a "freeze" adopted in May 1962, the Commission in 1963 proposed tighter rules to govern the consideration of new and increased AM facilities (Docket 15084). These were adopted pretty much as proposed, in July 1964. The chief changes involved were three: (1) The previous concept of a "normally protected contour," which could be invaded by a proposed new or increased operation if the gain would outweigh the loss, was replaced by a strict "go-no-go" principle, embodied in § 73.37, making the application unacceptable if it would cause interference to other stations within their protected contours; (2) the test as to "interference received" was also made "go-no-go" and tightened somewhat as compared to the "10-percent rule" mentioned; a proposed station must not receive any interference within their protected contours, unless it was either a first local outlet (in a community outside an urbanized area, or of 25,000 or more population within an urbanized area), or would provide a first primary service to 25 percent of the area within the interference-free contour, in which case interference might be received up to the 1 mv./m. contour; and (3) the 25 percent "unserved area" test was made an absolute condition to the acceptance of any application for new nighttime facilities (a new full-time station or a daytimer seeking full-time operation), though not for increases in such facilities.[7]

11. Probably the chief purpose of the 1964 rules was to prevent the deterioration of existing service through a series of grants of applications involving some interference to existing stations, each in itself small but cumulatively significant. As noted in the 1968 "freeze" Report and Order mentioned above, in this respect the new rules have been successful, although in other respects perhaps less so. The imposition of a "25 percent unserved area" requirement as an absolute criterion for new nighttime facilities was a recognition of the fact that any new nighttime operation is a source of interference to other cochannel stations over long distances, even though under the "R.S.S." method of computation, applying the "50 percent exclusion" rule, it may not be counted as objectionable interference.[8] Therefore, it was believed, rather than tighten the interference-computation rules to a point where virtually no additional facilities could be sought, it would be better to leave the computation rules as they are, and, instead, provide that, to justify the small incremental interference, a really substantial benefit be provided by the new proposal.

12. *The "clear channel freezes."* Another aspect of recent AM history, referred to by a number of commenting parties, is the "freeze" on the 25 I–A and some other channels, which has existed in one form or another since 1946. Section 73.25(a) presently in effect imposes a "freeze" to these channels, which have the 25 dominant I–A stations, plus 12 authorized full-time stations in the conterminous 48 States (10 II–A stations plus one at San Diego and one at Albuquerque), and 57 daytime-only or limited-time secondary stations, all authorized before 1946 (there are also some secondary stations in Alaska, Hawaii, and Puerto Rico on these channels). Also partially "frozen," in order to protect future allocation possibilities on the I–A channels, are 26 other channels adjacent to I–A frequencies.[9]

13. The "II–A" assignments mentioned in the last paragraph represent the one departure, in the AM field, from the "demand" principle. They date from the clear-channel decision of 1961 (in Docket 6741), in which the Commission "broke down" 13 of the I–A channels, to a limited extent, providing for one additional full-time assignment on each. Two of these were existing stations in San Diego, Calif., and Anchorage, Alaska; 11 others were for new Class II–A assignments specified in § 73.21 of the rules, to be used in a specified State

[5] In FM, a Class A channel may be used at an unlisted community within 10 miles of the listed community and a Class B/C channel at a community within 15 miles; the distance in television is 15 miles (§§ 73.203(b) and 73.607(b)).

[6] This rule, also, still applies to applications on file before adoption of the 1964 rules.

[7] In 1968 this 25 percent test was modified to permit acceptance where a first primary service would be provided to 25 percent of the area or population to be served.

[8] See § 73.182(o).

[9] These frequencies are specified in § 1.569, adopted in 1962 following the clear-channel decision. That section lists 33 frequencies, within 3 channels of a I–A channel. However, 7 of these have in effect been unfrozen now that all of the II–A assignments except that on 890 kH/s have been authorized. The extent to which the other 26 channels are "frozen" varies with the channel; on some the restraint is very small, but on some it is quite large (e.g. 630 kc/s, to protect the "higher power" potential of both the 640 and 650 kHz I–A stations).

or group of States (one in the Plains States and 10 in the West). All but one of these, the 890 kHz assignment in Utah, have now been authorized.

14. It should also be noted that liberal assignment principles for Alaska were adopted at the time of the notice herein; these have apparently worked well and no comments on the subject were filed in this proceeding. At the same time as the notice, the "freeze" was also lifted to permit the filing of power increase applications by the few Class IV stations not now having maximum power; this is discussed below.

III. Comments Filed in This Proceeding

15. Some 94 parties filed formal comments herein (counting individually about a dozen parties joining in certain comments). There were also some informal letters received. (Commenting parties are listed in Appendix B hereto.[11]) Of the parties filing formally, nearly all opposed the notice proposal partly or entirely; the closest to total support came from Clear Channel Broadcasting Service (CCBS), a group of 12 Class I–A licensees, as discussed below. There was particular opposition from licensees, engineers, and others, to the restrictions proposed on modifications of existing facilities (or "improvements").[12] Some parties, such as Association on Broadcasting Standards, Inc. (ABS, a full-time station group) took the position that the tight restrictions proposed for new stations are justified, but not those on increases in facilities. More than half of the comments dealt entirely, or largely, with the proposed restrictions on improvements in facilities. To a large extent, some of these parties' objections have been met by a subsequent (1970) Commission pronouncement clarifying the type of modification applications which are considered "major" and "minor" changes (i.e., applications proposing only changes in transmitter location, or directional or nondirectional mode of operation, are normally considered "minor"); but their arguments still must be considered in connection with other types of modification which are definitely "major": increases in power, changes in frequency, and applications by daytime-only stations for nighttime facilities.[13]

We do not attempt herein to discuss all of the comments individually; the following discussion will indicate the main lines of argument.

16. *Views of industry groups.* Six industry groups filed comments, including CCBS and ABS (mentioned above), National Association of Broadcasters (NAB), National Association of FM Broadcasters (NAFMB), Community Broadcasters Association (a group of Class IV stations), and the Association of Federal Communications Consulting Engineers (AFCCE). As indicated above, CCBS was the closest of all parties to supporting the notice proposal entirely. It favored the proposed restrictions particularly as to new stations, as avoiding further overcrowding of the AM band and encouraging FM, which, now that FM set circulation is large, should definitely be included in any "unserved area" determination and should be relied on to fill the need for additional stations. It is also urged that the Commission take steps to "clear" as many as 40 AM channels for higher power Class I operations, or national and regional stations, by reallocating stations engaged primarily in local broadcasting to the FM band.[14] CCBS also asserts that the "25 percent" standard should be tightened to require that 25 percent of the area and population be "unserved," citing in this connection the case of some of the II–A stations authorized, which serve large areas but small populations having no other nighttime primary service. CCBS also opposed any idea that, in making "unserved area" determination, distant signals should be ignored; it asserted that any mileage test of this sort would be arbitrary and its Class I members feel obligated to, and do, render truly meaningful service to rural areas many miles away from their locations. CCBS also renews its oft-made plea for "higher power" for the I–A stations, at least on an experimental basis, urging that skywave service is really the only way to provide good AM service to the present "unserved areas" in substantial amount, and that the present 50 kw. level is not sufficient to do so, in view of increasing man-made noise, interference from Latin American stations, and the poor selectivity of present transistor radios.

17. ABS agreed with the notice's view as to the desirability of restricting new facilities to those substantially serving "unserved area," saying that in this respect an "unrestricted demand" system is not justifiable, since it inevitably leads to a concentration of stations in and around large cities where there is a high level of economic support (often in "suburban" communities because of the more or less automatic "307(b)" preference which such stations receive despite the many outside signals available, and even though such proposals often present problems as to whether they are really not for large-city stations in fact if not in name). Thus, any AM stations to be permitted from now on should provide service where it is needed. Thus, it supported generally, for new stations, the "25 percent" standard. On the other hand, ABS vigorously opposed the restriction proposed on improvements in facilities, asserting that this would prevent stations making changes necessary to adequately serve their rapidly growing metropolitan areas, and thus improve the quality of existing service (this point is discussed separately below). It is asserted that if such restrictions are adopted, AM broadcasting will sink into obsolescence.[15] ABS also raised certain specific points: (1) Where existing FM service is to be considered in relation to "unserved area," probably it should be on the basis of such service to 100 percent of the area instead of 75 percent; otherwise, some "unserved area" would still remain; (2) educational FM stations should be included in this determination, since they do render service; (3) including in the FM availability test "unassigned but assignable" channels may present serious administrative problems; (4) there should not be an exception for proposals competing with renewals, since (with other new facilities not available) this would simply encourage such activity and this is particularly bad since the new applicant could propose greater facilities whereas the existing station could not;[16] (5) any consideration of "across the board" power increases, urged by some other parties, is much too complex for consideration at this time (involving both international and domestic problems); and (6) any consideration of permitting assignments which would provide a second primary service, or a first or second local service, should be only on a waiver basis, or otherwise the whole purpose of the rule would be thwarted (it is pointed out that many, probably most, recent and pending new applications are for a first or second station in their communities. It was urged that no such blanket restrictions are justifiable and that increases should simply be subject to the usual "no interference" tests.

18. NAB's comments related entirely to the proposed restriction on facility improvements, which, it points out, in some parts of the country would completely "freeze" AM stations at their

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[11] The term "improvement" in facilities is used herein, as it was by some of the commenting parties, to include all of the types of modification mentioned in the text, both "major" and "minor": changes in transmitter site, directional or nondirectional mode of operation, power increases, changes in frequency, and new nighttime facilities for daytime stations. Another type of "change" mentioned by a few parties—change in station location (community of license)—falls into a different category, being in a sense an application for a new facilities.

[12] Filed as part of the original document.

[13] See Policy Statement Concerning Standard Broadcast Applications for Major and Minor Changes, FCC 70–260, FCC 2d, 18 R.R. 2d 1763 (Apr. 14, 1970).

[14] CCBS cites, in this connection, the views expressed in the 1964 Report on Radio Spectrum Utilization issued by the Joint Technical Advisory Committee (JTAC), to the effect that in view of the crowded condition of the AM band in the United States and elsewhere, it would be in the long-range public interest to move local broadcasting (as opposed to national and regional) to the FM band, which is better suited for it because it offers superior technical characteristics, more consistent coverage, and better interference protection.

[15] This type of argument was urged also by several other parties, to the effect that with both other communications media and AM in other nations developing rapidly, it is not appropriate to restrict improvements in U.S. AM service.

[16] A number of existing licensees made one or both of these points in their comments, particularly the second.

present levels (e.g., North Carolina, where all but a very small part of the State receives 1 mv./m. or better FM service from existing FM stations). NAFMB,[16] as might be expected, supported the proposed inclusion of FM in the determination of what is "unserved area" and the concept that a new applicant should look first to FM, and in general treating that service as an integral part of a total aural service. It was asserted that both AM and FM are needed if the Nation is to receive adequate radio service—AM for its extensive groundwave and skywave coverage potential—and that too many substandard AM operations have been authorized (because FM has lagged) and this has hurt the development of FM. In sum, NAFMB supported the proposal as to new stations, and urged us to proceed with the type of reallocation recommended by JTAC (footnote 12, above). On the other hand, in its reply comments it expressed opposition to the proposed restrictions on improvements in existing stations, urging that effective AM service is needed, to rapidly burgeoning urban areas. This, it was said, should be looked at on a case-by-case basis.

19. The AFCCE comments opposed the idea of an "unserved area" criterion, or, indeed, any restriction beyond the overlap standards (adopted in 1964) to prevent objectionable interference, which, it stated, have worked well. It was stated that channel usage is going to be largely determined by presently existing stations in any event, so that no additional restrictions at this point are warranted. It was asserted that demand should determine what is possible, and the real needs for radio service do not really relate to "unserved area".[17] It was also urged that FM should not be taken into account, for reasons discussed separately below; and AFCCE made some specific suggestions also mentioned below. The comments of the Community Broadcasters Association related entirely to the 1-year limitation adopted in 1969 on the filing of applications by Class IV stations for power increases (only a few had not previously applied), urging that such a deadline should not be set.

20. *Other general comments.* A number of other comments generally opposing the proposal—which is claimed to represent a near-total "freeze"—were filed, which advanced among them in various forms the following views and ideas (some of which have been indicated above).[18]

21. *The great need for increased facilities.* It is urged that there is a tremendous general need to increase facilities (as noted, some of the arguments on this score, but not all, have been rendered moot by the 1970 pronouncement concerning major and minor changes). This is said to be true because of: (1) The great and rapid increase in the size of urban areas, which make more power or changed transmitter locations necessary to serve them and which will continue for a long time; (2) the unsuitability or future unavailability of present transmitter sites, because of the building up of surrounding areas (with reradiation problems), freeway construction or urban renewal, requiring relocation and, often, a power increase from the new location to continue to serve the whole urban area adequately; (3) increased manmade noise levels; (4) the need to correct antiquated directional arrays. Many parties also urge the need for nighttime service by daytime-only stations, which is discussed below in connection with three particular comments by such licensees.

22. *Nighttime interference levels have not increased and will not increase if new nighttime facilities are permitted.* One of the key concepts in the restrictions adopted by the Commission in 1964 on new nighttime authorizations was that any new nighttime operation is a source of additional interference to cochannel stations, even though—under the "50 percent exclusion" concept embodied in § 73.182(o)—it does not increase the nighttime limit of any station enough to be cognizable under the rules as "objectionable interference." Many parties, particularly engineering, argued with this idea. It was asserted that while some interference is thus added, it is minuscule and insignificant. In this connection reference was made to a study sponsored by the NAB in 1962 (prepared by George Davis), concerning interference levels on certain channels in 1960 as compared to 1940. It was found in the study that, despite a tremendously increased number of stations and virtual elimination of "unserved" and "gray" daytime area in the Southeast, the nighttime limits of many stations on these channels had increased little or none, and in some cases had been reduced as stations directionalized their nighttime operations.[19]

Attention was also called to the KWK (St. Louis) situation, where, when that license was not renewed and multiple new applicants competed for the frequency, the result was a substantial improvement in the service areas of nine cochannel stations. Some of the parties urging this point claimed that the impression of increased nighttime interference is basically a subjective, psychological one resulting from two factors: (1) With the movement to the suburbs, a listener may well now live outside of his local station's interference-free nighttime contour, and thus experience interference, whereas if he had remained in his earlier in-city location he would find no more now than formerly; and (2) tuning across the band at night today, the listener may encounter many fairly new stations, with high interference limits, in places on the dial where 30 years ago there was only silence; but the stations which were there then can still be received just as well.

23. On this basis, a number of parties urged not only that no restrictions be imposed here on nighttime authorizations, but that the "25 percent unserved area" criterion adopted in 1964 for new nighttime operations be abandoned. It was claimed that this, not any reluctance of parties to establish new nighttime facilities, is the reason why very few such proposals have been advanced in recent years; correspondingly, if the restriction were removed, needed expansion of nighttime service would result. It was also asserted that this restriction is undesirable in presenting a choice of nighttime local services and attainment of competitive equality.

24. *Emphasizing "unserved area" at the expense of other needs.* Many parties urged that the emphasis on "unserved area" embodied in the notice is both useless and wrong, pursuing an impossible objective at the expense of other needs for increased service. It was urged that: (1) There simply is not and will not be economic support in these areas for stations in any number sufficient to make a substantial dent in the "unserved area" (day or night); (2) the granting of new or increased facilities in other parts of the country, at least daytime, will not generally have any significant preclusionary effect on later facilities serving "unserved area" if and when there is any demand for them (or, at least, that this could be handled on a case-by-case basis by way of a "preclusion study"); (3) the most likely way to serve some of this "unserved area" is permitting increased facilities for existing stations, which would also tremendously improve their coverage of their own urban areas; (4) this emphasis, which includes "service" from distant sources, ignors the tremendous need for and importance of local service, a key objective of the Commission for many years under section 307(b) of the Communications Act; (5) it also ignores the importance of a choice of service—at least two, and likely more—and thus tends to preserve monopoly and diminish competition, for example in a number of cities of over 25,000 pop-

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[16] The NAFMB is composed of FM broadcasters, some independent and some also licensees of companion AM stations.

[17] AFCCE used as an example Ventura County, Calif., which has had a tremendous growth in recent years, with new cities of large size, but where the availability of AM facilities is sharply limited by the numerous Los Angeles stations. It was stated that, while these stations provide it with signals and thus it is not 'unserved area", it is doubtful that they can do much to meet its particular needs, since the needs of that city itself are great enough.

[18] The comments chiefly dealt with in these paragraphs are those of McKenna and Wilkinson and Robert L. Booth, Esq., communications attorneys, and the following communications engineering firms: Ralph J. Bitzer, Jules Cohen and Associates, Cohen & Dipell, Commercial Radio Equipment Co., Peter J. Guerckis (John Mullaney & Associates), Vir James, Jansky and Bailey, L. J. du Treil, Robert L. Jones, George Lohnes (Lohnes & Culver), E. Harold Munn, Silliman, Moffatt & Kowalski, Carl Smith, A. Earl Cullum & Associates, and J. G. Rountree.

[19] In the same inquiry, NBC made a study of the 1941 and 1962 limits of 3 Washington, D.C., stations, including its own WRC, computed by the 50 percent RSS exclusion method. It showed two as declining (2.8 to 2.6 mv./m. and 2.6 to 2.3 mv./m.) and WRC increasing, 3.5 to 3.6 mv./m. NBC also carried the analysis of WRC's limits out on the basis of 10 percent exclusion and found limits of 4.3 mv./m. in 1941 and 4.7 mv./m. in 1962.

ulation (outside of urban areas) having only 1 station; (6) there are other pressing needs much more likely of fulfillment, including that for adequate coverage of burgeoning urban areas and shifting populations, for local outlets in "new towns" such as Columbia, Md. (projected to have a population of over 100,000 by 1980), outlets for minority groups, and greater service generally to fulfill the specialized, localized role of modern radio."

25. *The significance of FM.* While NAFMB and a few other parties supported the notice's treatment of FM, many parties vigorously opposed it. Their arguments included the following: (1) It is essentially immoral to create an "artificial shortage" in AM just to stimulate FM; rather, the people of the area involved, and applicants proposing to serve them, should have a choice as to which they wish to use; (2) FM does not need any stimulation, shown by the great increase in stations between 1962 and 1969 (nearly 60 percent) and the occupancy of all or nearly all channels in much of the country including areas around large cities; (3) FM is still not the equivalent of AM in ability to serve the public, in view of limited set circulation and particularly the absence of FM sets in automobiles during highly important "drive time"; (4) terrain problems in rough or mountainous areas which seriously limit FM service range in some cases; (5) the very limited extent to which FM channels are in fact available, in much of the country, for a potential applicant to use; (6) the utter impossibility of establishing a viable FM station in some parts of the country where its has not developed at all outside of large centers (e.g., Wyoming, with the only stations those in Casper and Cheyenne, and northern Maine); (7) FM is not cheaper than AM as the notice claimed, but in fact AM is less expensive even if it involves a simple directional array (parties gave various figures in this connection). It was urged that—with only 25 percent of assigned channels vacant as of the end of 1969, and only 13 percent east of the Mississippi—telling potential applicants to "look to FM" is largely illusory, and, also, that any concept of using "unassigned by assignable" channels in this connection is an administrative impossibility and grossly unfair to applicants, in view of the delays and problems involved in FM rule making; (8) FM and AM are and should be treated as complementary, each being used where it best serves.

26. *Whether there is an "AM shortage".* Many parties argued with the concept that there is in fact any shortage of AM spectrum space, as the notice indicated. It was claimed that, in much of the country away from urban centers, this is not true even under present assignment policies, and it is certainly not true in view of the potential for further assignments if and when the various clear channel "freezes" are lifted. For example, it is said, the 25 Class I–A channels represent nearly 25 percent of AM spectrum space, which could be made available for daytime, if not full time, stations; and the same is true of adjacent channels which are likewise partially "frozen" under § 1.569, and to some extent other channels (I–B frequencies) which were unfrozen earlier only to have the general 1962 "freeze" quickly superimposed on them. In any event, it was urged, this reservoir makes it inappropriate to impose a freeze such as that involved in the notice proposal. Rather, it was said, AM is really as available as FM, if not more so, and therefore a concept of looking to FM in order to avoid depletion of AM is basically fallacious.

27. *The Commission's role and obligation.* A number of parties claimed that the notice proposal, and sharp restrictions involved, really reflected the Commission's effort to further "administrative convenience" by simply chocking off applications. It was asserted that, while there are problems in AM processing and determination, they certainly do not warrant this approach, but, rather, efforts to deal with them as such. Some suggestions made are set forth below. It was also claimed (e.g., in the McKenna and Wilkinson comments) that these are largely of the Commission's own making, and the context of some court decisions such as Ashbacker and KOA, which have imposed substantial requirements.[21] For example, it was argued that the Commission for a long time made substandard, interference-causing AM grants as a matter of policy, and existing stations, realizing this, asserted their KOA hearing rights in every case even where the interference was minuscule, lest the grant become a precedent and also because the Commission's consideration did not take into account the cumulative effect of such impingements on a given existing station. Also, some parties urged that the assertedly erratic treatment of AM over the years—"freezes", thaws, and then "re-freezes"—created uncertainty and a pent-up demand, which resulted in the filing of numerous applications involving "chain reaction" conflicts, particularly when certain frequencies were unfrozen. In general, it was urged that the Commission cannot properly use these considerations as ground to support the near-total "freeze" contemplated by the notice, but must do the best it can to improve its procedures and seek the necessary additional staff to handle applications which reflect a genuine demand and therefore, in general, applications which reflect a genuine demand and therefore, in general a need. In this connection, two other points were also urged: (1) While the notice spoke generally of the proposal as an interim measure pending further in-depth study, there was nothing specific as to what would be studied or when, so that it must be assumed the near-total freeze would last indefinitely; (2) some parties accused the Commission of having in mind, without saying so, a form of "birth control", an idea that a given community or area simply does not need, or cannot well support, any more stations than it now has.

28. *"Foreign preemption".* A number of parties, particularly engineers, urged that any restrictions on U.S. AM assignments—beyond those necessary to avoid interference—are undesirable because foreign nations on the continent are not bound by such restrictions and will make use of the frequencies in places near the border, to the exclusion of any later United States use. It was also claimed that when the foreign use is nighttime, as it often will be, this means additional interference to U.S. stations even though it is not cognizable under the international R.S.S. rules just as it would not be domestically. This argument was one urged for repeal of the "25 percent unserved area" criterion for new nighttime assignments adopted in 1964.

29. *Use of preclusion studies.* One of the matters mentioned in the notice—not as part of the present proposal but for possible ultimate use—was a requirement of a "preclusion study", from which it could be determined what the impact from a given application proposal would be on other possible uses of the channel and adjacent channels in the general area, and what other assignment possibilities remain to meet the needs in the "preclusion area". Such a study is now required in connection with many petitions for FM rule making.

30. Some parties, e.g., Silliman, Moffat, and Kowalski, supported this as a useful and feasible concept; as mentioned above, some parties suggested it as a method of "case by case" evaluation, for example showing whether or not a proposed use would preclude an assignment which would serve "unserved area". On the other hand, at least one party (Booth) opposed it as unworkable, in view of the tremendous differences which exist in AM propagation (ground conductivity and frequency) and the many variables involved in possible directional operation.

31. *The "demand" system.* Many commenting parties praised the traditional "demand" system of AM assignments, as the basis of the country's unparalleled AM system (with its tremendous number of stations and local outlets), and urged that it be continued, although perhaps with some modifications to encourage service to "unserved areas". On the other hand, others (e.g., McKenna and Wilkinson) urged that this system be considerably modified or abandoned, for example with a table of assignments

[20] It was pointed out that rather recently (1968) the Commission found the city of Elizabeth, N.J., to be sufficiently needful of local service, despite the plethora of New York City signals, to warrant a local outlet as compared to a more distant community.

[21] Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945); FCC v. National Broadcasting Company (KOA), 319 U.S. 239 (1943). The former established the right of co-pending mutually exclusive applicants to a full hearing against each other; the latter established the right of a station, which would receive objectionable interference, to a hearing on that issue.

containing initially existing stations, with additions thereto as a result of rule making, just as in the FM and TV service.

32. *The concept of "waste".* It was said by some parties that the whole idea that AM spectrum is "wasted" by grants on a "demand" basis is basically wrong, for one reason because spectrum, while very much a valuable and scarce national asset, is not a "wasting" one in the sense that minerals or petroleum are. It was asserted that later shifts in station location or facilities—either voluntarily or through Commission "show cause" proceedings—are always possible. Therefore, it was said, the "waste" involved is in not permitting use of the frequencies now.

33. *Comments urging the importance of nighttime AM service.* A number of parties, many of them licensees of daytime-only stations, urged the importance of their being able to obtain nighttime facilities to better serve their communities and surrounding areas.[2] Three comments illustrate some aspects of these suggestions and possible approaches. Sea Broadcasting Corp. is the licensee of Station WVAB, the only station licensed to Virginia Beach, Va., a city which is one of the four large cities making up the Norfolk-Portsmouth Standard Metropolitan Statistical Area (SMSA), and had a 1970 census population of 172,106. WVAB is daytime-only, and the licensee urged that there is a great need for a local nighttime facility to meet the substantial particular needs of Virginia Beach, including matters such as elections, weather, and school closings, local emergencies, discussion of public issues, and provision of time for local advertisers and political candidates. It was asserted that the only full-time station generally received throughout this city, WTAR, Norfolk, simply does not meet these needs because it has 16 major communities to serve and, for example, mentioned Virginia Beach material only four times in a week of evening news programs (three of them on one evening about the same item). It was claimed that, while Virginia Beach is part of an SMSA with a larger city, the Commission should adhere to the policy applied in Monroeville Broadcasting Co., 12 FCC 2d 359 (1968), where it recognized the need of Monroeville, Pa., for an outlet despite a plethora of primary service from nearby Pittsburgh stations, finding that none of the latter showed "an above average sensitivity to the needs" of the city of Monroeville. FM was claimed not to be the answer, at least as to present needs, in view of the still much greater circulation and universality of AM. The suggestion was that the Commission adopt a rule to the effect that when a "major political unit" of over 50,000 lacks a local AM nighttime service, the "25 percent unserved area" and other technical rules should not apply if it is shown that the proposed facility would not cause interference to other stations (under the traditional nighttime standards) and that the proposed station would serve nighttime a substantial part of the population within the political unit.[3]

34. Another aspect of such situations is presented in the comments filed by Gordon A. Rogers, president of Radio KGAR, the licensee of daytime-only Station KGAR at Vancouver, Wash. Vancouver, a city of about 43,000 in southwestern Washington, in the Portland, Oreg., SMSA, has two other AM stations assigned, one full time (KISN), but, as Mr. Rogers pointed out, this station is actually located in Oregon (both studio and transmitter location) and has been the subject of Commission action because of improper identification as a Portland station (continuation of its operation is now the subject of a hearing proceeding, although not chiefly for this reason). Mr. Rogers claimed that this station really is designed to serve Portland and Oregon, and, in fact, does not serve Vancouver at all as a local outlet; and, that city and its county therefore do not have local nighttime service (no FM channel is assigned to Vancouver, nor, in view of its proximity to Portland, is such an assignment likely). Mr. Rogers vigorously opposed the notice proposal, as stifling AM development, instead urging that daytimers should be permitted to "go nighttime" if they can meet the traditional noninterference tests. It was pointed out that with Station KOIN-FM, Portland, having a very large 1 mv./m. coverage area, if FM service is taken into account as a bar to AM improvement, this would preclude AM facilities in an extremely large area in Oregon and Washington. If this is going to be the case, it was urged that KOIN should be required to give its AM facility to KGAR and take the present KGAR frequency, which has less coverage potential but would still leave KOIN with its wide-coverage FM and television facilities. It was urged that no "unserved area" test is appropriate in such cases.

35. The comments of Tri-State Broadcasting Co., licensee of daytime Station WGTA, Summerville, Ga., present another type of situation. Summerville is the county seat of Chattooga County, with populations of about 5,000 and 20,000 respectively, and WGTA is the only station in the county. No FM channel is assigned in the city or county, nor, in all probability, could an assignment be made. The only nighttime AM service in the area is from Class I Station WSB, Atlanta, which puts a 0.5 mv./m. signal, but not a 2 mv./v. signal into Summerville and thus provides primary service to the surrounding area but not to the city itself. Two Chattanooga FM stations provide predicted 1 mv./m. signals to the city and area; but it is claimed that these do not in fact provide adequate service because of rough terrain (they are respectively 32 and 44 miles distant. There is no local daily newspaper. Tri-State urged the great need of this area for local nighttime service (particularly in view of the large "three shift" work force which travels to and from work during nighttime hours), and, also, and in particular, the economic impossibility of building a directional array which would enable it to meet interference protection requirements at night with the normally permissable power level of 500 watts (regional channels). It was asserted that this (including the acquisition of a large enough site) would cost over $115,000, which is simply not justifiable in a community of this size. Therefore, Tri-State's basic request is for a rule which would permit it to operate nondirectionally with less than the minimum power, or 100.5 watts, which it could use and not raise the interference limit of co-channel stations. So operating, with a 9.73 mv./m. limit to it (a radius of about 4 miles), it would provide a primary service to some 8,221 persons, of whom 4,706 now receive no nighttime AM primary service and 3,472 receive only one, and would thus meet the "25 percent unserved area" test as modified in 1968 to include a 25 percent population criterion. It asked for a rule which would permit non-directional operation with sub-minimum power at night if the applicant shows that a directional array necessary to meet protection requirements with the regular minimum power would be either impossibly complex or economically unfeasible. It was urged that this approach would solve the problem of providing local nighttime service in many U.S. communities.

36. The "minority group" problem: Comments of Dr. Wendell Cox. The comments of Dr. Wendell Cox, D.D.S., a principal in, and general manager of black-owned full-time AM Station WCHB, Inkster, Mich., and FM Station WCHD, Detroit, related to the possible acquisition of broadcasting facilities by "minority groups"—blacks in his case—pointing out that while there are some 700 stations presenting at least some programming aimed at the black audience, there are very few black-owned stations (they include the stations mentioned, and assertedly only about seven other AM and fewer other FM stations; but the number has increased somewhat since these comments were filed in November 1969). Dr. Cox urged that rules not be adopted which would restrict the opportunity for ethnic and racial minorities to compete for additional facilities in markets where they constitute large portions of the population. He asserted that—with the disadvantaged position of the black population during the period when facilities in large markets were available, and the

[2] At least one station whose licensee made this argument, WPVL, Painesville, Ohio, has since applied for and received grant of nighttime facilities.

[3] The latter part of the proposal apparently represents the fact that a nighttime facility would not include all of Virginia Beach—which has a very large area—within its interference-free contour. Sea proposed that the Commission make this "substantial" determination on a case-by-case basis.

present impossibility of adding any new ones in most large cities—steps should be taken to make more frequencies available to such groups, rather than adopting further restrictions of the type contemplated by the notice. It was asserted that, while "militant" groups have approached this problem by renewal challenges, it should not be necessary to take something away from an existing licensee in order to achieve a minority voice, if there are other ways by which such groups can obtain new facilities. A re-shuffle of frequencies in places such as New York, it was claimed, could provide an additional channel which minority groups could seek.[24] Dr. Cox claimed that FM is not a substitute in this respect; Black taxi drivers, filling station workers, etc., are "transitor oriented" and FM sets are less available to poor black homes. Therefore, as shown by his experience with the Detroit FM station, the potential black FM audience at this time is small, even if FM channels were available in large cities, which they usually are not (and existing FM licensees, it was asserted, put prices on their existing FM stations which make purchase out of the question even for a fairly successful black group). Specifically, Dr. Cox opposed the notice proposal, urged that the Commission take steps (by re-shuffling channels) to provide at least one frequency in major markets where there is now not a black-owned or controlled station, and stated that he is not asking that channels be available only for black applicants, but that they be given an opportunity to compete for them.

37. *Suggestions advanced by the parties.* Besides general opposition to the restrictive aspects of the notice proposal, a number of parties advanced affirmative suggestions which they claim will improve aural broadcast service and the assignment process. Some of these—including the general elimination of the "25 percent unserved area" requirement for new nighttime facilities, possible use of "preclusions studies" as a basic allocation tool, the specific suggestions of the Virginia Beach and Summerville, Ga., applicants for getting nighttime facilities in their particular situations, and the suggestons of Dr. Cox concerning a voice for minority groups—have been mentioned. Others are discussed in the next few paragraphs. Some of these ideas are clearly beyond the scope of this proceeding; others could conceivably be adopted herein but in our view should be the subject of more exploration if they are to be considered at all; and still others, such as those relating to processing and procedures, do not require rule making.

38. *"Across the board" power increase.* The engineering firm of Cohen and Dippel—supported by a number of parties, particularly Class IV licensees seeking increased nighttime power—proposed an "across the board" power increase for all classes of stations. The proposal was that: (1) Class I stations could increase from 50 to 250 kw, with I–A stations directionalizing (on the "broken down" I–A channels) to protect II–A stations; and I–B stations similarly protecting co-channel I–B stanels to protect the new 1 mv./m. 50 percent contour of co-channel I–B stations (which is farther out than the present 0.5 mv./m. 50 percent contour), and Class II–A stations protecting Class I–A stations on the present 0.5 mv./m. 50 percent basis; (3) regional (Class III) stations to be permitted 25 kw (the Munn Engineering comments suggested consideration of an increase to 50 kw); and (4) Class IV stations to go to 500 watts at night with a 5/8 (0.625) wave length antenna. The latter is designed to reduce high-angle radiation, the chief source of interference to other stations within 300 miles. Studies on Class IV situations in Illinois and Tennessee, said to be typical, showed increases in interference limits of 35 percent and 12 percent, respectively, but increases in groundwave field intensity of 116 percent and 100 percent, resulting in a considerable net gain in service areas. In connection with the Class I power increase also, it was asserted that this would result in over-all improvement, improving both groundwave and skywave coverage despite increased interference. It was recognized that these changes might involve some adjacent problems in some cases, and also would often require modification of international agreements. ABS, in reply comments, urged that such changes would be very complex and should not be undertaken at the present stage of this proceeding.

39. *Treatment of I–A and adjacent channels.* A number of engineering, and other parties, suggested that the Commission take steps to make additional assignments (daytime if not full-time) on I–A channels, and wholly, or partly, lift the "freeze" on use of adjacent channels presently contained in § 1.569. On the other hand, CCBS, urging the importance of skywave service from unduplicated I–A stations, asked that steps be taken to "clear" a number of additional channels for wide-coverage operation, by moving to the FM band stations designed primarily for local coverage.

40. *Use of a table of AM assignments.* Some parties, such as McKenna and Wilkinson and Ralph Bitzer, supported the idea af a Table of Assignments for AM, which would contain initially only existing stations, with additional assignments requiring amendment of the Table through rule making.

41. *Suggestions concerning procedures and processing.* Other suggestions related to the Commission's procedures and methods used in handling and consideration of applications, in an effort to deal with the problems mentioned in the notice without the Draconian measure of a near-total "freeze". These included:

(a) *Relying on licensees to check for interference.* The AFCCE specifically, and other parties more generally, suggested that the Commission abandon the system whereby every AM application is carefully checked as to interference to existing stations, and instead, rely on the existing stations themselves for this, with the Commission staff initially only spot-checking and examining applications only where international considerations are involved. The AFCCE's suggestion was that a system (using only clerical personnel and a computer) be worked out for notifying existing stations on a monthly basis of all applications for facilities on their channels or up to 30 KHz removed, with the licensee to have the burden of objecting if interference to it would be involved. The licensee would have 60 days to file objections, with a complete engineering showing, and if objection is filed, the applicant and other parties would have 45 days to reply. The staff and the Commission would then consider the matter. If no objection is received and the application appears otherwise in order, it would automatically be granted.

(b) *Filings only by professional engineers.* The AFCCE and other engineering parties urged that applications be required to be prepared by professional engineers, as a way of insuring engineering showings of good quality, accuracy, and completeness. It was said that this requirement—under which persons of "proven ethics and expertise" would be putting their reputations "on the line"—would go far to cut down the staff and Commission problems in dealing with inferior engineering submissions. In this respect, these parties make the same arguments urged by the AFCCE in a pending petition to adopt this requirement for all of the Commission's processes which involve engineering.

(c) *Furnishing an extract of material in the application.* McKenna and Wilkinson, noting that one of the time-consuming aspects of application processing is the preparation of memoranda setting forth the important facts as to an application—not only engineering but finances, ownership, programming, etc.—suggested that applicants be required to file with their applications an extract of key information in these categories, which would shorten the time involved in presenting items for consideration at higher staff level or by the Commission.

(d) *Increased filing fees.* Silliman, Moffat, and Kowalski suggested that application filing fees might well be raised, to cover the substantial costs of AM application processing if it is to be continued on its traditional basis (as the parties generally believed it should). In 1970, of course, the Commission raised its fees, for AM and other applications, substantially compared to what they were when these comments were filed, and further increases are currently under consideration.

(e) *Use of computers.* A number of parties suggested that the Commission should make more use of computers in AM processing. The Silliman comments suggested the accumulation of information concerning AM stations in a "computer bank," which would be available

[24] These comments were accompanied by an engineering statement of E. Harold Munn, Jr., to the same effect as part of his separate engineering comments, including data as to channel spacing and the date of authorization of stations in large cities.

to the public and also supported, at least in part, by public users.

42. *Suggested broadening of the proceeding.* Some parties, notably E. Harold Munn, Jr., urged that the scope of the proceeding should be broadened by a notice of inquiry and further notice of proposed rule making. Munn suggested that such a document might well look toward the following, in addition to further breakdown of the I–A channels already discussed:

(a) "Show cause" orders to daytime-only licensees as to why they should not be required to install nighttime facilities, in cases where it appears that they feasibly could and particularly where FM channels are not available;

(b) Steps to meet the needs of minority groups for increased ownership of facilities.

(c) Moving I–A stations out of the large cities, where they are now located, to smaller places where they could do a much better job of serving "unserved area," replacing them in the large centers by Class II or III stations.

(d) "Show Cause" orders to full-time stations which cause high nighttime limits to stations in "unserved area" portions of the country, as to why they should not be required to improve their arrays so as to reduce interference to these stations.

(e) Setting a time limit for resolution of the Clear Channel proceeding.

43. *Other suggestions.* Other suggestions made included the formation of a joint Government-industry committee to undertake a sweeping evaluation and reform of the aural broadcasting assignment structure; that the Commission urge adoption of "all channel" AM–FM receiver legislation as really the only effective way of bringing these two aural services to parity; and various fundamental changes in AM and FM technical rules (suggested in the Booth Comments).[25]

We have not mentioned specifically herein the longest comments of all, those filed by Coastal Broadcasting Co., Inc., licensee of WBEA and WBEA–FM, Ellsworth, Maine. These largely were related to that party's pending petition for breakdown of the Class I–A channel 820 kHz to provide a new Class II–A assignment in Maine. They made the same point urged by others herein as to the inadequacy of FM as a substitute for additional FM developemnt in places such as northern Maine, and of the alleged difficulty in getting coverage via FM comparable to that which a II–A station could provide.

IV. The Distribution of AM and FM Service and Facilities in the Conterminous 48 States

44. For reasons discussed below, rather than the "rules pending further study" contemplated by the Notice herein, we have decided to adopt instead, rules which are expected, with minor modifications, to govern the assignment of new and increased AM facilities for some time to come. Therefore, it is appropriate to examine the picture of aural broadcast service as it is today in the United States, both with respect to reception or the availability of a usable signal from a nearby or distant source, and as to transmission, the existence or absence of a local station, or full-time service or a choice of local service, in communities, or nearby communities. It is of course well settled that under section 307(b) of the Communications Act, the Commission's mandate to provide for a "fair, efficient, and equitable distribution of radio service" includes both of these concepts, as do the various statements of Commission allocation principles such as the Sixth Report and Order (1952) in television, and the notice of proposed rule making in Docket No. 15084 (1963), the proceeding which led to the 1964 AM rules. The discussion below relates to the 48 conterminous States; we discuss later herein the situation in Alaska, Hawaii, Puerto Rico, and the Virgin Islands, which present different considerations because of their distance from the rest of the Nation.

A. AM and FM Reception and Service

45. *Daytime AM service.* With more than 4,200 stations in the 48 States, all operating daytime, daytime AM service in the Nation is extremely widespread, and—except in the West and certain limited areas elsewhere—all but very small areas have at least one daytime primary service.[26] Daytime "gray" areas, which receive only one primary service, appear to be somewhat larger (especially in view of the extent, discussed below, to which many counties in the United States have only one station); but even here there is relatively little absence of a choice of service. As indicated in paragraph 22, above, the 1962 NAB-George Davis study showed that in the Southeast, by 1960, only 0.6 percent of that region's area had no primary service, and only 1.4 percent of the area was limited to one primary service.

46. *Nighttime primary service.* "Unserved areas", those without primary service, are substantially larger at night because of the high interference levels which prevail (limiting the service areas of those stations which operate at night). The tool usually used in evaluating this situation is a map originally prepared by CCBS in the 1940's for the Clear Channel proceeding and updated in January 1962 to reflect 1961 conditions (it is generally agreed that in overall terms, nighttime "unserved area" has not been significantly changed since). This shows some 1,726,000 square miles, or over half of the land area of the conterminous 48 States, as without nighttime "Type B" groundwave service.[27] This area in 1961 contained some 25,106,000 people.[28] The amount of "gray" area, receiving only one primary service at night, is also substantial. The unserved area includes a considerable portion of the three Pacific Coast States, the bulk of the Mountain and western portion of the Plains States, and the bulk of the south and southeast, Virginia and West Virginia, and northern New England as well as substantial portions of Michigan and Pennsylvania and parts of most other States. An important factor in the provision of service, in overall area terms, is the wide primary services areas of the Class I clear channel stations, such as those at New York, Chicago, St. Louis, Cincinnati, Des Moines, Minneapolis, New Orleans, Fort Worth, and elsewhere.[29] One factor reinforcing this pattern, as elaborated below, is that the bulk Class II and III fulltime stations are also located in or near the large cities of the country (Class IV stations also operate full time and are much more widely distributed geographically, but they have very small nighttime coverage areas principally because of the very high interferece levels which result from the great many co-channel stations).

47. *Skywave (secondary) service from Class I stations.* In order to offset these limitations on nighttime primary service, reliance is placed on the skywave, or secondary, service rendered at night by Class I stations (25 I–A and 33 I–B) assigned to operate with high power and afforded a high degree of protection so that they can provide this service. Skywave service is recognized as somewhat intermittent and subject to "fading"; but it is a useful way of providing at least a modicum of service to the large "unserved areas." This service is regarded as generally useful out to about the station's 0.5 mv./m. 50-percent-skywave

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[25] These included, in FM, reducing both the bandwidth (to 100 kHz) and the adjacent-channel requirements, and, in AM, deleting the allegedly obsolete "blanketing" and second and third adjacent channel separation requirements, and liberalizing the rules concerning principal-city coverage; and exploration of "single sideband" AM operation.

[26] There are extensive "unserved areas" in the Plains and Mountain States (and the interior portions of some of the Pacific States), and smaller areas farther east, including northern New England, northern New York, upper Michigan and northern Minnesota, and possibly north central Pennsylvania. In the east and southeast there are small interstitial unserved areas, particularly where ground conductivity is low.

[27] The "Type B" groundwave nighttime service shown on the CCBS map is roughly equivalent to primary service, representing more sophisticated concepts evolved during the clear channel proceeding, whose validity the Commission recognized but whose complexity was held to make it unsuitable for ordinary application processing.

[28] The "unserved area" actually increased slightly from 1957 to 1961, but the population declined slightly. In the portion of the presunrise proceedings concerning the I–A channels (Dockets 17562 et al.), some of the Class II opponents of the I–A stations urged that the decline in population, despite an increase in area and the great population growth of the United States generally, meant that this largely rural "unserved area" was losing population so that providing it with nighttime service is a matter of smaller importance. See the report and order in Dockets 17562 et al., 18 FCC 2d 705, 715 (1969).

[29] One of the oft-mentioned aspects of this situation is that the bulk of the nighttime "unserved area" is in the west; but the bulk of the "unserved population" is in the east and southeast.

contour, which for a nondirectional operation is 700 to 750 miles from its transmitter. All parts of the United States receive skywave service from these Class I stations, usually from several.

48. *FM service.* FM service, from more than 2,200 stations, is likewise widespread in most of the Nation, generally excepting the areas mentioned above for daytime AM service. The FM coverage map published periodically by the NAB shows the United States as completely covered, except for very small areas, about as far west as the 98th meridian in the Plains States, and then largely a coverage void until the Pacific States are reached. However, this is based on coverage out to a station's 50 uv./m. contour, which does not always represent reliable service and is not the basis of interference protection.[*] As mentioned in paragraph 18, above, the NAB introduced a map herein showing almost complete coverage of the State of North Carolina by 1 mv./m. signals from existing North Carolina facilities. However, since North Carolina is and has long been a State of widespread FM development, this is not necessarily typical of all of the Nation. The engineering comments prepared by Peter V. Gureckis contained a similar map of all of the United States east of the Mississippi (1-mv./m. coverage of all existing stations and assuming use of unoccupied channels); it shows only a small number of "unserved areas", of which the only ones of real size are northern Maine, northern New York, upper Michigan, central West Virginia and western Virginia, and southwestern Florida. Nighttime FM is in general considerably more widespread than AM primary service. Limited FM set circulation still remains a problem, although this is improving except possibly in the important auto radio market (see the notice herein, paragraph 5).

DISCUSSION AND DECISION

49. In deciding upon the nature of the rules to be adopted in this proceeding pursuant to our proposals herein, and in the light of the comments filed, we have explored in depth approaches which would be "fine-grained"—would take into detailed account the actual distribution of aural broadcast service over the country, and result in rules aimed at remedying service deficiencies, if not on a case-to-case basis, in a manner approximating it. However it soon appeared that the body of rules necessary to mount this kind of attack on the problem would be formidably complicated, and their implementation would impose a heavy administrative burden on the Commission and on licensees and applicants—all without any firm assurance that the result, as evidenced by a more equitable and efficient distribution of broadcast facilities, would be sufficiently significant to justify the attendant effort and expense.

50. Therefore, we have abandoned this approach, and are adopting comparatively simple rules in an attempt to accomplish our objective—to control the expansion of standard broadcast service in such a manner that, in the future, grants of new standard broadcast stations or changes in existing stations will be limited largely to those situations in which improvements in the existing level of aural service are clearly needed, and cannot readily be achieved by alternative means. In following this course of action, we are rejecting the suggestions of those parties who urge that we revert to an unrestricted "demand" system—that we accept and process any standard broadcast application which meets the basic technical standards, and abandon rules tailored to limit the addition of new stations to communities which we deem to have sufficient aural service. These parties tend to argue that the tremendous number of AM stations which have been assigned under this system is a demonstration of the excellence of the system, and that "demand" can be considered as a true indicator of the public need for additional broadcast service. We do not believe that effectiveness of a system of broadcast allocations can be measured solely or even primarily by the fact that it provides an open-ended avenue for the apparently unlimited expansion in the number of stations. As we have often observed, the unrestricted operation of such a system almost inevitably results in an inequitable distribution of facilities, with an undue concentration of stations in the larger communities. Nor do we believe that "demand," as evidenced by the willingness of entrepreneurs to hazard funds for the establishment or purchase of stations is a true reflector of the public need for additional broadcast service. Typically, any of the largest cities have a multitude of aural services, and it is difficult to conceive a substantial public requirement for any greater number, yet the "demand" remains, as demonstrated by the prices commanded by standard broadcast stations which change hands in those cities. Accordingly, we find no justification for jettisoning rules designed to direct the future growth of the standard broadcast service into areas where there is inadequate existing service by any reasonable standard.

51. The major rule amendments which we are adopting are embodied in a new paragraph, which, together with pertinent notes, would be added to present § 73.37 of the rules. This paragraph sets forth requirements bearing on the acceptability of applications in addition to the no overlap and noninterference showings presently required by the rule. A discussion of the positions advanced by the parties to this proceeding, and our reasons for adopting these particular rules, can be conducted most fruitfully if we here set forth the new paragraph, and examine its provisions and their implications in the light of the considerations involved.

52. Section 73.37(e) in addition to a demonstration of compliance with the requirements of paragraph (a), and, where appropriate, paragraphs (b), (c), and (d) of this section, an application for a new standard broadcast station, or for a major change (see § 1.571(a)(1)) in an authorized standard broadcast station, as a condition for its acceptance shall make satisfactory showings as indicated below for the kind of application submitted.

(1) Application for a new daytime station, or for a change in the frequency of an existing daytime station.

(i) That at least 25 percent of the area or population which would receive interference-free primary service from the proposed station does not receive such service from an authorized standard broadcast station or receive service from an authorized FM broadcast station with a signal strength of 1 mv./m., or greater, or

(ii) That no FM channel is available for use in the community designated in the application and that at least 20 percent of the area or population of the community receives less than two daytime aural services. For the purpose of this showing an aural service shall be deemed to be provided by an interference-free groundwave signal from an authorized standard broadcast station of a strength of 5 mv./m., or greater, or by an F (50,50) signal from an authorized FM broadcast station of a strength of 70 dbu (3.16 mv./m.), or greater.

(2) Application for a new unlimited time station, for a change in the frequency of an authorized unlimited time station, or for nighttime facilities by an authorized daytime station, a satisfactory showing under (i) (except for a Class IV station), and under either (ii) or (iii):

(i) That objectionable interference at night will not result to any authorized station, as determined pursuant to § 73.182(o).

(ii) That at least 25 percent of the area or population which would receive interference-free primary service at night from the proposed station does not receive such service from an authorized standard broadcast station, or service from an authorized FM broadcast station with a signal strength of 1 mv./m., or greater, or

(iii) That no FM channel is available for use in the community designated in the application, and at least 20 percent of the area or population of the community receives less than two nighttime aural services. For the purpose of this showing, an aural service shall be deemed to be provided by an interference-free groundwave signal from an authorized standard broadcast station with a strength of 5 mv./m., or greater, or by an F (50,50) signal from an authorized FM broadcast station with a strength of 70 dbu (3.16 mv./m.), or greater.

[*] Section 73.315(b) states that a signal as low as 50 uv./m. may provide service in rural areas. However, stations have never been protected against interference out to this contour; and in Commission proceedings the 1 mv./m. contour is usually the signal-intensity contour considered. Applicants are required to show the location o fthe 1 mv./m. and the 3.16 mv./m. (principal-city signal) contours.

(3) Application by an authorized station (other than a Class IV station) proposing changes in facilities, other than a change in frequency, must make a satisfactory showing, where appropriate, under (i), and under either (ii) or (iii).

(i) For a change in nighttime facilities, that the proposed change will not result in objectionable interference to other stations as determined pursuant to § 73.182(o).

(ii) For an increase in power, either daytime or nighttime, that the authorized operation, during the portion of the broadcast day for which power increase is sought, includes less than 80 percent of the area or population of the community to which the station is assigned within its 5 mv./m. groundwave contour (or within its interference-free groundwave contour, if of a higher value), or,

(iii) For an increase in power, that at least 25 percent of the area or population which, as a result of the power increase, for the first time would receive interference-free primary service from the station, is without primary service from any other standard broadcast station.

New notes appended to § 73.37 define the circumstances controlling the availability of an FM channel, and, with respect to the determination of existing services, stipulate that signals from stations located more than 50 miles from the community for which the station is proposed will not be considered, and that co-owned FM and standard broadcast stations shall be considered as providing a single aural service. A study of the provisions of this paragraph will reveal the following additional criteria which will henceforth govern the acceptance of applications for standard broadcast stations:

(1) A showing, for a new daytime station that 25 percent of the area or population within its proposed service area is without primary service from any existing standard broadcast station, or comparable service from an FM broadcast station, and, for a new unlimited time station, that this condition exists during nighttime hours.

(2) An alternative showing that the community for which the new station is proposed receives from existing stations a degree of service which, for the purposes of this document will be referred to as "inadequate"—that the community is not substantially covered by at least two independent (not commonly owned) aural (AM or FM) services with field strengths of a level normally required to be provided by a station assigned to that community—and that an FM channel is not available to the community which might be utilized to rectify the service inadequacy. In the determination of the adequacy of existing service to the community for which the application is designed, we have further provided that signals from distant stations—that is, from stations whose transmitters are located more than 50 miles from the community—are not to be considered.

(3) Subject to the overlap and interference restrictions of § 73.37 we will accept applications from existing stations for increased power within the limits permitted the class of station involved on a showing either that at least 25 percent of the newly served population or area would receive a first primary service, or that, with existing facilities, the station does not adequately cover its community—inadequate coverage being presumed if less than 80 percent of the population or area of the community receives an interference-free signal of 5 mv./m. or greater. For an unlimited time station, this test is applied separately nighttime and daytime, and an application for such a power increase based on inadequate community coverage is accepted only for the portion of the broadcast day during which inadequate coverage is shown.

53. The Commission has found in numerous cases that coverage of a community approximating 90 percent of its area or population with a signal of required strength is in substantial compliance with the service requirements of its rules. The 80-percent figure used herein as the minimum level for adequate coverage of its community by an existing station was chosen as a figure below which service can be deemed clearly inadequate, even in the light of existing Commission policy. For a similar reason, we have used the complement of this figure, 20 percent, as the criterion to be employed by the applicant for a new station in a demonstration of the area or population of a community unserved by existing stations.

54. It will be observed that, in the provision of aural service, we are treating FM as a full and viable partner of AM, in that we both accord existing FM service equal status with AM in the determination of whether a particular community is being "adequately" served, and, where service can be shown to be inadequate, that we point to FM as the favored means for correcting this deficiency.

55. We have given full consideration to the arguments filed in opposition to our proposal to accord a major role to FM in future endeavors to improve aural broadcast service, and have concluded that it is in the overall public interest that existing and potential FM service be relied on to the extent feasible. It is quite clear that, under the allocation practices prevailing heretofore, nighttime primary service from AM broadcast stations has not improved appreciably in areas where it is most needed, and, considering the nature of the problem, is unlikely to. FM is virtually the only means by which admittedly inadequate nighttime primary service may be improved substantially; in contrast to daytime stations, which have constituted the bulk of new standard broadcast stations authorized in the recent past, each new FM station provides a new and significant nighttime service. The argument has been advanced that the typical FM station does not provide service over an area as extensive as that usually served during daytime hours by a standard broadcast station. This is certainly true if the areas within the respective 1 mv./m. and 0.5 mv./m. protected service contours of such stations are compared. However, we believe that this advantage of AM, as demonstrated in this manner, becomes of far less significance when service comparisons are made under actual operating conditions. At locations where the extent of service provided by the FM or an AM station is effectively limited to its protected contour by interference from other stations, there is usually a plethora of service from such stations, and wide area coverage by either station, in all probability, contributes little to the revenues received by the station or service needed by the public. In less densely populated areas, where stations are fewer in number and more widely separated, the effective service areas of the FM and standard broadcast stations may approach comparability, since, as is widely recognized, in the absence of interference from other stations, an FM station will provide service roughly equivalent in quality to the 0.5 mv./m. service from a standard broadcast station, out to its 50 uv./m. contour.

56. Whether or not an FM station is less expensive to install than an AM station of comparable size (in our notice, we asserted that this was the case, but several of the comments asserted this was not necessarily so, and offered typical cost data in support of this contention), the differential one way or another, does not appear so great as to influence our action in this matter. While it has been urged that there is still an insufficient number of sets capable of receiving FM signals in the hands of the public to make the AM and FM services fully comparable, we find that this situation is one that is rather rapidly being alleviated. For instance, EIA[2] shows for the year 1971, approximately 59 percent of all radios, other than those for automobiles, produced or imported, had FM capability. Admittedly, automobile radios which include FM constituted only about 19 percent of such radios produced or imported in 1971, but this percentage has risen from a figure of around 11 percent for the year 1968. Those opposing the adoption of rules according coequal status to FM have emphasized that an extremely important section of the aural market is the commuting public, and the small proportion of cars equipped to receive FM programs present a serious threat to the economic viability of FM stations. However, it should be noted that the rules which we are adopting generally favor the growth of stations in the smaller, and more isolated markets when existing aural service can be demonstrated to be less than adequate. In such markets extensive commuting to and from work may be expected to be relatively less important, both as to the number of persons involved and the average duration of the trip. It is urged

that, in such markets, FM has had little previous acceptance, and, accordingly, the percentage of FM receivers in the hands of the general public is considerably lower than the national average. This seems essentially a "chicken and egg" proposition. Until FM service is available to these communities it is probably futile to expect that listeners will undertake to provide themselves with equipment for the reception of FM programs. The most potent impetus to the growth of the number of such receivers, is the existence of satisfactory service from FM stations. We do not believe, with the general availability of suitable receivers at reasonable prices, the fact that, in a particular instance, the radio audience has had no incentive to purchase such receivers is reason to refrain from supplying that incentive. At the present time, in excess of 2,300 FM stations are on the air, more than half the number of AM stations. This FM total, furthermore, does not include in excess of 500 non-commercial educational stations. Taking all of these factors into consideration, we are convinced that FM is ready and able to assume its full share of the burden for improving aural service to the American public. Our rules recognize this fact and assign to FM the role which it merits.

57. However, the amended rules provide that the determination of the adequacy of aural service to a community from existing stations be made without the inclusion of service which may be provided by noncommercial educational standard broadcast and FM stations. Our decision on this point has been arrived at with full recognition of the importance of the service rendered by such stations. Nevertheless, we have endeavored to tailor our rules so as to make possible the provision to each community of two "competing voices." These "competing voices" will be sources, not only of two program services, but, hopefully, will present two independent viewpoints on matters of community concern. Over 60 percent of the FM educational stations in the United States are Class D 10-watt stations operated by educational institutions, both at the college and secondary school levels. These stations are operated primarily for the benefit of the student body, their effective service area is very limited, and they very often are off the air during school vacation periods. Further, many of this class of stations serve primarily as training facilities to teach students the art and science of broadcasting. For these reasons, these stations are not truly voices in the community and should not be counted as such. Although other classes of educational FM stations may actually provide adequate signals to the communities to which they are licensed, they, like the Class D station, are exempted from many of the operating requirements imposed upon commercial stations. For example, educational stations have no minimum hours of operation; they are not required to provide their community of license with a minimum required field intensity; and they are not presently required to ascertain community needs and interests and provide programing to meet such ascertained needs and interests. With respect to noncommercial educational AM stations, their numbers are so small—less than 30 out of more than 4,000 AM stations—that as a practical matter, we believe that they should also be excluded from consideration. Accordingly, for the purposes herein, we will exclude such station from consideration in an assessment of existing aural service to the community. We do this with no intention of diminishing the value of educational broadcast service, which, where it exists, provides a desirable and unique bonus in available programing.

58. The rules provide that where a prospective applicant intends to rely on a demonstration that service to a community is inadequate, he must also show that no channel is available for a new FM station serving the community. A channel assigned to the community is considered unavailable if occupied by an authorized station, whether or not the station is in actual operation. If the channel is unoccupied, but applied for in that community, it is still "available," since, whatever applicant finally gains an authorization on the channel, the station will supply service to the community. A channel is also available if it is unoccupied, and can be used in the community pursuant to § 73.203(b) of the FM rules (the 10-15-mile rule).

59. The FM Table is not "saturated" in the less populated areas, and we had considered the advisability, where no FM channel had been assigned to a community, or requiring, as a necessary condition for the acceptance of an application for an AM station in that community, a showing that it was not technically feasible to make such an assignment. However, we have decided that the complications involved in such a negative showing are not warranted, and we, accordingly, have determined upon the simpler formulation.

60. Also, it may be noted, we have not specified a preclusion showing in the acceptability criteria—that a station assigned to the proposed community will not preclude a more needed or more efficient assignment elsewhere. This kind of showing had been considered as particularly appropriate with respect to daytime stations, whose proliferation might limit opportunities for new unlimited time assignments, with their greater service potentiality. When we invited comments concerning the possible adoption of rules requiring such showings, we indicated we had rather strong reservations about their practicability, when considered with respect to AM allocations. While one or two of the parties who discussed this matter believed that preclusion studies might usefully be required, at least on a case-to-case basis, others opposed their employment under any circumstances. Upon further consideration of all facets of this matter, not only the many variables which affect AM signal propagation, but the kinds of decisions, both economic and engineering, which must be made concerning the use of directional antennas, decisions particularly within the purview of each applicant proposing such an antenna, we have concluded that such studies, while inevitably being complicated and costly, would still be unlikely, in most instances, to provide definitive "yes" or "no" answers to the preclusion question. Rather, the requirement for such showings would introduce a new element of uncertainty and complication in our application processing procedures which we can well do without.

61. As we proposed in our notice in this proceeding we are requiring a showing of service to twenty-five percent unserved area or population as an application acceptability criterion for daytime proposals, and are retaining this requirement where nighttime operation is contemplated. This requirement represents an effort to channel new AM assignments to locations where each contributes materially toward the achievement of the first of the traditional service priorities—the provision of service to all of the U.S. population. While this remains a desirable aim, long experience has demonstrated that it cannot be fully achieved under a system of broadcasting where each station must be financially self-sustaining, and accordingly, must be located where population is sufficiently concentrated to provide the necessary support. Accordingly, we have offered an alternative test, applicable to both daytime and nighttime operation, which reflects our aim toward attainment of two other important priorities, the provision of first and a second locally oriented service to each community.

62. For present purposes, these priorities are observed in modified form, in that:

(1) The contributions of two aural services, AM and FM, are considered together in the satisfaction of these priorities.

(2) Existing aural services to a community, if they are of adequate strength and are provided by stations not too distant from the community, are considered to satisfy these priorities. Traditionally, the priorities have been applied with respect to stations which are assigned to the community.

63. We have already discussed our reasons for treating AM and FM as a single service in this context. Insofar as the second point is concerned, we have remarked that while the assignment of first and second stations to each community traditionally has been an important allocations objective, that many communities are very small, and the full achievement of this objective in the limited spectrum space available is not feasible. In recent years, we have placed considerable emphasis on the obligation of each station to tailor its programs to serve the needs of all substantial population segments in its service area. Thus, if a community is served with a 5 mv./m.

[11] Consumer Electronics—1972—Annual Review—published by Consumer Electronics Group of the Electronic Industries Association.

signal from a nearby AM station (or 3.16 mv./m. signal from an FM station) it obviously receives a technically adequate service from that station, and, we believe, could expect that station to give adequate attention, in its programs, to the purely local concerns of the community.

64. In the determination of existing service to each community, however, we have provided that service from stations whose transmitter sites are more than 50 miles from the community be excluded, on the assumption that stations at such distances from the community could not reasonably be expected to devote a substantial part of their broadcasting time to the particular needs of the community. The choice of this distance, of course, has been, to some extent, arbitrary, but we believe it is a good compromise. As the distance of a station from a particular community increases, the likelihood that the station, as a practical matter, can give a substantial degree of attention to the specific needs of the community rapidly lessens. For instance, a station delivering a 5 mv./m. signal at a distance of 10 miles has a service area which is roughly 1/25 of the service area of a station delivering a signal of comparable strength at 50 miles. The latter station obviously will have a very much greater number of separate communities within its service area, and would be much less able to concentrate on the needs of specific communities in that area, than would a station with more restricted service contours.

65. We were also concerned, in our aim to provide each community with two adequate aural services, that these services be "competing voices". Thus, for the purpose of the existing service determination, we have treated service rendered by commonly owned FM and AM stations as a single service. This is the only kind of common ownership situation which will be encountered in this connection, since in meeting the requirements of §§ 73.35 and 73.240 of our rules, commonly owned AM stations or commonly owned FM stations would be so separated geographically that under no circumstances would the 5 mv./m. contours (of AM stations) or the 70 dbu contours (of FM stations) encompass the same areas.

66. While we are adopting rules with respect to new daytime stations which are substantially more restrictive than the present rules, the rules for nighttime AM service, even though making the presence of availability of FM service as a new consideration, have been somewhat liberalized, since we have provided alternative tests for application acceptability which are the same as we have prescribed for daytime applications—rather than continuing to rely solely on a showing of proposed service to unserved area or population. In situations where FM is not available to a particular community, we are ready to accept an application contemplating a nighttime operation when it is shown that the proposed station is necessary to insure that the community receives two adequate aural services at night, and it offers protection for other stations which our rules require. We believe a new nighttime assignment may be justified under such circumstances as an exception to a policy aimed at avoiding an undue proliferation of such assignments.

67. Some of those commenting hold that we are unduly concerned with the effect an existing service of adding new stations for operation after nightfall, and dispute our claim that each new assignment, regardless of the degree of protection offered pursuant to existing rules, imposes its modicum of interference, with some effective limitation to the service provided by existing stations. It is suggested that this, in fact, does not occur—that an older station continues to provide interference-free service to as large areas as in former years, but many of the listeners to this station are now in suburban areas, more remote from the station than previously. While they may find reception unsatisfactory, and ascribe this condition to a shrinkage in the interference-free service area of the station, in reality their poorer reception results from the fact that they reside at more distant locations. This opinion is offered without supporting evidence, which admittedly could be developed only by a great many observations of a number of stations over a long period of time. Our own observation, offered similarly without technical support, has led us to a distinctly contrary conclusion—we believe that regional stations, in particular, despite computations made under existing rules which may demonstrate that limitations remain unchanged, have suffered a progressive deterioration in the extent of the areas over which they can provide interference-free service. If this conclusion is correct, there are at least two causes to which the effect might be ascribed: (1) That our methods of predicting interference do not fully take into account the cumulative effect of interference from many sources, and (2) that the directional antennas used by most regional stations for restricting radiation toward other co-channel stations do not, in many cases, limit interference produced by skywave transmission to a degree which might be predicted from consideration of the antenna design. At least one study has been made tending to show that this can be the case—that directional antennas designed for a high degree of suppression of radiation at angles above the horizontal produce interfering skywave signals substantially exceeding those which would be predicted under the Commission's rules.[3] This last consideration is particularly important in considering the addition of new nighttime services to already overcrowded regional channels. Stations "shoehorned" in under such conditions almost invariably require the use of directional antennas designed to radiate very little energy in various directions above the horizontal plane, so as to provide the degree of nominal protection for other stations required by the Commission's rules. If this protection is not, in fact, achieved, as it well may not be, the result is a higher level of interference to these stations than was anticipated.

68. For these reasons, and because, in general, such new stations, subject to interference from many other stations, have very limited interference-free service areas and contribute little to overall nighttime service, we will continue to restrict new nighttime assignments to those cases where they can provide clearly needed new service and there is no available alternative means for providing this service.

69. Because we recognize the problems faced by many existing stations in continuing to serve satisfactorily communities which, over the years, have expanded to geographic extent, the amended rules are framed so as to permit stations able to demonstrate that their existing community coverage is inadequate to increase power within the limits specified by our rules, subject to compliance with overlap and interference considerations. However, permissible power increases are selective—an unlimited time station will be permitted to increase power only during the portion of the broadcast day when existing community coverage is shown to be inadequate (or it can be shown that 25 percent of the area or population newly served as a result of the power increase would receive its first primary service). Of course, power increases permitted on such a selective basis may result in cases where some unlimited time stations are authorized to operate with higher power at night than during the daytime. While this result may be at variance to the usual situation, in which the station's daytime power is equal to or greater than its nighttime power, there appears little justification for permitting a power increase during a portion of the broadcast day for which the applicant is unable to make a satisfactory showing, pursuant to the rules, of service benefits resulting from the increase.

70. We have not adopted any rule provisions, as suggested by some of the parties, directed specifically toward making easier the acquisition of nighttime facilities by daytime stations. Indirectly, we believe we have done this, however, by upgrading the requirements for adequate service to each community from existing stations. Thus, if the licensee of a daytime station can demonstrate that no unused FM channel is available to his community, and that other stations fail to provide at least two "adequate" nighttime aural services to that community, he is eligible, if his proposal will meet the

[3] Suppression Performance of Directional Antenna Systems in the Standard Broadcast Band—FCC Office of Chief Engineer—TRR Report 1.2.7. This report analyzes the results of skywave measurements on directional arrays made in April 1949, by NARBA Preparatory Committee IA.

nighttime protection requirements for other stations, to apply for full time operation. However, he would not be permitted to tailor the proposed nighttime power, as Tri-State requests, to whatever level might be necessary to provide protection, with non-directional operation, for other stations. An appealing case might be made for this kind of operation in an individual instance. However, the net effect of a rule relaxation permitting such operation would be a proliferation of many low cost, but substandard nighttime facilities, generally providing inadequate service to their communities, and contributing to a level of actual (as distinguished from computed) interference far outweighing the service benefits which they might provide.

71. As indicated in our earlier discussion of these matters, proposals for an across-the-band power increase, and involving changes in the rules governing the use of the clear channels are beyond the scope of this proceeding. Any broadening of its coverage to include such questions could result in an extension of the "freeze" on the acceptance of applications into the distant future, a result which we believe is undesired by any of the parties. We have given full consideration to those suggestions aimed at mitigating the Commission's workload in the processing applications for standard broadcast stations, and may eventually test the feasibility of certain of the ideas presented. At the present, since we are unable to forecast accurately the degree to which application filings pursuant to the amended rules will present a major problem, we intend to proceed in this area as described in paragraph 77 of this report and order.

72. A petition for special consideration of minority groups presents not a requirement for more stations serving the special interests of these groups (on the contrary, it is claimed that approximately 700 stations carry at least some programing directed especially to the black audience), but seeks an opportunity for new stations which are black owned. This need is seen as especially great in the larger markets, where the greatest concentrations of minority groups are found; it is also in these markets, however, where new facilities are less likely to be available, both because the plethora of existing stations diminishes the possibility of technically feasible new assignments, and because the Commission's policies are generally aimed toward precluding further additions to the many broadcast services already provided such cities. It is urged, however, that, it is only recently that the blacks' financial and social position has advanced to a degree that broadcast station ownership has become possible—meanwhile, the available assignments in these population centers have been utilized. It is further stated that the purchase of existing facilities in these markets by black groups is either not possible, or involves prices so monumentally high as to be prohibitive. Accordingly, the only practical avenue through which black ownership of broadcast facilities can be accomplished is through allocation policies which make additional assignments possible.

73. Conceding the truth of all of these allegations, and that the promotion of minority group ownership of broadcast facilities is a socially desirable end, we are unable to see how this objective may be furthered effectively in a proceeding, such as this, and within the framework of the statutory scheme which circumscribes our actions. Obviously, should we modify and relax all nontechnical rules which tend to restrict additional assignments, the opportunities in general for minority controlled applicants to seek new facilities may be increased, but at the expense of basic allocation objectives, and without any real assurance that these opportunities can or will be effectively exercised. In any event, the availability of new assignment opportunities in the larger cities, in which the largest minority groups reside, is not controlled by rules such as we now adopt, but by the basic technical standards. The petitioner demonstrates this in a study appended to his filing which shows in the "top 10" markets, nearly all of the existing standard broadcast stations were assigned in these markets prior to 1950, long before the Commission became actively concerned with the undue concentration of stations in the larger population centers, and adopted rules designed to direct the future growth of stations to areas where additional service is more greatly needed. Thus, absent a revision of the standards which now define the limits of service and interference, a revision which is clearly beyond the ambit of this proceeding, there is no action the Commission could appropriately take which would further the particular objectives of the petitioner.

74. The new showings as to the extent of existing AM and FM service, and the availability of FM channels will not be required in applications for new AM broadcast facilities in Alaska, which will continue to be governed by the more liberal policies which are presently set forth in paragraph (5) of Note 2 in § 1.571. These policies, which were adopted on an interim basis at the time of the freeze, will be made permanent. Accordingly, the substance of aforementioned paragraph (5) is being added as a new paragraph (f) to § 73.37. Moreover, we have decided to apply these policies with respect to applications submitted for new facilities in Puerto Rico, the Virgin Islands, Hawaii, Guam, and American Samoa as indicated in paragraph (f). While the aural broadcast coverage of Alaska is, of course, inadequate on an area basis, this limitation is presently imposed by economic considerations (the sparseness of population with respect to the area of the State), rather than by any scarcity in available standard broadcast spectrum space, and the restrictions which accordingly are imposed are only those intended to limit interstation interference and insure that each new assignment will contribute efficiently to the improvement in broadcast service. Hawaii and Guam are both limited in geographical extent, and so isolated from other populated areas that standard broadcast stations can be assigned with only a limited need to consider interference effects external to the particular State or territory. We see no need to apply any more restrictive rules in these cases than with respect to Alaska. While the availability of standard broadcast service in Puerto Rico and the Virgin Islands is limited primarily by their proximity to Cuba, where many stations operate, and to Haiti and the Dominican Republic, this limitation is not sufficient to preclude adequate coverage of these comparatively small islands by standard broadcast facilities assigned to the communities therein, and we do not feel justified in imposing the more restrictive standards of the new rules to these territories. While the distances of these outlying States and territories from the conterminous States vary greatly, all are sufficiently far away that assignment policies which place relatively few obstacles in the way of new daytime and unlimited time standard broadcast assignments in these areas can have little preclusionary effect on assignments in the conterminous States.

75. Having extracted the useful substance of Note 2 to § 1.571, as above described, we are deleting this note, thereby, in effect, lifting the "freeze" on the filing of certain categories of applications.

76. When an applicant relies on a demonstration that the existing aural service to the community which he serves or proposes to serve is inadequate as a basis for the acceptance of his application, it should be evident that his application, to be eligible for a grant without hearing, must propose an operation that itself will provide an adequate service to the community. As is well known, the Commission consistently requires that a new standard broadcast station provide an interference-free signal of 5 mv./m. or greater over the entire community to which it is assigned. This longstanding requirement is presently not stated directly in the rules, but may be derived from § 73.188(b)(2), which requires that the transmitter site for a proposed station be so selected that a signal of 5 mv./m. minimum strength will be delivered over the most distant residential section of the designated community, read in connection with the textual material of § 73.182(f) which makes it clear that service is considered to be provided only when the signal is interference-free, which, at night, may require a signal in excess of the 5 mv./m. minimum. Since this requirement bears an important relationship to the application of the new rules, we consider it desirable that it be stated clearly and directly, and we have included it, together with the concomitant requirement for a 25 mv./m. signal over business areas of the community in a new paragraph added to § 73.24, a section of the rules which specifies the showings which must be made prerequisite to the authorization of a new station or an increase in the

facilities of an existing station. It is recognized that, in the individual case, an existing station proposing an increase in power within the power ceiling imposed on the class of station involved, or because of interference considerations, may be unable to meet fully the service requirements discussed above. In such an instance, if the proposed operation would provide service to the community substantially superior to that provided by the existing operation, and is otherwise in compliance with the rules, the Commission will give favorable consideration to a request for waiver of the community service requirement.

77. During the year following adoption of the current AM rules in 1964, over 400 major applications were filed. This total was due in part to pent-up demand created by the "freeze" period preceding adoption of the rules. Due to this large influx and the complex nature of the studies required under the "go-no go" system, a large blacklog soon developed. As the average length of time to dispose of applications grew, so did the necessity to amend and up-date them. Consequently, the backlog tended to become self-perpetuating. Because of a reduction in personnel available to process AM applications, the filing of new proposals in numbers even approaching the total filed subsequent to the lifting of the last "freeze" will result inevitably in another large backlog. Thus steps may be necessary to control the influx of applications. Considerable thought has been given to the design of an acceptable method to accomplish this result. We have concluded, however, that it would be premature to institute control measures at the outset, when we are unable to predict accurately the rate of incoming applications. Accordingly, at this time, no restrictions will be placed on the potential number of proposals which may be filed. If the number submitted, however, becomes administratively burdensome, we will give further consideration to the imposition of control measures. These measures will probably involve the declaration of periodic "open" and "closed" seasons for the filing of applications. If it becomes necessary to institute such measures, they will be temporary in nature, and advance notice will be given, so that all parties will have ample time to complete and submit any applications which are in preparation.

78. The amendments to the rules, as discussed herein, are set forth below. The additional requirements will apply to all applications filed after the effective date of these rules.

79. *Accordingly, it is ordered.* That, effective April 10, 1973, Part 73 of the rules and regulations is amended as set forth below. Authority for this action is found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

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

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

Adopted: February 21, 1973.

Released: February 28, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[33]

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

1. Section 1.571 is amended by redesignating Note 1 as Note and amending the text, and deleting Note 2 to read as follows:

§ 1.571 Processing of standard broadcast applications.

* * * * *

NOTE: No application for broadcast facilities in the conterminous United States tendered for filing after July 13, 1964, will be accepted for filing unless it complies fully with the provisions of § 73.24(b) and § 73.37 (a) of this chapter through (d) of this chapter, and no application for broadcast facilities in the conterminous United States tendered for filing after July 18, 1968, will be accepted for filing unless it complies fully with the provisions of § 73.24(b) of this chapter and the provisions of § 73.37(a) through (e) of this chapter. No application for new or changed broadcast facilities in the States of Alaska, and Hawaii, the Commonwealth of Puerto Rico, and the territories of the Virgin Islands, Guam, and American Samoa, tendered for filing after July 18, 1968, will be accepted for filing unless it complies fully with the provisions of §§ 73.24(b) and 73.37(a) through (f) of this chapter.

2. In § 73.24, paragraph (b) and Note are amended, present paragraph (j) becomes paragraph (k) and a new paragraph (j) is added to read as follows:

§ 73.24 Broadcast facilities, showings required.

* * * * *

(b) That a proposed new station (or a proposed change in the facilities of an authorized station) complies with the pertinent requirements of § 73.37 of this chapter.

NOTE: The provisions of § 73.37 of this chapter shall not be applicable to new Class II–A stations or to stations for which applications were accepted for filing before July 13, 1964. With respect to such stations, the provisions of § 73.28(d) of this chapter, and the provisions of NOTE 1 of § 73.37 of this chapter shall apply. Special provisions concerning interference from Class II–A to stations of other classes authorized after October 30, 1961, are contained in § 73.22(d) of this chapter and NOTE 3 to § 73.21 of this chapter. The level of interference shall be computed pursuant to §§ 73.182 and 73.186 of this chapter.

* * * * *

(j) That the 25 mv./m. contour encompasses the business district of the community to which the station is assigned, and that the 5 mv./m. contour (or, at night, the interference-free contour, if of a higher value) encompasses all residential areas of such community.

(k) That the public interest, convenience, and necessity will be served through the operation under the proposed assignment.

§ 73.30 [Amended]

3. Section 73.30 is amended by deleting paragraph (c).

4. In § 73.37, amend the headnote and add new paragraphs (e), (f), and Notes 4, 5, 6, 7, and 8, to read as follows:

§ 73.37 Applications for broadcast facilities, showing required.

* * * * *

(e) In addition to a demonstration of compliance with the requirements of paragraph (a) of this section, and, where appropriate, paragraphs (b), (c), and (d) of this section, an application for a new standard broadcast station, or for a major change (see § 1.571(a)(1) of this chapter) in an authorized standard broadcast station, as a condition for its acceptance, shall make satisfactory showings as indicated below for the kind of application submitted:

(1) Application for a new daytime station, or for a change in the frequency of an existing daytime station:

(i) That at least 25 percent of the area or population which would receive interference-free primary service from the proposed station does not receive such service from an authorized standard broadcast station, or receive service from an authorized FM broadcast station with a signal strength of 1 mv./m., or greater, or

(ii) That no FM channel is available for use in the community designated in the application and that at least 20 percent of the area or population of the community receives less than two daytime aural services. For the purpose of this showing an aural service shall be deemed to be provided by an interference-free groundwave signal from an authorized standard broadcast station of a strength of 5 mv./m., or greater, or by an F (50, 50) signal from an authorized FM broadcast station of a strength of 70 dBu (3.16 mv./m.), or greater.

(2) Application for a new unlimited time station, for a change in the frequency of an authorized unlimited time station, or for nighttime facilities by an authorized daytime station, a satisfactory showing under paragraph (e)(2)(i) of this section (except for a Class IV station), and under either paragraph (e)(2)(ii) or (iii) of this section:

(i) That objectionable interference at night will not result to any authorized station, as determined pursuant to § 73.182(o),

[33] Commissioner Robert E. Lee absent; Commissioner Johnson dissenting and issuing a statement, which is filed as part of the original document; Commissioner Wiley issuing a separate statement, which is also filed as part of the original document.

(ii) That at least 25 percent of the area or population which would receive interference-free primary service at night from the proposed station does not receive such service from an authorized standard broadcast station or service from an authorized FM broadcast station with a signal strength of 1 mv./m., or greater, or

(iii) That no FM channel is available for use in the community designated in the application, and at least 20 percent of the area or population of the community receives less than two nighttime aural services. For the purpose of this showing, an aural service shall be deemed to be provided by an interference-free groundwave signal from an authorized standard broadcast station with a strength of 5 mv./m., or greater, or by an F (50, 50) signal from an authorized FM broadcast station with a strength of 70 dBu (3.16 mv./m.), or greater.

(3) Application by an authorized station (other than a Class IV station) proposing changes in facilities, other than a change in frequency, must make a satisfactory showing, where appropriate, under paragraph (e)(3)(i) of this section, and under either paragraph (e)(3)(ii) or (iii) of this section.

(i) For a change in nighttime facilities, that the proposed change will not result in objectionable interference to other stations as determined pursuant to § 73.182(o).

(ii) For an increase in power, either daytime or nighttime, that the authorized operation, during the portion of the broadcast day for which the power increase is sought, includes less than 80 percent of the area or population of the community to which the station is assigned within its 5 mv./m. groundwave contour (or within its interference-free groundwave contour, if of a higher value), or,

(iii) For an increase in power, that at least 25 percent of the area or population which, as a result of the power increase, for the first time would receive interference-free primary service from the station is without primary service from any other standard broadcast station.

(f) Applications for new or changed facilities in the states of Alaska and Hawaii, in the Commonwealth of Puerto Rico, and in the territories of the Virigin Islands, Guam, and American Samoa will be accepted for filing only if satisfactory showings are submitted with respect to the following:

(1) The proposed operation complies with the requirements of paragraphs (a), (b), (c), and (d) of this section.

(2) Unlimited time operation, by other than a Class IV facility, will not cause objectionable skywave interference at night to an existing station, pursuant to § 73.182(o). In addition, each proposal for unlimited time operation (including Class IV proposals) shall meet at least one of the following conditions:

(i) Not more than 10 percent of the population included within the normally protected nighttime contour would receive objectionable interference.

(ii) The proposed operation would be the first standard broadcast facility assigned to the community which would provide nighttime service.

(iii) For a proposed new station, that at least 25 percent of the area or population included within the nighttime interference-free primary service contour is without nighttime primary standard broadcast service, or, for a proposed change in the nighttime facilities of an authorized station, that at least 25 percent of the area or population which would receive interference-free nighttime primary service from the station for the first time as a result of the change in facilities is without nighttime primary standard broadcast service.

* * * * *

NOTE 4: All applications for new stations, or for major changes in existing stations tendered for filing after July 18, 1968, for facilities in the conterminous United States, shall be subject to the provisions of paragraph (e) of this section, or, for facilities in the States of Alaska and Hawaii, the Commonwealth of Puerto Rico and the territories of the Virgin Islands, Guam, and American Samoa, shall be subject to the provisions of paragraph (f) of this section.

NOTE 5: In making determinations of "aural service" to the community from standard broadcast or FM broadcast stations in showings pursuant to paragraphs (e)(1)(ii) and (e)(2)(iii) of this section, service provided by any standard broadcast station or FM broadcast station whose transmitter site is located more than 50 miles from the nearest boundary of the community designated in the application shall be excluded from consideration.

NOTE 6: No FM channel is available for use in the community (see paragraphs (e)(1)(ii) and (e)(2)(iii) of this section, if no channel is assigned to the community for commercial use in the FM Table of Assignments (§ 73.202(b)), as amended by Commission action as of the date the application is tendered, or, if assigned, is occupied by an authorized facility, and no unoccupied channel can be utilized to serve the community pursuant to § 73.203(b).

NOTE 7: In the determination of the extent of existing aural service to a community, areas and populations of the community receiving service from a standard broadcast station and an FM broadcast station which are commonly owned shall be considered as receiving a single aural service from these stations. Service provided by noncommercial educational FM stations and standard broadcast stations shall not be included in the determination of existing aural service.

NOTE 8: An application for a new unlimited time station, other than a Class IV station, even though including a satisfactory showing pursuant to paragraph (e)(2) of this section will not be accepted for filing if the proposed daytime power is greater than the proposed nighttime power, unless it contains an additional satisfactory showing pursuant to paragraph (e)(1) of this section for daytime hours of operation.

[FR Doc.73-4089 Filed 3-2-73;8:45 am]

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

[Docket No. 18, Amt. 21-1]

PART 21—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Obligations of Airport Operators

The purpose of this amendment is to change the reporting date in Appendix C(b)(3) of Part 21 of the regulations of the Secretary of Transportation from January 31 of each year to March 31 of each year for the submission of the required data.

The data, submitted pursuant to Appendix C(b)(3), requires information from federally assisted airport operators and their concessionaires that is nearly identical to the information required by the Equal Employment Opportunity Commission in Form EEO-1 which is required to be filed by March 31 of each year (29 CFR 1602.7). In order to relieve those who are required to file both forms from duplicating the effort of compiling the information, the Department of Transportation is changing its reporting date to coincide with that of the Equal Employment Opportunity Commission.

Because this amendment does not impose an additional burden on those affected by the reporting requirement, I find that public notice and procedure thereon are not necessary, and that it may become effective in less than 30 days.

In consideration of the foregoing, the last sentence of Appendix C(b)(3) of Part 21 of the regulations of the Secretary of Transportation is hereby amended, effective February 23, 1973, to read as follows:

(b) *Obligations of the airport operator*—* * *

(3) *Reports.* * * * Each airport operator shall, by March 31 of each year, submit to the area manager of the FAA area in which the airport is located a report for the preceding year in a form prescribed by the Federal Aviation Administrator.

Issued in Washington, D.C., on February 23, 1973.

CLAUDE S. BRINEGAR,
Secretary of Transportation.

[FR Doc.73-4074 Filed 3-2-73;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

PART 1002—FEES

Services Performed in Connection With Licensing and Related Services; Correction

FEBRUARY 28, 1973.

Section 1002.2, Title 49, Code of Federal Regulations (36 FR 11294, June 11, 1971) is corrected by adding the fee of

$35 in the right hand column of paragraph (d) (40) as follows:

§ 1002.2 Filing fees.

* * * * *

(d) *Schedule of filing fees.*

* * * * *

(40) A petition for waiver of any provision of the lease and interchange regulations, 49 CFR Part 1057	35

* * * * *

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-4132 Filed 3-2-73;8:45 am]

[S.O. 1086; Amdt. 3]

PART 1033—CAR SERVICE

Chicago, Rock Island and Pacific Railroad Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 26th day of February 1973.

Upon further consideration of Service Order No. 1086 (36 FR 25425, 37 FR 12727, and 38 FR 877), and good cause appearing therefor:

It is ordered, That:

Section 1033.1086 *Service Order No. 1086* (Chicago, Rock Island and Pacific Railroad Co. authorized to operate over tracks of the Peoria and Pekin Union Railway Co.) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* This order shall expire at 11:59 p.m., August 31, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., February 28, 1973.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-4131 Filed 3-2-73;8:45 am]

[S.O. 1087; Amdt. 3]

PART 1033—CAR SERVICE

Burlington Northern Inc.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 26th day of February 1973.

Upon further consideration of Service Order No. 1087 (36 FR 25425, 37 FR 12497, and 38 FR 877), and good cause appearing therefor:

It is ordered, That:

§ 1033.1087 *Service Order No. 1087* (Burlington Northern Inc. authorized to operate over tracks of the Peoria and Pekin Union Railway Co.) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* This order shall expire at 11:59 p.m., August 31, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., February 28, 1973.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-4130 Filed 3-2-73;8:45 am]

[S.O. 1107; Amdt. 2]

PART 1033—CAR SERVICE

Lehigh Valley Railroad Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 26th day of February 1973.

Upon further consideration of Service Order No. 1107 (37 FR 16549 and 25236), and good cause appearing therefor:

It is ordered, That:

§ 1033.1107 *Service Order 1107* (Lehigh Valley Railroad Co., John F. Nash and Richard C. Haldeman, Trustees, authorized to operate over tracks of Penn Central Transportation Co., George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 30, 1973, unless otherwise modified, changed or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., February 28, 1973.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-4129 Filed 3-2-73;8:45 am]

[Rev. S.O. 1108; Amdt. 1]

PART 1033—CAR SERVICE

Reading Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 26th day of February 1973.

Upon further consideration of Revised Service Order No. 1108 (37 FR 28634), and good cause appearing therefor:

It is ordered, That:

§ 1033.1108 *Rev. Service Order No. 1108* (Reading Co., Richardson Dilworth and Andrew L. Lewis, Jr., Trustees, authorized to operate over tracks of Lehigh Valley Railroad Co., John F. Nash and Robert C. Haldeman, Trustees) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., August 31, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., February 28, 1973.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-4128 Filed 3-2-73;8:45 am]

[S.O. 1113; Amdt. 1]

PART 1033—CAR SERVICE

Penn Central Transportation Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 26th day of February 1973.

Upon further consideration of Service Order No. 1113 (37 FR 22872), and good cause appearing therefor:

It is ordered, That:

§ 1033.1113 *Service Order No. 1113* (Penn Central Transportation Co., George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees, authorized to operate over tracks of the Norfolk and Western Railway Co.) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 30, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., February 28, 1973.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-4127 Filed 3-2-73;8:45 am]

[S.O. 1114; Amdt. 1]

PART 1033—CAR SERVICE

Norfolk and Western Railway Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 26th day of February 1973.

Upon further consideration of Service Order No. 1114 (37 FR 22872), and good cause appearing therefor:

It is ordered, That:

§ 1033.1114 *Service Order No. 1114* (Norfolk and Western Railway Co. authorized to operate over tracks of Penn Central Transportation Co., George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 30, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., February 28, 1973.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-4126 Filed 3-2-73;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—BUREAU OF SPORT FISHERIES AND WILDLIFE, FISH AND WILDLIFE SERVICE; DEPARTMENT OF THE INTERIOR

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Crab Orchard National Wildlife Refuge, Ill.

The following special regulation is issued and is effective on March 5, 1973.

§ 28.28 **Special regulations, public access, use, and recreation; for individual wildlife refuge areas.**

ILLINOIS

CRAB ORCHARD NATIONAL WILDLIFE REFUGE

Public use is permited on the Crab Orchard National Wildlife Refuge subject to the following special conditions:

(1) Swimming is permitted only at beach areas as designated by signs.

(2) All types of flotation devices, other than U.S. Coast Guard approved life-saving devices, are prohibited on refuge waters.

(3) Foodstuffs, drink containers (cans, bottles, cartons), pets, or fires are prohibited at designated beach areas and on the rock area immediately below Crab Orchard Lake Spillway.

(4) The Carterville Beach, Hogan Point, Lookout Point, Crab Orchard Beach, Bulliner Point, Playport Boat Dock, Sailboat Basin, Crab Orchard Spillway, and Spillway parking lot and picnic areas are closed to unauthorized use from 9 p.m., local time, until 5 a.m., local time, daily.

(5) Motor vehicle entry to the Crab Orchard Lake Campground is prohibited from 11 p.m. until 7 a.m., local time, during the period said campground is open to the public.

(6) Quiet shall be maintained in all refuge campgrounds between 10 p.m. and 6 a.m., local time.

(7) Horseback riding is prohibited except on designated horseback riding trails.

(8) Sailboats or sailing craft are not permitted on Devils Kitchen and Little Grassy Lakes.

(9) Sailboats underway between sunset and sunrise must display a bright white light visible all around the horizon for a distance of 2 miles.

(10) Alcoholic liquor may not be transported, carried, or possessed on any boat propelled by sail or mechanical power, except in the original package and with the seal unbroken, while the craft is in operation on refuge waters.

(11) No marine head (toilet) on any boat or watercraft operated upon refuge waters may be so constructed and operated as to discharge any sewage into the waters directly or indirectly.

(12) The drinking or possession of alcoholic liquor by persons under 21 years of age is prohibited on the refuge area.

(13) No person shall transport, carry, possess or have any alcoholic liquor in or upon any motor vehicle except in the original package and with the seal unbroken, while on the refuge area.

The provisions of this notice supplement the regulations which govern public access, use, and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1973.

L. A. MEHRHOFF, Jr.,
Project Manager, Crab Orchard National Wildlife Refuge.

FEBRUARY 26, 1973.

[FR Doc.73-4082 Filed 3-2-73;8:45 am]

Title 7—Agriculture

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

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Japanese Beetle

MISCELLANEOUS AMENDMENTS

Correction

In FR Doc. 72-19762 appearing at page 24327 of the issue for Thursday, November 16, 1973, the following changes should be made:

1. The reference at the end of § 301.48–1(o), reading "§ 301.48–2(b)", should read "§ 301.48(b)".

2. The reference in the fifth line of § 301.48–2(a), reading "§ 301.48–2(a)", should read "§ 301.48–2a".

3. In the authority citation at the end of the document, in the middle line the reference "7 U.S.C. 161, 152, 150ee;" should read "7 U.S.C. 161, 162, 150ee;".

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

[Amdt. 43]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1969 and Succeeding Crop Years

PEANUTS

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended, the above-identified regulations are amended effective beginning with the 1973 crop year in the following respects:

1. The portion of the table following paragraph (a) of § 401.103 under the heading "Peanuts" is amended effective beginning with the 1973 crop year to read as follows:

§ 401.103 Application for insurance.

(a) * * *

(CLOSING DATES)

PEANUTS

Texas:	
Atascosa, Frio, and Wilson Counties	March 10
All other Texas counties	April 25
All other States	April 30

* * * * *

2. Section 7 of the peanut endorsement shown in § 401.138 is amended effective beginning with the 1973 crop year to read as follows:

7. Cancellation and termination for indebtedness dates. For each year of the contract, the cancellation date and termination date for indebtedness are the following applicable dates immediately preceding the beginning of the crop year for which the cancellation or the termination is to become effective.

State and county	Cancellation date	Termination date for indebtedness
Texas:		
Atascosa, Frio, and Wilson Counties.	December 31	March 10
All other Texas counties	December 31	April 25
All other States	December 31	April 30

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

The foregoing amendment establishes closing dates for the filing of applications and termination dates for indebtedness for Texas counties for peanut crop insurance which are different from such dates established for other states. Such insurance will be offered for the first time in Texas in the 1973 crop year. The current peanut regulations provide an April 30 closing and termination date for all States, which is unrealistic in Texas where planting normally begins prior to April 30. Since the contract provides that insurance attaches at the time of planting, it is imperative that the regulations be amended to establish closing dates and termination dates for indebtedness for peanut insurance in Texas which precede the time of planting. Because of the urgency of establishing such dates prior to planting, the Board of Directors found that it would be contrary to the public interest to follow the procedure for notice and public participation prescribed by 5 U.S.C. 553 (b) and (c), as directed by the Secretary of Agriculture in a statement of policy, executed July 20, 1971 (36 FR 13804), prior to its adoption. Accordingly, said amendment was adopted by the Board of Directors on February 21, 1973.

[SEAL] LLOYD E. JONES,
Secretary, Federal Crop Insurance Corporation.

Approved on February 27, 1973.

EARL L. BUTZ,
Secretary.

[FR Doc.73-4079 Filed 3-2-73;8:45 am]

[Amdt. 42]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1969 and Succeeding Crop Years

BURLEY TOBACCO POUNDAGE QUOTA ENDORSEMENT

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended, the above-identified regulations are amended effective beginning with the 1973 crop year in the following respect:

1. The following section is added:

§ 401.148 The Burley Tobacco Poundage Quota Endorsement with proision for indemnity based upon dollar amount of insurance for the insurance unit less value of production to count.

The provisions of the Burley Tobacco Poundage Quota Endorsement (applicable only in Bourbon, Fayette, Green, Nicholas, and Taylor Counties, Ky., and Greene and Hawkins Counties, Tenn.) for the 1973 and succeeding crop years are as follows:

1. *General.* The provisions of this endorsement shall apply to all insureds in Bourbon, Fayette, Green, Nicholas, and Taylor Counties, Ky., and Greene and Hawkins Counties, Tenn., who apply for insurance beginning with the 1973 or any subsequent crop year. Any insured in these counties with a tobacco crop insurance contract in force in 1972 may elect that the provisions of this endorsement apply beginning with any subsequent crop year if he so notifies the office for the county prior to the termination date for indebtedness for that crop year.

2. *Insured crop.* The crop insured shall be burley tobacco (Type 31).

3. *Insured acreage.* In lieu of the provisions of section 2(c) of the policy the following shall apply: The insured burley tobacco acreage for each crop year shall be all acreage planted to Burley tobacco on the insurance unit (herein called unit) provided that no insurance shall be considered to have attached on any acreage the Corporation determines was (1) destroyed and after such destruction it was practical to replant and such acreage was not replanted, (2) initially planted after the date fixed by the Corporation and placed on file in the office for the county, as being too late to initially plant and expect a normal crop to be produced, (3) designated as not insurable on the county actuarial table, (4) planted to tobacco of a discount variety under the provisions of the tobacco price support program, or (5) planted for experimental purposes.

4. *Additional reporting requirement.* In addition to reporting the planted acreage and share as provided in section 3 of the policy, the insured shall report the effective poundage marketing quota, or portion thereof, applicable to the unit (herein called poundage quota) at the time of planting for the current marketing year as provided under the ASCS Burley Tobacco Marketing Quota Regulations and the pounds, if any, by which in establishing the amount of insurance for the unit the poundage quota shall be reduced due to carryover tobacco to be marketed under the poundage quota applicable to the unit: *Provided*, That unless such reduction is clearly specified in filing the acreage report, it shall not be allowed.

5. *Amount of insurance and premium for a unit.* (a) In lieu of the provisions of section 5 of the policy the following shall apply: The amount of insurance for a unit shall be the dollar amount determined by multiplying the applicable poundage for the unit as determined in (b) below by the applicable percentage of guarantee for the tobacco farm shown on the county actuarial table for this purpose and the result by the current year's Burley tobacco price support per pound less 3 cents for warehouse charges.

(b) the poundage determined to be applicable to the unit shall be the effective Burley poundage marketing quota for the crop year for the tobacco farm under the ASCS Burley Tobacco Marketing Quota Regulations, or portion thereof applicable to the unit, at planting time, as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, with such poundage for any unit reduced by the pounds of carryover tobacco to be marketed under the current crop year poundage quota if reported in accordance with section 4: *Provided, however*, If the result obtained by dividing the poundage as determined above by the farm yield per acre (see subsection 11(g)) exceeds the insured acreage on a unit, the poundage used in (a) above shall be reduced by the factor determined by dividing the insured acreage by such result.

Unless otherwise provided on the actuarial table, for any crop year in which Burley tobacco poundage marketing quota regulations are not in effect, the poundage used in determining the applicable amount of insurance for a unit shall be obtained by multiplying the farm yield for the tobacco farm previously used by ASCS in establishing the basic poundage marketing quota for the tobacco farm by the percentage guarantee shown on the actuarial table and the result by the lower of the reported or insured acreage.

(c) The annual premium for the unit shall be determined by multiplying the amount of insurance, determined as provided above, by the applicable percentage premium rate shown on the actuarial table and multiplying the product thereof by the insured's share at the time insurance attaches, and, when applicable, applying the discounts shown in section 6(b) of the policy.

6. *Insurance period.* Insurance on any insured acreage shall attach at the time the

tobacco is planted and, with respect to any portion of the crop, shall cease upon the earlier of February 28, weighing-in at the tobacco warehouse, transfer of interest in the tobacco after harvest, or removal of the tobacco from the insurance unit, except for curing, grading, packing, or immediate delivery to the tobacco warehouse.

7. *Notice of loss or substantial damage.* In lieu of the provisions of section 8(b) of the policy the following shall apply: If at the completion of selling or otherwise disposing of the insured tobacco an insured loss on a unit is probable, the insured shall give within 15 days' written notice thereof to the Corporation at the office for the county, but in no event shall such notice be given later than February 28: *Provided, however,* That if any tobacco is destroyed or damaged by fire during the insurance period or any acreage will not be harvested, such notice shall be given immediately.

8. *Claims for loss.* (a) Any claim for loss on a unit shall be submitted to the Corporation on a form prescribed by the Corporation not later than 60 days after the amount of loss can be determined, but in no event shall such form be submitted later than the March 31 following the normal harvest period.

(b) It shall be a condition precedent to the payment of any loss that the insured establish the production of the insured crop on the unit and that such loss has been directly caused by one or more of the hazards insured against during the insurance period for the crop year for which the loss is claimed, and furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(c) Losses shall be determined separately for each unit. The amount of loss with respect to any unit shall be determined by subtracting from the amount of insurance applicable to the unit the value (determined in accordance with subsection (d) of this section) of the total production to be counted for the unit and multiplying the remainder by the insured share.

The value of the total production to be counted for a unit shall be determined by the Corporation, and subject to the provisions hereinafter, shall include the value of all harvested production and the value of any appraisals made by the Corporation for unharvested or potential production, poor farming parctices, uninsured causes of loss, or for acreage abandoned or put to another use without the consent of the Corporation: *Provided,* That the value of the total production to be counted for any tobacco acreage not harvested nor considered as harvested within the meaning of the term "harvested" shall never be less than 20 percent of the product of the farm yield per acre and the percentage guarantee shown on the actuarial table for such acreage multiplied by the current year's Burley tobacco price support per pound less 3 cents for warehouse charges, except that for acreage abandoned or put to another use without prior written release by the Corporation and acreage damaged solely by uninsured causes at least the product of the farm yield per acre and the percentage guarantee shown on the actuarial table for such acreage multiplied by the current year's Burley tobacco price support per pound less 3 cents for warehouse charges shall be counted.

(d) In determining any loss under the contract, the production shall be valued as follows: (1) The gross returns (less 3 cents per pound for warehouse charges) from the tobacco sold on the warehouse floor, (2) the fair market value, as determined by the Corporation, of the tobacco sold other than on the warehouse floor, (3) the fair market value, as determined by the Corporation, of the tobacco harvested and not sold, and (4) the fair market value of any unharvested tobacco determined by the Corporation as if such tobacco were harvested and cured. Any appraisals of production for any crop year made for poor farming practices or uninsured causes of loss, shall be valued at the current support price per pound less 3 cents for warehouse charges.

(e) To enable the Corporation to determine the fair market value of tobacco not sold through auction warehouses, the Corporation shall be given the opportunity to inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of by the insured and, if the best offer received by the insured for any such tobacco is considered by the Corporation to be inadequate, to obtain additional offers therefor on behalf of the insured.

9. *Cancellation and debt termination dates.* (a) For each crop year of the contract the cancellation date (applicable to both the insured and the Corporation) shall be the January 31 immediately preceding the beginning of the crop year for which it is to become effective.

(b) The termination date for indebtedness for each crop year of the contract shall be the May 31 immediately preceding the beginning of the crop year for which the termination is to become effective.

10. *Sharecroppers.* Paragraph B of the Application Form FCI-12-Revised shall not be applicable under this Burley Tobacco Poundage Quota Endorsement.

11. *Meaning of terms.* For purposes of insurance on burley tobacco the terms:

(a) "Insurance Unit", notwithstanding the first sentence of section 19(e) of the policy, means all the insurable acreage in the county planted to burley tobacco on a farm for which a single farm poundage marketing quota for burley tobacco is established and at the time of planting (1) in which the insured has 100% interest, (2) which is owned by one person and operated by the insured as a tenant, or (3) which is owned by the insured and rented to one tenant: *Provided, however,* That if a burley tobacco price support program is not in effect for any crop year, the above words "planted on a farm for which a single poundage marketing quota for burley tobacco is established" shall be disregarded. Otherwise the provisions of section 19(e) of the policy apply to burley tobacco crop insurance, except that no other agreement shall be made which divides the insurable acreage into two or more units.

(b) "Market Price" for a crop year means the average auction price for burley tobacco (less 3 cents for warehouse charges) in the belt or area as determined by the Corporation. The market price when determined by the Corporation shall be filed in the office for the county with the actuarial table.

(c) "Support Price Per Pound" means the average price support level per pound for burley tobacco as announced by the United States Department of Agriculture under the tobacco price support program: *Provided, however,* That for any crop year in which a price support for burley tobacco is not in effect the market price for that crop year shall be used in lieu thereof.

(d) "Planting" means transplanting the tobacco plant from the bed to the field.

(e) "Harvest" or "Harvested" as to any acreage means cutting at least 20 percent of the number of pounds obtained by multiplying the farm yield per acre by the percentage guarantee shown on the actuarial table for such acreage.

(f) "Effective Farm Marketing Quota" means the farm marketing quota as established and recorded by ASCS at planting time.

(g) "Farm Yield" means the yield per acre used by ASCS in establishing the basic farm marketing poundage quota for the tobacco farm.

(h) "Carryover Tobacco" means any tobacco on hand from a previous year's production.

(i) "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

The foregoing amendment should provide a more practical plan for insuring burley tobacco than the current tobacco endorsement which was designed for crops produced under acreage allotments. The proposed amendment will be first tested in seven pilot counties in Kentucky and Tennessee beginning with the 1973 crop year. It will apply to all new business and to those insureds with a contract in force in 1972 who so elect. Since it will be necessary to start taking applications as soon as possible from new applicants for the 1973 crop year, the Board of Directors found that it would be impracticable and contrary to the public interest to follow the procedure for notice and public participation prescribed by 5 U.S.C. 553 (b) and (c), as directed by the Secretary of Agriculture in a Statement of Policy, executed July 20, 1971 (36 FR 13804), prior to its adoption. Accordingly, said amendment was adopted by the Board of Directors on February 21, 1973.

[SEAL] LLOYD E. JONES,
Secretary, Federal Crop Insurance Corporation.

Approved on February 27, 1973.

EARL L. BUTZ,
Secretary.

[FR Doc.73-4078 Filed 3-2-73;8:45 am]

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 722—COTTON

Subpart—1973 Crop of Upland Cotton; Base Acreage Allotments

COUNTY RESERVES; CORRECTION

The purpose of this document is to correct an error in FR Doc. 73-2469 appearing at page 3952 of the issue for Friday, February 9, 1973. In the table for Nevada, Nye County reading "0" should be corrected to read "5.0".

Signed at Washington, D.C., on February 27, 1973.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.73-4146 Filed 3-2-73;8:45 am]

[Amdt. 10]

PART 722—COTTON

Subpart—Acreage Allotments for the 1966 and Succeeding Crops of Extra Long Staple Cotton

MISCELLANEOUS AMENDMENTS

The purposes of this amendment are to exclude from this subpart the closing dates for release, requests for reapportionment, final date for reapportionment and the closing dates for filing a record of transfer of extra long staple cotton acreage allotments. Such closing dates have been established in a new Part 731 of this chapter published in the FEDERAL REGISTER on December 21, 1972 (37 FR 28124). Also, to amend the provisions for determining productivity adjustments in extra long staple cotton yields in relation to transfers. The amended provision is to use the average yield for the 3 years immediately preceding the year in which the allotment is determined. This amendment is issued pursuant to and in accordance with applicable provisions of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.).

Since farmers are now transferring cotton acreage for the 1973 crop year, it is hereby found and determined that compliance with the notice, public procedure, and 30-day effective date requirements of 5 U.S.C. 553 is impracticable and contrary to the public interest. This amendment shall become effective on March 5, 1973.

The Subpart—Acreage Allotments for 1966 and Succeeding Crops of Extra Long Staple Cotton, of Part 722, Subchapter B of Chapter VII, Title 7 (31 FR 6247, 13530, 32 FR 5416, 33 FR 8427, 16066, 16434, 34 FR 5, 808, 37 FR 9202, 11965, 24428) is amended as follows:

1. Section 722.513 is amended by revising paragraph (b)(7) to read as follows:

§ 722.513 Release and reapportionment of ELS cotton allotments.

* * * * *

(b) * * *

(7) *Closing dates.* The State committee shall establish applicable closing dates in accordance with Part 731 of this chapter.

* * * * *

2. Paragraph (b) of § 722.528 is revised to read as follows:

§ 722.528 Records of transfer.

* * * * *

(b) *When records to be filed.* Records of transfers may be filed during the period beginning on the date original notices of acreage allotments are mailed to farm operators and ending on the date provided for in Part 731 of this chapter.

* * * * *

3. The first sentence of paragraph (b) of § 722.529 is revised to read as follows:

§ 722.529 Amount of allotment transferable.

* * * * *

(b) *Productivity adjustments.* The farm yield for determining productivity adjustments is the average yield per harvested acre of lint ELS cotton on the farm during each of the 3 calendar years immediately preceding the year in which such allotment is determined. * * *

(Secs. 344, 347, 375, 63 Stat. 670, as amended, 675, as amended, 52 Stat. 66, as amended; 7 U.S.C. 1344, 1347, 1375)

Effective date: March 5, 1973.

Signed at Washington, D.C., on February 27, 1973.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.73-4147 Filed 3-2-73;8:45 am]

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

[Navel Orange Reg. 289, Amdt. 1]

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

Limitation of Handling

This regulation increases the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period February 23–March 1, 1973. The quantity that may be shipped is increased due to improved market conditions for Navel oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907.

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

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Navel Orange Regulation 289 (38 FR 4770). The marketing picture now indicates that there is a greater demand for Navel oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Navel oranges to fill the current market demand thereby making a greater quantity of Navel oranges available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Navel oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b)(1)(ii) of § 907.589 (Navel Orange Regulation 289 (38 FR 4770)) are hereby amended to read as follows:

§ 907.589 Navel Orange Regulation 289.

* * * * *

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

(ii) District 2: 250,000 cartons.

* * * * *

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

Dated: February 28, 1973.

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

[FR Doc.73-4143 Filed 3-2-73;8:45 am]

PART 928—PAPAYAS GROWN IN HAWAII

Expenses, Rate of Assessment, and Carryover of Unexpended Funds

This proposal would fix the maximum amount of expenses, $182,330, that could be incurred by the Papaya Administrative Committee in the administration of the program. It would also establish the assessment for the same period of six and one-half mills ($0.0065) per pound of papayas handled and provided for the transfer of unexpended assessment funds from the previous fiscal period to the program's reserve.

On January 29, 1973, notice of proposed rule making was published in the FEDERAL REGISTER (38 FR 2701) regarding proposed expenses and the related rate of assessment for the fiscal year ending December 31, 1973, and carryover of unexpended funds, pursuant to the marketing agreement and Order No. 928 (7 CFR Part 928), regulating the handling of papayas grown in Hawaii, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Papaya Administrative Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

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

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Papaya Administrative Committee during the period January 1, 1973, through December 31, 1973, will amount to $182,330.

(b) *Rate of assessment.* The rate of assessment for said period, payable by each handler in accordance with § 928.41, is fixed at $0.0065 per pound of papayas.

(c) *Reserve.* Unexpended assessment funds in excess of expenses incurred during the fiscal year ended December 31, 1972, shall be carried over as a reserve in accordance with applicable provisions of § 928.42 of the marketing agreement and order.

Terms used in the marketing agreement and this part shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and this part.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of papayas are now being made; (2) the relevant provisions of said marketing agreement and this part require that the rate of assessment fixed for a particular fiscal period shall be applicable to all assessable papayas from the beginning of such period; and (3) such period began on January 1, 1973, and the rate of assessment herein fixed will automatically apply to all assessable papayas beginning with such date.

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

Dated: February 27, 1973.

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

[FR Doc.73-4077 Filed 3-2-73;8:45 am]

Proposed Rule Making

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 991]

HANDLING OF HOPS OF DOMESTIC PRODUCTION

Proposed Salable Quantity and Allotment Percentage for 1973–74 Marketing Year

Notice is hereby given of a proposal to establish for the 1973–74 marketing year, beginning August 1, 1973, a salable quantity of 55,528,000 pounds, and an allotment percentage of 92 percent, for hops grown in Washington, Oregon, Idaho, and California. The salable quantity is the total quantity of hops that may be freely marketed from any crop grown in those States and handled by handlers. The salable quantity is prorated among producers by applying the allotment percentage to each producer's allotment base.

The proposed salable quantity and allotment percentage would be established in accordance with provisions of Marketing Order No. 991, as amended (7 CFR Part 991), regulating the handling of hops of domestic production, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal was recommended by the Hop Administrative Committee.

Consideration will be given to any written data, views, or arguments pertaining to the proposal which are received by the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, DC 20250, not later than March 15, 1973. All written submissions made pursuant to this notice should be made in quadruplicate and will be made available for public inspection at the office of the Hearing Clerk during official hours of business (7 CFR 1.27(b)).

The proposed salable quantity and allotment percentage are based upon recommendations of the Committee made at their meeting of January 19, 1973, and derived from the following determinations for the marketing year beginning August 1, 1973:

(1) Total domestic consumption of 36 million pounds of hops;

(2) Minus imports of 13 million pounds of hops to result in domestic consumption of U.S. hops of 23 million pounds;

(3) Plus total U.S. exports of 30 million pounds of hops to equal 53 million pounds total usage of U.S. hops;

(4) Minus a desirable inventory adjustment, as of September 1, 1974, of 294,000 pounds;

(5) Plus an adjustment of 2,182,000 pounds to provide for allotments not produced plus 640,000 pounds to assure production of the quantity needed to meet market requirements, resulting in adjusted requirements for salable hops of 55,528,000 pounds.

The proposal is as follows:

§ 991.211 Allotment percentage and salable quantity for hops during the marketing year beginning August 1, 1973.

The allotment percentage during the marketing year beginning August 1, 1973, shall be 92 percent, and the salable quantity shall be 55,528,000 pounds.

Dated: February 27, 1973.

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

[FR Doc.73-4144 Filed 3-2-73;8:45 am]

[7 CFR Part 1125]

[Docket No. AO 226–A25]

MILK IN THE PUGET SOUND, WASH., MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Puget Sound, Wash., marketing area.

Interested parties may file written exception to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, on or before March 20, 1973. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

PRELIMINARY STATEMENT

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Seattle, Wash., on April 25–28, 1972 pursuant to notice thereof which was issued on April 6, 1972 (37 FR 7259).

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

1. Pool plant qualifications.
2. Diversion of producer milk.
3. Location adjustments.
4. Butterfat differentials.
5. Classification provisions.
6. Payments to producers.
7. Administrative provisions.

At the hearing, no testimony was presented concerning hearing notice proposals 4 and 8, and no other evidence submitted indicated a need to adopt the proposals. Accordingly, the proposals are denied.

FINDINGS AND CONCLUSIONS

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

1. *Pool plant qualifications—(a) Pool distributing plants.* The provisions for pooling "distributing plants" should not be changed.

Currently, the order provides pool plant status for any distributing plant from which during the month route disposition of fluid milk products in the marketing area averages more than 110 pounds daily and is 10 percent or more of the receipts of Grade A milk at the plant.

A cooperative association supplying the market proposed that the percentage factor be increased to 25 percent from the 10 percent now provided. The proposal is part of a proposed comprehensive revision of pooling qualifications. Proponent proposed to change the pooling standards for distributing plants on the basis that to be pooled such plants should have a greater degree of association with the Puget Sound market than is now required by the order.

Each pool distributing plant now operating in the market characteristically has a substantial proportion of its Class I sales within the marketing area. As a general proposition, the proposal would make possible for the future a higher incidence of exemption from regulation

for distributing plants. We find insufficient evidence in this proceeding to warrant adoption of provisions that would tend to reduce the proportion of milk pooled through pool distributing plants. The operation of the pool is an essential feature of this regulation, which is designed to maintain orderly marketing, since it is the mechanism through which producers enjoy the benefits of the Class I sales value and also share equitably in the burden of any lower-valued surplus disposition. We conclude that the interests of the producers are served best when the maximum proportion of milk regularly supplied to the market is regulated on such terms. The present provision accomplishes this and at the same time permits exemption from pooling milk at a plant that might only incidentally, or perhaps accidentally, become involved in distribution within the marketing area. For this reason, the proposal is denied.

(b) *Pool supply plants.* The provisions for pooling supply plants should be changed. As set forth herein, a supply plant would be pooled in any month during which the following percentages of Grade A receipts are shipped to pool distributing plants: 50 percent in any of the months of October through December, 40 percent in January, February, and September, and 30 percent in any of the months of March through August. Any supply plant that qualified for pooling during the entire period of September through February would pool automatically during the months of March through August.

Currently, the order provides pool supply plant status for a plant located in the marketing area, at which Grade A milk is received from dairy farmers or cooperative associations.

For supply plants that are located outside the marketing area pool status is now extended to such plant if it ships 50 percent of its Grade A receipts to pool distributing plants during the months of October through December, or 20 percent during the months of January through September. Any supply plant that qualifies for pool status during the entire period of October through December qualifies automatically for pool status during the months of January through September.

A cooperative proposed that the pooling standards for supply plants be amended to eliminate the provision whereby a plant may be pooled as a supply plant if it is located in the marketing area and receives Grade A milk from dairy farmers. The association proposed in lieu thereof that a plant located within the marketing area must ship at least 25 percent of its Grade A receipts from dairy farmers to pool distributing plants in each of the months of September through March in order to qualify as a pool supply plant.

For supply plants located outside the marketing area, proponent proposed that the months during which the 50 percent factor is applicable should be extended to include the months of September through March, and that during the months of April through August shipments to pool distributing plants should represent at least 30 percent of such plant's Grade A receipts from dairy farmers.

In addition, proponent proposed special provisions whereby a cooperative association could apply direct deliveries from its members' farms to pool distributing plants in qualifying a supply plant for pool status. Similarly, under proponent's proposal, a proprietary handler could apply direct deliveries from the farms of its patrons (not members of a cooperative association) to its own pool distributing plant in qualifying a supply plant for pool status.

Proponent based the claim for establishing these performance standards on the stated necessity for supply plants to have a greater degree of association with the fluid market than at present.

The proposals were opposed by a proprietary handler operating in the market. If adopted, the proposals would result in depooling the handler's supply plant.

Another proprietary handler serving the market acknowledged the need for each supply plant to serve the fluid market but stressed that no supply plant that historically had been associated with the Puget Sound fluid market should be deprived of pool status by any amendment resulting from the hearing.

Pooling standards for supply plants identify plants that are associated with the market as regular suppliers of milk needed for fluid use. Such standards distinguish between plants meeting a reasonable standard of regular and customary supply service to the market and those that do not. The requirements encourage milk shipments to the end that handlers engaged in bottling and distributing operations in the market can obtain the available milk as needed to meet their fluid milk requirements. Without such requirement, supply plants will tend to keep milk at their plants for manufacturing whenever it is to their economic advantage to do so.

Additionally, pooling standards are intended to accommodate a sharing of the Class I sales of the regulated market among those dairy farmers who constitute its regular sources of milk supply. Otherwise, dairy farmers who have no regular affiliation could casually, or in an incidental manner, associate with the market when it is to their economic advantage to do so, but without intention of providing the market with a dependable supply over time.

There are five pool supply plants under the order at present. All are pooled on the basis simply of being located in the marketing area and of receiving Grade A milk from dairy farmers or cooperative associations.

Two of the supply plants, one at Issaquah and another at Lynden, Wash., are operated by a cooperative association, members of which supply the market by shipment to pool distributing plants.

Two supply plants are operated by proprietary handlers. One, at Mount Vernon, Wash., has been pooled as a supply plant since the inception of the order. The other, at Olympia, Wash., has been pooled as a supply plant for about 6 years.

The fifth plant, also operated by a proprietary handler, has bottling operations, but its fluid milk disposition in the marketing area is insufficient, under present rules, for pooling it as a distributing plant. It is pooled as a supply plant on the basis that it is located in the marketing area.

Two important considerations emerge from the evidence presented at the hearing. In this market milk is not shipped regularly from supply plants to pool distributing plants. Instead, the supply system for the market is organized on the basis of direct delivery from farms to pool distributing plants. Thus, the manufacture of market reserves need not occur in pool supply plants but can be diverted from pool distributing plants to manufacturing plants (i.e., butter-nonfat dry milk, evaporated milk and cheese plants) not necessarily having pool plant status.

The other consideration is that provision should continue to be made for a supply plant wherever located to share in pool proceeds if it supplies milk to a pool distributing plant under reasonable performance standards.

While the supply system for the market does not rely ordinarily on supply plants to furnish the main fluid milk requirements of pool distributing plants, this does not mean that shipping standards for supply plants should not be provided in the order. To the contrary, such standards should continue to be provided, as they are in other Federal milk orders, to accommodate the movement of milk to pool distributing plants from plants distantly located in the event that milk procured from such plants is instrumental in providing for the fluid milk needs of the market.

Such shipping standards should apply uniformly to any supply plant wherever located. Access to the market by supply plants should be on the same basis for each plant. Otherwise, access to the market may be facilitated for one category of plant and made more difficult for another category. Consequently, the proposal submitted by producer proponents is not adopted.

As earlier stated, the cooperative association further proposed that the direct deliveries from its members' farms to pool distributing plants be applied toward qualifying a cooperative association supply plant for pooling. It proposed also that the direct deliveries from the producer patrons of a proprietary handler to his pool distributing plant be applied toward qualifying such handler's supply plant.

The changes provided herein will assure continued pool status for the milk of producers who have regularly supplied the market. The adoption of the additional proposals made by the cooperative association, as described above, will not be necessary because the provisions provided herein will achieve the

same objective of continuing pool status for milk that has been regularly associated with the market in the past.

The supply plant pooling standards provided herein will assure that all supply plants will have access to the market on the same delivery performance terms. Also, they are sufficiently similar to counterpart provisions of the other Federal milk orders in the Northwest that each of such regulated markets with overlapping milksheds will have opportunity to procure milk on a reasonable competitive basis insofar as the respective pooling provisions of the orders are involved.

The pool plant provisions of the order should specify that the term "pool plant" shall not include a producer-handler plant. Nor should it include a distributing plant or a supply plant that is subject to regulation by another order. The provisions provided herein include a reasonable means of determining the order under which a distributing plant or a supply plant should be regulated when it meets the pooling qualifications of more than one order. The order presently provides for such provisions in another section, but the order would be clarified by repositioning them as part of the pool plant provisions. A specific proposal to do this was considered at the hearing and was not opposed. However, in redrafting the pool plant provision in its entirety, it is appropriate to provide a basis for determining when distributing plants, as well as supply plants, that otherwise meet the conditions for pooling nevertheless are to be excluded as pool plants.

The term pool plant should not apply to a distributing plant that also meets the pooling requirements of another Federal order and from which the Secretary determines there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant were subject to all the provisions of the Puget Sound order in the immediately preceding month, it would continue to be subject to all the provisions of the Puget Sound order until the third month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions provided herein, it is regulated under such other order.

The provision is aimed at coordinating, within the region, the treatment of distributing plants for pooling purposes in the event of overlapping route disposition that results in qualifying such plant for pooling under more than one order. However, it would tend to prevent disruptive, casual shifting between orders on a month-by-month basis.

Concerning a supply plant, the order should provide that such plant shall not be a pool plant if it also meets the pooling requirements of another Federal order and greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under the Puget Sound order.

The foregoing provisions are the same as those provided in the adjacent Oregon-Washington order and should improve coordination of order provisions should the need arise for the market administrator to determine under which order a distributing plant or supply plant should be regulated when it is subject to the pooling provisions of more than one order.

While the changes provided herein are not identical to the provisions provided in the Inland Empire order, here also they should provide greater coordination than at present in determining the order under which a distributing plant of a supply plant should be regulated when it is subject to the pooling provisions of both the Puget Sound and Inland Empire orders.

2. *Diversion of producer milk.* The diversion provisions of the order should be revised to provide that for any month of January through April, or September through December, the quantity of producer milk diverted in such month from a pool distributing plant to any nonpool plant, or to a commercial food processing establishment located in Pacific County, Wash., may not exceed 70 percent of the producer milk received at such distributing plant (including that diverted). During the months of May through August no limit should apply on the quantity of milk that may be so diverted. Diversions from a pool supply plant should not exceed 50 percent of the producer milk received at such plant during any month.

The diversion provisions provided herein would apply equally to cooperative associations and to proprietary handlers. Currently, the order provides no limitations on the quantity of producer milk that may be diverted to nonpool plants.

Diversion of milk directly from the farm to a nonpool manufacturing plant is a method by which a handler (including a cooperative association) may dispose of, in an efficient manner, the reserve milk that is a necessary part of his regular supply. In order to be assured of an adequate supply every day, a handler procuring his own milk supply must arrange for sufficient supplies to allow for variations in production and in his daily needs for fluid processing. Production of milk varies seasonally and, accordingly, producers furnishing a sufficient supply for the low production season will produce more than an adequate supply in high production months. Handlers' milk requirements may vary both daily and seasonally chiefly because fluid milk packaging may not be carried on all days of the week and because cows' production varies.

A cooperative association proposed that the quantity of milk diverted should not exceed 50 percent in the months of April through August, or 30 percent in the months of September through March, of the producer milk received at pool distributing plants. The proposal would apply equally to milk diverted by a proprietary handler or a cooperative association. Also, diverted milk would be priced at the location of the plant to which diverted.

No testimony was received at the hearing in opposition to providing some limit on the proportion of producer milk that may be diverted.

The order now provides for the unlimited diversion of milk from pool plants to nonpool plants. Nevertheless, because supply plants, with manufacturing facilities, that are located in the marketing area were pooled on the basis of their location there, the market has not relied heavily on diversions to nonpool plants as a means of disposing of reserve supplies. Proponent anticipates that for the future such diversions may be made more extensively, and the provisions should be revised in line with changes in the market's supply and disposal needs and changes are being made in pooling provisions.

Proponent sells milk to handlers regulated by the order. Some of the handlers buy their full supply from the association, while other handlers call on the association only to supplement their own farm supplies of producer milk. During certain days of the week, months of the year, or at times when they might obtain bids to supply school or government contracts, handlers may call upon the reserve supplies of milk handled by the association. As previously indicated in Issue No. 1, the supply system for the market centers on the movement of such milk directly from farms to distributing plants.

For the 12 months through October 1972, about 42 percent of the producer milk of the market was used in Class I.[1] Consequently, a substantial part of the total supply for the market normally must be utilized for manufacturing. It is anticipated that with the adoption of the pool plant standards proposed herein under Issue No. 1, the pool supply plants now associated with the market would become nonpool plants, but milk received at such plants could be pooled under the rules for diversion. Accordingly, disposition of the reserve supply for the market can be accomplished readily by diversion from pool distributing plants to nonpool manufacturing plants. The provisions provided herein therefore will accommodate such disposition for the future and assure continued pool status for milk of producers who regularly supply the fluid milk needs of the market.

The provisions for the diversion of reserve milk from pool distributing plants are made somewhat more liberal than proponent's proposal because its proposal was based on the anticipation that most of the supply plants now pooled would continue to qualify as pool plants, and the incidence of diversion to nonpool plants would be somewhat less than under the provisions proposed herein.

[1] Official notice is taken of the "Market Information Bulletin" for the 12 months ending November 1972, issued by the Market Administrator.

Diversion of milk from pool supply plants would be provided for at a somewhat lower rate than from pool distributing plants. This is appropriate because, as previously indicated, the supply system for the market is such that milk, to meet the fluid needs of the market, moves predominantly from producers' farms direct to pool distributing plants. Consequently, the greatest incidence of diversion will be from pool distributing plants. However, in the event that a supply plant serves the market, it may have need for the privilege of diverting milk also. A supply plant that ships a portion (at least 50 percent) of its receipts from dairy farmers may need to divert milk to a nonpool manufacturing plant particularly if it has no manufacturing facilities of its own.

To provide that no milk may be diverted from a supply plant would require the milk of producers who regularly ship to a supply plant without manufacturing facilities to move through such plant for transshipment either to pool distributing plants or to nonpool manufacturing plants. The supply plant could not avail itself of the efficiencies associated with diversions directly from producer farms to manufacturing plants when the milk is not needed at pool distributing plants.

The supply plant pooling requirements provided herein insure that to be pooled such a plant must have a meaningful association with the market during months when milk to supply fluid needs is most needed. Also, it is provided that a supply plant that qualifies during the months of relatively short supply (September through February) may pool automatically during the remaining months of relatively heavy production.

The possibility exists, however, that any supply plant that may be associated with the market in the future might, unless limits were provided, add unneeded supplies of milk to the pool through the diversion provisions. This would dissipate, unnecessarily, the returns to all producers.

The addition of such milk to the pool by this means would be in sharp contrast to the anticipated and necessary diversion of milk from pool distributing plants as the chief means of disposing of the reserve supplies of milk already associated with the market. The minimum shipping requirement in the fall months of lowest seasonal production is 50 percent of the supply plant's receipts. This is a reasonable minimum, since to be eligible for pooling the plant should have a greater association of its supply to fulfill the fluid needs of the market than to fulfill the fluid needs of other markets. Obviously, if the plant ships this minimum to the market it will not have a need to divert more than 50 percent of its receipts in such fall months. Although lesser proportions of milk receipts are required to be shipped for initial pool qualification in other months, the limit of 50 percent of receipts on diversions in all months will reduce the incentive to add milk to the pool by means of diversion during months when the need for such milk in the market diminishes seasonally.

The limits provided herein will promote orderly marketing by assuring that only milk of producers regularly supplying the market may share in the proceeds from Class I sales. At the same time, the provisions will permit flexibility needed to handle efficiently milk not needed for fluid use.

Diversion to a commercial food processing establishment located in Pacific County, Wash., is provided for herein, in addition to diversion generally to nonpool plants, to accommodate a special marketing situation in the Puget Sound market.

A firm at South Bend, Wash. (Pacific County) operates an oyster processing plant that manufactures, among other oyster food products, an oyster stew. This plant uses substantial quantities of milk. With the closing of the pool plant at Chehalis, Wash., the nearest pool plants with available supplies of milk are in the Seattle-Tacoma-Olympia area, a considerable distance from South Bend (up to 135 miles). There are a number of milk producers whose farms are within 5 miles of the South Bend oyster plant. The company is equipped to receive milk directly from producers when it is not needed at pool plants for fluid use. It is provided herein that diversions may be made to the oyster processing plant on the same basis as diversions are made to nonpool plants.

Such diversion should be limited to this commercial food processor in Pacific County, Wash. There are other commercial food processors in the marketing area, and presumably outside the marketing area. Unlike the oyster plant, however, their requirements for milk normally are supplied from a plant at which some processing of the milk is done first, such as pasteurizing or standardizing. The oyster plant represents a limited market for milk delivered directly from the farm.

It will be economical to divert to the oyster plant directly from the nearby farms. Otherwise the milk would have to be hauled up to 135 miles to a pool plant and then hauled back if such producers are to continue to supply the oyster plant, a desired outlet, with milk. It would not be feasible for the producers in the vicinity of the plant to supply the plant directly, without affiliation with a pool plant as producers, because the demand for the milk is somewhat seasonal, and the producers would risk forfeiting their Class I bases if direct shipment were undertaken.

It is concluded that the diversion of milk to the commercial food processing plant in Pacific County, Wash., under the same conditions as diversion of milk to nonpool plants, will promote the orderly marketing of milk in the area.

The order also should continue to provide that for purposes of pricing only, milk diverted from a pool plant to a nonpool plant, or to such commercial food establishment, either for the account of a handler as the operator of a pool plant or for the account of a cooperative association in its capacity as a handler, shall be treated as a receipt at the location to which diverted.

If diverted milk is priced at the plant from which diverted, there is an incentive to associate distant milk with local plants in the market even though such milk is not needed for fluid use, is not a part of the market's regular supply, and is intended for manufacturing uses. If dairy farmers relatively distant from the market have their milk diverted to a nonpool plant near their farms and receive a uniform price based on the location of a pool plant in the marketing area, such farmers are compensated as if their milk had incurred the expense of delivery all the way to the market center. There is no reason why milk diverted from a pool plant to a nonpool plant at any particular location should draw a higher return from the market pool than milk received at a pool plant at the same location.

3. *Location adjustments.* Location adjustments (the amounts by which the Class I, Class II, and base prices are adjusted according to the location of the plant where milk is received from producers) should be revised to reflect changed marketing conditions in the Puget Sound marketing area.

Base milk location adjustments are the same as Class I adjustments, while Class II location adjustments are one-half of the rates applicable to Class I milk.

Currently, the marketing area is divided into four districts for the purpose of applying location adjustments, with certain districts also containing other counties outside the marketing area. District 1 includes King, Pierce (that portion in the marketing area), and Snohomish Counties. District 2 includes Thurston, Skagit, and Island Counties. District 3 is defined as that part of the marketing area in Grays Harbor, Lewis, Pacific, and Whatcom Counties. District 4 is San Juan County.

There are no location adjustments presently applicable to milk received at plants located in District 1, or Kitsap County. The Class I price at plants located in District 2 or Mason County is adjusted so as to be 15 cents per hundredweight less than the announced order price in District 1. In District 3, the portion of Lewis and Pacific Counties outside the marketing area, and Kittitas County, the announced Class I price is reduced 20 cents per hundredweight. District 4 and all other locations outside the marketing area have a Class I location adjustment of 40 cents per hundredweight.

Producer proponents originally proposed that the 40-cent per hundredweight Class I location adjustment apply to District 4 and Clallan and Jefferson Counties. For plants outside the marketing area and not subject to any of the above rates, the association proposed that location adjustments on Class I milk be set at 20 cents per hundredweight, plus 1.5 cents for each 10 miles or fraction thereof that the plant is located beyond 100 miles from the County-City Building in Seattle. Proposed adjustment rates on Class II milk, although

one-half of the above rate, would not exceed 25 cents per hundredweight.

At the hearing, producers modified their first proposal. The proposed rate on Class I milk for locations outside the marketing area not subject to any of the designated district rates was changed to 20 cents, plus 2 cents for each 10 miles or fraction thereof beyond 100 miles from Seattle. The Class I adjustments for Districts 2 and 3 were changed from the current 15 and 20 cents, to 10 and 15 cents, respectively. The association further proposed that Skagit and Island Counties be removed from District 2 and placed in District 3; and that Kittitas County be subject to location adjustments applicable generally to locations outside the marketing area, rather than to the District 3 rate currently applicable in Kittitas County.

Proponent stated that the proposal to reduce the Class I price adjustment for a plant located in Whatcom County from 20 cents to 15 cents is intended mainly to facilitate the movement of milk from various plants in the milkshed to its supply plant at Lynden (Whatcom County) when necessary for surplus disposal. The closing of the association's Mount Vernon pool supply plant in Skagit County, which currently is in District 2, was given as a factor contributing to the surplus disposal problem. Producer milk formerly shipped to the proponent association's Mount Vernon plant is now being delivered to the Lynden plant, which currently carries a 5-cent per hundredweight greater Class I location adjustment than the rate applicable at Mount Vernon. Proponent contends that it is improper for producers whose milk at times is moved away from its customary pool plant outlet to Lynden to bear a 5-cent reduction in the base price as well as to incur the additional cost of movement itself.

In addition to reducing the location adjustment in Whatcom County, the effect of producers' proposal would be to reduce Class I location adjustments by 5 cents per hundredweight in Pacific, Thurston, Lewis, and Mason Counties. Currently, there are no pool plants in either Lewis or Mason Counties. At the time of the hearing there were two pool plants in Pacific County to which a 15-cent per hundredweight Class I location adjustment, rather than the current 20-cent adjustment, would apply. The Class I location adjustment at a plant located in Thurston County would be reduced from 15 cents to 10 cents.

There is only one other pool plant in the marketing area to which a location adjustment is applicable currently. The Class I location adjustment of 15 cents per hundredweight at such plant (in Skagit County) would not be changed by producer's proposal.

There are no pool plants now located outside the marketing area. Proponent testified that in the event that out-of-area plants should be pooled in the future, location adjustments for all outside locations should be based on mileage from Seattle, in lieu of the "flat" location adjustment of 40 cents currently provided in the order.

No location adjustments should apply to plants located in or near principal cities of the marketing area, which constitute the points of greatest milk processing and consumption. This would include plants in King, Pierce, and Snohomish Counties and Kitsap County, which is located outside the marketing area but adjacent to King County. As above indicated, no location adjustments presently are applicable to plants located in these counties and producers proposed no modifications for such plants.

All plants located outside the no location adjustment zone should have adjustments that reasonably relate to the cost of moving milk from plants to the central cities in the marketing area. There is no marketing reason for fluid milk products to be supplied regularly through supply plants located within the marketing area. The milk needs at fluid processing plants in the central cities are supplied by milk direct shipped from producers' farms to bottling plants. Individual producers pay the cost of hauling milk to such plants and receive a price that allows for such delivery as compared to delivery to outlying plants in the milkshed. However, when fluid milk is shipped from supply plants, location adjustments should tend to reflect the difference in the value of milk based on plant of receipt from the farm in relation to its value where it is needed for fluid use. Prices adjusted for plant location promote the uniform pricing plan by compensating the plant operator for his cost incurred in moving milk from the outlying plant location to the market center.

Producers' request to reduce location adjustments in Districts 2 and 3 should be adopted. Such reduction will more nearly reflect current rates for efficient hauling of bulk milk. However, Island and Skagit Counties should not be removed from District 2 and placed in District 3. The Class I location adjustment in both these counties currently is 5 cents per hundredweight less than the adjustment in Whatcom County. This difference should be maintained to reflect the relative distances of the plants located in each county to the central market. Therefore, Island and Skagit Counties should remain in District 2 and carry a 10-cent per hundredweight Class I location adjustment. For the previously stated reasons, the Class I location adjustments applicable to Districts 2 and 3 should be changed to 10 and 15 cents per hundredweight, respectively.

As indicated previously, proponent testified about not reducing the base price payable to their producers whose milk is moved from Skagit County to the Lynden plant. They did not indicate, however, that this could not be achieved through the reblending of proceeds to their producers.

Class I location adjustments applicable in District 4 and Clallam and Jefferson Counties should be maintained at the current rate of 40 cents per hundredweight due to the presence of Puget Sound between such counties and the market center. This necessitates a longer haul by road or relatively expensive ferrying.

Location adjustments by Districts, based primarily on county boundaries, are continued herein as a customary method of providing for location pricing within the marketing area. The rates adopted for the several districts, most of which territory is in the marketing area, are reasonably reflective, however, of the cost that would be involved in moving milk into the marketing center from the few outlying supply plants remaining in the outlying counties of the marketing area. Location adjustments for locations outside the marketing area that are not subject to any of the in-area rates should be computed on the basis of mileage from Seattle.

In the past it has not been necessary to compute adjustments on such basis because production for the market has been centered west of the Cascade Mountains. Very little milk came into the area from east of the mountains and that shipped in came from no farther than the Columbia River Basin area. The 40-cent location adjustment provided by the order served adequately for milk moving from such area.

The mobility of milk has increased, however, to the point that some provision should be made now for the eventuality that milk might move into the marketing area from plants located at considerable distances.

As previously indicated, producers proposed that such location adjustments be applied to out-of-area plants at a rate of 20 cents, plus 2 cents per 10 miles beyond 100 miles from Seattle. In supporting 2 cents per 10 miles a representative of the association presented a schedule of shipping rates filed with the Washington Utilities and Transportation Commission (WUTC). These rates were filed by a common carrier and apply where specific point-to-point rates are not maintained. The exhibit indicates a charge of 28 cents per hundredweight for shipping 48,000 pounds of milk 105 miles. This charge is further increased by 2 cents per hundredweight for each additional 10 miles.

Such rates filed with the WUTC are not negotiated rates for standard or regular hauls, but represent a basis for the hauler's charge when a specific rate is not established between certain points. The association has negotiated lesser hauling rates than those filed with WUTC. An association charge of 20.33 cents per hundredweight applies on milk shipped from Lynden to Seattle (106 miles) compared to the field charge of 28 cents for 105 miles.

A hauling charge of 20.33 cents from Lynden to Seattle converts to a rate of 1.92 cents per hundredweight per 10 miles. However, the association's own proposed location adjustment under the order for its Lynden plant in Whatcom County is 15 cents, or 1.42 cents per hundredweight per 10 miles. This proceeding provides no basis for presuming

that the rate of adjustment applicable to locations outside the marketing area should be significantly greater than those found to be reasonable within the area.

Therefore, a rate of 1.5 cents per 10 miles, as proponents originally proposed, provides an equitable allowance for plants located outside the marketing area relative to allowances for plants within the marketing area. Furthermore, a rate of 1.5 cents per 10 miles will be consistent with location adjustment rates under other Federal orders, including the adjacent Oregon-Washington order.

While it was not an issue at the hearing, it should be noted that the base milk price to producers would continue to be reduced, at the same rate as specified for Class I milk, for plant location where the milk is received from the farmer.

Producers proposed that Class II location adjustment be set at one-half of the Class I adjustment, but not to exceed 25 cents per hundredweight. No evidence was presented, however, to indicate a need for increasing the maximum Class II location adjustment from 20 cents to 25 cents. The Class II location adjustments, therefore, should continue to be set at one-half of the rate specified for Class I milk, but not to exceed the 20-cent per hundredweight maxamum as currently provided in the order.

Location adjustments on excess milk. The order should be amended to delete the location adjustments that are added to the uniform price for excess milk at pool plants in Districts 1, 2, and 3.

The amount of such addition to the excess price varies slightly from month to month according to the volume of producer milk utilized in Class II at pool plants in such districts and the volume of excess milk received at the plants. In the recent past the adjustments have ranged between 9–10 cents per hundredweight for excess milk received at pool plants in District 1; 3–4 cents in District 2; and 1–2 cents in District 3. There is no adjustment added to the uniform price for excess milk at pool plants in District 4.

A cooperative association proposed that such location adjustments be eliminated to improve the operation of the Class I base plan. Moneys now paid out on excess milk would accrue to deliveries of base milk by all producers. In proponent's view, this would help to provide greater economic incentive under the Class I base plan to encourage deliveries of base milk and to discourage the production of excess milk.

The original purpose of such adjustments was to compensate producers for the delivery of excess milk (the order provided for a base-excess plan) to District 1 where it was used for ice cream and cottage cheese. Prior to the order, handlers had paid about 25 cents more per hundredweight for milk so used than the milk used in butter, cheese and nonfat dry milk. Since about 90 percent of the milk delivered was base milk, the higher price charged handlers in District 1 for milk used in cottage cheese and ice cream resulted in a corresponding payment of 25 cents a hundredweight to producers for delivery of excess milk for such uses.

When the order was amended effective May 1, 1968, to provide a separate class (Class II) for milk used in cottage cheese and ice cream, the Class II differential was set at 25 cents per hundredweight over the Class III price for all marketing area plants. By then cottage cheese and ice cream manufacture had developed at plants outside District 1. The 25 cent payment to producers on excess milk likewise was extended to deliveries made to pool distributing plants in Districts 2 and 3. However, since the total supply of milk available to the market had increased, the rate of payment to producers on excess milk decreased from 25 cents per hundredweight to the lower rates described above.

There is no reason under current marketing conditions to maintain such incentive to encourage the delivery of excess milk for use in Class II. There was no indication in the record that the supply of milk for Class II will be jeopardized if the price adjustments on excess milk are removed. In fact, continuing the adjustment for the future could create an undue incentive for the production and delivery of excess milk.

Deleting the adjustments on excess milk will not reduce the amount of money in the pool, but will redirect it to increase the price of base milk, thereby increasing the returns of each producer for the base milk he supplied to meet the requirements of pool distributing plants. For 1971, the amount added to the base price would have been about 6 cents per hundredweight.

It is concluded that the location adjustments on excess milk should be deleted to insure that producer milk in excess of the fluid milk needs of the market should reflect only the value of the lowest use classification. Each producer then will have greater incentive to adjust his production to delivery of base milk as the Class I base plan contemplates.

Location adjustments on other source milk. The order should be amended to provide that the Class I price for other source milk, when adjusted for location, shall not be less than the Class III price.

A pool plant operator's obligation to the producer-settlement fund may include a payment on receipts from unregulated sources which are allocated to Class I use. The order currently provides that the weighted average price, when adjusted for location, shall not be less than the Class III price. No such limitation is applied to the Class I price.

A similar limitation on adjustments to the Class I price should be provided. Otherwise, a handler could receive payment from the producer-settlement fund on such receipts. This could occur whenever the location adjustment at the plant exceeded the difference between the Class I and Class III prices. Producers under the order, in effect, would be providing the handler with a credit that reduced his cost for other source milk below its value for manufacturing uses. A handler should not be provided this incentive to import milk from distant sources at the expense of local producers.

4. *Changing the butterfat differentials.* The order should be amended to provide for a single butterfat differential for adjusting order prices to the butterfat content of milk being priced. The differential for the current month should be the Chicago butter price for such month multiplied by a factor of 0.115, rounded to the nearest one-tenth cent. Such differential should be announced on the fifth day of the following month.

Currently, the order provides for three butterfat differentials. The Class I butterfat differential for handlers is determined by multiplying the Chicago butter price for the preceding month by 0.125, while the handler Class II–III differentials are determined by multiplying the butter price for the current month by 0.120. The butterfat differential applicable in adjusting payments to producers is the average of the Class I and Class II–III differentials weighted by the proportion of producer milk in each class.

Presently, the Class I and Class II–III differentials are announced on the fifth day of the month. The Class I differential applies to the month in which announced, while the Class II–III differentials apply to the preceding month. The producer butterfat differential is announced on the 13th day of each month and applies to milk received during the preceding month.

A cooperative association serving the market proposed that the butterfat differentials for each class be reduced from present levels to 11.5 percent of the Chicago 92-score butter price. Proponent contended that the prices now assigned to differential butterfat in the various classes do not reflect the current market values of this component of milk in its several uses.

The proposal was opposed by Jersey and Guernsey breed associations in the market. The principal reasons cited by the two breed associations in opposition to the reduction of butterfat differentials were that lower butterfat differentials would (1) place the breed associations at a competitive disadvantage, and (2) result in a substantial loss of income to producers of high test milk. Reduced butterfat differentials, it was contended, would result in decreased production of butterfat and solids-not-fat, which would have a deleterious effect on the nutritional value of milk. No opposition to the proposal was presented by other groups in attendance at the hearing.

Under the Puget Sound order the average butterfat test of Class I milk has been declining. In 1966 it was 3.53 percent and in 1971 it was 3.25 percent, a drop of 7.9 percent. In contrast, during 1971, when the butterfat in producer milk classified in Class I averaged 3.25 percent, producer deliveries averaged 3.79 percent butterfat. The increasing demand for Class I products of lower

butterfat content can be expected to result in a continuing decline in the average butterfat of Class I sales under the order.

The Puget Sound experience follows closely the declining national trend in the proportion of butterfat in Class I sales as shown by the average test of fluid milk products sold in the Federal order marketing areas. In 1966, the average butterfat test in 66 Federal order markets for such sales was 3.5 percent.[3] This percentage has declined from year to year, and in 1971 the comparable average butterfat test was 3.21 percent. On a percentage basis, the average butterfat content in these fluid milk products declined 9 percent from 1966 to 1971.

The demand for butterfat has declined not only as indicated above but also in products included in Class II and Class III. This is indicated by the support prices established in recent years which have lowered the support purchase prices for butter in relation to those for nonfat dry milk.

It is concluded that class butterfat differentials should be reduced in recognition of the declining demand for butterfat in the several class uses.

The combined effect of reducing the Class I and Class II–III butterfat differential factors would be to decrease slightly the average base milk price at test. If the reduced factors had been in effect during 1971, the average base milk price at 3.5 percent butterfat test would have been decreased by about 1.4 cents per hundredweight. The chief benefit from this change is that the associations that dispose of a large portion of the reserve milk of the market may do so more competitively than at present.

Proponent requested also that the Class I butterfat differential be based on the Chicago butter price for the second preceding month and announced in conjunction with the Class I price. Proponent testified that it is not possible for handlers to establish accurately their product costs when the butterfat differential is announced on the fifth day of the month that it takes effect and 30 days after the announcement of the Class I price.

As indicated above, only the Class I butterfat differential currently is based on the butter price for the preceding month. Because monthly changes in the Chicago butter price normally are relatively small, it is not necessary to utilize butter quotations for Class I different from those utilized to price Class II–Class III butterfat.

In addition to opposing the reduction of any butterfat differential, witnesses for the two breed associations proposed a butterfat, solids-not-fat (SNF) formula to derive a differential for adjusting prices to producers for milk above or below 3.5 percent butterfat content. Under the formula, separate values are computed for the SNF and butterfat components of producer milk. The values are then combined to provide the differential. The associations' formula, which utilizes a change of 0.04 percent SNF for each 0.1 percent change of butterfat, would have resulted in an average producer "butterfat-SNF differential" of 8.7 cents during 1971, compared to an actual average producer butterfat differential of 8.32 cents.

Underlying the associations' proposal is the assumption of a constant relationship between changes in the butterfat and SNF content of producers' milk. Evidence in the record does not substantiate this assumption. To the contrary, it demonstrates that wide variations exist between the relationship of the butterfat content and the SNF content of milk. Changes between the two do not occur in a constant proportion. Accordingly, we may not conclude from the record that it represents a satisfactory technique for pricing the butterfat-SNF components of milk.

The regulation cannot ignore that the prices producers receive for butterfat must be closely related to the values of butterfat in the marketplace. This is determined by what handlers can return from the sale of products made from this component of milk. It is clear from the record that the amount of butterfat that can be disposed of in fluid milk products is decreasing. The differentials now provided in the order are higher than those provided in nearby areas, which could impede the Puget Sound market in competition with other areas. The associations actually marketing much of the butterfat in the market contend that the marketplace will not sustain the present price of butterfat delivered by producers. In view of these circumstances, it is concluded that the value of butterfat in producer milk is no different than the value of it in the various class uses.

Since a single butterfat differential would be applicable, the order need provide only for a producer butterfat differential. No handler butterfat differentials applicable to class prices need be set forth as such. Nor is there any need for pooling butterfat values in each class since all butterfat in producer milk would be priced to handlers at the same level regardless of the class in which used. The proposed revised order attached hereto is drafted accordingly. The differential being the same for each class, as proposed herein, the provisions for weighting the values of butterfat by classes become unnecessary and are deleted.

5. *Classification*—(a) *Ending inventory.* Fluid milk products on hand in packaged form at the end of the month should be classified as Class I milk. Fluid milk products on hand at the end of the month in bulk form should be classified as Class III milk. At the present time all inventory on hand at the end of the month is classified as Class I milk.

This change was requested by a cooperative association serving the market, to improve the accounting plan for milk. Most of the packaged fluid milk products in inventory at the end of the month are used in the following month as Class I disposition. A substantial portion of bulk inventories may be used in Class III for manufacturing. The proposed change would eliminate reclassification charges on such inventories in the following month. The order would continue to provide a basis for including as Class I all of the packaged fluid milk products held by the handler at the end of the month whether in his processing plant or at other locations such as distributing points. Thus, the amendment would provide a method of pricing such fluid milk products in the month in which packaged by the handler.

Inventories of bulk fluid milk products on hand at the beginning of the first month in which this order becomes effective should be allocated to any available Class I use of the plant during the month. As ending inventory, this milk will have been assigned to the higher price-class in the month prior to this amendment. This will permit the changeover to be made without affecting either the handlers' costs or the producers' returns.

(b) *Products not specified in the order.* The order should be changed to provide that dairy products not specifically identified as Class II or Class III should be classified as Class I. At present, any such product that would be marketed would be classified as Class III milk. However, there are no unspecified products being classified at this time.

Other provisions of the order put the burden of proof on the handler to show that a product should not be in a higher classification. The change provided herein, as proposed by a cooperative association, will result in greater consistency with the order which provides also that all skim milk and butterfat shall be Class I unless the handler who first received such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise.

The proposal was opposed by a handler who stated that his firm might develop a flavored whipped cream. The order now provides that whipped cream is Class I. Adding a flavor such as strawberry or caramel at the processing plant rather than at a consumer's home should not affect this classification any more than adding chocolate flavoring to milk. The product should continue to be classified as Class I and should not be relegated to Class III solely by the addition of a flavor.

6. *Partial payments to producers.* The order should provide that all handlers be required to make partial payments to producers, or to cooperative associations that collect for their members, for producer milk delivered during the first 15 days of the month. Such payments to individual producers should be made by the 25th day of the month. Payments to cooperative associations should be made 2 days earlier. The rate of payment should be the Class III price for the preceding month, less any deductions authorized by the producer.

The order does not now provide for partial payments to producers. Handlers,

[3] Official notice is taken of the January 1972 Summary of Federal Milk Order Statistics (issued by the Dairy Division, AMS, USDA), p. 4.

however, follow the practice of issuing partial payments when requested to do so by producers. Final settlement for producer deliveries during the month is not required until about the middle of the following month.

When only a final settlement for producer milk is provided, payable by the 19th of the next month, the handler has the use of the money resulting from its sale for up to 50 days without any payment to the producer. The application of partial payments will reduce the period a producer must wait to receive some payment. Such partial payment still would be less than the full value of the milk by the amount of the difference between the price for the lowest use-class and the uniform price. A more uniform basis of payment throughout the market will result.

The rate of partial payment should be the Class III price for the preceding month without further adjustment for butterfat content or location. The partial payments should be reduced by the amount of any proper deductions authorized by a producer. It is not unusual for a producer to have assignments or other deductions made against the payments for his milk. This provision will accommodate such circumstances and allow these deductions to be made from the partial as well as the final payments for milk.

A handler should be required to make partial payment only to a producer who has not discontinued delivery of milk to the handler as of the 15th of the month. This requirement will minimize the possibility of overpayments.

The order should provide that partial payments to a cooperative association collecting for its members be made on or before the 23d day of the month. This is provided so that the individual members of the cooperative can receive such payments by the same time as producers receiving payment directly from handlers. Two days should be adequate for this purpose.

7. *Administrative provision* — (a) *Route disposition.* The definition should be changed to provide that packaged fluid milk products that are transferred to a pool distributing plant from another pool distributing plant, and classified as Class I, shall be considered as route disposition from the transferor-plant, rather than from the transferee-plant, for the single purpose of determining its qualification as a pool distributing plant. The transferor-plant shall be assigned in-area sales, but not in excess of the in-area sales of the transferee.

This change will mitigate possible removal from pooling of a plant in the marketing area from which milk is distributed on routes but which is now pooled as a supply plant on the basis of its location in the marketing area.

(b) *Handler statements to producers.* The order now provides that each handler furnish each producer a supporting statement that includes the Class I, Class II, and Class III prices for milk of 3.5 percent butterfat content and the marketwide percentage of producer milk utilized in each class during the month. This provision makes for repetitious reporting requirements. Currently, the market administrator provides and mails to each producer the information specified above. Also, cooperative associations provide this information to each member producer in their house bulletins. Deleting the report required of handlers will eliminate a superfluous requirement on handlers.

(c) *Chicago 92-score butter price.* The definition "Chicago butter price" now provided in the order is based on 93-score butter, with 92-score prices to be used only if there are no reported prices for 93-score butter.

There are very few quotations for 93-score butter any longer, and the substitution of the 92-score butter quotation for computing the Puget Sound order formula prices has been required frequently in the recent past. When there has been a quotation for 93-score butter, it has been only slightly higher than the quotation for 92-score butter.

Other milk orders, and particularly those in adjacent markets, use the 92-score quotation without reference to the 93-score butter price. Adoption of the 92-score butter price, where applicable in the order, will make the Puget Sound order consistent with adjacent markets by eliminating for the future the slight differences in values for computing price formulas that have prevailed in the past. A definition of "Chicago butter price" is deemed unnecessary and therefore is removed to simplify order language.

(d) *Substitution of "regulatory agency" for "health authority."* "Regulatory agency" should be substituted for "health authority" wherever it appears in those sections of the order defining "producer," "distributing plant," "supply plant," and "pool plant." Frequently, the regulatory agency approving milk for fluid consumption is not termed a health authority. Accordingly, use of "regulatory agency" provides a more useful description of such agencies having jurisdiction in this field.

(e) *Plant definition.* As indicated previously the performance standards for pooling supply plants would be changed by provisions included herein. Because of the difference in marketing practices and functions between pool distributing plants and supply plants, separate performance standards have been provided in the order. It will facilitate reference throughout the order if definitions of a distributing plant and a supply plant are provided in the order. The term "distributing plant" would cover a plant in which a fluid milk product approved by a duly constituted regulatory agency for fluid consumption is processed or packaged and that has route disposition in the marketing area during the month. The term "supply plant" would include any plant from which a fluid milk product approved by a duly constituted regulatory agency for fluid consumption, or filled milk, is transferred to a pool distributing plant during the month.

(f) *Fluid milk product.* The definition of "fluid milk product" should be clarified to include flavored cream. At times, in the past, handlers have added flavoring ingredients or sugar to cream. This has raised the question of whether such altered cream should be considered a fluid milk product. At the present time, no handler produces flavored cream. The change proposed herein would not affect the classification of any products currently produced in the market. Further, there is no evidence that flavored cream has any use other than a fluid milk product use (as for whipping) and no objection was raised at the hearing concerning this change.

The definition now includes a provision concerning products that are reconstituted or fortified with additional nonfat milk solids. This provision should be repositioned in the introductory paragraph of the definition to make it clear that it applies to all fluid milk products included in the definition. This has been the intent of the provision and the practice in its administration.

In the last paragraph of the fluid milk product definition there is a reference to "condensed milk, and skim milk (plain or sweetened)." The present language, however, does not indicate clearly whether it is meant to refer to condensed milk, either plain or sweetened. The change proposed herein would make it clear that condensed milk (plain or sweetened) and condensed skim milk (plain or sweetened) are not to be considered as fluid milk products. The change will clarify the provision to bring it in line with the present administrative practice.

(g) *Authority for additional information.* The order should be amended to provide for such additional reports as the market administrator may need to administer the order properly. For example, the change would authorize the administrator to request, under the payroll reports provision, information on the daily deliveries of producers for use in connection with the Class I base plan. The change, which was not opposed at the hearing, will facilitate administration of the order.

(h) *Other order packaged fluid milk not suitable for fluid disposition.* The provisions for classifying producer milk should be amended to provide that packaged fluid milk products for route disposition shall be accounted for as Class I milk when received at a pool plant from an other order plant. Packaged fluid milk products that are received at a pool plant from an other order plant for "salvage" use should be accounted for in Class III as a fluid milk product not qualified for disposition to consumers in fluid form.

The need for this change stems from a particular situation involving a Puget Sound handler who also has a plant under another order. Fluid milk products packaged at its Puget Sound plant are moved to the other order plant. They are intended for fluid consumption and are used by the other order plant to supply consumers with products and containers which are not packaged in the receiving plant. Some of these products

are returned from routes and are unsuitable for further disposition in fluid form. They are then returned to the Puget Sound plant in their original containers for salvage.

The other order plant of the Puget Sound handler packages other fluid milk products in containers of varying size for disposition on routes in that marketing area. Route returns of these products also are moved in their original packages to the Puget Sound plant for salvage.

Fluid milk products received from an other order plant, even though unsuitable for fluid consumption in the Puget Sound marketing area, have been accounted for in Class I at the Puget Sound pool plant as a receipt of packaged fluid milk products (with an adjustment for shrinkage) from an other order plant.

The effect of this is to reduce Class I use for producer milk under the Puget Sound order even though the receipts from the other order plant have not been for route disposition in the Puget Sound area.

The change provided herein will insure that the Class I classification of packaged fluid milk products from an other order will apply only when such products are for route disposition and not for salvage in manufacturing.

(i) *Fluid milk products received from an unregulated supply plant or partially regulated distributing plant but already priced under a Federal order.* No pool charge should be made on fluid milk products received at a pool plant or a partially regulated distributing plant from an unregulated supply plant when it is determined that such fluid milk products have been priced as Class I under this or any other Federal order.

When an unregulated supply plant makes Class I purchases from a regulated plant under any order, the obligation to the order pool at the Class I price has been met, and there is no justification for any additional charge pursuant to the order. The Puget Sound order will continue to provide for payment to the producer-settlement fund at the difference between the Class I and uniform prices on any unpriced milk received from an unregulated supply plant and allocated to Class I at a pool plant.

The provisions prescribing the obligation of a partially regulated distributing plant should be changed also in this regard. When such plant's obligation is computed as though it were a pool plant, proper recognition must be given to any transfers from the plant to a regulated plant that already have been priced as Class I milk under another Federal order. Also, in computing such a plant's obligation on route disposition in the marketing area, recognition should be given to any receipt of milk at such plant from an unregulated plant if an equivalent amount of milk received at the latter plant already has been priced as Class I milk under another order.

(j) *Equivalent price.* The provision is revised herein to incorporate, as part of the revised format, a more appropriate equivalent price provision. The order now provides for such computation and the changes provided herein merely adopt language to achieve desired uniformity among orders. As provided herein, if a price or pricing constituent needed by the market administrator in administering the order is not available, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

The order now uses both "price quotation" and "price" to describe the formula pricing constituents and prices that must be available to the market administrator monthly in order for him to determine the class prices and the butterfat differential.

Although the various quotations now used in the order are specific price quotations, a different price constituent (e.g., a price index) that is reflective of one or more price quotations might under some circumstances be instituted in the order as a basis for determining class prices. Use of "price or pricing constituent" in the order language relating to use of equivalent prices will more appropriately express the intent of this provision of the order.

(k) *Format of order provisions.* The format provided herein is designed to provide a more logical positioning of provisions. The positioning of provisions within the order is the same as that recently incorporated in several Federal milk orders and proposed for a number of others. Such positioning is designed to achieve a uniform location of order provisions among all orders and to improve the arrangement of provisions therein.

(l) *Miscellaneous.* (1) The "producer milk" definition includes a reference to filled milk in the provision relating to diversion of milk from farms to nonpool plants. The reference is not appropriate at such point and should be deleted.

(2) The order should treat as other source milk, and provide for its allocation, the receipts at a pool plant during the month from a dairy farmer who also delivered milk to a nonpool plant (except by diversion) during the same month. In 1968, the order was amended to eliminate such milk as producer milk but did not provide for its allocation to Class III as other source milk.

(3) A provision of the order that allocates some "overage" to other source milk should be deleted. The quantity of overage that was so allocated in 1971 was very small and was valued at $1,000 for the year. Both quantity and value are expected to decline further as pool plants are decreasing receipts of other source milk. As provided herein, handlers would be charged for all "overage" instead of having some of it allocated to Class III as other source milk. The chief benefit from this change will be avoidance af the time and cost involved in making the computation now provided by the order. The change was not opposed at the hearing.

(4) In addition to its present application, the administrative assessment should apply to the route disposition of a partially regulated distributing plant that exceeds the Class I milk from pool plants and other order plants (but not used as an offset on any similar payment obligation under any other order).

This will carry out the objective stated earlier herein of charging an obligation on any route disposition from a partially regulated distributing plant that has not been priced as Class I milk under another Federal order. For disposition that has not been so priced it is appropriate to charge the operator of the partially regulated distributing plant the administrative assessment to cover the cost of administering the order provisions under which such handler incurs an obligation.

(5) In revising the pool plant and diversion provisions, previously discussed, the order language adopted herein recognizes that a cooperative association may, under the Capper-Volstead Act, market the milk of some producers who are not members of the association. Conforming changes are made in the "Handler," "Producer milk," and "Marketing services" provision to reflect such transactions.

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;

(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; and

(d) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1125.85 of the aforesaid tentative marketing agreement and the order as proposed to be amended.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Puget Sound, Wash., marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

PART 1125—MILK IN PUGET SOUND, WASHINGTON, MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1125.1 General provisions.

DEFINITIONS

1125.2 Puget Sound, Wash., marketing area.
1125.3 Route disposition.
1125.4 Plant.
1125.5 Distributing plant.
1125.6 Supply plant.
1125.7 Pool plant.
1125.8 Nonpool plant.
1125.9 Handler.
1125.10 Producer-handler.
1125.11 [Reserved]
1125.12 Producer.
1125.13 Producer milk.
1125.14 Other source milk.
1125.15 Fluid milk product.
1125.16 [Reserved]
1125.17 Filled milk.
1125.18 Cooperative association.

HANDLER REPORTS

1125.30 Reports of receipts and utilization.
1125.31 Payroll reports.
1125.32 Other reports.

CLASSIFICATION OF MILK

1125.40 Classes of utilization.
1125.41 Shrinkage.
1125.42 Classification of transfers and diversions.
1125.43 General classification rules.
1125.44 Classification of producer milk.
1125.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

Sec.
1125.50 Class prices.
1125.51 Basic formula price.
1125.52 Plant location adjustments for handlers.
1125.53 Announcement of class prices.
1125.54 Equivalent price.

UNIFORM PRICES

1125.60 Handler's value of milk for computing uniform prices.
1125.61 Computation of uniform prices for base and excess milk (including weighted average price).
1125.62 Announcement of uniform prices and butterfat differential.

PAYMENTS FOR MILK

1125.70 Producer-settlement fund.
1125.71 Payments to the producer-settlement fund.
1125.72 Payments from the producer-settlement fund.
1125.73 Payments to producers and to cooperative associations.
1125.74 Butterfat differential.
1125.75 Plant location adjustments for producers and on nonpool milk.
1125.76 Payments by handler operating a partially regulated distributing plant.
1125.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1125.85 Assessment for order administration.
1125.86 Deduction for marketing services.

CLASS I BASE PLAN

1125.90 Production history base and Class I base.
1125.91 Base milk and excess milk.
1125.92 Computation of production history base for each producer.
1125.93 Computation of Class I base or base milk for each producer.
1125.94 Transfer of bases.
1125.95 Miscellaneous base rules.
1125.96 Hardship provisions.

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

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1125.1 General provisions.

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

DEFINITIONS

§ 1125.2 Puget Sound, Wash., marketing area.

"Puget Sound, Wash., marketing area" (hereinafter called the "marketing area") means all territory geographically within the places listed below, including all territory wholly or partly therein occupied by government (municipal, State or Federal) reservations, facilities, installations or institutions:

WASHINGTON COUNTIES

Grays Harbor.
Island.
King.
Lewis (except the town of Vader).
Pacific (all territory north of township 11 N except Long Island and the North Beach Peninsula).
Pierce (except Fox, McNeil, and Anderson Islands and the peninsulas adjacent to Kitsap County).
San Juan.
Skagit.
Snohomish.
Thurston.
Whatcom.

"District 1" shall include that portion of the marketing area in King, Pierce, and Snohomish Counties. "District 2" shall include Thurston, Skagit, and Island Counties. "District 3" shall include that portion of the marketing area in Grays Harbor, Lewis, Pacific, and Whatcom Counties. "District 4" shall include San Juan County.

§ 1125.3 Route disposition.

"Route disposition" means any delivery of fluid milk products (including delivery at a plant, plant store, or eating place and delivery by a vendor or through a distribution point) except:

(a) A delivery to a plant: *Provided*, That packaged fluid milk products that are transferred to a pool distributing plant from another pool distributing plant, and classified as Class I under § 1125.42(a), shall be considered route disposition from the transferor-plant for the sole purpose of qualifying it as a pool distributing plant under § 1125.7(a), and the transferor-plant shall be assigned in-area sales but not in excess of the in-area sales of the transferee;

(b) A delivery in bulk to a commercial food processing establishment pursuant to § 1125.40(b)(3); or

(c) A delivery to a military or other ocean transport vessel leaving the marketing area of fluid milk products which originated at a plant located outside the marketing area and were not received or processed at any pool plant.

§ 1125.4 Plant.

"Plant" means the land, buildings, surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment, which is maintained and operated primarily for the receiving, handling and/or processing of milk or milk products (including filled milk). The term "plant" does not include:

(a) "Bulk reload points" which comprise the buildings, premises and facilities, including facilities for washing tanks, used primarily as a location at which milk is transferred from one farm pickup tank truck to another or to an over-the-road tank truck. Any reload point approved for such use by a duly constituted regulatory agency and located on the premises of a plant engaging in other operations shall constitute a part of the operations of such plant. However, milk which is reloaded at such a facility in transit to another plant at which it is processed, shall, for purposes of pricing only, be considered a receipt at the plant at which it is processed; or

(b) "Distribution points" which comprise the buildings, premises and storage

facilities at which are stored, enroute in the course of disposition, fluid milk products that have been processed and packaged in consumer-type packages at a distributing plant. The following shall apply with respect to the operations of a distribution point:

(1) Operations of such a distribution point located on the premises of a nonpool plant or a pool supply plant shall not constitute a part of the operations of such plant; and

(2) Fluid milk products moved through a distribution point shall be classified on the basis of disposition from the distributing plant at which processed and packaged, unless the following conditions are met, in which case such products may be classified on the basis of disposition from such distribution point:

(i) Such distribution point is located west of the Cascade Mountain Range;

(ii) Fluid milk products are not received during the month at such distribution point from more than one plant; and

(iii) The handler operating such distributing plant notifies the market administrator of his intent to report regularly on the basis of disposition from such distribution point.

§ 1125.5 Distributing plant.

"Distributing plant" means a plant in which a fluid milk product approved by a duly constituted regulatory agency for fluid consumption, or filled milk, is processed or packaged and that has route disposition in the marketing area during the month.

§ 1125.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product approved by a duly constituted regulatory agency for fluid consumption, or filled milk, is transferred during the month to a pool distributing plant.

§ 1125.7 Pool plant.

Except as provided in paragraph (c) of this section "pool plant" means a plant specified in paragraph (a) or (b) of this section. For the purpose of determining a plant's pool status under paragraph (a), (b), or (c) of this section, the receipts and disposition of filled milk shall be excluded from such computation.

(a) A distributing plant with route disposition in the marketing area during the month that averages more than 110 pounds daily and is also not less than 10 percent of receipts of Grade A milk at such plant. For purposes of this paragraph, route disposition shall not include receipts from a transferor-plant pursuant to the proviso of § 1125.3(a); or

(b) A supply plant from which there is transferred to a pool distributing plant fluid milk products that represent not less than the following percentages of the total quantity of Grade A milk that is physically received at such plant directly from dairy farmers, or a cooperative association pursuant to § 1125.9(c), or diverted therefrom as producer milk pursuant to § 1125.13:

Months	Applicable percentage
January, February, or September	40
March through August	30
October through December	50

Any such plant that has transferred the applicable percentage of its receipts during the entire September through February period shall be a pool plant for the months of March through August immediately following unless the operator of such plant files with the market administrator, prior to the first day of the month, during the March–August period, a written request to withdraw such plant from pool supply plant status for the month. If the plant operator does not renew such request for the following month (when applicable) the plant shall be pooled for such month, and for each month remaining in the March through August period, only by meeting the pool supply plant qualifying percentages for such period.

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

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition in this marketing area than in such other marketing area but which plant maintains pooling status for the month under such other Federal order; or

(4) A plant pursuant to paragraph (b) of this section which also meets the pool plant requirements of another Federal order and from which greater shipments are made during the month to plants regulated under such other order than are made to plants regulated under this order.

§ 1125.8 Nonpool plant.

"Nonpool plant" means any plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

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

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

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which during the month an average of more than 110 pounds daily of fluid milk products is disposed of as route disposition in the marketing area.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are moved to a pool plant during the month.

§ 1125.9 Handler.

"Handler" means:

(a) The operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it caused to be diverted for the account of such cooperative association from a pool plant of another handler to a nonpool plant, or to a food processing establishment in Pacific County, Wash.;

(c) Any cooperative association with respect to producer milk received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association, if the cooperative association notified the market administrator and the operator of the pool plant to whom the milk is delivered, in writing prior to the first day of the month of delivery that it elects to be the handler for such milk;

(d) The operator of a partially regulated distributing plant;

(e) A producer-handler; and

(f) The operator of an other order plant from which route disposition is made in the marketing area during the month.

§ 1125.10 Producer-handler.

"Producer-handler" means a person who is engaged in the production of milk and also operates a plant from which during the month an average of more than 110 pounds daily of fluid milk products, except filled milk, is disposed of as route disposition within the marketing area and who has been so designated by the market administrator upon his determination that all of the requirements of this section have been met, and that none of the conditions therein for cancellation of such designation exists. All designations shall remain in effect until canceled pursuant to paragraph (c) of this section. The Department of Institutions, State of Washington, shall be a producer-handler exempt from the provisions of this section and §§ 1125.30 and 1125.32(c) with respect to milk of its own production and receipts from pool plants processed or received for consumption in State institutions and with respect to movements of milk to or from a pool plant.

(a) *Requirements for designation.* (1) *The producer-handler has and exercises* (in his capacity as a handler) complete

and exclusive control over the operation and management of a plant at which he handles and processes milk received from his milk production resources and facilities (designated as such pursuant to paragraph (b)(1) of this section), the operation and management of which are under the complete and exclusive control of the producer-handler (in his capacity as a dairy farmer).

(2) The producer-handler neither receives at his designated milk production resources and facilities nor receives, handles, processes or distributes at or through any of his milk handling, processing or distributing resources and facilities (designated as such pursuant to paragraph (b)(2) of this section) milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than (i) his designated milk production resources and facilities, (ii) pool plants within the limitation specified in paragraph (c)(2) of this section, or (iii) nonfat milk solids which are used to fortify fluid milk products.

(3) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(4) Designation of any person as a producer-handler following a cancellation of his prior designation shall be preceded by performance in accordance with subparagraphs (1), (2), and (3) of this paragraph for a period of 1 month.

(b) *Resources and facilities.* Designation of a person as a producer-handler shall include the determination and designation of the milk production, handling, processing and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(1) As milk production resources and facilities: All resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler;

(ii) In which the producer-handler in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly or partially owned, operated or controlled by any partner or stockholder of the producer-handler: *Provided,* That for purposes of this subparagraph any such milk production resources and facilities which the producer-handler proves to the satisfaction of the market administrator do not constitute an actual or potential source of milk supply for the producer-handler's operation as such shall not be considered a part of his milk production resources and facilities; and

(2) As milk handling, processing and distributing resources and facilities: All resources and facilities (including store outlets) used for handling, processing and distributing within the marketing area any fluid milk product:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler; or

(ii) In which the producer-handler in any way has an interest, including any contractual arrangement, or with respect to which the producer-handler directly or indirectly exercises any degree of management or control.

(c) *Cancellation.* The designation as a producer-handler shall be canceled under any of the conditions set forth in subparagraphs (1) and (2) of this paragraph, or upon determination by the market administrator that any of the requirements of subparagraphs (1), (2), and (3) of paragraph (a) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellation occurred.

(1) Milk from the designated milk production resources and facilities of the producer-handler is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the designated milk production facilities and resources, with the exception of purchases from pool plants in the form of packaged fluid milk products, other than whole milk, which do not exceed a daily average during the month of 100 pounds.

(d) *Public announcement.* The market administrator shall publicly announce the name, plant location and farm location(s) of persons designated as producer-handlers, of those whose designations have been canceled, and the effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.5 of this chapter that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

§ 1125.11 [Reserved]

§ 1125.12 Producer.

"Producer" means any person engaged in the production of milk of dairy cows:

(a) Who produces such milk in compliance with the Grade A inspection requirements of a duly constituted regulatory agency;

(b) Whose milk during the month is received at a pool plant or is diverted from a pool plant to a nonpool plant or a commercial food processing establishment pursuant to § 1125.13 unless such milk is received at a pool plant by diversion from an other order plant and retains status as producer milk under the order by which such plant is regulated;

(c) Who is not a producer-handler as defined in any order (including this part) issued pursuant to the Act;

(d) Who during the month has not disposed of as route disposition or to consumers at the farm an average of more than 110 pounds daily of fluid milk products; and

(e) Whose milk during the month was not received at a nonpool plant or a commercial food processing establishment except by diversion from a pool plant pursuant to § 1125.13.

§ 1125.13 Producer milk.

"Producer milk" or "milk received from producers" means skim milk and butterfat in milk produced by producers which is received for the account of a handler as follows:

(a) With respect to receipts at a pool plant, producer milk shall include:

(1) Milk received at such plant directly from producers;

(2) Milk diverted from such pool plant to a nonpool plant or a commercial food processing establishment in Pacific County, Wash., for the account of the operator of the pool plant, subject to the conditions set forth in paragraph (c) of this section; and

(3) Milk received at such pool plant from a cooperative association in its capacity as a handler pursuant to § 1125.9(c), for all purposes other than those specified in paragraph (b)(2)(i) of this section;

(b) With respect to milk for which a cooperative association is a handler in a capacity other than as the operator of a pool plant, producer milk shall include:

(1) Milk diverted from the pool plant of another handler to a nonpool plant or a commercial food processing establishment in Pacific County, Wash., for the account of the cooperative association, subject to the conditions set forth in paragraph (c) of this section; and

(2) Milk for which the cooperative association is a handler pursuant to § 1125.9(c) to the following extent:

(i) For purposes of reporting pursuant to §§ 1125.30(c) and 1125.31(a) and making payments to producers pursuant to § 1125.73(a); and

(ii) For all purposes, with respect to any such milk which is not delivered to the pool plant of another handler;

(c) With respect to diversions to nonpool plants, or to a commercial food processing establishment in Pacific County, Wash.:

(1) Milk of any producer may be diverted by a cooperative association or its agent for its account pursuant to § 1125.9(b) from pool distributing plants to nonpool plants or to a commercial food processing establishment in Pacific County, Wash. The total quantity of milk diverted may not exceed 70 percent of the producer milk which the association or its agent causes to be delivered to pool distributing plants, or diverted

therefrom, during the months of January through April or September through December. No percentage limit shall apply during the months of May through August;

(2) Milk of any producer may be diverted by a cooperative association or its agent for its account from pool supply plants to nonpool plants or to a commercial food processing establishment in Pacific County, Wash. The total quantity of milk so diverted may not exceed 50 percent of the producer milk which the association or its agent causes to be delivered to all such pool supply plants or diverted therefrom during the month;

(3) A handler, other than a cooperative association, operating a pool distributing plant may divert therefrom for his account to nonpool plants or to a commercial food processing establishment in Pacific County, Wash. The total quantity of milk so diverted during the months of January through April, or September through December may not exceed 70 percent of the milk received at or diverted from such handler's pool distributing plant from producers and for which the operator of such plant is the handler during the month. The milk for which the operator of such plant is the handler during the month, however, shall not duplicate milk diverted pursuant to subparagraph (1) of this paragraph. No percentage limit shall apply during the months of May through August;

(4) A handler, other than a cooperative association, operating a pool supply plant may divert therefrom for his account to nonpool plants or to a commercial food processing establishment in Pacific County, Wash. The total quantity of milk so diverted may not exceed 50 percent of the total milk received at or diverted from such pool plant during the month from producers and for which the operator of such plant is the handler during the month;

(5) Milk diverted in excess of the limits specified shall not be considered producer milk, and the diverting handler shall specify the producers whose milk is ineligible as producer milk. If a handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by the handler during the month;

(6) For purpose of location adjustments pursuant to §§ 1125.52 (a) and (b) and 1125.75, milk diverted to a nonpool plant or a commercial food processing establishment shall be priced at the location of the plant or commercial food processing establishment to which diverted; and

(d) In the case of any bulk tank load of milk originating at farms and subsequently divided among plants, the proportion of the load received at each plant shall be prorated among the individual producers involved on the basis of their respective percentages of the total load.

§ 1125.14 Other source milk.

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

(a) Receipts during the month of fluid milk products from any source (including all receipts in fluid form from a producer-handler or the plant of a producer-handler as defined under this or any other Federal order) except:

(1) Producer milk; and

(2) Receipts from other pool plants; and

(b) Nonfluid and residual products (including those processed at the plant) which are reprocessed in connection with, or converted to, a fluid milk product during the month. The skim milk component of such products shall be as follows:

(1) A weight equal to the weight of the volume increase caused by nonfat milk solids in dry milk solids or condensed milk or skim milk products used for the fortification of, or as an additive to, fluid milk products; and

(2) The weight of a volume equivalent to the skim milk used to produce such product, with respect to other such products or uses.

§ 1125.15 Fluid milk product.

"Fluid milk product" means the following, in fluid or frozen form (including such products reconstituted or fortified with additional nonfat milk solids):

(a) Milk, skim milk, skim milk drinks, buttermilk, filled milk, flavored milk, and flavored milk drinks;

(b) Concentrated milk, skim milk, flavored milk, and flavored milk drinks; and

(c) Cream (including plain, flavored, sweet or sour) and any mixtures of cream and milk or skim milk (exclusive of ice cream and frozen dessert mixes, cocoa mixes, aerated cream products, and eggnog).

Fluid milk products shall not include those products commonly known as evaporated milk, condensed milk (plain or sweetened), condensed skim milk (plain or sweetened), yogurt, starter, any milk or milk products (including filled milk, sterilized and packaged in hermetically sealed metal or glass containers; or a product which contains 6 percent or more nonmilk fat (or oil).

§ 1125.16 [Reserved]

§ 1125.17 Filled milk.

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

§ 1125.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers, duly organized as such under the laws of any State, which includes members who are producers as defined in § 1125.12 and which the Secretary determines, after application by the association:

(a) To be qualified under the standards set forth in the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have its entire organization and all of its activities under the control of its members; and

(c) To be currently engaged in making collective sales of or marketing milk or its products for its members.

Handler Reports

§ 1125.30 Reports of receipts and utilization.

On or before the 8th day of each month each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for the preceding month:

(a) Each handler operating a pool plant(s) shall report separately for each pool plant:

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

(i) Milk received directly from producers, showing separately any milk of own-farm production;

(ii) Milk received from a cooperative association pursuant to § 1125.9(c);

(iii) Fluid milk products received from other pool plants showing filled milk separately; and

(iv) Other source milk showing filled milk separately.

(2) The utilization of all skim milk and butterfat required to be reported, including separate statements of quantities:

(i) Contained in packaged and bulk fluid milk products on hand at the beginning and end of the month; and

(ii) In route disposition showing separately route disposition of filled milk inside and outside the marketing area;

(3) The aggregate quantities of base milk and excess milk received; and

(4) Such other information with respect to such receipts and utilization as the market administrator may prescribe.

(b) Each producer-handler shall report:

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

(i Milk of own-farm production;

(ii) Receipts of fluid milk products from pool plants, showing separately receipts in packaged form and in bulk; and

(iii) Other source milk, showing separately any receipts from another dairy farmer; and

(2) As specified in paragraph (a) (2) and (4) of this section.

(c) Each cooperative association shall report with respect to milk for which it is the handler pursuant to either § 1125.9(b) or (c):

(1) The quantities of skim milk and butterfat received from producers;

(2) The utilization of skim milk and butterfat for which it is the handler pursuant to § 1125.9(b);

(3) The quantities of skim milk and butterfat delivered to each pool plant pursuant to § 1125.9(c); and

(4) As specified in paragraph (a) (3) and (4) of this section.

(d) Each handler who operates a partially regulated distributing plant shall report as specified in paragraph (a) (1), (2), and (4) of this section except that receipts from dairy farmers in Grade A milk shall be reported in lieu of those in

producer milk. Such report shall include separate statements, respectively, showing the respective amounts of skim milk and butterfat disposed of as route disposition in the marketing area as Class I milk and the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area.

(e) Each handler who operates an other order plant with route disposition of fluid milk products in the marketing area shall report the quantities of skim milk and butterfat in such disposition.

§ 1125.31 Payroll reports.

On or before the 20th day of each month, handlers shall report to the market administrator as follows:

(a) Each handler with respect to each of his pool plants and each cooperative association which is a handler pursuant to § 1125.9 (b) or (c) shall submit his producer payroll for deliveries (other than his own-farm production) in the preceding month which shall show:

(1) The total pounds of base milk and the total pounds of excess milk received from each producer, the pounds of butterfat contained in such milk, and the number of days on which milk was delivered by such producer in such month;

(2) The amount of payment to each producer and cooperative association; and

(3) The nature and amount of any deductions or charges involved in such payments; and

(b) Each handler operating a partially regulated distributing plant who wishes computations pursuant to § 1125.76(a) to be considered in the computation of his obligation pursuant to § 1125.76 shall submit his payroll for delivers of Grade A milk by dairy farmers which shall show:

(1) The total pounds of milk and the butterfat content thereof received from each dairy farmer;

(2) The amount of payment to each dairy farmer (or to a cooperative association on behalf of such dairy farmer); and

(3) The nature and amount of any deductions or charges involved in such payments.

§ 1125.32 Other reports.

At such time and in such manner as the market administrator may prescribe, each handler shall report to the market administrator such information in addition to that required under §§ 1125.30 and 1125.31 as may be requested by the market administrator with respect to milk and milk products (including filled milk) handled by him.

CLASSIFICATION OF MILK

§ 1125.40 Classes of utilization.

Subject to the conditions set forth in §§ 1125.41 and 1125.42, the classes of utilization shall be as follows:

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

(1) Disposed of in the form of a fluid milk product, subject to the following limitations and exceptions:

(i) Any products fortified with added nonfat milk solids shall be Class I in an amount equal only to the weight of an equal volume of a like unmodified product of the same butterfat content;

(ii) Fluid milk products in concentrated form shall be Class I in an amount equal to the skim milk and butterfat used to produce the quantity of such products disposed of; and

(iii) Products classified as Class II pursuant to paragraph (b)(3), and as Class III pursuant to paragraph (c) (3) and (4), of this section are excepted;

(2) In packaged fluid milk products in inventory at the end of the month; and

(3) Not specifically accounted for as Class II or Class III utilization.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Used to produce ice cream, ice cream mix, frozen desserts, aerated cream products, plastic cream, soured cream dressing, yogurt, eggnog, cottage cheese, pot cheese, bakers cheese, cream cheese, neufchatel cheese, starter or any milk or milk products (including filled milk) sterilized and packaged in hermetically sealed metal or glass containers;

(2) Used to produce condensed milk and condensed skim milk utilized for any purposes other than those specified in paragraph (c)(1) of this section; and

(3) In fluid milk products disposed of in bulk or diverted to a commercial food processing establishment for use in food products which are processed for general distribution to the public for consumption off the premises.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce evaporated milk sterilized in sealed metal containers (whether produced from whole milk, skim milk, or partially skimmed milk), condensed milk and condensed skim milk used to produce another Class III product in a pool plant or in a nonpool plant located within the marketing area or used to fortify Class I products in a pool plant, butter, nonfat dry milk solids, powdered whole milk, casein, and cheese (other than that specified in paragraph (b)(1) of this section), including that contained in residual products resulting from the manufacture of butter and cheese;

(2) In fluid milk products disposed of for livestock feed;

(3) In fluid milk products dumped after such prior notice and opportunity for verification as may be required by the market administrator;

(4) In shrinkage at each pool plant as computed pursuant to § 1125.41(b)(1) but not to exceed the following amount:

(i) Two percent of receipts in producer milk pursuant to § 1125.13(a) (1) and (2); plus

(ii) One and one-half percent of receipts of fluid milk products in bulk from other pool plants; plus

(iii) One and one-half percent of receipts from a cooperative association in its capacity as a handler pursuant to § 1125.9(c), except that if the handler operating the pool plant files notice with the market administrator that he is purchasing such milk on the basis of farm weights and individual producer tests, the applicable percentage shall be 2 percent; plus

(iv) One and one-half percent of receipts of fluid milk products in bulk from an other order plant, exclusive of the quantity for which Class II or Class III utilization was requested by the operator of such plant and the handler; plus

(v) One and one-half percent of receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which Class II or Class III utilization was requested by the handler; less

(vi) One and on-half percent of fluid milk products disposed of in bulk to other plants, except, in the case of milk diverted to a nonpool plant or to a commercial food processing establishment in Pacific County, Wash., if the operator of the plant to which the milk is diverted purchases such milk on the basis of farm weights and individual producer tests, the applicable percentage shall be 2 percent;

(5) In shrinkage at each pool plant as computed pursuant to § 1125.41(b)(2);

(6) In shrinkage resulting from milk for which a cooperative association is the handler pursuant to § 1125.9 (b) or (c) not being delivered to pool plants, and nonpool plants, or to a commercial food processing establishment in Pacific County, Wash., but not in excess of one-half percent of such receipts, exclusive of those for which farm weights and individual producer tests are used as the basis of receipt at the plant to which delivered; and

(7) In inventory of bulk fluid milk products on hand at the end of the month.

§ 1125.41 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts at each pool plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively (after reducing the quantity transferred to any nonpool plant located on the same premises by a pro rata share of shrinkage in such nonpool plant based on the proportion that such transfers are of its total receipts); and

(b) Prorate the resulting amounts between:

(1) A quantity equal to 50 times the maximum that may be computed pursuant to § 1125.40(c)(4); and

(2) Skim milk and butterfat in other source milk in the form of bulk fluid milk products, exclusive of that specified in § 1125.40(c)(4) (iv) and (v).

§ 1125.42 Classification of transfers and diversions.

Skim milk and butterfat moved by transfer, and by diversion under paragraph (c) of this section, as fluid milk products from a pool plant shall be assigned (separately) to each class in the following manner:

(a) To a pool distributing plant: As Class I milk to the extent Class I milk is available at the transferee-plant after computations pursuant to § 1125.44(a) (10) and the corresponding step of § 1125.44(b), subject to the following provisions:

(1) In the event the quantity transferred exceeds the total of receipts from producers and other pool plants at the transferor-plant, such excess shall be assigned to the available milk in each class at the transferee-plant in series beginning with Class III;

(2) If more than one transferor-plant is involved, the available Class I milk shall first be assigned to pool plants located in District 1, and the counties of Pierce and Kitsap, and then in sequence to the plants at which the least location adjustment applies;

(3) If Class I milk is not available in amounts equal to the sum of the quantities to be assigned pursuant to subparagraph (2) of this paragraph to plants having the same location adjustments, the transferee-handler may designate to which of such plants the available Class I milk shall be assigned;

(4) Notwithstanding the prior provisions of this paragraph, any such skim milk and butterfat transferred in bulk from a pool plant to a pool distributing plant in which facilities are maintained and used to receive milk or milk products required by a duly constituted regulatory agency to be kept physically separate from Grade A milk shall be classified in accordance with the provisions of paragraph (b) of this section; and

(5) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1125.44(a) (9) and (10) and the corresponding steps of § 1125.44(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee-plant.

(b) To a pool supply plant as Class II milk, subject to the following conditions:

(1) The skim milk or butterfat so assigned to Class III milk shall be limited to the amount thereof remaining in Class III milk in the transferee-plant after computations pursuant to § 1125.44(a) (10) and the corresponding step of § 1125.44(b) for such plant, and any additional amounts of such skim milk or butterfat shall be assigned to Class II milk to the extent such utilization is available. Any additional amounts of such skim milk and butterfat shall be assigned to Class I milk and credited to transfers from transferor-plants in the sequence at which the least location adjustment applies;

(2) If more than one transferor-plant is involved, the available Class III and/or Class II milk shall first be assigned to transferor-plants located outside District 1 and Kitsap and Pierce Counties, and then in sequence to the plants at which the greatest location adjustment applies; and

(3) If Class III and/or Class II milk is not available in amounts equal to the sum of the quantities to be assigned pursuant to paragraph (b) (2) of this section to plants having the same location adjustments, the transferee-handler may designate to which of such plants the available Class III and/or Class II shall be assigned.

(c) To a nonpool plant:

(1) Except as provided for in paragraph (c) (3) and (4) of this section, as Class I milk, if transferred or diverted to a nonpool plant located outside the marketing area;

(2) As Class I milk, if transferred or diverted to a producer-handler as defined in any order (including this part) issued pursuant to the Act, or to the plant of such a producer-handler;

(3) As Class II milk to the extent such utilization is available and then to Class III milk, if transferred or diverted to a nonpool plant or to a commercial food processing establishment pursuant to § 1125.13(c) from which fluid milk products are not distributed as route disposition, subject to the following conditions:

(i) The transfer or diversion shall be classified as Class I milk unless the market administrator is permitted to audit the records of the nonpool plant or the commercial food processing establishment for purposes of verification; and

(ii) If such nonpool plant disposes of fluid milk products to any other nonpool plant distributing fluid milk products as route disposition, the transfer or diversion shall be classified as Class I milk up to the quantity of such disposition to the second nonpool plant; and

(4) As follows, if transferred to an other order plant in excess of receipts from such plant in the same category as described in subdivision (i), (ii), or (iii) of this subparagraph:

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

(ii) If transferred in bulk form, classification shall be in Class I if allocated as a fluid milk product to Class I under the other order, in Class II if allocated to Class II under an order that provides three classes and in Class III if allocated to Class III under the other order or if allocated to Class II under the order that provides only two classes (including allocation under the conditions set forth in subdivision (iii) of this subparagraph);

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

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

(v) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1125.40.

§ 1125.43 General classification rules.

In determining the classification of producer milk pursuant to § 1125.44, the following rules shall apply:

(a) For each month the market administrator shall correct for mathematical and other obvious errors the reports of receipts and utilization submitted pursuant to § 1125.30 (a) and (c) and compute the total pounds of skim milk and butterfat in each class. For the purposes of such computation, 0.06 percent shall be used as the butterfat content of skim milk where no specific tests are available;

(b) If any other source milk not subject to allocation at such plant pursuant to § 1125.44(a) (2) through (7), and the corresponding steps of § 1125.44(b) was received at any pool plant of a handler, there will be computed for such handler the total pounds of skim milk and butterfat, respectively in each class at all of his pool plants combined, exclusive of any classification based upon movements between such plants, and allocation pursuant to § 1125.44 and computation of obligation pursuant to § 1125.60 shall be based upon the combined utilization so computed. For purposes of assigning location adjustments pursuant to § 1125.52 (a) and (b) with respect to fluid milk products moved between such plants, the skim milk and butterfat subtracted from each class pursuant to § 1125.44(a) (2), (3), (5), (6), (9), and (10) and the corresponding steps of § 1125.44(b) will be assigned so far as possible to utilization (exclusive of such interplant movements) reported at the plant at which it was received, and thereafter in sequence to plants at which location adjustment for such class is the same or most nearly similar, and the applicable location adjustments will be determined on the basis of the classification resulting from the application of § 1125.42 (a) and (b) to the remaining utilization reported;

(c) If no fluid milk products to be allocated pursuant to § 1125.44(a) (9) or (10) were received at any pool plant of a handler, the total pounds of skim milk and butterfat, respectively, in each class will be computed for each pool plant of such handler, and allocation pursuant to § 1125.44 and computation of obligation pursuant to § 1125.60 shall be made separately for each pool plant of the handler; and

(d) There will be computed for each cooperative association reporting pursuant to § 1125.30(c) the pounds in each class of skim milk and butterfat, respectively, in producer milk pursuant to § 1125.13(b) (1) and (2)(ii). The amounts so determined shall be those

used for computation pursuant to § 1125.44(c).

§ 1125.44 Classification of producer milk.

After making the computations pursuant to § 1125.43, the market administrator shall determine the classification of producer milk for each handler at all his pool plants (or at each pool plant, when § 1125.43(c) applies) as follows:

(a) Skim milk shall be allocated in the following manner, except that the quantities allocated to Class II milk and Class III milk shall be subtracted in series beginning with Class III.

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1125.40(c)(4);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated by this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any payment obligation under this or any other order;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form for route disposition from other order plants, except that to be subtracted pursuant to subparagraph (5)(v) of this paragraph, as follows:

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

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

(4) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products (and for the first month this subparagraph is effective, in bulk fluid milk products) in inventory at the beginning of the month;

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

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

(ii) Receipts of fluid milk products not qualified for disposition to consumers in fluid form, or which are from unidentified sources;

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

(iv) Receipts of reconstituted skim milk in fluid milk from unregulated supply plants that were not subtracted pursuant to paragraph (a)(2) of this section;

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

(vi) Receipts of milk from a dairy farmer who did not qualify as a producer pursuant to § 1125.12(e).

(6) Subtract, in the order specified below in sequence beginning with Class III, from the pounds of skim milk remaining in Class II and Class III but not in excess of such quantity:

(i) Receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to paragraphs (a)(2) and (a)(5)(iv) of this section, for which the handler requests Class II or III utilization;

(ii) Remaining receipts of fluid milk products from unregulated supply plants, that were not subtracted pursuant to paragraphs (a)(2), (5)(iv), and (6)(i) of this section, which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in receipts of producer milk, receipts from pool plants of other handlers (and of the same handler, when § 1125.43(c) applies), and receipts in bulk from other order plants, that were not subtracted pursuant to paragraph (a)(5)(v) of this section; and

(iii) Receipts of fluid milk products in bulk from an other order plant that were not subtracted pursuant to subparagraph (5)(v) of this paragraph, in excess of similar transfers to such plant, if Class II or II utilization was requested by the operator of such plant and the handler;

(7) Except for the first month this subparagraph is effective, subtract from the pounds of skim milk remaining in each class in series beginning with Class III milk the pounds of skim milk in inventory of bulk fluid milk products on hand at the beginning of the month;

(8) Add to the remaining pounds of skim milk in Class III milk the pounds subtracted pursuant to paragraph (a)(1) of this section;

(9) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to paragraphs (a)(2), (5)(iv), and (6)(i) and (ii) of this section;

(10) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant(s), in excess in each case of similar transfers to the same plant, which were not subtracted pursuant to paragraph (a)(5)(v) or (6)(iii) of this section:

(i) In series, beginning with Class III, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1125.45(a) or the percentage that Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(11) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from pool plants of other handlers (and of the same handler, when § 1125.43(c) applies) according to the classification assigned pursuant to § 1125.42; and

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

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

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section and § 1125.43(d) into one total for each class.

§ 1125.45 Market administrator's reports and announcements concerning classification.

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

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1125.44(a)(10) and the corresponding step of § 1125.44(b), estimate and publicly announce the utilization (to the nearest whole percentage), in each class, during the month, of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1125.44 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report;

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

(d) On or before the 13th day after the end of each month, report to each cooperative association (or its duly designated agent) which so requests the class utilization of milk of its member producers which is received by each handler directly from farms or from the cooperative association pursuant to

§ 1125.9(c). For the purposes of this report, such milk shall be prorated to each class in the proportion that the total receipts of milk from producers and from cooperative associations pursuant to § 1125.9(c) of such handler were used in each class.

CLASS PRICES

§ 1125.50 Class prices.

Subject to the provisions of § 1125.52, the class prices for the month, per hundredweight of milk containing 3.5 percent butterfat, shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.85.

(b) *Class II price.* The Class II price shall be the Class III price computed pursuant to paragraph (c) of this section, plus 25 cents per hundredweight.

(c) *Class III price.* The Class III price shall be the basic formula price for the month but not to exceed the price computed as follows:

(1) Multiply the Chicago butter price pursuant to § 1125.51 by 4.2;

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

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

§ 1125.51 Basic formula price.

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

§ 1125.52 Plant location adjustments for handlers.

(a) The price of Class I and Class II milk at each plant shall be, regardless of point of disposition within or outside the marketing area, that computed pursuant to § 1125.50 less a location adjustment for such plant shown in the table below or paragraph (b) of this section:

Plant location	Adjustment (cents/cwt)	
	Class I	Class II
District 1 or Kitsap or Pierce Counties	0	0
District 2 or Mason County	10	5.0
District 3 (including the entire counties of Lewis and Pacific)	15	7.5
District 4 or Clallam or Jefferson counties	40	20.0

(b) For other locations outside the marketing area:

(1) *Class I milk.* 1.5 cents for each 10 miles or fraction thereof by shortest, hard-surfaced highway distance, as determined by the market administrator, that the plant is located from the County-City Building in Seattle.

(2) *Class II milk.* One-half of the amount specified in paragraph (b)(1) of this section, but not to exceed 20 cents per hundredweight.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (a) and (b) of this section, except that no price so adjusted shall be less than the Class III price.

§ 1125.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1125.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1125.60 Handler's value of milk for computing uniform prices.

The value of milk of each pool handler (for each pool plant, when § 1125.43(c) applies) during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1125.44(c), by the applicable class prices (adjusted pursuant to § 1125.52 (a) and (b)) and add together the resulting amounts;

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1125.44(a)(12) and the corresponding step of § 1125.44(b), by the applicable class prices.

In case overage occurs in a nonpool plant located on the same premises as a pool plant, such overage shall be prorated between the quantity transferred from the pool plant and other source milk in such nonpool plant, and an amount equal to the value of overage allocated to the transferred quantity at the applicable class price adjusted for butterfat content and location shall also be added;

(c) Add or subtract, as the case may be the amount necessary to correct errors as disclosed by the verification of reports of such handler of his receipts and utilization of the skim milk and butterfat in previous months for which payment has not been made;

(d) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1125.44(a)(5) and the corresponding step of § 1125.44(b) except that for receipts of fluid milk products assigned to Class I pursuant to § 1125.44(a)(5) (iv) and (v) and the corresponding step of § 1125.44(b) the Class I price shall be adjusted to the location of the transferor-plant;

(e) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1125.44 (a)(7) and the corresponding step of § 1125.44(b); and

(f) Add an amount equal to the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat subtracted from Class I pursuant to § 1125.44(a)(9) and the corresponding step of § 1125.44(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by a handler fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any payment obligation under this or any other order.

§ 1125.61 Computation of uniform prices for base and excess milk (including weighted average price).

(a) For each month the market administrator shall compute the weighted average price for all milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1125.60 for all handlers who made the reports prescribed in § 1125.30 and who made the payments

pursuant to § 1125.71(a) for the preceding month;

(2) Add the aggregate of the location adjustments computed pursuant to § 1125.75(a);

(3) Add the aggregate of the values on nonpool milk computed pursuant to § 1125.75(c);

(4) Add an amount representing not less than one-half the unobligated cash balance in the producer-settlement fund;

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

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1125.60 (f); and

(6) Subtract not less than 4 cents but less than 5 cents from the price computed pursuant to subparagraph (5) of this paragraph. The result shall be known as the weighted average price for all milk.

(b) For each month the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk of 3.5 percent butterfat content received from producers as follows:

(1) From the net amount computed pursuant to paragraph (a)(1) through (4) of this section subtract the following:

(i) The amount computed by multiplying the hundredweight of milk specified in paragraph (a)(5)(ii) of this section by the weighted average price for all milk;

(ii) The amount obtained by multiplying by the Class III price the total hundredweight of milk delivered by all producers described in § 1125.93 (c) and (d) for whom no base milk has been computed; and

(iii) The amount computed by multiplying the hundredweight of excess milk by the Class III price rounded to the nearest one-tenth cent: *Provided*, That if such result is greater than an amount computed by multiplying the hundredweight of base milk by the Class I price plus 4 cents, such amount in excess thereof shall be subtracted from the result obtained prior to this proviso;

(2) Divide the net amount obtained in paragraph (b)(1) of this section by the total hundredweight of base milk and subtract not less than 4 cents but less than 5 cents. This result shall be known as the uniform price per hundredweight of base milk of 3.5 percent butterfat content; and

(3) Divide the amount obtained in paragraph (b)(1)(iii) of this section plus any amount subtracted pursuant to the proviso of paragraph (b)(1)(iii) of this section by the hundredweight of excess milk, and subtract any fractional part of 1 cent. This result shall be known as the uniform price per hundredweight of excess milk of 3.5 percent butterfat content.

§ 1125.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The 5th day after the end of each month the butterfat differential for such month; and

(b) The 13th day after the end of each month the weighted average price and the uniform prices for the preceding month.

Payments for Milk

§ 1125.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1125.71, and 1125.76 and out of which he shall make all payments to handlers pursuant to § 1125.72.

§ 1125.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month during which the skim milk and butterfat were received, each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a)(1) of this section exceeds the total amount specified in paragraph (a)(2) of this section:

(1) The sum of:

(i) The total value of milk of the handler for such month as determined pursuant to § 1125.60; and

(ii) For a cooperative association handler, the amount due from other handlers pursuant to § 1125.73(d) but without adjustment for butterfat;

(2) The sum of:

(i) The value of milk received by such handler from producers at the applicable uniform prices;

(ii) The amount to be paid to cooperative associations pursuant to § 1125.73 (d) but without adjustment for butterfat; and

(iii) The value at the weighted average price for all skim milk and butterfat applicable at the location of the plant(s) from which received (not to be less than the value at the Class III price) with respect to other source milk for which a value is computed pursuant to § 1125.60 (f); and

(b) On or before the 25th day after the end of the month, each handler operating a plant specified in § 1125.7(c) (2) and (3), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund an amount computed as follows:

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

(2) Compute the value of the quantity assigned in paragraph (b)(1) of this section to Class I disposition in this area, at the Class I price under this part applicable at the location of the other order plant (but not to be less than the Class III price) and subtract its value at the Class III price.

§ 1125.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month during which the skim milk and butterfat were received, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1125.71(a)(2) exceeds the amount computed pursuant to § 1125.71(a)(1), and less any unpaid obligations of such handler to the market administrator pursuant to §§ 1125.71(a), 1125.77, 1125.85, and 1125.86: *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1125.73 Payments to producers and to cooperative associations.

(a) Each handler shall make payments to each producer for milk received from such producer during the month:

(1) On or before the 25th day of the month to each producer who had not discontinued shipping milk to such handler before the 15th day of the month, at not less than the Class III price for the preceding month per hundredweight of milk received during the first 15 days of the month, less proper deductions authorized in writing by such producer; and

(2) On or before the 19th day after the end of each month for milk received from such producers during such month:

(i) At not less than the uniform price for base milk for the quantity of base milk received, adjusted by the butterfat differential computed pursuant to § 1125.74 and by any location adjustments applicable under § 1125.75;

(ii) At not less than the Class III price adjusted by the butterfat differential computed pursuant to § 1125.74 for the quantity of milk received from producers described in § 1125.93 (c) and (d) for whom no base milk has been computed;

(iii) At not less than the uniform price for excess milk for the quantity of excess milk received, adjusted by the butterfat differential computed pursuant to § 1125.74; and

(iv) Minus payments made pursuant to paragraph (a)(1) of this section: *Provided*, That, if by such date such handler has not received full payment for such month pursuant to § 1125.72, he shall not be deemed to be in violation of this paragraph if he reduces uniformly for all producers his payments per hundredweight pursuant to this paragraph by a total amount not in excess of the reduction in payment from the market administrator; however, the handler shall make such balance of payment uniformly to those producers to whom it is due on or before the date for

making payments pursuant to this paragraph next following that on which such balance of payments is received from the market administrator.

(b) The payments required in paragraph (a) of this section shall be made, upon request, to a cooperative association qualified under § 1125.18, or its duly authorized agent, with respect to milk received from each producer who has given such association authorization by contract or by other written instrument to collect the proceeds from the sale of his milk, and any payment made pursuant to this paragraph, shall be made on or before 2 days prior to the dates specified in paragraph (a) of this section.

(c) Each handler shall pay to each cooperative association or its duly authorized agent which operates a pool plant for skim milk and butterfat received from such plant:

(1) On or before the 23d day of each month for skim milk and butterfat received during the first 15 days of that month at not less than the Class III price for the preceding month; and

(2) On or before the 17th day after the end of such month, an amount of money computed by multiplying the total pounds of such skim milk and butterfat in each class (pursuant to § 1125.42(a) or § 1125.42(b)) by the class price adjusted by the butterfat differential and taking into account any location adjustment as provided by § 1125.52 applicable at the pool plant of the cooperative association or its agent, minus payments made pursuant to subparagraph (1) of this paragraph.

(d) Each handler who receives milk for which a cooperative association is the handler pursuant to § 1125.9(c) shall pay such cooperative association for such milk received:

(1) On or before the 23d day of each month for such milk received during the first 15 days of that month at not less than the Class III price for the preceding month; and

(2) On or before the 17th day after the end of each month, for the milk received at not less than the weighted average price for all milk adjusted pursuant to §§ 1125.74 and 1125.75(b), minus payments made pursuant to paragraph (d)(1) of this section.

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provision of the Act.

(f) In making payments to producers pursuant to this section, each handler, on or before the 19th day of each month shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show for the preceding month:

(1) The identity of the handler and the producer;

(2) The total pounds of milk delivered by the producer and the average butterfat test thereof, the pounds of base and excess milk, and the pounds per shipment if such information is not furnished to the producer each day of delivery;

(3) The minimum rate(s) at which payment to the producer is required under the provisions of this section;

(4) The rate per hundredweight and amount of any premiums or payments above the minimum prices provided by the order;

(5) The amount or rate per hundredweight of each deduction claimed by the handler, together with a description of the respective deductions; and

(6) The net amount of payment to the producer.

(g) In making payment to a cooperative association in aggregate pursuant to this section, each handler upon request shall furnish to the cooperative association, with respect to each producer for whom such payment is made, any or all of the above information specified in paragraph (f) of this section.

§ 1125.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago as reported by the Department for the month.

§ 1125.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payment to producers pursuant to § 1125.73(a) subject to the application of § 1125.13(c)(6) deduction may be made per hundredweight of base milk received from producers at respective plant locations at the same rate as specified for Class I milk set forth in § 1125.52(a) or § 1125.52(b).

(b) In making payments to a cooperative association pursuant to § 1125.73(d) deductions may be made at the rates specified for Class I milk in § 1125.52(a) or § 1125.52(b) for the location of the plant at which the milk was received from the cooperative association.

(c) For purposes of computations pursuant to §§ 1125.71(a) and 1125.72 the weighted average price for all milk shall be adjusted at the rates set forth in § 1125.52(a) or § 1125.52(b) for Class I milk applicable at the location of the nonpool plant from which the milk or filled milk was received, except that the weighted average price shall not be less than the Class III price.

§ 1125.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1125.30(d) and 1125.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1)(i) The obligation that would have been computed pursuant to § 1125.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which an equivalent amount of milk was classified and priced as Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1125.60(f) and a credit in the amount specified in § 1125.71(a)(2)(iii) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in subdivision (ii) of this subparagraph; and

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1125.30(d) and 1125.31(b) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1125.7(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of (i) the gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant adjusted to a 3.5 percent butterfat basis by the butterfat differential pursuant to § 1125.74, and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1)

of this paragraph, and (ii) any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as route disposition of Class I milk within the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received at the plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any payment obligation under this or any other order;

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

(4) [Reserved]

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

§ 1125.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due:

(a) The market administrator from such handler,

(b) Such handler from the market administrator, or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred following the 5th day after such notice.

Administrative Assessment and Marketing Service Deduction

§ 1125.85 Assessment for order administration.

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

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

(b) Other source milk allocated to Class I pursuant to § 1125.44(a) (5) and (9) and the corresponding steps of § 1125.44(b), except such other source milk on which no handler obligation applies pursuant to § 1125.60(f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in § 1125.76(b)(2)(ii).

§ 1125.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than with respect to milk of such handler's own production) pursuant to § 1125.73(a)(2), shall make a deduction of 5 cents per hundredweight of milk, or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, with respect to the following:

(1) All milk received from producers at a plant not operated by a cooperative association:

(2) [Reserved]

(3) All milk received at a plant operated by a cooperative association from producers for whom the marketing services set forth below in this subparagraph are not being performed by the cooperative association as determined by the market administrator. Such deduction shall be paid by the handler to the market administrator on or before the 15th day after the end of the month. Such moneys shall be expended by the market administrator for the verification of weights, sampling and testing of milk received from producers and in providing for market infomation to producers; such services to be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of each producer:

(1) Who is a member of, or who has given written authorization for the rendering of marketing service and the taking of deduction therefor to, a cooperative asociation,

(2) Whose milk is received at a plant not operated by such association, and

(3) For whom the market administrator determines that such association is performing the services described in paragraph (a) of this section, each handler shall deduct, in lieu of the deduction specified under paragraph (a) of this section, from the payments made pursuant to § 1125.73(a)(2) the amount per hundredweight on milk authorized by such producer and shall pay on or before the 15th day after the end of the month, such deduction to the association entitled to receive it under this paragraph.

Class I Base Plan

§ 1125.90 Production history base and Class I base.

For purposes of determination and assignment of Class I base of each producer:

(a) "Production history base" means a quantity of milk in pounds per day as computed pursuant to § 1125.92 (b) or (c).

(b) "Class I base" means a quantity of milk in pounds per day as computed pursuant to § 1125.93 for which a producer may receive the base milk price.

(c) "Average daily producer milk deliveries" of a producer in any specified period used for computing production history bases means the total pounds of producer milk delivered by the producer divided by the number of days in the period rounded to the nearest whole pound: *Provided*, That if a producer is prevented from delivering milk during the production history period because of storm conditions, the number of days of nondelivery due to such cause not to exceed 4 days in any year may be deducted from the total number of calendar days in the period.

§ 1125.91 Base milk and excess milk.

(a) "Base milk" means:

(1) Milk received from a producer which is not in excess of his Class I base multiplied by the number of days in the month except that if milk is received from a producer for only part of a month, base milk shall be milk received from such producer which is not in excess of his Class I base multiplied by the number of days of production of producer milk delivered during the month; and

(2) Milk received from a producer to whom no Class I base has been issued, in the amount determined pursuant to § 1125.93 (c) or (d).

(b) "Excess milk" means milk in excess of base milk received during any designated period from a producer who during such period is delivering base milk.

§ 1125.92 Computation of production history base for each producer.

A "production history base" as defined in paragraph (b) or (c) of this section shall be determined by the market administrator for each producer eligible for such base on the effective date of this provision and on February 1 of each year thereafter. The computation of production history base shall be subject to adjustments described in paragraph (c)(1) of this section due to acquisition or disposition by transfer of Class I base or other modifications of Class I base due to hardship or loss of Class I base because of underdelivery of base. For purposes of computation of his production history base, a producer shall be considered as having been on the market during any specified period if: As a producer he delivered milk of his production during the designated period without interruption sufficient to cause forfeiture of base

pursuant to § 1125.95(a); during such period (after the effective date of this provision) did not dispose of all his Class I base by transfer; and during no year of his production history period were his average daily producer milk deliveries subject to negative adjustments pursuant to paragraph (c)(1) of this section resulting in a zero quantity. If such adjustment results in a zero quantity of average daily deliveries, the producer shall have a 1-year production history period and a corresponding production history base, not subject, however, to the 20 percent reduction provided in paragraph (c)(3) of this section.

(a) "Production history period" means the period to be used for the computation of production history base for a producer. Production history periods for this purpose are as follows:

(1) The production history period for a producer who has been on the market during the 3 years (January–December) preceding the determination of his production history base shall be the 4 months of each such year during which the average daily receipts of total producer milk in the market were lowest for the year. The period described in this subparagraph shall be known as a 3-year production history period.

(2) The production history period for a producer who has been on the market for a lesser period than specified in subparagraph (1) of this paragraph but beginning on a date not later than September 1 of one of the three preceding years (January–December) shall be:

(i) In the first year, the months specified in subparagraph (1) of this paragraph if the producer were on the market during the first full month so specified, otherwise the months of September through December, of such year; and

(ii) In any other years preceding the determination of his production history base, the 4 months of each year specified in subparagraph (1) of this paragraph;

(iii) Periods described in this subparagraph shall be known as 1-year, 2-year or 3-year production history periods depending on whether deliveries began in the first, second, or third year, respectively, preceding determination of production history base;

(3) The production history period for a producer who has been on the market during a period beginning after September 1, 1970, and who delivered producer milk in each of the 7 months preceding the effective date of this provision shall be the first 4 full months of delivery on the market. Such period shall be known as a 1-year production history period. For any such producer, the milk deliveries of the same 4 months shall be used in subsequent updating of production history bases to represent the milk deliveries of such producer in 1970. When a producer has acquired the herd and farm of a member of his immediate family (either before or after the effective date of this provision) and has continued to operate that farm and herd as a continuous operation, the deliveries made by the previous producer during the base earning period shall be assumed to have been delivered by the current producer for use in computing a production history base.

(b) The production history base for each producer on the effective date of this provision shall be determined by the market administrator as follows:

(1) If the production history period of any producer includes in any year months other than those specified pursuant to paragraph (a)(1) of this section, the average daily producer milk deliveries of such producer in the months used in his production history period shall be adjusted as follows: Multiply the producer's average daily producer milk deliveries by the ratio of average daily total producer milk in the market in the 4 months of the year specified in paragraph (a)(1) of this section to the average daily total producer milk on the market in the months used for such producer; except that for a producer described pursuant to paragraph (a)(3) of this section, the 4-month period specified in paragraph (a)(1) of this section shall be the applicable months in 1970.

(2) For a producer who was issued a Class I base pursuant to the provisions which became effective on September 1, 1967, and thus had a "production history base" which he had earned pursuant to the provisions then effective, and who has continued on the market as a producer since the issuance of such base, the production history base pursuant to this subparagraph shall be the larger of (i) the "production history base" assigned pursuant to the provisions effective September 1, 1967, reduced by the amount specified in the provision made effective September 1, 1967, in § 1125.123(f) with respect to reduction of production history base in proportion to transfer of Class I base, or (ii) such producer's production history base determined pursuant to subparagraph (3) of this paragraph. This provision shall apply also to the production history base of a Class I base effective September 1, 1967, if now held by a producer who received it from the original holder by intrafamily transfer, or through a succession of intrafamily transfers.

(3) For a producer with a 3-year production history period, the production history base shall be the sum of his average daily producer milk deliveries each year in the specified months for production history (subject to adjustment of deliveries in any year pursuant to subparagraph (1) of this paragraph if applicable) divided by 3.

(4) For a producer with a 1-year or 2-year production history period, the production history base shall be the sum of his average daily producer milk deliveries in each year in the specified months for production history (subject to adjustment of deliveries in any year pursuant to subparagraph (1) of this paragraph, if applicable) divided by the number of years in the production history period and multiplied by 60 percent for a 1-year production history period or by 80 percent for a 2-year production history period.

(5) A production history base shall be assigned to producers on the effective date of this provision who qualify for such base pursuant to paragraphs (d), (e), and (f) of this section.

(c) The production history base for each producer who has not disposed of his entire base by transfer, or who after disposing of his entire base by transfer has met the delivery requirements described in § 1125.93(d), shall be determined by the market administrator on February 1 of each year as follows:

(1) In updating a production history base as described in this paragraph, adjustments to a producer's previously assigned production history base and/or average daily producer milk deliveries in prior years shall be made as follows:

(i) If a producer's average daily producer milk deliveries in the combined period of the four production history months of the preceding year is less than the average of such producer's Class I base effective on the first day of each such month, the amount of such difference shall represent a reduction in Class I base. Such reduction shall not apply, however, in the updating of bases on February 1, 1972.

(ii) The prior production history base assigned to such producer shall be adjusted in proportion to the net change in Class I base due to acquiring or disposing of Class I base by transfer, adjustment of Class I base for hardship, or because of underdelivery of Class I base. The adjustment factor shall be determined by dividing the Class I base last held by the producer in the preceding January (after any adjustment pursuant to subdivision (i) of this subparagraph), by the amount of Class I base issued on the preceding February 1 or effective date of this provision.

(iii) The average daily producer milk deliveries for which a producer will receive credit in his production history in the current-year and in years prior to any net disposal of Class I base by transfer or reduction due to underdelivery shall be adjusted in proportion to the net change in Class I base. The adjustment factor shall be the Class I base issued on the previous February 1 (or effective date of this provision) less the net amount of Class I base disposed of by transfer since such date and the amount of reduction of Class I base pursuant to subdivision (i) of this subparagraph, divided by the amount of Class I base issued on the preceding February 1 (or effective date of this provision).

(iv) If the combined effect of such adjustments is a reduction greater than the respective production history base or average daily producer milk deliveries subject to such adjustments, then the resulting amount after adjustment shall be zero and any year for which a zero amount is determined shall not be regarded as a production history period.

(2) For a producer with a 3-year production history period, the production history base shall be one-third of the sum of the amounts pursuant to subdivisions (i), (ii) and (iii) of this subparagraph, or the amount pursuant to subdivision (iv) of this subparagraph, whichever is larger:

(i) His average daily producer milk deliveries in the specified months for production history in the first year (adjusted pursuant to paragraph (b)(1) of this section, if applicable) reduced by any adjustments pursuant to subparagraph (1)(iii) of this paragraph;

(ii) His average daily producer milk deliveries in the specified months for production history in the second year of his production history period, reduced by any adjustments pursuant to subparagraph (1)(iii) of this paragraph;

(iii) His average daily producer milk deliveries in the specified months for production history in the most recent year of his production history period reduced by any adjustments pursuant to subdivision (1)(iii) of this subparagraph which are applicable to a net disposal of Class I base by transfer;

(iv) The production history base assigned to such producer on the preceding February 1 (or effective date of this provision) subject to any adjustments pursuant to subpargraph (1) of this paragraph.

(3) For a producer with a 1- or 2-year production history period who did not acquire Class I base by transfer from another producer, the production history base shall be the sum of his average daily producer milk deliveries for each year (calculated in the same manner and subject to the same type of reductions as described in subparagraph (2)(i) of this paragraph) divided by the number of years in his production history period and multiplied by 60 percent if the producer has a 1-year production history period or by 80 percent if he has a 2-year production history period. The resulting quantity shall be subject to a further reduction of 20 percent in the case of any producer who began deliveries after the effective date of this provision or who is a producer described in § 1125.93(d).

(4) For a producer who has acquired a Class I base by transfer from another producer prior to assignment of a production history base computed from deliveries of his own milk production, the production history base to be assigned on the February 1 following a 1-year production history period of such producer shall be the larger of the amounts computed pursuant to subdivision (i) or (ii) of this subparagraph, and on the February 1 following a 2-year production history period shall be the amount computed pursuant to subdivision (iii) of this subparagraph.

(i) The production history base associated with the Class I base acquired, adjusted pursuant to subparagraph (1) of this paragraph.

(ii) One-third of his average daily producer milk deliveries in the specified production history months of the preceding year (adjusted pursuant to paragraph (b)(1) of this section, if applicable).

(iii) The production history base last assigned on a February 1 adjusted pursuant to subparagraph (1) of this paragraph plus one-third of the excess of the producer's average daily producer milk deliveries in the 4 production history months of the preceding year over such adjusted production history base.

(5) For a producer who has been assigned a production history base calculated only from deliveries of his own milk production during a 1-year production history period and who since such assignment has acquired Class I base by transfer from another producer, the production history base of such producer on February 1 following such acquisition of Class I base shall be the production history base last assigned to such producer on the effective date of this provision or on the latest preceding February 1 adjusted pursuant to subparagraph (1) of this paragraph plus one-third of the excess of the producer's average daily producer milk deliveries in the four production history months of the preceding year over such adjusted production history base.

(d) For each producer not subject to § 1125.93(d) who became a producer for this market after January 1, 1968, because the plant to which he regularly delivered milk became a fully regulated plant pursuant to this order, a production history base shall be determined, if possible, pursuant to paragraph (b) or (c) of this section based on his deliveries of milk as if the nonpool plant to which he delivered were a pool plant during the 3 preceding years.

(e) A producer not described pursuant to paragraph (d) of this section who delivered milk to a nonpool plant or who delivered manufacturing grade milk to a pool plant prior to becoming a producer, and who is not subject to the provisions of § 1125.93(d), shall have a production history base effective on the first day of the third month after the month in which he began deliveries of producer milk to a pool plant if a production history base can be computed pursuant to paragraph (b) or (c) of this section based on deliveries of milk from the same farm on which he is now a producer as if the plant(s) to which he delivered had been a pool plant(s) during the 3 preceding years.

(f) For a producer who held producer-handler status during any part of the production history periods specified in paragraph (a) of this section, a production history base shall be calculated as prescribed in paragraph (b) or (c) of this section as though the milk of his own production received at his producer-handler plant had been received at a pool plant.

(g) With respect to computation of production history bases pursuant to this section the following rules shall apply:

(1) If a producer operated more than one farm at the same time during any specified production period, a separate computation shall be made with respect to producer milk delivered from each such farm for such period, except that only one computation shall be made with respect to milk production resources and facilities of a producer-handler specified in § 1125.10(b)(1).

(2) Only one production history base shall be allotted with respect to milk produced by one or more persons where the land, buildings, and equipment are jointly used, owned, or operated.

§ 1125.93 Computation of Class I base or base milk for each producer.

On the effective date of this provision and on February 1 of each subsequent year the market administrator shall assign a Class I base to each producer who has a production history base. Class I bases shall be assigned to producers described in paragraphs (d), (e), and (f) of § 1125.92 when they are issued production history bases. Class I bases shall be computed as follows:

(a) Compute a "Class I base percentage" as follows:

(1) Determine the sum of Class I dispositions during the preceding calendar year from the following:

(i) Class I producer milk pursuant to § 1125.44(c),

(ii) The Class I disposition of plants during the period when they were nonpool plants, if such plants were pool plants in the preceding December, and

(iii) The Class I disposition of his own production of a person who was a producer-handler during a portion of the year and who held producer status in the preceding December.

Multiply the sum by 1.20 and divide the result by the number of days in such year: *Provided*, That on the effective date of this provision, comparable Class I disposition for the year 1970 will be determined, including that of former nonpool plants and producer-handlers which in the second month preceding the effective date were, respectively, pool plants and producers.

(2) Divide the quantity computed pursuant to paragraph (a)(1) of this section by a quantity which is the total of production history bases computed pursuant to § 1125.92. The result shall be converted to a percentage by multiplying by 100 and rounding to the third decimal place. Such percentage shall be known as the "Class I base percentage."

(b) The Class I base of each producer with a production history base shall be determined by multiplying his production history base by the "Class I base percentage."

(c) A producer, other than a producer pursuant to paragraph (d) of this section, who has no production history base shall be assigned base milk each month effective on the first day of the third month after the month in which he began deliveries of producer milk. Such base milk for each month prior to the first February 1 on which he is eligible for a Class I base shall be computed as follows:

(1) Multiply the quantity of producer milk delivered by the producer during the month by the ratio of average daily total producer milk in the market in the last 4 months described in § 1125.92(a)(1) used in the computation of production history base for assignment on the effective date hereof or on the February 1

preceding this computation to the average daily total producer milk in the market in the month of the year preceding this calculation which corresponds to the current month for which Class I base assignment is being computed.

(2) Multiply the quantity resulting from the computation pursuant to subparagraph (1) of this paragraph by 40 percent and by the Class I base percentage, and if such producer began production after the effective date of this provision, or is a producer described in paragraph (d) of this section, subtract from the resulting quantity 20 percent of such quantity, rounding in either event to the nearest whole number.

(d) A producer who, after having forfeited or disposed of all of his Class I base, either continues as a producer on the market or discontinues deliveries to the market and returns to the market as a producer, shall be assigned base milk computed in the manner specified in paragraph (c) (1) and (2) of this section, such assignment to be effective on the later of the following dates: The first day of the third month after the month in which he recommences deliveries of producer milk on the market, or the first day of the seventh month after the month in which a producer who forfeits his base ceases deliveries or a producer disposes of his Class I base. The production history period of such producer shall begin on the later of the following dates: the date on which he first received payment for base milk or the first day of the first month eligible for use in a production history period pursuant to § 1125.92(a). In the application of this provision, use of the same production facilities by another person (or the same person under a different name) to produce milk after the above described forfeiture or transfer of base shall be considered as a continuation of the operation by the previous operator if the new operator is a member of the immediate family of the previous operator. It shall be applied also to any production facility to which a Class I base has not been assigned, wherever located, operated by a person in which the producer who forfeited or transferred his base has a financial interest if such facility commences production on or after the effective date of the transfer or forfeiture, or such producer acquired his financial interest in such person later than 3 months prior to the effective date of the base transfer or forfeiture.

§ 1125.94 Transfer of bases.

Production history and Class I base may be transferred pursuant to the following rules and conditions:

(a) A transfer of base means the transfer of both the production history base and the Class I base associated with it at the time of transfer. The percentage of Class I base transferred shall be applied to the total production history base held at the time of transfer to determine the corresponding amount of production history transferred.

(b) The market administrator must be notified in writing by the holder of the Class I base prior to the first day of the month of transfer of the name of the person to whom the Class I base is to be transferred, the effective date of the transfer and the amount of base to be transferred if less than the entire Class I base held by the transferor.

(c) It must be established to the satisfaction of the market administrator that the conveyance of such base is bona fide and not for the purpose of evading any provision of this order, and comes within the remaining provisions of this section.

(d) A transfer may be made only to a producer (a person who is currently a producer on the market or who will become a producer under the terms of the order by the last day of the month of transfer).

(e) A transfer of Class I base may be made in amounts of not less than 150 pounds or the entire base, whichever is smaller. The amount of base credited to the transferee shall be two-thirds of the Class I base disposed of by the transferor producer.

(f) A transfer of a portion of a Class I base shall be a partial transfer and shall be effective only on the first day of a month. A transfer where the transferee producer will combine the Class I base received with Class I base already held shall be considered a partial transfer.

(g) A transfer of a complete Class I base of a producer to a person who does not hold a Class I base will be effective on the date of transfer of herd and farm, or on the first day of the month if no herd and farm is transferred, provided in either case that a base transfer request was made to the market administrator before the first day of the month of transfer.

(h) An intrafamily transfer (including transfers to an estate and from an estate to a member of the immediate family) will not be subject to a one-third lapse of base, provided that the transfer implements a continuous operation on the same farm with the same herd. All restrictions on transferring base applicable to the transferor producer shall also apply to the transferee.

(i) A producer who receives a base pursuant to § 1125.92 (d) or (e) may not transfer such base, other than pursuant to paragraph (h) of this section, for 1 year from the date of receipt or such later date as provided in paragraph (k) of this section.

(j) A producer-handler who becomes a producer and receives a base may not transfer that base for a period of 3 years from the date of receipt, except to a member of the immediate family pursuant to paragraph (h) of this section.

(k) A base which has been computed from a less than 3-year production history period may not be transferred, except as an intrafamily transfer pursuant to paragraph (h) of this section.

(l) If a base is held by a corporation, a change in ownership of the stock which transfers control to a new person or persons will require a transfer of bases and compliance with all base rules therein.

§ 1125.95 Miscellaneous base rules.

The following base rules shall be observed in the determination of bases:

(a) A person who discontinues delivery of producer milk for a period of 60 consecutive days after a Class I base is issued to him shall forfeit his production history, together with any Class I base and production history base held pursuant to the provisions of this order, except that a person entering the military service may retain them until 1 year after being released from active military service.

(b) As soon as production history bases and Class I bases are computed by the market administrator, notice of the amount of each producer's production history base and Class I base shall be given by the market administrator to the producer, to the handler receiving such producer's milk, and to the cooperative association of which the producer is a member. Each handler, following receipt of such notice, shall promptly post in a conspicuous place in his plant a list or lists showing the Class I base of each producer whose milk is received at such plant.

(c) As a condition for designation as a producer-handler pursuant to § 1125.10, any person (including any member of the immediate family of such a person, any affiliate of such a person, or any business of which such a person is a part) who has held Class I base any time during the 12-month period prior to such designation shall forfeit the maximum amount of Class I and production history base held at any time during such 12-month period.

§ 1125.96 Hardship provisions.

Requests of producers for relief from hardship or inequity arising under the provisions of §§ 1125.92 through 1125.95 will be subject to the following:

(a) After bases are first issued under this plan and after bases are issued on each succeeding February 1, a producer may request review of the following circumstances because of alleged hardship or inequity:

(1) He was not issued a Class I base;

(2) His production history base is not appropriate because of unusual conditions during the base-earning period such as loss of buildings, herds, or other facilities by fire, flood or storms, official quarantine, disease, pesticide residue, condemnation of milk, or military service of the producer or his son;

(3) Loss or potential loss of Class I base pursuant to § 1125.95(a);

(4) Loss or potential loss of Class I base because of underdeliveries pursuant to § 1125.92(c)(1);

(5) Inability to transfer base due to the provisions of § 1125.94 (i), (j), or (k);

(b) The producer shall file with the market administrator a request in writing for review of hardship or inequity not later than 45 days after notice pursuant to § 1125.95(b) with respect to requests pursuant to paragraph (a) (1) or (2) of this section, or not later than 45 days

after the occurrence with respect to requests pursuant to paragraph (a) (3), (4), or (5) of this section, setting forth:

(1) Conditions that caused the alleged hardship or inequity;

(2) The extent of the relief or adjustment requested;

(3) The basis upon which the amount of adjustment requested was determined; and

(4) Reasons why the relief or adjustment should be granted.

(c) One or more Producer Base Committees shall be established and function as follows:

(1) Each Producer Base Committee shall consist of five producers appointed by the market administrator.

(2) Each committee shall review the requests for relief from hardship or inequity referred to it by the market administrator at a meeting in which the market administrator or his representative serves as recording secretary and at which the applicant may appear in person if he so requests.

(3) Recommendations with respect to each such request shall be endorsed at the meeting by at least three committee members and shall:

(i) With respect to requests pursuant to paragraph (a) (1), (3), (4), or (5) of this section, grant or adjust production history bases and average daily producer milk deliveries for prior years where it appears appropriate, delay forfeiture of Class I base, restore forfeited base or reduced average daily producer milk deliveries where appropriate, and permit transfer of base not otherwise possible under the order provisions.

(ii) With respect to requests pursuant to paragraph (a)(2) of this section, either reject the request or provide adjustment in the form of additional production history base and average daily producer milk deliveries for prior years where it appears appropriate and the effective date thereof of such adjustment. In considering such requests the loss of milk production due to the following shall not be considered a basis for hardship adjustment:

(*a*) Loss of milk due to mechanical failure of farm tank or other farm equipment; and

(*b*) Inability to obtain adequate labor to maintain milk production, except that hardship adjustment may be granted in the case of a producer or the son of a producer who entered into military service directly from employment in milk production;

(4) Recommendation of the Producer Base Committee shall:

(i) If to deny the request, be final upon notification to the producer, subject only to appeal by the producer to the Director, Dairy Division, within 45 days after such notification; or

(ii) If to grant the request in whole or in part, be transmitted to the Director, Dairy Division, and shall become final unless vetoed by such Director within 15 days after transmitted.

(5) Committee members shall be reimbursed by the market administrator from the funds collected under § 1125.85 for their services at $20 per day or portion thereof, plus necessary travel and subsistence expenses incurred in the performance of their duties as committee members.

(d) The market administrator shall maintain files of all requests for alleviation of hardship and the disposition of such requests. These files shall be open to the inspection of any interested person during the regular office hours of the market administrator.

Signed at Washington, D.C., on February 26, 1973.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.73-3967 Filed 3-2-73;8:45 am]

Agricultural Stabilization and Conservation Service

[7 CFR Part 724]

CIGAR-BINDER (TYPES 51 AND 52) TOBACCO

Termination of Marketing Quotas for 1973–74 Marketing Year

Pursuant to and in accordance with section 371(a) of the Agricultural Adjustment Act of 1938, as amended (referred to hereinafter as the "Act"), an investigation is being made to determine whether the operation of farm marketing quotas in effect on cigar-binder (types 51 and 52) tobacco for the 1973–74 marketing year will cause the amount of such kind of tobacco which will be free of marketing restrictions to be less than the normal supply for such kind of tobacco for such marketing year.

If upon the basis of such investigation the Secretary finds the existence of such fact, he will proclaim the same and specify such increase in, or termination of, existing quotas as he finds, on the basis of such investigation, is necessary to make the amount of such kind of tobacco which will be free of marketing restrictions for the 1973–74 marketing year equal to the normal supply.

Having previously terminated national marketing quotas for the 1970–71 marketing year (35 FR 7361) and the 1971–72 marketing year (36 FR 4977), the Secretary proclaimed marketing quotas for this kind of tobacco for the 1972–73, 1973–74 and 1974–75 marketing years (36 FR 24060). Farmers approved marketing quotas for such 3 marketing years in referendum, (37 FR 3422), and marketing quotas for the 1972–73 marketing year were later terminated (37 FR 5599).

Under present legislation the termination of marketing quotas for any given marketing year would be limited in application and effect to that year only.

Under section 106 of the Agricultural Act of 1949, as amended, price support will be available on the 1973 crop of cigar-binder (types 51 and 52) tobacco even if marketing quotas are terminated since producers did not disapprove marketing quotas. Further, as authorized by section 101 of such Act, price support will be made available on all cigar-binder (types 51 and 52) tobacco produced in 1973 if marketing quotas are terminated.

Data show that total disappearance (domestic use plus exports) of cigar-binder (types 51 and 52) tobacco has decreased from 26 million pounds during the 1955–56 marketing year, prior to the advent of reconstituted binder sheet, to 2.6 million pounds during the 1971–72 marketing year. Disappearance is expected to be about 2.6 million pounds during the 1972–73 marketing year. This has necessitated drastic adjustments in production. Producers have used the Soil Bank and the Cropland Adjustment Programs extensively in making these adjustments. In addition, the allotted acreage has been reduced from 17,643 acres in the 1955–56 marketing year to about 5,850 acres in 1973.

Total disappearance (domestic use plus exports) exceeded production each year from 1955 through 1969. Production slightly exceeded disappearance in 1970 and 1971, and is expected to be slightly less in 1972. The excessive supplies have been used up, resulting in less than normal supplies at the end of the 1971–72 marketing year. In 1968, 36.5 percent of the allotted acreage was harvested. In 1969, acreage allotments were increased 50 percent and the harvested acreage as a percent of the allotted acreage declined to 26.4. With quotas terminated, the harvested acreage in 1970, 1971, and 1972 was 1,670, 1,610, and 1,510 acres respectively. If the 1973 harvested acreage is the same as the 1972 harvested acreage, and if a yield per acre about equal to the average of the 1970, 1971, and 1972 per acre yields were obtained, production would equal about 2.6 million pounds. A 2.6 million pound crop and a carryover (estimated) of 7.3 million pounds would provide a total supply for the 1973–74 marketing year of 9.9 million pounds. The normal supply is 14.8 million pounds.

Section 371(a) of the Act provides that in the course of the investigation conducted by the Secretary, due notice and opportunity for hearing shall be given to interested persons. Accordingly, consideration will be given to data, views, and recommendations pertaining to the determinations and actions described in this notice which are submitted in writing to the Director, Tobacco Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. All submissions made pursuant to this notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 3741, South Building, 14th and Independence Avenue SW., Washington, D.C. All submissions must, in order to be sure of consideration, be postmarked on or before March 20, 1973.

Signed at Washington, D.C., on February 27, 1973.

KENNETH E. FRICK,
Administrator, Agricultural Stabilizaiton and Conservation Service.

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DEPARTMENT OF COMMERCE

Office of Foreign Direct Investments

[15 CFR Part 1000]

FOREIGN DIRECT INVESTMENT REGULATIONS

Transfer of Capital: Export Credit Exemption

EDITORIAL NOTE: The Foreign Direct Investment Regulations appear in Title 15, Chapter X, Part 1000 of the Code of Federal Regulations (CFR). All sections of the Foreign Direct Investment Regulations contained in CFR are preceded by the designation "1000" (e.g. § 1000.312). The "1000" prefix has, for convenience, been eliminated from the section references contained in the explanatory material below. The abbreviations "DI" and "AFN" are used to refer to "direct investor" and "affiliated foreign national."

Notice is hereby given that the Office of Foreign Direct Investments (the "Office") proposes to make certain amendments to the Foreign Direct Investment Regulations (the "Regulations"). On January 2, 1973, the Office announced that credits extended by DIs on normal commercial terms to their AFNs with respect to export sales or leases of qualifying U.S. goods and services would be exempted under the Regulations. The purpose of the amendments proposed herein is to implement the export credit exemption policy announced on January 2. On January 3, 1973, certain amendments to the Regulations (§§ 312(e) and 313(f)) were published in the FEDERAL REGISTER, at page 9, to prevent DIs from using knowledge of the proposed exemption to gain undue advantage. The interim protective amendments, superseded by the exemption system in the regulations proposed herein, will be revoked.

The amendments, which are liberalizing in nature, will apply to transactions effected after December 31, 1972. These amendments will not affect the computation of positive direct investment during the base period, 1965–1966, for any purpose of the Regulations. Forms FDI–101, on which the base period calculations are reported, will not have to be revised by reason of these amendments.

Prior to the adoption of these amendments, consideration will be given to any comments, data, views, arguments, or suggestions pertaining thereto which are submitted in writing and received by the Office on or before April 19, 1973. Such comments or suggestions should be directed to the Chief Counsel, Office of Foreign Direct Investments, Department of Commerce, Washington, D.C. 20230.

1. *General explanation.* Under the Regulations in effect through 1972, the acquisition by a DI of an obligation of an incorporated AFN attendant to an export sale of goods or services to the AFN by the DI was a positive transfer of capital under § 312(a)(1); repayment of the obligation by the AFN, or transfer of the obligation by the DI, was a negative transfer of capital under § 312(b)(3) or § 312(b)(5). The rules applicable to unincorporated AFNs produced the same result. The proposed export credit exemption provisions of the regulations (§§ 312(c)(13), 312(c)(14), 313(b)), to be effective for transactions after December 31, 1972, will in general block all positive and negative transfers of capital in connection with qualifying export transactions.

Section 312(c)(13) will be the principal provision governing the treatment of obligations of incorporated AFNs acquired by DIs in connection with qualified export sale transactions. For such transactions § 312(c)(13) will establish exceptions to the general definitions of positive and negative transfers of capital set forth in §§ 312(a) and 312(b). Provisions in § 313(b), governed by the definitions set forth in § 312(c)(13), will provide the same substantive treatment with respect to unincorporated AFNs. Section 312(c)(14) will provide an exclusion with respect to the transfer or return of property pursuant to qualified export leases by DIs to incorporated AFNs.

Under § 312(c)(13) no transfer of capital will be recognized in connection with an acquisition by a DI after December 31, 1972 of a debt obligation of an incorporated AFN attendant to a sale by the DI to the AFN of U.S. goods or U.S. services, until the obligation has been outstanding for a period longer than the arm's length term applicable to the transaction. A positive transfer of capital in the amount of the debt obligation will be charged when the credit becomes overdue as measured by the arm's length term if the DI holds the obligation at that time. After December 31, 1972 no negative transfer of capital will be recognized in connection with any repayment of a qualified export obligation by an AFN, or transfer by a DI of such an obligation, except to the extent that a positive transfer of capital will have been previously recognized after December 31, 1972 with respect to the obligation. (It should be noted that this rule will apply to the repayment or transfer after 1972 of qualified export obligations that were acquired by the DI in 1972 or earlier.) Moreover, after December 31, 1972, no negative transfer of capital will be recognized for the repayment by or in behalf of an AFN of a qualified export obligation held by a financial institution subject to the Federal Reserve Foreign Credit Restraint Program, even though such repayment would have been deemed a transfer of capital by the AFN under the proviso to § 312(c)(4) or § 312(c)(12).

The substantive rules applicable to unincorporated AFNs will produce the same net result. Ordinarily the liability of an unincorporated AFN to a DI is excluded in calculating the net assets of the AFN under § 313(b). Thus, a sale of goods by the DI to the AFN on credit results in an increase in the AFN's net assets by increasing its assets without increasing its liabilities. This has the effect of a positive transfer of capital. Under proposed § 313(b), the liabilities of unincorporated AFNs to the DI which represent qualified export obligations will not be excluded from the calculation of net assets, until such obligations have been outstanding for periods of time longer than the arm's length terms applicable to them. When such obligations become overdue as measured by the arm's length term, they must be excluded in the net asset calculation; this increases net assets and has the effect of a positive transfer of capital. Payment made to the DI from AFN assets, eliminating the excluded liability, will reduce net assets and have the effect of a negative transfer of capital.

A qualified export obligation which is acquired and then satisfied or transferred within the same year will have no net effect under the Regulations, whether or not it is repaid or transferred within the period of the arm's length term applicable to the transaction. But where the debt obligation remains outstanding at yearend, and is at that time overdue as measured by the arm's length term, the DI will incur a positive transfer of capital in that year. The DI can recognize a negative transfer of capital in the year in which such obligation is repaid or transferred.

Under the proposed amendments, §§ 312(c)(4) and 312(c)(12) as amended effective January 1, 1973 will not be applicable to qualified export obligations. Thus, if a DI transfers a qualified export obligation to an institution subject to the Federal Reserve Foreign Credit Restraint Program ("FRFCRP"), or an AFN obtains funds from such an institution to repay a qualified export obligation to the DI, §§ 312(c)(4) and 312(c)(12) will have no affect on the treatment of such transactions under the Regulations, regardless of whether the institutions charge their ceilings under the FRFCRP in connection with the transactions.

The provisions of §§ 312(c)(13) (pertaining to incorporated AFNs) and 313(b)(1), (2) (pertaining to unincorporated AFNs) will apply to sales transactions. Separate provision is made in proposed § 312(c)(14) to accomplish the exemption of the transfer of property to an incorporated AFN pursuant to a qualifying export lease and the return of property so transferred. The effect of these provisions is described in paragraph 8, below.

Addition of § 312(c)(13) and amendment of § 313(b) will not affect the treatment of acquisitions of export obligations of AFNs which are not qualified export obligations as defined in § 312(c)(13). Acquisitions of such nonqualified obligations will continue to constitute positive transfers of capital under § 312(a)(1), or in the case of unincorporated AFNs increases in net assets under § 313(b) (by exclusion of the imputed debt obligation), at the times the obligations are acquired; repayment of the obligations by the AFN or transfers of them by the DI will continue to constitute negative transfers of capital under § 312(b)(3) or § 312(b)(5) or a decrease in net assets under § 313(b) (unless recognition of the negative transfer of capital or reduction in assets is blocked by § 312(c)(4) or § 312(c)(12)). Also, § 312(c)(14), which will provide an exemption

for qualified lease transactions, will not affect the treatment of nonqualified leases. It should be carefully noted that these rules apply regardless of whether the nonqualified obligation or lease arose before or after yearend 1972.

Because of the differing treatment which will be provided for qualified and nonqualified export obligations and leases, DIs (except DIs which elect out of the exemption system in accordance with § 312(c)(13)(vi)) will find they need to segregate on their books and records those AFN obligations which are qualified export obligations and those lease transactions which constitute qualified export leases. DIs will also be required to determine which of the AFN obligations held as of the end of the year 1972 were qualified export obligations and which leases outstanding were qualified export leases, since repayment of such qualified export obligations and returns of property under such leases will not be negative transfers of capital.

The proposed amendments will not affect the 1965–1966 ("base period") positive direct investment calculations. Revised base period reports on Form FDI–101 will not have to be submitted by reason of the proposed amendments.

Quarterly reports on Form FDI–102 will not be required to reflect transfers of capital to or from AFNs related to qualified export obligations or qualified export leases.

The proposed amendments are described in greater detail as follows:

2. *Definitions.*—a. *Qualified export obligation.* Under proposed § 312(c)(13)(ii)(A), the term "qualified export, obligation" will mean a debt obligation of an AFN acquired by a DI in any year (including any year before 1973) attendant to a sale of U.S. goods or U.S. services. There will be two exceptions:

(1) In no event will a qualified export obligation be recognized in connection with a transaction which is in substance a contribution to capital. Where a transfer of goods or services is recorded on a DI's books and records as a credit sale, and timely payment is subsequently forgiven in whole or in part, the transaction may be deemed a contribution to capital in the year the goods or services were transferred in the amount of the full value of such goods or services. (However, where changed circumstances give rise to a legitimate business reason for forgiving the indebtedness attendant to a transaction previously treated in good faith as a credit sale, the amount of the debt forgiven will be treated as a transfer of capital in the year of forgiveness.) This rule will apply to unincorporated AFNs as well as incorporated AFNs. Thus, where a DI ships goods to an unicorporated AFN or performs services for it with the arrangement that the AFN will make full payment for the goods or services, the DI may treat the transaction as a sale to the unincorporated AFN. If the other requirements are met, such a sale will give rise to a qualified export obligation. However, if the DI does not anticipate full payment for the goods or services, or forgoes payment, the transaction may be considered a contribution to capital, which does not give rise to a qualified export obligation.

(2) In no event will a qualified export obligation arise in connection with an installment sale unless the terms of the sale require installment payments at an arm's length rate, taking into account the time and amount of each payment to be made. For example, if a DI sells equipment to an AFN for a total price of $60,000, and the sale agreement requires three semiannual payments of $10,000 and a final semiannual payment of $30,000, the sale does not require payments at an arm's length rate, and thus would not give rise to qualified export obligations, if an arm's length rate of payment would require four semiannual payments of $15,000. If, on the other hand, the agreement requires an initial semiannual installment of $30,000 and three additional semiannual payments of $10,000, the sale would give rise to qualified export obligations since the rate of payment required is faster than the arm's length rate. The arm's length rate of payment for these purposes will be the rate that would have been provided at the time the transaction was entered into, in independent transactions with or between unrelated parties under similar circumstances, considering all relevant factors except the credit standing of the AFN. The AFN will be considered to be an average or typical credit risk, but not an unusually good or a poor one. See paragraph 4 below.

Each payment due under an installment sale which gives rise to a qualified export obligation, will be deemed to be a separate qualified export obligation. Thus, in the last example in the preceding paragraph, the transaction would give rise to one qualified export obligation of $30,000 and three qualified export obligations of $10,000 each, due at successive semiannual intervals.

b. *United States goods.* The exemption of § 312(c)(13) will be applicable, in the case of goods, to sales of "United States goods", which will be defined in § 312(c)(13)(iii) to be tangible property meeting two requirements. It must be grown, produced or manufactured in the United States, and it must be exported from the United States by the DI.

Property will be considerd grown, produced or manufactured in the United States only if it may be classified as "domestic" for purposes of a Department of Commerce Shipper's Export Declaration on Commerce Department Form 7525–V. This is the form which must be completed and submitted by all exporters shipping domestic goods from the United States. With regard to classification of goods shipped as "foreign" or "domestic", Article IV of the form provides as follows:

> Exports of domestic merchandise include commodities which are the growth, produce, or manufacture of the United States. Exports of foreign merchandise include commodities of foreign origin which entered the United States as imports, and which, at the time of exportation, are in the same condition as when imported. Commodities of foreign origin which have been changed in the United States from the form in which they were imported, or which have been enhanced in value by further manufacture in the United States, are considered as "domestic" commodities.

c. *United States services.* Sales of services will qualify for the § 312(c)(13) exemption only if they are "United States services", as defined in proposed § 312(c)(13)(iv), which must be services performed for an AFN by the DI. Services performed by a DI through one of its AFNs for another AFN will not be considered performed by the DI. Services subcontracted to another party for performance on behalf of the DI will not be considered performed by the DI.

d. *Arm's length term.* The Regulations will establish as applicable to each qualified export obligation a qualifying duration of the credit extended, based on the concept of the "arm's length term". This is explained in paragraphs 4 and 5, below.

3. *Overdue qualified export credit.* As stated above, under the Regulations in effect through 1972, a positive transfer of capital was recognized upon the acquisition of an AFN obligation by a DI in connection with any credit sale to the AFN, and a negative transfer of capital was recognized upon repayment of the obligation by the AFN or transfer of it by the DI. Under proposed § 312(c)(13)(i), no positive transfer of capital will be recognized in connection with an acquisition after December 31, 1972, of a qualified export obligation of an incorporated AFN until the obligation, held by the DI, has been outstanding for a period longer than the arm's length term applicable to it. Thus, if the obligation is not "overdue" as measured by the arm's length term, no positive transfer of capital will arise. The repayment or other satisfaction of a qualified export obligation by an incorporated AFN, or transfer by a DI of a qualified export obligation, will not constitute a negative transfer of capital if effected within the period of the arm's length term. If, however, the obligation becomes overdue and is held by the DI so that a positive transfer of capital is recognized with respect to it (after December 31, 1972), such repayment or satisfaction or transfer will constitute a negative transfer of capital.

The rules provided in the proposed amendments to § 313(b) applying to unincorporated AFNs will produce the same net results as the rules for incorporated AFNs. Where a qualified export obligation of an unincorporated AFN is acquired by a DI the liability of the AFN will be included in calculating the net assets of the AFN under § 313(b) until the obligation has been outstanding for a period longer than the arm's length term applicable to it. This AFN liability will either offset the exported asset (resulting in no change in the net asset position) or, where payment for services is expensed, produce a reduction in net assets.

Where payment or satisfaction of the qualified export obligation is made before the obligation becomes overdue as

measured by the arm's length term, there will be a reduction in assets and a corresponding reduction in liabilities, producing no change in net assets. The net result of the credit sale and subsqeuent payment within the arm's length term will be either (1) no change in net assets if an asset is recognized (as for the purchase of goods or capitalized services), or, (2) a reduction in net assets if the item purchased is expensed (as for the purchase of expensed services).

But when the obligation becomes overdue under the arm's length term the liability must then he excluded in calculating net assets under § 313(b), resulting in an increase in net assets. The net change attendant to the sale on credit and subsequent failure to pay within the arm's length term will be an increase in net assets where an asset is recognized (as for the purchase of goods or of capitalized services), or no change in net assets where the item purchased is expensed (as for the purchase of expensed services). Repayment by an AFN of an "overdue" qualified export obligation will result in a reduction in net assets as computed under § 313(b), since cash is expended to pay the obligation but the liability eliminated is an excluded liability.

Under proposed § 313(b)(2) any reduction in net assets resulting from a repayment of a qualified export obligation acquired by the direct investor prior to 1973 will be disregarded in computing the increase or decrease in net assets of the AFN.

For any year commencing with 1973, the DI will compute positive transfers of capital related to qualified export obligations (of either an incorporated or an unincorporated AFN) on the basis of the qualified export obligations of the AFN that are overdue at yearend as measured by the arm's length term. When such overdue obligations are repaid by the AFN in a subsequent year, a negative transfer of capital will be recognized.

Example 1. On March 15, 1973 DI sells $50,000 worth of U.S. goods to an incorporated AFN. On October 31, 1973, the DI sells $75,000 worth of U.S. goods to the AFN. The arm's length term applicable to both transactions is 9 months. As of December 31, 1973, neither qualified export obligation has been repaid. A positive transfer of capital of $50,000 is recognized in connection with the first acquisition on December 15, 1973, the date the obligation became overdue as measured by the 9-month arm's length term applicable to it. Since the obligation has not been repaid by yearend 1973, there is no offsetting negative, and the positive transfer of capital must be charged for 1973 Program compliance. No transfer of capital is recognized, however, in connection with the second qualified export obligation, since at yearend 1973 the obligation has been outstanding for a period less than the 9-month arm's length term applicable to it.

On January 31, 1974, the AFN repays both obligations ($125,000). A negative transfer of capital of only $50,000 is recognized in connection with the repayments, since a positive transfer of capital of only $50,000 was previously recognized as a result of acquisition of the obligations.

Example 2. Same facts as in Example 1 except that the AFN involved is unincorporated. As of December 31, 1973, the net assets of the AFN have been increased by $50,000 as a result of the first purchase, since the exported goods are included as AFN assets, while the liability to the DI arising from the purchase, having become overdue as measured by the arm's length term on December 15, 1973, is excluded in calculating the net assets of the AFN under § 313(b). The second purchase has no effect on net assets, since the liability is not overdue as of yearend and therefore is included in calculating the AFN's net assets, offsetting the acquired asset. When the obligations are repaid on January 31, 1974, the repayment of the $50,000 obligation results in a $50,000 reduction in net assets as computed under § 313(b). There is a $50,000 reduction in assets (cash), while there is no reduction in liabilities since the corresponding liability had been excluded for § 313(b) purposes. The repayment of the $75,000 obligation has no effect on net assets as computed under § 313(b) since the liability eliminated is an included liability; thus, the reduction in assets is offset by the reduction in liabilites.

As with nonqualifying obligations, where an incorporated or unincorporated AFN transfers an account receivable, note or other debt obligation of an unaffiliated foreign person in satisfaction of a qualified export obligation (or in immediate payment where nonpayment would give rise to a qualified export obligation) the qualified export obligation will be deemed to remain outstanding and held by the DI. The qualified export obligation will be deemed repaid by the AFN or transferred by the DI only when the debt obligation of the unaffiliated person is repaid to the DI or is transferred by the DI to an unaffiliated foreign national or to a U.S. financial institution subject to the FRFCRP which charges its ceiling under that program in connection with the acquisition. See § B312–15(iii) of the 1972 General Bulletin.

4. *Arm's length term.* The arm's length term, defined under proposed § 312(c)-(13)(v), will be the length of time to make payment which would have been provided at the time the sale is entered into, in an independent transaction between unrelated parties under similar circumstances, considering all relevant factors except the credit standing of the AFN. The AFN will be considered to be an average or typical credit risk, but not an unusually good or a poor one. Relevant factors to be considered include the type of goods or services, the security if any, shipping time, and the terms prevailing at the situs for comparable transactions.

With respect to the sale of U.S. goods, any term of 180 days or less from the time of the shipment of the goods will be deemed an arm's length term. With respect to the sale of U.S. services, any term of 90 days or less, measured from the end of the month in which such services would be billed in a similar transaction between unrelated parties, will be deemed an arm's length term. Furthermore, where U.S. services are related and subsidiary to a sale of goods which entails a qualified export obligation, the arm's length term will be the same as that for the sale of the goods.

Where there is an insufficient number of similar independent transactions from which the DI can reasonably determine the duration of credit which would have been extended in such transactions, and where an AFN resells or leases the goods or services (without significant further processing) to an unrelated foreign person, the term of credit extended by the AFN to the unrelated person may, in the absence of strong contrary considerations, be added to appropriate shipping time to determine the arm's length term.

5. *Arm's length term for installment sales.* As explained in paragraph 1, above, an installment sale will give rise to qualified export obligations only if payments under the terms of the sale are to be made at an arm's length rate; for installment sales so qualifying, each payment will be considered a separate export obligation. Thus, a term within arm's length limits will be established by agreement with respect to each individual installment. If all payments are made on schedule, no positive or negative transfer of capital will be recognized in connection with the sale. But when a scheduled payment is not timely made, a positive transfer of capital will arise. Subsequent payment of the obligation, for which a positive transfer of capital has been recognized, after December 31, 1972, will constitute a negative transfer of capital.

Example 3. On March 31, 1973, DI sells a computer to an AFN for $5 million, the fair market value. The terms of the sale provide for 20 semiannual installments of $250,000, with interest, commencing September 30, 1973. An arm's length rate of payment would require 10 semiannual installments of $500,000, with interest. The sale does not give rise to qualified export obligations.

Example 4. Same facts as in Example 3 except that the sale agreement requires the arm's length rate of payment—10 semiannual installments of $500,000, with interest, commencing September 30, 1973. The AFN does not make the September 30 payment called for under the contract. A positive transfer of capital of $500,000 is therefore recognized under § 312(a)(1) as modified by § 312(c)(13)(i)(A). (Nonpayment of the interest due on September 30 is also a positive transfer of capital under § 312(a)(1). See § B312-18(viii) of the 1972 General Bulletin.) On March 31, 1974 the AFN pays the DI $1 million (the installment currently due and the overdue installment) plus all accrued interest. A negative transfer of capital of $500,000 is recognized by reason of the payment of the overdue installment for which a positive transfer of capital was previously recognized. (A negative transfer of capital for payment of the overdue interest is also recognized.) There is no negative transfer of capital for payment of the March 31 installment, which was not overdue.

6. *Applicability to § 313(e).* As announced January 2, 1973, and as provided by the interim protective amendment § 313(f) promulgated January 3, the adoption of the export credit exemption will have no effect on the operation of § 313(e) for the year 1972. Section 313(e) of the Regulations affords DIs options with respect to AFN repayments to the

DI in January or February 1973 of debt obligations (including those relating to export credits extended by the DI to the AFN) outstanding on December 31, 1972. If such debt obligations were repaid in January 1973, or (as alternatively elected by the DI) repaid in January and February 1973, the resulting transfers of capital by incorporated AFNs and decreases in net assets of unincorporated AFNs could be included in calculating the DI's 1972 net transfers of capital for pertinent scheduled areas, provided the DI made a worldwide negative net transfer of capital during the period elected and the aggregate amount of such AFN debt repayment used for 1972 calculations did not exceed the amount of such worldwide negative net transfer of capital.

This provision is not being amended. As confirmed by proposed § 313(e)(4), the use of the § 313(e) options is governed by the Regulations as in force on December 31, 1972. Thus, a DI may count a repayment in January or February 1973 by an AFN of a qualified export obligation outstanding on December 31, 1972 as a negative transfer of capital for purposes of computing 1972 transfers of capital under § 313(e), even though repayment of such obligation would not constitute a negative transfer of capital for 1973. If a DI chooses to include repayments of qualified export obligations as negative transfers of capital in computing 1972 compliance under § 313(e), the DI must include acquisition of qualified export obligations during the elected extension period as positive transfers of capital for purposes of computing the worldwide net transfer of capital during the period under § 313(e)(2), even though such acquisitions are not in themselves charged as positive transfers of capital for the year 1973.

After examination of the relevant data, the Office has concluded that the "recapture" provision of § 312(e) published January 3, 1973, applicable to repayments of qualified export obligations in 1973 under § 313(e), is not necessary. Accordingly, the proposed amendments will revoke § 312(e).

7. *Nonrenewal of § 313(e) for 1973.* Under the proposed export credit exemption system, § 313(e) is not being renewed to apply to the compliance year 1973. The § 313(e) device aided DIs that experienced unusually high levels of export credit outstanding to their AFNs toward the end of a compliance year. The extension period permitted additional time for such DIs to reduce their levels of outstanding credit to a normal level and eliminate the positive transfer of capital charge arising from the higher level. Since positive transfers of capital will not ordinarily arise from increased levels of export credit under the proposed exemption system, § 313(e) will not be necessary for 1973. It is noted that the related § 312(e) recapture provision, published January 3, 1973, will be revoked.

8. *Qualified export leases.* Under the regulations in force on December 31, 1972, a lease of property by a DI to an incorporated AFN was a positive transfer of capital (§ 312(a)(8)) in the amount of the fair market value of the property at the time of the transfer. Return of the property by the AFN was a negative transfer of capital in the amount of the fair market value at the time of the return. Payments of rental charges currently due were not transfers of capital, but failure of an AFN to make timely payment was a positive transfer of capital and subsequent payment of the overdue rent was a negative transfer of capital.

Under proposed § 312(c)(14), effective for transactions after December 31, 1972, transfers of property to incorporated AFNs pursuant to qualified export leases will be exempt from transfer of capital charge. Return of property under a qualified lease will not be a negative transfer of capital.

A lease by a DI to an incorporated AFN is a qualified export lease if it (1) transfers U.S. goods and (2) provides rental payments at an arm's length rate, considering the time and amount of each payment to be made. The arm's length rate of rental payment is determined in the same manner as for installment sales. See paragraphs 2a (2) and 5 above.

In no event will a transfer be recognized as pursuant to a qualified export lease if it is, in substance, a contribution to capital, regardless of the manner in which such transfer is entered on the DI's books and records. Accordingly, if rental payments are subsequently forgiven, in whole or in part, with respect to a transfer recorded by a DI as a lease, the transaction transferring the goods may be deemed a contribution to capital in the year the goods are transferred in the amount of the full value of such goods. (However, where changed business circumstances give rise to a legitimate business reason for contributing the leased property to the capital of the AFN, a transfer of capital attendant to such a contribution will be recognized in the year the contribution is made in the amount of the then fair market value of the property. See paragraph 2a(1), above.)

Where a lease meets the qualification requirements, the transfer of property to the AFN will not constitute a positive transfer of capital, notwithstanding § 312(a)(8); the return of the property by the AFN, whether or not the property was leased after 1972, will not constitute a negative transfer of capital under § 312(b) (as described in § B312-12 of the 1972 General Bulletin). Rental payments under such a lease, however, will be subject to the same provisions as apply to nonqualified leases under the general provisions of the Regulations. If a rental payment to the AFN becomes overdue, an acquisition of a debt obligation of an AFN will be recognized, which constitutes a positive transfer of capital under § 312(a)(1). When payment of the overdue rent is made, a negative transfer of capital will be recognized under § 312(b)(3). If all rental payments are met on schedule as required under the terms of the lease, no transfer of capital will be recognized at any time.

Where leased property is not returned at the termination of the lease (and the lease is not extended), a contribution to capital in the full fair market value of the property will be recognized, constituting a positive transfer of capital under § 312(a)(2). Subsequent return of the property by the AFN will constitute a negative transfer of capital under § 312(b)(2).

A DI which elects not to be subject to the export credit exemption scheme, as discussed in paragraph 9, may not treat any lease as a qualified export lease under § 312(c)(14).

9. *Election out of export credit exemption system.* Proposed § 312(c)(13)(vi) provides that any direct investor may elect that none of its transactions be deemed to involve qualified export obligations or qualified export leases. In effect, this permits the DI to disregard the export credit exemption system and treat all export obligations and leases as nonqualifying; the effect of the Regulations governing the export credit transactions of such an electing DI will be the same as under the Regulations in effect on December 31, 1972. In this connection, it should be noted that the standard export credit specific authorization available for years prior to 1973 would no longer be obtainable.

The election out will be made by notification on the Form FDI-102F for 1973 filed by the DI. Any DI not affirmatively electing out at such time will be subject to all provisions of the Regulations concerning qualified export obligations and qualified export leases.

An election out once made by a DI will not be revocable without the prior permission of the Office.

10. *Reporting.* Quarterly reports on Form FDI-102 will not have to reflect transfers of capital to or from AFNs related to qualified export obligations or qualified export leases. The quarterly and annual reports will, however, continue to require reporting of the "memo" items concerning exports and export credit.

11. *Relation to § 312(c)(4) and § 312(c)(12).* Proposed amendments to §§ 312(c)(4) and 312(c)(12) provide that, commencing January 1, 1973 these subparagraphs will not apply to transactions involving qualified export obligations or qualified export leases. (Where a DI has elected out of the export credit exemption system under proposed § 312(c)(13)(vi), however, none of the DI's transactions will involve such obligations or leases; therefore §§ 312(c)(4) and (12) will be fully applicable to such a DI.) It should also be noted that, commencing January 1, 1973, under proposed § 312(c)(13)(i)(c), any repayment relating to a qualified export obligation that would otherwise be deemed a transfer of capital under the proviso to § 312(c)(4) or the proviso to § 312(c)(12) is deemed not to be a transfer of capital.

Thus, if, prior to January 1, 1973, a DI transferred a qualified export obligation to an institution subject to the FRFCRP and the negative transfer of

capital attendant to the transfer was blocked by § 312(c)(4), repayment of the obligation in 1973 will not be deemed a negative transfer of capital. If such an obligation is transferred by a DI after December 31, 1972 to an institution subject to the FRFCRP, § 312(c)(4) will have no effect on the treatment of the transaction under the Regulations, regardless of whether the institution charges its FRFCRP ceiling in connection with the transfer.

12. *Transfers between AFNs.* The export credit exemption system will not apply to transactions between AFNs. Proposed § 505(a)(7) provides that, in determining the effect of transfers between AFNs and the effect of changes in nets assets of unincorporated AFNs affiliated foreign nationals under § 505, the fact that the underlying transactions may involve qualified export obligations or qualified export leases shall be disregarded.

13. *Effect on specific authorization process.* If the proposed exemption scheme is adopted, the standard export credit specific authorizations previously available will no longer be obtainable. (These specific authorizations are described in the June 16, 1972 memorandum for DIs and also on page 39 of the publication titled "1972 Foreign Direct Investment Program".)

Specific authorizations granted in the past with regard to export credit contained "recapture" provisions which deemed the DIs to make positive transfers of capital in subsequent years under certain circumstances. Although there have been different recapture provisions employed, each is geared in some manner to reductions in the level of exports or export credit from that at the end of the year for which the specific authorization was obtained. If the proposed export credit exemption system is adopted, the Office will generally forgive all export credit specific authorization recapture provisions still outstanding for those DIs that do not elect out of the exemption system under § 312(c)(13)(vi). This general forgiveness will not apply to recapture charges incurred in 1972 but deferred to 1973 at the option of DIs.

The text of the proposed amendments is as follows:

a. In § 1000.312, paragraphs (c)(4) and (12) are revised, paragraphs (c)(13) and (14) are added, and paragraph (e) is revoked as follows:

§ 1000.312 Transfers of capital.

* * * * *

(c) * * *

(4) A transfer described in paragraph (b)(5) of this section, other than a transfer after December 31, 1972 of a qualified export obligation, unless (a) the transfer is made (i) to a foreign national or (ii) to a financial institution subject to the Federal Reserve Foreign Credit Restraint Program and the transfer is charged against the ceiling of such institution under such Program, and (b) the transfer constitutes a transfer of capital after application of paragraph (c)(12) of this section: *Provided*, That, if the transfer is of a debt obligation and does not constitute a transfer of capital because of this paragraph, repayment by the affiliated foreign national of such debt obligation to a person within the United States shall be deemed a transfer of capital by the affiliated foreign national.

* * * * *

(12) On or after July 1, 1972, any transaction described in paragraph (b) of this section, other than a transaction entered into after December 31, 1972 involving a qualified export obligation or qualified export lease, in connection with which a financial institution subject to the Federal Reserve Foreign Credit Restraint Program, without charging its ceiling under such Program, acquires a debt obligation of a foreign national and transfers funds or other property (i) to the direct investor, or (ii) to an affiliated foreign nation, or (iii) to a foreign financial institution which transfers funds or other property to an affiliated foreign national or to the direct investor, or (iv) to a foreign national other than a financial institution and other than an affiliated foreign national ("unaffiliated foreign national"), or to a foreign financial institution which transfers funds or other property to an unaffiliated foreign national, which unaffiliated foreign national transfers funds or other property to an affiliated foreign national or to the direct investor, unless, for purposes of this subparagraph (iv), the debt obligation is treated as a direct or indirect export credit to an unaffiliated foreign national under the Federal Reserve Foreign Credit Restraint Program and is acquired without the intervention of the direct investor or an affiliated foreign national in a manner that departs from their previously established practices: *Provided*, That if the transaction does not constitute a transfer of capital because of this paragraph, repayment of the debt obligation by a foreign national to a person within the United States shall be deemed a transfer of capital by the affiliated foreign national.

(13)(i) Commencing January 1, 1973: (A) The acquisition by a direct investor of a qualified export obligation of an incorporated affiliated foreign national, until such obligation has been outstanding for a period longer than the arm's length term applicable to it; (B) the payment or satisfaction of a qualified export obligation by an incorporated affiliated foreign national to a direct investor, or the transfer by a direct investor of a qualified export obligation of an incorporated affiliated foreign national, except to the extent that a transfer of capital by the direct investor was previously recognized with respect to such obligation in 1973 or subsequently; and (C) any repayment, relating to a qualified export obligation, that would be deemed a transfer of capital by an affiliated foreign national under the proviso to paragraph (c)(4) or the proviso to paragraph (c)(12) of this section.

(ii)(A) The term "qualified export obligation" means a debt obligation of an affiliated foreign national acquired in any year by a direct investor attendant to a sale by a direct investor to an affiliated foreign national of United States goods of United States services. Each installment payable on an installment sale which entails a qualified export obligation is considered a separate qualified export obligation of the affiliated foreign national.

(B) In no case shall a qualified export obligation arise in connection with (*1*) a transaction which is in substance a contribution to capital, regardless of the manner in which such transaction is entered in the books and records of the direct investor, or (2) an installment sale, unless its terms require installment payments at an arm's length rate, considering the time and amount of each payment to be made, except that, for purposes of determining the arm's length rate, the credit standing of the affiliated foreign national shall be disregarded.

(iii) The term "United States goods" means tangible property (A) grown, produced or manufactured in the United States, and (B) exported from the United States by the direct investor. Property is grown, produced or manufactured in the United States only if it may be classified as "domestic" for purposes of a Department of Commerce Shipper's Export Declaration (Commerce Department Form 7525–V or any superseding form).

(iv) The term "United States services" means services performed for an affiliated foreign national by a direct investor but does not include services performed by any affiliated foreign national of the direct investor.

(v) The "arm's length term" means the period for which credit would have been extended, at the time the sale was entered into, in an independent transaction between unrelated parties under similar circumstances, considering all relevant factors, such as the type of goods or services involved, the security involved, shipping time, and the terms prevailing at the situs for comparable transactions, except that the credit standing of the affiliated foreign national shall be disregarded. With respect to the sale of United States goods, any term of 180 days or less from the time of shipment of the goods shall be deemed an arm's length term. With respect to the sale of United States services, any term of 90 days or less, measured from the end of the month in which such services would be billed in a similar transaction between unrelated parties, shall be deemed an arm's length term: *Provided*, That in the case of United States services related and subsidiary to a sale of goods which entails a qualified export obligation, the arm's length term shall be the same as that for the sale of the goods.

(vi)(A) Any direct investor may elect that none of its transactions shall be deemed to involve qualified export obligations (as defined in paragraph (c)(13)(ii) of this section) or qualified export leases (as defined in paragraph (c)(14) of this section).

(B) An election pursuant to this paragraph (c)(13)(vi) must be made on the

Form FDI-102F filed by the direct investor for the year 1973 and may not thereafter be revoked by the direct investor without obtaining the prior permission of the Office.

(14) Commencing January 1, 1973, a transfer of property pursuant to a qualified export lease or the return of property so transferred. The term "qualified export lease" means a lease of United States goods (as defined in paragraph (c)(13)(iii) of this section) by a direct investor to an affiliated foreign national which requires rental payments at an arm's length rate, considering the time and amount of each rental payment to be made, except that, for purposes of determining the arm's length rate the credit standing of the affiliated foreign national shall be disregarded.

* * * * *

(e) [Revoked]

b. In § 1000.313, paragraph (b) is revised, paragraph (e)(4) is added, and paragraph (f) is revoked as follows:

§ 1000.313 Net transfer of capital.

* * * * *

(b)(1) A net transfer of capital (which may be a positive or negative amount) by a direct investor to all unincorporated affiliated foreign nationals in any scheduled area during any period means the direct investor's share of the aggregate net increase or net decrease, during such period, in the aggregate net assets of such affiliated foreign nationals (whether such net increase or decrease results from any transfer of capital (as defined in § 1000.312), earnings, or losses or any combination thereof). In calculating the net assets of all unincorporated affiliated foreign nationals in any scheduled area, there shall be excluded (i) all equity interests in and debt obligations of such unincorporated affiliated foreign nationals held by the direct investor or affiliated foreign nationals of the direct investor, except qualified export obligations held and acquired by the direct investor after 1972 unless such obligations have been outstanding for periods longer than the qualifying terms applicable to them, and (ii) all assets of such unincorporated affiliated foreign nationals consisting of equity interests in or debt obligations of the direct investor or affiliated foreign nationals of the direct investor.

(2) Any reduction in net assets of an unincorporated affiliated foreign national resulting from a repayment after 1972 of a qualified export obligation acquired by a direct investor prior to 1973 shall be disregarded in calculating the increase or decrease in net assets of such unincorporated affiliated foreign national.

* * * * *

(e) * * *

(4) All calculations under this paragraph (e) shall be made in accordance with this part as in force on December 31, 1972.

(f) [Revoked]

c. Subparagraph (7) is added to § 1000.505(a) to read as follows:

§ 1000.505 Transfers between affiliated foreign nationals.

* * * * *

(a) * * *

(7) In determining the effect of transfers between affiliated foreign nationals and the effect of changes in net assets of unincorporated affiliated foreign nationals under this § 1000.505, the fact that the underlying transactions may involve qualified export obligations or qualified export leases (as defined respectively in §§ 1000.312(c)(13) and 1000.312(c)(14)) shall be disregarded.

* * * * *

The amendments hereby adopted shall be effective as of the date of publication in final form in the FEDERAL REGISTER and shall apply to all affected transactions on or after January 1, 1973.

(Sec. 5, Act of Oct. 6, 1917, 40 Stat. 415, as amended, 12 U.S.C. 95a; E.O. 11387, Jan. 1, 1968, 33 FR 47)

WILLIAM V. HOYT,
Director, Office of Foreign Direct Investments.

FEBRUARY 23, 1973.

[FR Doc.73-3717 Filed 3-2-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 73-SW-10]

CONTROL ZONE

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to alter controlled airspace in the Victoria, Tex., terminal area.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Post Office Box 1689, Fort Worth, TX 76101. All communications received on or before April 4, 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 Chief, Airspace and Procedures Branch. 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.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Tex. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

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

VICTORIA, TEX.

Within a 5-mile radius of the Victoria County-Foster Airport (latitude 28°51'10" N., longitude 96°55'20" W.) and within 3 miles each side of the Victoria, Tex., VOR 313° radial extending from the 5-mile radius zone to 10.5 miles northwest of the VOR.

This amendment to controlled airspace will provide the necessary airspace for aircraft executing approaches to Victoria, Tex., on a 24-hour basis.

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 Fort Worth, Tex., on February 20, 1973.

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

[FR Doc.73-4071 Filed 3-2-73;8:45 am]

[Airspace Docket No. 73-SW-11]

[14 CFR Part 71]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to designate a 700-foot transition area at Idabel, Okla.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Post Office Box 1689, Fort Worth, TX 76101. All communications received on or before April 4, 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 Chief, Airspace and Procedures Branch. 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.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Tex. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed 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:

IDABEL, OKLA.

That airspace extending from 700 feet above the surface within a 5-mile radius of Idabel Municipal Airport (latitude 33°54'23" N., longitude 94°50'41" W.) and within 3.5 miles each side of the 349° T. (342°M.) bearing from the NDB (latitude 33°54'23" N., longitude 94°50'45" W.) extending from the 5-mile-radius area to a point 8 miles north of the NDB.

The proposed transition area will provide controlled airspace for aircraft executing approach/departure procedures proposed at the Idabel, Okla., Municipal 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 sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Fort Worth, Tex., on February 23, 1973.

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

[FR Doc.73-4072 Filed 3-2-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 72-WE-38]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendement to Part 71 of the Federal Aviation Regulations that would alter the Oxnard, Calif., transition area.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 1500 Aviation Boulevard, Post Office Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

All communications received on or before April 4, 1973, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20591. An informal docket also will be available for examination at the Office of the Regional Air Traffic Division Chief.

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the ICAO International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of and Annex 11 to the Convention on International Civil Aviation, which pertain to the establishment of air navigation facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to insure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The proposed amendment would alter the 700-foot portion of the Oxnard, Calif., transition area to read as follows:

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Point Mugu RBN, and within 4.5 miles each side of the Oxnard, Calif., VOR 264° T. (249° M.) radial, extending from the west end of Runway 07 at Ventura County Airport to 9.5 miles west of the runway.

The proposed alteration of the transition area is needed to provide controlled airspace for a procedure turn for the VOR Runway 7 Instrument Approach Procedure to Ventura County Airport, Oxnard, Calif.

This amendment is proposed under the authority of sections 307(a) and 1110 of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1510), Executive Order 10854 (24 FR 9565) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

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

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73-4073 Filed 3-2-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 275]

[Releases Nos. IA-363, IC-7682, File No. S7-462]

INVESTMENT ADVISER REGULATIONS

Recordkeeping Requirements and Exemption From Definition of Investment Adviser; Extension of Time for Comments

Notice is hereby given that the Securities and Exchange Commission has extended the period of time within which written comments and views may be submitted on its proposals to adopt new Rule 202-2 (17 CFR 202-2),[1] to amend paragraph (12) of Rule 204-2(a) (17 CFR 204-2(a)), and to adopt new paragraphs (13) and (14) of Rule 204-2(a) under the Advisers Act (15 U.S.C. 80b-1 et seq.). The period of time for submitting such written comments has been extended from February 16, 1973, to March 16, 1973.

Proposed Rule 202-2 would, generally, exempt from the definition of "Investment Adviser" in section 202(a)(11) of the Advisers Act (15 U.S.C. 80b-2(a)(11)) a controlling person of a registered investment adviser or an affiliate of such controlling person where the criteria specified in the proposed rule are met. The proposed amendment to paragraph (12) of Rule 204-2(a) under the Advisers Act would revise the definition of the term "advisory representative" as that term is employed in said paragraph. Proposed new paragraph (13) of Rule 204-2(a) would specify certain records to be kept by registered investment advisers who are primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients. Proposed new paragraph (14) of Rule 204-2(a) would adopt the definition of control set forth in section 2(a)(9) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(9)) for purposes of paragraphs (12) and (13) of Rule 204-2(a). These proposals were published for comment on December 18, 1972, in Investment Advisers Act Release No. 353 (Investment Company Act Release No. 7565) and in the January 17, 1973, issue of the FEDERAL REGISTER, 38 FR 1649.

Commission action. The Commission pursuant to authority in sections 202 and 211 of the Investment Advisers Act of 1940, hereby redesignates proposed new Rule 202-1 which appeared in Invest-

[1] On Jan. 31, 1973, the Commission adopted Rule 202-1 under the Advisers Act (38 FR 4317) to exempt from the definition of "Investment Adviser" in section 202(a)(11) an insurance company or an affiliated company thereof to the extent it performs advisory services incidental to the issuance of variable life insurance contracts (Securities Act of 1933 Release No. 5360; Investment Advisers Act of 1940 Release No. 359). Proposed Rule 202-1, as published on Dec. 18, 1972, in Investment Advisers Act of 1940 Release No. 353, is, therefore, hereby redesignated as proposed Rule 202-2 under the Advisers Act.

ment Advisers Act Release No. 353, December 18, 1972, and in the FEDERAL REGISTER issue of January 17, 1973, Volume 38, page 1651, as proposed new Rule 202–2 and extends the time for comments on proposed new redesignated Rule 202–2 and proposed amendment to Rule 204–2(a) from February 16, 1973, until March 16, 1973.

(Sec. 202.211, 54 Stat. 847, 855, 54 Stat. 1433, 15 U.S.C. 80b–2, 80b–6a, 80b–11)

By the Commission.

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

FEBRUARY 20, 1973.

[FR Doc.73–4064 Filed 3–2–73;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF STATE

[Public Notice CM-8]

SHIPPING COORDINATING COMMITTEE

Subcommittee on the Code of Conduct for Liner Conferences; Meeting

A meeting of the subcommittee on the Code of Conduct for Liner Conferences will be held at 10 a.m., on Tuesday, March 13, 1973, in Room 1205, Department of State. The subcommittee meeting will be open to the public.

The meeting will consider the advisory functions of the subcommittee, together with the United States positions for the second session of the United Nations Committee on Trade and Development (UNCTAD) Preparatory Committee on the Code of Conduct for Liner Conferences, to be held in Geneva, June 4–29, 1973.

For purposes of fulfilling building security requirements, anyone wishing to attend the open session must advise the Executive Secretary of the Committee by telephone in advance of the meeting (area code 202) 632–0704.

For further information on the subject matter of the meeting, contact Mr. Ronald A. Webb, Chairman, Shipping Coordinating Committee, Department of State, Washington, D.C. 20520, telephone (area code 202) 632–1313.

RONALD A. WEBB,
Chairman,
Shipping Coordinating Committee.

FEBRUARY 28, 1973.

[FR Doc.73-4153 Filed 3-2-73;8:45 am]

Agency for International Development

RESEARCH ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Executive Order 11671 and the provisions of section 10(a)(2), Public Law 92–463, Federal Advisory Committee Act (which became effective on Jan. 5, 1973), notice is hereby given of the meeting of the Research Advisory Committee (RAC) on March 7 and 8, 1973, at the Pan American Health Organization Building, 23d Street and Virginia Avenue NW., Conference Room B, to review, appraise, and make recommendations to the Administrator, AID, concerning proposals for research contracts in the fields of fertility control, income distribution policy, and housing technology. The meeting will be closed to the public pursuant to the provisions of section 13(d), Executive Order 11671; section 10(b), Federal Advisory Committee Act, and the Administrator's determination made pursuant thereto. Dr. Erven Long, Associate Assistant Administrator is designated as the AID representative at the meeting.

JOHN A. HANNAH,
Administrator.

FEBRUARY 27, 1973.

[FR Doc.73-4058 Filed 3-2-73;8:45 am]

RESEARCH ADVISORY COMMITTEE

Determination

A meeting of the Research Advisory Committee for the Agency for International Development will be held on March 7 and 8, 1973. The AID Research Advisory Committee is composed of AID consultants appointed, among other things, to appraise all projects proposed for AID central research funding in terms of pertinence of the subject to the problems of lesser developed countries, competence of the proposed investigation, soundness of the project design, and reasonableness of cost in relation to the magnitude and complexity of the investigative effort involved.

The purpose of this meeting is the consideration and formulation of recommendations to the Agency with respect to specific research projects proposed to be performed by specific organizations or institutions in the fields of fertility control, income distribution policy, and housing technology.

I hereby determine, pursuant to subsection 10(d), Public Law 92–463, the Federal Advisory Committee Act, that the meeting will consist of an exchange of opinions, that the discussion if written would fall within exemption (5) of 5 U.S.C. 552(b) and that it is essential to close such meeting to protect the free exchange of internal views and to avoid undue interference with committee operations.

JOHN A. HANNAH,
Administrator.

FEBRUARY 27, 1973.

[FR Doc.73-4059 Filed 3-2-73;8:45 am]

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DEFENSE INTELLIGENCE AGENCY SCIENTIFIC ADVISORY COMMITTEE

Notice of Meeting

A panel of the Defense Intelligence Agency Scientific Advisory Committee will hold a closed meeting to discuss classified matters at 9 a.m. on March 19, 1973.

MAURICE W. ROCHE,
Director, Correspondence and Directives Division, Office of the Assistant Secretary of Defense (Comptroller).

[FR Doc.73-4124 Filed 3-2-73;8:45 am]

DEFENSE INTELLIGENCE AGENCY SCIENTIFIC ADVISORY COMMITTEE

Notice of Meeting

The Defense Intelligence Agency Scientific Advisory Committee will hold a closed meeting to discuss classified matters at 9 a.m. on April 4–5, 1973.

MAURICE W. ROCHE,
Director, Correspondence and Directives Division, Office of the Assistant Secretary of Defense (Comptroller).

[FR Doc.73-4125 Filed 3-2-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

RIO GRANDE NATIONAL WILD AND SCENIC RIVER, N. MEX.

Notice of Boundaries, Classification and Development Plans; Correction

In FR Doc. No. 69-12601 appearing in the issue of Thursday, October 23, 1969 (34 FR 17207–17209), the following corrections are hereby made:

In the second column, page 17208 under T. 31 N., R. 11 E., Sec. 2, add "SE¼NW¼SE¼ and E½SW¼SE¼." Under T. 31 N., R. 12 E., Sec. 30, add "lot 3"; in Sec. 31, add "W½NW¼NE¼." Under T. 29 N., R. 12 E., in Sec. 16, following "acres" add "and one tract of unsurveyed land in the SW¼ containing 3.76 acres;".

In the third column, page 17208 under T. 28 N., R. 12 E., Sec. 10, delete "SW¼ SW¼NW¼ and NW¼NW¼SW¼;" and add in lieu thereof: "That portion of the N½NW¼ that lies north of the Red River;" in Sec. 17, delete "W½SW¼ NW¼SW¼" and add "SW¼ and NW¼ SE¼." Change the statement following the description in Sec. 32 by changing the word "boundary" to "boundaries" and add "and the Red River" following "Rio Grande." Under T. 26 N., R. 11 E., eliminate the statement following the land description in sec. 36 and in lieu thereof add, "390 acres more or less of the Antoine Leroux Grant (Los Luceros Grant) ((Antoine Leroux Grant) (Anton Leroux Grant)) and the Lucero de

Godoi or Antonio Martinez Grant (Antonio Martinez or Godoi Grant), meandering the east boundary of the Rio Grande." "Under Proposed Recreational River Classification" T. 27 N., R. 12 E., eliminate the statement following the land description in Sec. 31 and in lieu thereof add, "130 acres more or less of the Antoine Leroux Grant (Los Luceros Grant) ((Antoine Leroux Grant) (Anton Leroux Grant)) meandering the east boundary of the Rio Grande."

CURT BERKLUND,
Acting Assistant Secretary of the Interior.

FEBRUARY 26, 1973.

[FR Doc.73-4047 Filed 3-2-73;8:45 am]

National Park Service

[Order 2]

ADMINISTRATIVE ASSISTANT, GULF ISLANDS NATIONAL SEASHORE

Delegation of Authority

SECTION 1. *Administrative Assistant.* The Administrative Assistant of the Gulf Islands National Seashore may execute and approve contracts not in excess of $2,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

SEC. 2. *Re-delegation.* The authority delegated in this Order No. 2 may not be re-delegated.

(National Park Service Order No. 66 (36 FR 21218) as amended (37 FR 4001) (37 FR 12854); Southeast Regional Order No. 5 (37 FR 7721)

Dated: January 31, 1973.

JOE BROWN,
Director.

[FR Doc.73-4051 Filed 3-2-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[PPQ 639]

SOIL SAMPLES

List of Approved Laboratories

This document revises the list of approved laboratories authorized to receive interstate shipments of soil samples for processing, testing, or analysis to delete the names of six laboratories which no longer receive interstate shipments of soil samples for analysis, and to delete the names of 31 laboratories whose permits to receive foreign soil samples have expired. It also adds the names of 33 laboratories approved to receive interstate and foreign shipments of soil since the last amendment of the list.

Pursuant to the Japanese Beetle, Whitefringed Beetle, Witchweed, Imported Fire Ant, and Golden Nematode Quarantines (Notices of Quarantine Nos. 48, 72, 80, 81, and 85; 7 CFR 301.48, 301.72, 301.80, 301.81, and 301.85), under sections 8 and 9 of the Plant Quarantine Act of 1912, as amended, and section 106 of the Federal Plant Pest Act (7 U.S.C. 161, 162, 150ee), the list of laboratories (36 FR 3272) operating under a compliance agreement and approved under said quarantines to receive interstate shipments of soil samples for processing, testing, or analysis is hereby revised as follows:

LABORATORY AND ADDRESS

A

A & H Corp., Consulting Engineers, Carbondale, Ill.
A & H Corp., Consulting Engineers, Champaign, Ill.
A & H Corp., Consulting Engineers, Chicago, Ill.
A & H Corp., Consulting Engineers, Peoria, Ill.
A & H Engineering Corp., Springfield, Ill.
A & L Agricultural Laboratories, Memphis, Tenn.[2] (6-30-73).
Abbott Laboratories, North Chicago, Ill.[2] (6-30-76).
Ackenheil, A. C., & Associates, Inc., Pittsburgh, Pa.
Advanced Tests and Inspections, Inc., National City, Calif.
Agrico Chemical Co., Washington Courthouse, Ohio.
Agricultural Service Laboratories, Pharr, Tex.[3] (6-30-77).
Agronomics International Corp., Barnesville, Minn.
Alfred Agricultural and Technical Institute, State University of New York, Department of Agronomy, Alfred, N.Y.
Allied Chemical Corp., Morristown, N.J.
Alpha Research & Development, Inc., Blue Island, Ill.
American Cyanamide Co., Princeton, N.J.
American Cyanamide Co., Agriculture Division, Princeton, N.J.[3] (6-30-73)
American Oil Co., Soil Laboratories, Rochelle, Ga.
American Oil Co., Soil Laboratories, Holland, Tex.
American Oil Co., Soil Testing Laboratory, Yoder, Ind.
Ameron, South Gate, Calif.
Analysis Laboratories, Inc., Metairie, La.
Analytical Development Corp., Monument, Colo.
Anco Testing Laboratory, Inc., St. Louis, Mo.
Ansul Co., Marinette, Wis.
Arco Chemical Co., Fort Madison, Iowa.
Arizona State University, Tempe, Ariz.
Arizona State University, Department of Anthropology, Tempe, Ariz.[3] (6-30-74).
Arizona Testing Laboratory, Phoenix, Ariz.
Arizona, University of, Department of Agricultural Chemistry and Soils, Tucson, Ariz.[3] (6-30-75).
Arizona, University of, Department of Plant Pathology, Tucson, Ariz.[3] (6-30-77).
Arkansas, University of, Experiment Station, Fayetteville, Ark.
Arkansas, University of, Experiment Station, Marianna, Ark.
Arkansas Highway Department, Materials and Testing Laboratory, Little Rock, Ark.
Asphalt Institute, College Park, Md.
Asphalt Technology, Bellmawr, N.J.
Associated Laboratories, Orange, Calif.[3] (6-30-73).
Astrotech, Inc., Harrisburg, Pa.
Atkins Farmlab, Sacramento, Calif.
Atlanta Testing & Engineering Co., Atlanta, Ga.
ATS, Post Office Box 2141, Bakersfield, CA[3] (6-30-76).
Auburn University, Soil Testing Laboratory, Auburn, Ala.

B

Babcock, Edward S., & Sons, Riverside, Calif.
Baker, Michael, Inc., Rochester, Pa.
Barbot, D. C., & Associates, Inc., Florence, S.C.
Barrow-Agee Laboratories, Inc., Memphis, Tenn.[1]
Beckman, Inc., Microbics Operations, La Habra, Calif.
Biological Testing and Research Laboratory, Lindsay, Calif.
Boring Soils & Testing Co., Inc., Harrisburg, Pa.
Boswell, J. G., Co., Corcoran, Calif.[3] (6-30-76).
Bowes & Associates, Strawberry Park Road, Steamboat Springs, Colo.[3] (6-30-76).
Bowser-Morner Testing Laboratories, Inc., Dayton, Ohio.
Brandley, Reinard W., Sacramento, Calif.[3] (6-30-74).
Braun, Skaggs, and Kervorkian Engineering, Inc., Fresno, Calif.
Bristol Laboratories, Syracuse, N.Y.[3] (6-30-74).
Broeman, F. C., & Co., Cincinnati, Ohio.
Brookside Laboratory, Division of Chemical Service Laboratory, Inc., New Knoxville, Ohio.
Brown and Root-Northrop IRL, Houston, Tex.
Brucker and Thacker, St. Louis, Mo.

C

California Department of Public Works, Division of Highways Materials and Research, Sacramento, Calif.
California Institute of Technology, Jet Propulsion Laboratory, Pasadena, Calif.[3] (6-30-74).
California State Polytechnic College, Department of Biological Sciences, Pomona, Calif.[3] (5-20-73).
California State University, College of Sciences, San Diego, Calif.[3] (6-30-73).
California Testing Laboratories, Los Angeles, Calif.
California, University of, Agricultural Extension Laboratory, Agricultural Extension Service, Riverside, Calif.
California, University of, Department of Anthropology, Davis, Calif.[3] (12-31-73).
California, University of, Department of Anthropology, Santa Barbara, Calif.[3] (12-31-73).
California, University of, Department of Civil Engineering, Davis, Calif.[3] (6-30-77).
California, University of (Los Angeles), Laboratory of Nuclear Medicine and Radiation Biology, Los Angeles, Calif.
California, University of, Lawrence Livermore Laboratory, Livermore, Calif.[3] (6-30-74).
California, University of, Soils and Plant Nutrition, Riverside, Calif.[3] (6-30-74).
Calspan Corp., Buffalo, N.Y.
Campbell Institute for Agricultural Research, Riverton, N.J.[3] (6-30-74).
Capozzoli, Louis J., & Associates, Inc., Baton Rouge, La.
Carpenter Construction Co., Inc., Virginia Beach, Va.
Cascade Agricultural Service Co., Mt. Vernon, Wash.
Central Michigan University, Department of Biology, Mount Pleasant, Mich.[3] (6-30-75).
Central Valley Laboratory, Fresno, Calif.
Chemagro Corp., Kansas City, Mo.[3] (6-30-77).
Chembac Laboratories, Charlotte, N.C.
Chemical Service Laboratory, Inc., Jeffersonville, Ind.
Chemical Service Laboratory, Inc., New Knoxville, Ohio[3] (6-30-76).
Chevron Chemical Co., Fresno, Calif.
Chevron Chemical Co., Richmond, Calif.
Chevron Oil Field Research Co., La Habra, Calif.
Clarkson Laboratory & Supply, Inc., San Diego, Calif.[3] (6-30-75).
Clemson University, Clemson, S.C.
Clinton Corn Processing Co., Clinton, Iowa[3] (6-30-74).
Coenan and Associates—Engineers, Newport News, Va.

See footnotes at end of document.

Colorado School of Mines, Research Institute, Golden, Colo.[3] (6-30-74).
Colorado State University, Department of Agronomy, Fort Collins, Colo.[3] (6-30-75).
Colorado State University, Department of Economics, Fort Collins, Colo.
Colorado, University of, Department of Geological Sciences, Boulder, Colo.[3] (6-30-74).
Columbia University, R. W. Carlton Materials Laboratory, New York, N.Y.[3] (6-30-74).
Commercial Laboratory, Inc., Richmond, Va.
Commercial Testing & Engineering Co., Chicago, Ill.[1]
Connecticut, University of, Soil Testing Laboratory, Plant Science Department, College of Agriculture and Natural Resources, Storrs, Conn.
Consolidated Cigar Corp., Glastonbury, Conn.[3] (6-30-74).
Construction Aggregates Corp., Perrysburg, Mich.
Contractors & Engineers Service, Inc., Fayetteville, N.C.
Contractors & Engineers Service, Inc., Goldsboro, N.C.
Cook Research Laboratories, Inc., Menlo Park, Calif.
Cookwell Strainer, Cincinnati, Ohio.
Cooper-Clark & Associates, Palo Alto, Calif.
Coors Spectro-Chemical Laboratory, Denver, Colo.
Core Laboratories, Inc., Aurora, Colo.
Core Laboratories, Inc., Houma, La.
Core Laboratories, Inc., Lafayette, La.
Core Laboratories, Inc., New Orleans, La.
Core Laboratories, Inc., Shreveport, La.
Core Laboratories, Inc., Farmington, N. Mex.
Core Laboratories, Inc., Hobbs, N. Mex.
Core Laboratories, Inc, Dallas, Tex.
Core Laboratories, Inc., Casper, Wyo.
Cornell University, Department of Agronomy, Ithaca, N.Y.[3] (6-30-74).
Cornell University, Department of Floriculture and Ornamental Horticulture, Ithaca, N.Y.[3] (6-30-76).
Craig Testing Laboratories, Mays Landing, N.J.
Crobaugh Laboratories, Cleveland, Ohio
Custom Farm Services, Inc., East Point, Ga.[1, 3] (6-30-75).

D

Dade County Soils Laboratory, Homestead, Fla.
Dames & Moore, Los Angeles, Calif.[3] (6-30-76).
Dames & Moore, Redwood City, Calif.
Dames & Moore, San Francisco, Calif.[3] (6-30-77).
Dames & Moore, Atlanta, Ga.[3] (6-30-76).
Dames & Moore, Park Ridge, Ill.[3] (6-30-73).
Dames & Moore, Cranford, N.J.[3] (6-30-75).
Dames & Moore, Houston, Tex.[3] (6-30-75).
D'Appolonia, E., Consulting Engineers, Inc., Pittsburgh, Pa.[3] (6-30-77).
Davey Tree Expert Co., Kent, Ohio.
Daylin Laboratories, Inc., Los Angeles, Calif.
Del Monte Corp., San Leandro, Calif.
Del Monte Corp., Walnut Creek, Calif.
Delta Testing and Inspection, Inc., Baton Rouge, La.
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Denver University of, Department of Geography, Denver, Colo.[3] (6-30-77).
Diamond Shamrock Corp., Painesville, Ohio.
Dickinson College, Department of Biology, Carlisle, Pa.[3] (6-30-73).
Dickinson Laboratories, Inc., Mobile, Ala.
Dixie Laboratories, Inc., Mobile, Ala.
Dow Chemical Co., Walnut Creek, Calif.[3] (6-30-77).
Dow Chemical Co., Midland, Mich.[3] (6-30-76).
du Pont de Nemours, E. I., & Co., Industrial and Biochemicals Department, Foreign Sales, Wilmington, Del.[3] (6-30-76).
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Duke University, Department of Botany, Durham, N.C.[3] (6-30-75).
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E

Eagle Iron Works, Des Moines, Iowa[3] (6-30-77).
Earth Sciences Associates, Palo Alto, Calif.[3] (6-30-73).
Ecto Engineers and Associates, Baton Rouge, La.
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Eico Engineers & Associates, Houston, Tex.
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Ellerbe Architect, St. Paul, Minn.
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El Paso Chemical Laboratories, El Paso, Tex.[3] (6-30-78).
Empire Soils Investigations, Groton, N.Y.
Engineers Laboratories, Inc., Jackson, Miss.
Engineers Testing Laboratories, Phoenix, Ariz.
England, C. W., Laboratories, Inc., Beltsville, Md.[3] (6-30-73).
Esso Research & Engineering Co., Esso Agricultural Products Laboratory, Linden, N.J.[3] (6-30-74).
* Eustis Engineering Co., Metairie, La.
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Ford County Farm Bureau, Melvin, Ill.
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Forsyth Dental Center, Boston, Mass.[3] (6-30-73).
Foundation Test Services, Inc., Bethesda, Md.
Fresno Field Station, Fresno, Calif.
Froehling & Robertson, Inc., Richmond, Va.[1]
Fruco & Associates, St. Louis, Mo.
Fuller Co., Allentown, Pa.[3] (6-30-74).
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G

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General Foods Corp., Birds Eye Division, Woodburn, Oreg.[3] (6-30-74).
General Testing Laboratory, Kansas City, Mo.
Geo-Survey, Inc., Camp Hill, Pa.
Geo-Testing, Inc., San Rafael, Calif.[3] (6-30-74).
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Georgia, University of, Experiment, Ga.
Georgia, University of, Tifton, Ga.
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GHT Laboratories of Imperial Valley, Inc., Brawley, Calif.
Gillen Engineering Co., Inc., Metairie, La.
Girdler Foundation & Exploration Co., Lenexa, Va.
Glassmire, S. H., & Associates, Metairie, La.[3] (6-30-75).
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Gore Engineering, Inc., Metairie, La.
Grace, W. R., & Co., Fort Pierce, Fla.[3] (6-30-76).
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Grimes, Walter B., & Associates, Chico, Calif.
Growers Chemical Corp., Milan, Ohio.
Gulf Coast Testing Laboratory, Inc., Corpus Christi, Tex.
Gulf South Research Institute, Baton Rouge, La.
Gulf South Research Institute, New Orleans, La.
GX Laboratories, Inc., Golden, Colo.

H

Hales Testing Laboratories, San Jose, Calif.
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Hamilton Company, Soil Testing Laboratory, McLeansboro, Ill.
Hampton Roads Testing Laboratories, Newport News, Va.
Hanks, Abbot A., Testing Laboratory, San Francisco, Calif.
Hanson Engineers, Inc., Springfield, Ill.
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Harris, Inc., Frederick R., Woodbridge, N.J.[3] (6-30-76).
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Hayssen Manufacturing Co., Sheboygan, Wis.[3] (6-30-73).
Hazen Research Inc., Golden, Colo.[3] (6-30-78).
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Hector Supply Co., Miami, Fla.[3] (6-30-74).
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Herbert & Associates, Virginia Beach, Va.
Hercules, Inc., Wilmington, Del.
Hess, John D., Testing Corp., El Centro, Calif.
Hill-Harned & Associates, Redding, Calif.
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Illinois Division of Highways, Bureau of Materials, Paris, Ill.
Illinois Division of Highways, Bureau of Materials, Springfield, Ill.
Illinois Division of Highways, Carbondale, Ill.
Illinois Division of Highways, East St. Louis, Ill.
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L

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Merck & Co., Inc., Rahway, N.J.
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Mier, Ezra, Raleigh, N.C.
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Milwaukee, City of, Sewage Commission, Milwaukee, Wis.
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Minnesota, University of, Department of Geology, Minneapolis, Minn.[3] (6-30-74).
Minnesota, University of, Department of Plant Pathology, St. Paul, Minn.[3] (6-30-73).
Minnesota, University of, Department of Soil Science, St. Paul, Minn.[3] (6-30-75).
Mississippi State University, State College, Miss.
Mississippi, University of, University, Miss.
Missouri Highway Commission, Jefferson City, Mo.
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Missouri, University of, Department of Food Sciences and Nutrition, Columbia, Mo.[4] (6-30-73).
Missouri, University of, Division of Biology, Columbia, Mo.[3] (6-30-76).
Mitchell & Associates, Dallas, Tex.[3] (6-30-74).
Mobile Chemical Co., Research Laboratory, Ashland, Va.[3] (6-30-76).
Mobile Testing Co., Corpus Christi, Tex.
Monsanto Co., Agricultural Division, St. Louis, Mo.[3] (6-30-73).
Morse Laboratories, Sacramento, Calif.
Mueser, Rutledge, Wentworth, and Johnston, New York, N.Y.[3] (6-30-74).

MC

McCallum Inspection Co., Chesapeake, Va.[1]
McClelland Engineers, Inc., Houston, Tex.[3] (6-30-74).
McGauthy, Marshall, and McMillian, Norfolk, Va.

N

Na-Churs Plant Food Co., Marion, Ohio[3] (6-30-75).
Na-Churs, Red Oak, Iowa.
National Bulk Carriers, Inc., New York, N.Y.
National Laboratories, Evansville, Ind.
Natural Resources Laboratory, Golden, Colo.
National Soil Services, Inc., Dallas, Tex.
National Soil Services, Inc., Houston Tex.[3] (6-30-75).
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Nebraska, University of, Department of Agronomy, Heim Hall, Lincoln, Nebr.[3] (6-30-78).
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Nevada State Highway Department Laboratory, Carson City, Nev.
Nevada, University of, Desert Research Institute, Reno, Nev.[3] (6-30-73).
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New Mexico State Highway Department, Santa Fe, N. Mex.
New Mexico State University, Soil Testing Laboratory, Las Cruces, N. Mex.[3] (6-30-76).
New Mexico, University of, Anthropology Department, Albuquerque, N. Mex.[3] (6-30-74).
New Mexico, University of, Department of Geology, Albuquerque, N. Mex.[3] (6-30-74).
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New York, State University of, College of Environmental Sciences and Forestry, Syracuse, N.Y.[3] (6-30-74).
Niagara Chemical Division of FMC Corp., Middleport, N.Y.
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North Carolina State University, Department of Soil Science, International Soil Testing Project, Raleigh, N.C.[3] (6-30-75).

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Rocky Mountain Geochemical Corp., Prescott, Ariz.
Rocky Mountain Geochemical Corp., West Jordan, Utah.[3] (6-30-74).
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Rutgers, the State University, Department of
Rutgers, the State University, International Agricultural Programs, New Brunswick, N.J.[3] (6-30-76).
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S

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Southern Turf Nurseries, Tifton, Ga.[3] (6-30-73).
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Southwestern Agricultural Testing Co., Fabens, Tex.[3] (6-30-75).
Southwestern Assayers & Chemists, Inc., Tucson, Ariz.[3] (6-30-74).
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Southwestern Laboratories of Louisiana, Inc., Monroe, La.
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Standard Fruit Co., New Orleans, La.[3] (6-30-74).
Standard Laboratories, Goodfield, Ill.
Standard Testing & Engineering Co., Oklahoma City, Okla.[3] (6-30-76).
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T

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See footnotes at end of document.

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U.S. Agricultural Consultants Laboratories, San Gabriel, Calif.
U.S. Borax Research Corp., Anaheim, Calif.
U.S. Laboratories, Inc., Oakland, Calif.
U.S. Plant, Soil, and Nutrition Laboratory, Ithaca, N.Y.
U.S. Terrestrial Plants Laboratory, Hanover, N.H.
U.S. Testing Co., Inc., Los Angeles, Calif.
U.S. Testing Co., Inc., Hoboken, N.J.
U.S. Testing Co., Memphis, Tenn.[3] (6-30-74).
U.S. Testing Laboratory, Richland, Wash.
USS Agri-Chemicals, Belmond, Iowa.
USS Agri-Chemicals, Decatur, Ga.
Union Carbide Corp., Grand Junction, Colo.
Union Carbide Corp., Niagara Falls, N.Y.[3] (6-30-75).
Union Carbide Corp., South Charleston, W.Va.
Union Oil Company of California, Brea, Calif.
Upjohn Co., Agricultural Product Development and Research, Biochemistry and Residue Analysis, Kalamazoo, Mich.[3] (6-30-73).
Upjohn Co., Pharmaceutical Division, Kalamazoo, Mich.[3] (6-30-74).
Utah State University, College of Engineering, Agriculture and Irrigation Engineering, Logan, Utah[3] (6-30-73).
Utah State University, Department of Bacteriology and Public Health, Logan, Utah[3] (6-30-74).
Utah State University, Soil Laboratory, Logan, Utah.
Utah State University, Soil and Water Conservation Research, Mechanic Arts, Logan, Utah.
Utah State University, Crops Research Laboratory, Logan, Utah.

U.S. GOVERNMENT

U.S. Department of Agriculture, APHIS, Cyst Nematode Laboratory, Franklin, Va.
U.S. Department of Agriculture, APHIS, Golden Nematode Laboratory, Hicksville, N.Y.
U.S. Department of Agriculture, APHIS, Gypsy Moth Laboratory, Otis AFB, Mass.
U.S. Department of Agriculture, APHIS, Environmental Quality Laboratory, Gulfport, Miss.
U.S. Department of Agriculture, ARS, Plant and Entomological Sciences, Washington, D.C.[1]
U.S. Department of Agriculture, ARS, Soil, Water, and Air Sciences, Washington, D.C.[1]
U.S. Department of Agriculture, ARS, U.S. Fruit, Vegetable, Soil, and Water Laboratory, Nematology Investigation, Weslaco, Tex.[3] (6-30-77).
U. S. Department of Agriculture, ARS, U.S. Water Conservation Laboratory, Phoenix, Ariz.[3] (6-30-73).
U.S. Department of Agriculture, FS, Southern Forest Experiment Station, Pineville, La.
U.S. Department of Agriculture, FS, Washington, D.C.[1]
U.S. Department of Agriculture, FS, Wood Products Insect Laboratory, Gulfport, Miss.
U.S. Department of Agriculture, SCS, Engineering and Watershed Planning Unit, Materials Testing Section, Portland, Oreg.[3] (6-30-74).
U.S. Department of Agriculture, SCS, Engineering Division, Washington, D.C.[1]
U. S. Department of Agriculture, SCS, Soil Survey Laboratory, Riverside, Calif.[3] (6-30-77).
U. S. Department of Agriculture, SCS, Soil Mechanics Laboratory, Lincoln, Nebr.[3] (6-30-74).
U. S. Department of Agriculture, SCS, Soil Survey, Washintgon, D.C.[1]
U.S. Department of Commerce, National Bureau of Standards, Health Physics Section, Gaithersburg, Md.[3] (6-30-75).
U.S. Department of Defense, U.S. Air Force, AFCES/DL Civil Engineering Center, Tyndall AFB, Fla.[3] (6-30-78).
U.S. Department of Defense, U.S. Air Force, Air Force Cambridge Research Laboratories (AFSC), Laurence G. Hanscom Field, Bedford, Mass.
U.S. Department of Defense, U.S. Air Force, Air Force Weapons Laboratory, Kirkland AFB, Albuquerque, N. Mex.[3] (6-30-76).
U.S. Department of Defense, U.S. Army, Construction Engineering Research Laboratory, Champaign, Ill.[3] (6-30-75).
U.S. Department of Defense, U.S. Army Corps of Engineers, Chicago, Ill.
U.S. Department of Defense, U.S. Army Corps of Engineers, Engineering Division Laboratory, Marietta, Ga.[3] (6-30-77).
U.S. Department of Defense, U.S. Army, Corps of Engineers, Engineering Division Laboratory, Marietta, Ga.[3] (6-30-77).
U.S. Department of Defense, U.S. Army, Corps of Engineers, Vicksburg, Miss.[3] (6-30-74).
U.S. Department of Defense, U.S. Army, Corps of Engineers, Washington, D.C.[1]
U.S. Department of Defense, U.S. Army, Electronics Command, Institute for Exploratory Research Fort Monmouth, N.J.[3] (6-30-75).
U.S. Department of Defense, U.S. Army Engineer Power Group, Engineering Division, Pollution Control Laboratory, Fort Belvoir, Va.[3] (6-30-73).
U.S. Department of Defense, U.S. Army, Environmental Health Agency, Building 2100, Edgewood Arsenal, Md.[3] (6-30-74).
U.S. Department of Defense, U.S. Navy, Naval Facilities Engineering Command, Soil Mechanics and Paving Branch, Norfolk, Va.
U.S. Department of Defense, U.S. Navy, Naval Weapons Center, China Lake, Calif.[3] (6-30-74).
U.S. Department of Health, Education, and Welfare, National Communicable Disease Center, Atlanta, Ga.[3] (6-30-73).
U.S. Department of the Interior, Bureau of Indian Affairs, Soil Testing Laboratory, Gallup, N. Mex.
U.S. Department of the Interior, Geological Survey, Albuquerque, N. Mex.[3] (6-30-73).
U.S. Department of the Interior, Geological Survey, Harrisburg, Pa.[3] (6-30-74).
U.S. Department of the Interior, Geological Survey, Washington, D.C.[1]
U.S. Department of Transportation, Federal Highway Administration, Fairbanks Highway Research Station, McLean, Va.
U.S. Department of Transportation, Federal Highway Administration, Materials Testing Laboratory, Vancouver, Wash. (6-30-77).[3]
U.S. Department of Transportation, Federal Highway Administration, Washington, D.C.[1]
U.S. Environmental Protection Agency Laboratory, Sabine Island, Gulf Breeze, Fla.[3] (6-30-74).
U.S. Environmental Protection Agency, Western Environmental Research Laboratory, Las Vegas, Nev.[3] (6-30-73).

V

Velsicol Chemical Corp., Chicago, Ill.[3] (6-30-75).
Vermillion Co., Farm Bureau, Danville, Ill.
Vermont, University of, Burlington, Vt.
Virginia Department of Highways, Richmond, Va.
Virginia Polytechnic Institute, Blacksburg, Va.
Virginia Truck Experiment Station, Painter, Va.
Virginia Truck Experiment Station, Virginia Beach, Va.
Vistron Company, Lima, Ohio.

W

Wahler, W. A., & Associates, Palo Alto, Calif.
Walker Laboratories, Columbia, S.C.
Walker Laboratories, Florence, S.C.
Ward, J. S., & Associates, Caldwell, N.J.[3] (6-30-76).
Ward Lind Engineers, Inc., Jackson, Miss.
Warf Institute, Inc., Madison, Wis.
Washington State University, Department of Botany, Pullman, Wash.[3] (6-30-76).
Washington, University of, College of Forest Resources, Seattle, Wash.[3] (6-30-76).
Washington, University of, Laboratory of Radiation Ecology, Seattle, Wash.[3] (6-30-74).
Weber State College, Department of Microbiology, Ogden, Utah.
West Virginia Department of Highways, Charleston, W. Va.
Western Research Laboratories, Niagara Chemical Division, FMC, Richmond, Calif.
Wharton County Junior College, Soil Testing Laboratory, Wharton, Tex.[3] (6-30-73).
Willchemco Testing Laboratory, Grand Island, Nebr.
William and Mary, College of, Williamsburg, Va.
Williams, E. V., Co., Inc., Virginia Beach, Va.
Winthrop College Department of Biology, Rock Hill, S.C.[3] (6-30-74).
Wisconsin Department of Transportation, Madison, Wis.
Wisconsin, University of, Department of Soil Science, Madison, Wis.
Wisconsin, University of, Soils Department, Madison, Wis.[3] (6-30-74).
Wolf's, Dr., Agricultural Laboratories, Fort Lauderdale, Fla.[3] (6-30-75).
Woodard Research Corp., Herndon, Va.
Woodward-Clevenger & Associates, Inc., Denver, Colo.[3] (6-30-75).
Woodward, Clyde, & Associates, Orange, Calif.
Woodward, Clyde, & Associates, Clifton, N.J.
Woodward, Clyde, & Associates, San Diego, Calif.
Woodward, Clyde, Sherard, & Associates, St. Louis, Mo.
Woodward-Gardner & Associates, Philadelphia, Pa.
Woodward-Lundgren, & Associates, Oakland, Calif.
Woodward-Lundgren, & Associates, San Jose, Calif.
Woodward-McMaster, & Associates, Kansas City, Mo.

See footnotes at end of document.

Woodward-McMaster & Associates, Inc., St. Louis, Mo.
Woodward-Moorehouse, & Associates, Inc., Clifton, N.J.[2] (6-30-76).
Woodson-Tenent Laboratories, Memphis, Tenn.
Woodville Lime Products, Woodville, Ohio.
Wyoming, University of, Department of Botany, Laramie, Wyo.[3] (6-30-76).

Y

Yakima Testing Laboratory, Yakima, Wash.[2] (6-30-74).
Yale University, Department of Geology & Geophysics, New Haven, Conn.[2] (6-30-73).
Yale University, Greeley Laboratories, New Haven, Conn.[2] (6-30-77).
Yeshiva University, New York, N.Y.[3] (6-30-73).
Yule, Jordan, and Associates, Camp Hill, Pa.

Z

Zoecon Corp., Palo Alto, Calif.

(Secs. 8 and 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33; 7 U.S.C. 161, 162, 150ee; 29 FR 16210, as amended; 37 FR 28464, 28477; 7 CFR 301.48, 301.72, 301.80, 301.81 and 301.85)

This document shall become effective March 1, 1973, when it shall supersede PP 639 dated April 20, 1972, and PP 639 amendment dated August 3, 1972.

Under the provisions of the regulations supplemental to the notices of quarantine cited herein, soil samples for processing, testing, or analysis may be moved interstate from any regulated area specified in the regulations to laboratories approved by the Deputy Administrator and so listed by him. A laboratory may be approved if a compliance agreement is signed; samples are packaged to prevent spilling of soil; and soil residues, hazardous water residues, and shipping containers are treated in accordance with specified procedures.

The Deputy Administrator of Plant Protection and Quarantine Programs has approved the above-listed laboratories as establishments which meet the qualifications required under the regulations. The listed establishments are, therefore, authorized to receive soil samples from the regulated areas specified in the regulations without certificates or permits attached.

With respect to the establishments added to the list of approved laboratories, this revision relieves certain restrictions presently imposed and should be made effective promptly in order to be of maximum benefit to persons subject to the restrictions that are being relieved.

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

Done at Washington, D.C., this 23d day of February 1973.

LEO G. K. IVERSON,
Deputy Administrator, Plant Protection and Quarantine Programs.

NOTE: A date after a name indicates when the import permit expires.

[FR Doc.73-3850 Filed 3-2-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DESI 10296; Docket No. FDC-D-523; NDA 10-296]

ELI LILLY AND CO.

Combination Drug Containing Diethylstilbestrol, Methyltestosterone and Reserpine for Oral Use; Notice of Withdrawal of Approval of New Drug Application

Correction

In FR Doc. 73-2311 appearing at page 3534 of the issue for Wednesday, February 7, 1973, in the fifth line of the last paragraph the effective date, reading "February 1, 1973.", should read "February 7, 1973.".

[Docket No. FDC-D-477; NADA 6-888V]

MEGASUL (NITROPHENIDE) PREMIX 25 PERCENT

Notice of Withdrawal of Approval of New Animal Drug Application

Correction

In FR Doc. 73-2312 appearing on page 3535 of the issue for Wednesday, February 7, 1973, at the end of the last paragraph the effective date, reading "March 9, 1973", should read "February 7, 1973.".

[DESI 6363; Docket No. FDC-D-532; NDA 12-399]

A. H. ROBINS CO.

Methocarbamol With Phenacetin, Aspirin, Hyoscyamine Sulfate and Phenobarbital; Withdrawal of Approval of New Drug Application

On November 15, 1972, there was published in the FEDERAL REGISTER (37 FR 24206) a notice of opportunity for hearing (DESI 6363) in which the Commissioner of Food and Drugs proposed to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) withdrawing approval of NDA 12-399 for Robaxisal-PH Tablets containing methocarbamol, phenacetin, aspirin, hyoscyamine sulfate, and phenobarbital; A. H. Robins Co., 1407 Cummings Drive, Richmond, VA 23220. The basis of the proposed action was the lack of substantial evidence that the drug is effective as a fixed combination for the uses recommended or suggested in its labeling and that each component of the combination drug contributes to the total effects claimed.

Neither A. H. Robins nor any other interested person filed a written appearance of election with respect to Robaxisal-PH Tablets as provided by said notice. The failure to file such an appearance constitutes an election by such persons not to avail themselves of the opportunity for a hearing.

[1] National Compliance Agreement—applies to all branch laboratories in conterminous United States.
[2] Authorized to receive unsterilized foreign samples only.
[3] Authorized to receive unsterilized foreign samples also.

Also included in the aforesaid notice was Robaxisal Tablets containg methocarbamol and aspirin (NDA 12-281). A. H. Robins Co. elected to avail itself of an opportunity for hearing concerning that drug. That request for a hearing is under review and will be the subject of a separate FEDERAL REGISTER notice.

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, October 31, 1972). Any person who wishes to determine whether a specific product is covered by this notice should write to the Food and Drug Administration, Bureau of Drugs, Office of Compliance (BD-300), 5600 Fishers Lane, Rockville, Md. 20852.

The Commissioner of Food and Drugs, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1053, as amended; 21 U.S.C. 355), and the Administrative Procedure Act (5 U.S.C. 554), and under authority delegated to him (21 CFR 2.120), finds that on the basis of new information before him with respect to the drug, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof.

Therefore, pursuant to the foregoing findings, approval of new drug application 12-399 and all amendments and supplements applying thereto is withdrawn effective on March 5, 1973. Shipment in interstate commerce of the above-listed drug product or of any identical, related, or similar product, not the subject of an approved new drug application, is henceforth unlawful.

Dated: February 23, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.73-4056 Filed 3-2-73;8:45 am]

[DESI 6902; Docket No. FDC-D-597; NDA NO. 6-902]

ROCHE LABORATORIES, DIVISION OF HOFFMANN-LA ROCHE

Capsules Containing Nicotinyl Alcohol as the Tartrate and Trimethobenzamide Hydrochloride; Opportunity for Hearing on Proposal To Withdraw Approval of New Drug Application

In a notice (DESI 6902) published in the FEDERAL REGISTER of September 18, 1970 (35 FR 14628) the Commissioner of Food and Drugs announced his conclusions pursuant to the evaluation of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the drug described below, stating that the drug was regarded as possibly effective and lacking substantial evidence of effectiveness for the various 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 within the period provided.

NDA 12-410; Tigacol Capsules containing nicotinyl alcohol as the tartrate and trimethobenzamide hydrochloride; Roche Laboratories, Division of Hoffmann-La Roche Inc., 340 Kingsland Street, Nutley, NJ 07110.

Therefore, notice is given to the holder(s) of the new drug application(s) and to any other interested person that the Commissioner proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) withdrawing approval of the listed new drug application(s) and all amendments and supplements thereto on the grounds that new information before him with respect to the drug(s), evaluated together with the evidence available to him at the time of approval of the application(s), shows there is a lack of substantial evidence that the drug(s) will have all the effects purported or represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

All identical, related, or similar products, not the subject of an approved new drug application, are covered by the new drug application(s) reviewed. See 21 CFR 130.40 (37 FR 23185, October 31, 1972). Any manufacturer or distributor of such an identical, related, or similar product is an interested person who may in response to this notice submit data and information, request that the new drug application(s) not be withdrawn, request a hearing, and participate as a party in any hearing. Any person who wishes to determine whether a specific product is covered by this notice should write to the Food and Drug Administration, Bureau of Drugs, Office of Compliance (BD-300), 5600 Fishers Lane, Rockville, Md. 20852.

In accordance with the provisions of section 505 of the Act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Part 130), the Commissioner hereby gives the applicant(s) and any other interested person an opportunity for a hearing to show why approval of the new drug application(s) should not be withdrawn.

On or before April 4, 1973, the applicant(s) and any other interested person is required to file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, a written appearance electing whether or not to avail himself of the opportunity for a hearing. Failure of an applicant or any other interested person to file a written appearance of election within said 30 days will constitute an election by him not to avail himself of the opportunity for a hearing.

If no person elects to avail himself of the opportunity for a hearing, the Commissioner without further notice will enter a final order withdrawing approval of the application(s).

If an applicant or any other interested person elects to avail himself of the opportunity for a hearing, he must file, on or before April 4, 1973, a written appearance requesting the hearing, giving the reasons why approval of the new drug application(s) should not be withdrawn, together with a well-organized and full-factual analysis of the clinical and other investigational data he is prepared to prove in support of his opposition. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing (21 CFR 130.14(b)).

If review of the data submitted by an applicant or any other interested person warrants the conclusion that there exists substantial evidence demonstrating the effectiveness of the product(s) for the labeling claims involved, the Commissioner will rescind this notice of opportunity for hearing.

If review of the data in the application(s) and data submitted by the applicant(s) or any other interested person in a request for a hearing, together with the reasoning and factual analysis in a request for a hearing, warrants the conclusion that no genuine and substantial issue of fact precludes the withdrawal of approval of the application(s), the Commissioner will enter an order of withdrawal making findings and conclusions on such data.

If, upon the request of the new drug applicant(s) or any other interested person, a hearing is justified, the issues will be defined, a hearing examiner will be named, and he shall issue, as soon as practicable after April 4, 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 new drug application(s) will be afforded an opportunity to appear at the hearing, file briefs, present evidence, cross-examine witnesses, submit suggested findings of fact, and otherwise participate as a party. The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process the Commissioner finds entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in 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. 505, 52 Stat. 1052-53, as amended; 21 U.S.C. 355), and the Administrative Procedure Act (5 U.S.C. 554), and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: February 23, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.73-4055 Filed 3-2-73;8:45 am]

[FAP 3A2885]

G. D. SEARLE & CO.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 3A2885) has been filed by G. D. Searle & Co., Box 5110, Chicago, IL 60680, proposing the issuance of a food additive regulation (21 CFR Part 121) to provide for the safe use of aspartame (L-aspartyl-L-phenylalanine methyl ester) in foods as a nutritive substance with intense sweetness and with flavor-enhancing properties.

Dated: March 1, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.73-4260 Filed 3-2-73;8:45 am]

National Institutes of Health

PANCREAS WORKING GROUP

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of The Pancreas Working Group, March 6, 1973, at 9 a.m. in the Montgomery Room at the Holiday Inn, Bethesda, Md. This meeting will be open to the public from 9 a.m., March 6, 1973, to discuss new approaches to management of cancer of the pancreas. Attendance by the public will be limited to space available.

Mr. Frank Karel, Associate Director of Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Md. 20014 (301/496-1911) will furnish summaries of the open meeting and roster of working group members.

Dr. John T. Kalberer, Jr., Special Assistant to the Director, Division of Cancer Grants, NCI, Building 31, Room 10A06, National Institutes of Health, Bethesda, Md. 20014 (301/496-5147) will provide substantive program information.

Dated: February 26, 1973.

JOHN F. SHERMAN,
Acting Director, NIH.

[FR Doc.73-4167 Filed 3-1-73;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing Production and Mortgage Credit

[Docket No. N-73-127]

FIRE PROTECTION STANDARDS

Proposed Revision of HUD's Minimum Property Standards

Notice is hereby given that the Department of Housing and Urban Development proposes to revise its Minimum Property Standards for fire protection. The new fire protection standards would be Revision No. 1 to each of the following two proposed Minimum Property

Standards volumes for which a notice of availability was published in the FEDERAL REGISTER on November 29, 1972 (37 FR 25271):

HUD 4910 Minimum Property Standards for Multifamily Housing.
HUD 4920 Minimum Property Standards for Care-Type Housing.

These changes are planned as a result of the evidence that tragic fires are continuing throughout the country in residential buildings. The emphasis of these proposed fire standards is on providing increased life safety by the greater use of fire detection and extinguishing devices and additional controls on the operation of elevators.

It is expected that the proposed revisions to the Minimum Property Standards for fire will ultimately be formally adopted by the Department. They will then be incorporated into the Department's regulations and will be available, together with the other Minimum Property Standards, for purchase by all interested persons.

The public is invited to comment on these proposed revised fire protection standards, copies of which are available for public inspection in both the Office of Technical and Credit Standards, Architecture and Engineering Division, Room 5224, and the Office of General Counsel, Rules Docket Clerk, Room 10256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. These proposed revised standards are also available in each HUD Regional, Area, and Insuring Office. Comments should be filed in triplicate, using the above docket number and title, with the Rules Docket Clerk at the address stated above. All relevant material received on or before March 29, 1973, will be considered. Copies of comments submited will be available for examination by interested persons during business hours, both before and after the closing, at the office of the Rules Docket Clerk.

Issued at Washington, D.C., February 2, 1973.

JOHN L. GANLEY,
Deputy Assistant Secretary for Housing Production and Mortgage Credit.

[FR Doc.73-4206 Filed 3-2-73;8:45 am]

Office of Interstate Land Sales Registration

[Docket No. N-73-142; Administrative Division Docket No. 2-278]

CRYSTAL HILLS, ET AL.

Notice of Hearing

Notice is hereby given that.

1. Crystal Hills Development Co., its officers and agents, hereinafter referred to as "Respondent," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Public Law 90-448) (15 U.S.C. 1701 et seq.), received a Notice of Proceedings and Opportunity for Hearing dated January 4, 1973, which was sent to the developer pursuant to 15 U.S.C. 1706(d) and CFR 1710.45(b)(1) informing the developer of information obtained by the Office of Interstate Land Sales Registration showing that a change had occurred which affected material facts in the Developer's Statement of Record for Crystal Hills and the failure of the developer to amend the pertinent sections of the Statement of Record and Property Report.

2. The Respondent filed an answer dated January 19, 1973, in answer to the allegations of the Notice of Proceedings and Opportunity for a Hearing.

3. In said answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for a Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(b), *It is hereby ordered*, That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Paul N. Pfeiffer, Administrative Law Judge, in Room 7233, Department of HUD Building, 451 Seventh Street SW., Washington, DC, on March 6, 1973, at 10 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C. 20410, on or before February 28, 1973.

5. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceeding shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order suspending the statement of record, herein identified shall be issued pursuant to 24 CFR 1710.45(b)(1).

This notice shall be served upon the respondent forthwith pursuant to 24 CFR 1720.440.

Dated: February 23, 1973.

By the Secretary.

GEORGE K. BERNSTEIN,
Interstate Land Sales Administrator.

[FR Doc.73-4096 Filed 3-2-73;8:45 am]

[Docket No. N-73-141; Administrative D Division Docket No. Z-276]

RIVER'S BEND ESTATES, ET AL.

Notice of Hearing

Notice is hereby given that:

1. River's Bend Estates, Inc., its officers and agents, hereinafter referred to as "Respondent," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Public Law 90-448) (15 U.S.C. 1701 et seq.), received a Notice of Proceedings and Opportunity for hearing dated January 4, 1973, which was sent to the developer pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1) informing the developer of information obtained by the Office of Interstate Land Sales Registration showing that a change had occurred which affected material facts in the developer's Statement of Record for River's Bend Estates and the failure of the developer to amend the pertinent sections of the Statement of Record and Property Report.

2. The Respondent filed an answer received January 24, 1973, in answer to the allegations of the Notice of Proceedings and Opportunity for a Hearing.

3. In said answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for a hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(b), *It is hereby ordered*, That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Paul N. Pfeiffer, Administrative Law Judge, in Room 7233, Department of HUD Building, 451 7th Street SW., Washington, DC, on March 6, 1973, at 2 p.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C. 20410, on or before February 28, 1973.

5. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceeding shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order suspending the statement of record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: February 23, 1973.

By the Secretary.

GEORGE K. BERNSTEIN,
Interstate Land Sales Administrator.

[FR Doc.73-4095 Filed 3-2-73;8:45 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50-295, 50-304]

COMMONWEALTH EDISON CO.

Notice and Order for Final Prehearing Conference

In the matter of Commonwealth Edison Co. (Zion Station, Units 1 and 2), Dockets Nos. 50-295, 50-304.

Take notice that pursuant to the Commission's rules of practice, the Atomic Safety and Licensing Board (the Board) assigned to this proceeding will hold a final prehearing conference on March 12, 1973, in Washington, D.C. This prehearing conference will start at 11 a.m., e.s.t., at the following address:

U.S. District Court, Courtroom 24, Third and Constitution Avenue NW., Washington, D.C. 20001.

At the subject conference, the parties, by their attorneys, will:

1. Report on the status of discovery;

2. Discuss the needs for further discovery, and the time required for such discovery, if any; and

3. Submit oral or written arguments on those contentions upon which the parties have thus far failed to agree concerning

the admissibility of such contentions for adjudication in this proceeding, to enable the Board to make final resolution of the specific matters in controversy.

The Board will hear any motions to be addressed to the Atomic Safety and Licensing Board; will discuss procedures to be followed in the presentation of evidence and the handling of exhibits at the evidentiary hearings; will discuss schedules and locations for the hearings; and such other matters as may aid in the orderly disposition of this proceeding.

All members of the public are entitled to attend the prehearing conference, as well as the evidentiary hearing itself, now scheduled to begin in Waukegan, Ill., on April 2, 1973.

It is so ordered.

Issued at Washington, D.C., this 27th day of February 1973.

For the Atomic Safety and Licensing Board.

THOMAS W. REILLY,
Chairman.

[FR Doc.73-4075 Filed 3-2-73;8:45 am]

[Docket No. 50-331]

IOWA ELECTRIC LIGHT AND POWER CO. ET AL.

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the FEDERAL REGISTER (37 FR 28710) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, and 2.721 of the Commission's regulations, all as amended, an Atomic Safety and Licensing Board is hereby established to rule on petitions and/or requests for leave to intervene in the following proceeding:

Iowa Electric Light and Power Co., Central Iowa Power Cooperative, and Corn Belt Power Cooperative (Duane Arnold Energy Center), Docket No. 50-331.

The members of the Board are:

Elizabeth S. Bowers, Esq., Chairman; John B. Farmakides, Esq., Member; Dr. Marvin M. Mann, Member.

Dated at Washington, D.C., this 26th day of February 1973.

For the Atomic Safety and Licensing Board Panel.

NATHANIEL H. GOODRICH,
Chairman.

[FR Doc.73-4076 Filed 3-2-73;8:45 am]

[Docket No. 50-410]

NIAGARA MOHAWK POWER CORP.

Notice and Order for Second Prehearing Conference

Notice is hereby given that, in accordance with the prehearing conference order issued by the Atomic Safety and Licensing Board (the Board) on January 26, 1973, a second prehearing conference will be held in the above-captioned proceeding on Thursday, March 29, 1973, at 10 a.m., local time, in the Second Floor Courtroom, County Courthouse, East Oneida and Second Streets, Oswego, N.Y. 13126.

The second prehearing conference shall deal with the following matters:

1. Further identification and clarification of the issues.

2. The status of any discovery initiated by the parties.

3. The need for further discovery, and the time required to complete any such discovery.

4. Any pending motions.

Also, the Board will expect to be advised of the impact of the Federal Water Pollution Control Act Amendments of 1972 on the conduct and disposition of this proceeding. As part of this discussion, the Board will require information on all applicable State and Federal water quality standards and effluent limitations and on the status of the State certification required by section 401(a) of the Federal Water Pollution Control Act Amendments of 1972. The parties should also be prepared to discuss the effect on this proceeding of the memorandum of understanding between the Atomic Energy Commission and the Environmental Protection Agency regarding implementation of section 511(c) of the Federal Water Pollution Control Act Amendments of 1972, including Appendix A thereto, which is the Atomic Energy Commission interim policy statement on implementation of section 511.

The Board has received the objections by the intervenors to its aforementioned prehearing conference order and has these objections under advisement.

The attorneys for the respective parties are directed to confer in advance of this prehearing conference, in such manner as they deem appropriate, and report to the Board at said conference on any stipulations regarding matters in controversy, on any informal discovery that can be arranged between the parties and on any other mutually agreeable procedures to expedite this proceeding.

Members of the public are invited to attend this second prehearing conference as well as the evidentiary hearing to be held at a later date to be fixed by the Board.

By order of the Atomic Safety and Licensing Board.

Dated this 26th day of February 1973, at Washington, D.C.

DANIEL M. HEAD,
Chairman.

[FR Doc.73-4040 Filed 3-2-73;8:45 am]

[Dockets Nos. 50-382, 50-306]

NORTHERN STATES POWER CO.

Notice of Hearing on Facility Operating Licenses

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the National Environmental Policy Act of 1969 (NEPA), and the regulations in Title 10, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities," and Part 2, "Rules of Practice," notice is hereby given that, subject to conditions set forth in a memorandum and order of February 23, 1973, a hearing will be held on the two pressurized water reactors, identified as the Prairie Island Nuclear Generating Plant Units 1 and 2 (the facilities) of the applicant, Northern States Power Co. The hearing to consider the issuance of the operating licenses for the facilities will be held at a time and place to be set forth in the future by the Atomic Safety and Licensing Board (Licensing Board) named herein, to begin in the vicinity of the facilities near Red Wing, Goodhue County, Minn. Construction of the facilities was authorized by Construction Permits Nos. CPPR-45 and CPPR-46, issued by the Atomic Energy Commission on June 25, 1968. The instant facilities are subject to the provisions of section C.3 of Appendix D to 10 CFR Part 50, which sets forth procedures applicable to review of environmental considerations for production and utilization facilities for which construction permits were issued prior to January 1, 1970.

The Licensing Board, designated by the Chairman of the Atomic Safety and Licensing Board Panel, will consist of Edward Luton, Esq., Chairman; Dr. Franklin C. Daiber, and Dr. Emmeth A. Luebke. Mr. Ralph S. Decker has been designated as a technically qualified alternate, and John B. Farmakides, Esq., has been designated as an alternate qualified in the conduct of administrative proceedings.

A Notice of Consideration of Issuance of Facility Operating Licenses; Notice of Opportunity for Hearing was published in the FEDERAL REGISTER on October 11, 1972 (37 FR 21455). The notice provided, inter alia, that within 30 days from the date of publication, any person whose interest may be affected by the proceeding could file a petition for leave to intervene in accordance with the requirements of 10 CFR Part 2, Rules of Practice. Petitions to intervene were thereafter filed by several petitioners including (1) the Minnesota Pollution Control Agency (MPCA); (2) Businessmen for the Public Interest and Mr. James T. Nodland, jointly (BPI); and Mr. Steven J. Gadler. As set out in the memorandum and order referred to above, a public hearing will be held. Petitioners MPCA and Gadler will be admitted as parties to the proceeding; petitioner BPI may subsequently be admitted as a party or, alternatively, will be permitted to make a limited appearance pursuant to 10 CFR 2.715.

A prehearing conference or conferences will be held by the Licensing Board, at date(s) and place(s) to be set by it, to consider pertinent matters in accordance with the Commission's rules of practice. The date and place of the hearing will be set by the Board at or after the prehearing conference(s). Notices as to the dates and places of the prehearing conference and the hearing will be published in the FEDERAL REGISTER. The specific issues to be considered

at the hearing will be determined by the Licensing Board.

For further details pertinent to the matters under consideration, see the application for the facility operating licenses, dated January 28, 1971, as amended; the applicant's environmental report dated November 5, 1971, as supplemented; the safety evaluation prepared by the Directorate of Licensing, dated September 28, 1972, and the Commission's draft detailed statement on environmental considerations pursuant to 10 CFR Part 50, Appendix D, dated January 24, 1973, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Environmental Library of Minnesota, 1222 Southeast Fourth Street, Minneapolis, MN. As they become available, the following documents also will be available at the above locations: (1) The report of the Advisory Committee on Reactor Safeguards on the application for facility operating licenses; (2) the Commission's final detailed statement on environmental considerations; (3) the proposed facility operating licenses; and (4) the technical specifications, which will be attached to the proposed facility operating licenses. Copies of items (1) and (2) may also be obtained by request to the Deputy Director for Reactor Projects, Directorate of Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

Any person who wishes to make an oral or written statement in this proceeding but who has not filed a petition for leave to intervene as noted above, may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715 of the Commission's rules of practice. Limited appearances will be permitted at the time of the hearing in the discretion of the Licensing Board, within such limits and on such conditions as may be fixed by it. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, not later than April 4, 1973. A person permitted to make a limited appearance does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of the hearing as specified above. A member of the public does not have the right to participate unless he has been granted the right to intervene as a party or the right of limited appearance.

An answer to this notice, pursuant to the provisions of 10 CFR 2.705 of the Commission's rules of practice, must be filed by the parties to this proceeding (other than the regulatory staff) not later than March 26, 1973.

Papers required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Pending further order of the Licensing Board, parties are required to file, pursuant to the provisions of 10 CFR 2.708 of the Commission's rules of practice, an original and 20 conformed copies of each such paper with the Commission.

It is so ordered.

Issued at Washington, D.C., this 23d day of February 1973.

ATOMIC SAFETY AND LICENSING BOARD,
ELIZABETH S. BOWERS,
Chairman.

[FR Doc.73-4021 Filed 3-2-73;8:45 am]

[Docket No. 50-415]

WESTINGHOUSE ELECTRIC CORP.

Notice of Application for and Consideration of Issuance of Facility Export License

Please take notice that Westinghouse Electric Corp., New York, N.Y., has submitted to the Atomic Energy Commission an application for a license to authorize the export of a pressurized water reactor with a thermal power level of 1,882 megawatts to the Furnas Centrais Electricas S.A., Rio de Janeiro, Brazil, and that the issuance of such license is under consideration by the Atomic Energy Commission.

No license authorizing the proposed reactor export will be issued until the Atomic Energy Commission determines that such export is within the scope of and consistent with the terms of an applicable agreement for cooperation arranged pursuant to section 123 of the Atomic Energy Act of 1954, as amended (Act), nor until the Atomic Energy Commission has found that:

(a) The application complies with the requirements of the Act, and the Atomic Energy Commission's regulations set forth in Title 10, Chapter 1, Code of Federal Regulations, and

(b) The reactor proposed to be exported is a utilization facility as defined in said Act and regulations.

In its review of applications solely to authorize the export of production or utilization facilities, the Atomic Energy Commission does not evaluate the health and safety characteristics of the facility to be exported.

Unless on or before March 20, 1973, a request for a hearing is filed with the Atomic Energy Commission by the applicant, or a petition for leave to intervene is filed by any person whose interest may be affected by the proceeding, the Director of Regulation may, upon the determinations and findings noted above, cause to be issued to Westinghouse Electric Corp., a facility export license and may cause to be published in the FEDERAL REGISTER a notice of issuance of the license. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in the notice, the Atomic Energy Commission will issue a notice of hearing or an appropriate order.

A copy of the application is on file in the Atomic Energy Commission's Public Document Room located at 1717 H Street NW., Washington, DC.

For the Atomic Energy Commission.

Dated at Bethesda, Md., this 21st day of February 1973.

RICHARD E. CUNNINGHAM,
Acting Deputy Director for Fuels and Materials, Directorate of Licensing.

[FR Doc.73-4041 Filed 3-2-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 25241; Order 73-2-101]

ALITALIA-LINEE AEREE ITALIANE-S.p.A.

Order of Investigation and Suspension Regarding Transatlantic Fare Structure

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 14th day of February 1973.

By tariffs filed on January 22, 1973, Alitalia-Linee Aeree Italiane-S.p.A. (Alitalia) proposes for effect from April 1, 1973, to revise the existing fare structure over the North Atlantic between the United States and Italy. As in the case of our recent disposition of U.S. carrier transatlantic fare proposals (Order 73-1-76), this order will be concerned with Alitalia's proposal as it relates to the period from April 1, 1973, through October 31, 1973.

Alitalia proposes a simplified fare structure comparable to that proposed by Lufthansa and limited to four distinct categories of fares.[1] First-class fares would be retained at status quo. However, normal economy fares in both shoulder and peak periods would be reduced, and set at levels $46 and $66, respectively, below those proposed by the U.S. carriers. Alitalia does not propose to offer an advance purchase excursion fare (APEX). However, it would introduce a 14/60-day excursion fare at a level only slightly above that of the present 22/45-day excursion fares. Alitalia also proposes a 14/21-day individual inclusive tour fare (IIT) for eastbound originating travel only, at levels ranging from $16 to $21 below those proposed by the U.S. carriers. For westbound originating passengers, Alitalia would offer a 10/21-day group inclusive tour (GIT) fare at levels which undercut the present 14/21-day GIT fares by $50 and $62 in peak and shoulder periods, respectively.

Complaints have been filed by Pan American World Airways, Inc. (Pan American), Trans World Airlines, Inc. (TWA), and the member carriers of the National Air Carrier Association (NACA), all of which request that immediate steps be taken to suspend the filing as unjust, unreasonable, and uneconomic. The thrust of the complainants'

[1] Alitalia also proposes to retain the currently available youth fares. The issue of youth fares is under investigation in Docket 23780 and will not be further dealt with herein. We intend to dispose of the pending request for suspension of these fares promptly by separate order.

argument is that the two promotional fares proposed would be made available virtually without restriction, that most of the traffic would travel at one or the other of these fares, and that at the low yields involved the fares would prove to be economically disastrous to the scheduled industry. NACA refers to its earlier complaint against Lufthansa's filing in which it alleges that the low level of the promotional fares when combined with the absence of meaningful restrictions on their use indicates that they are predatory in nature and aimed at the charter market. NACA contends that, because of the lower normal fares, Alitalia's proposed structure would be even less economic than that proposed by Lufthansa.

Pan American contends that Alitalia's fare structure, if implemented throughout the transaltantic market, would generate a 7-percent increase in traffic over that which it anticipates were present fares to be retained. However, it also estimates that approximately 75 percent of its traffic would move on the two promotional fares. Since the yield from these fares is less than the cost of operation, Pan American projects a reduction in net operating profit of $3.6 million from the level which would be achieved under status quo fares. TWA estimates that implementation of Alitalia's proposal across the Atlantic would result in traffic increases of about 5 percent, but would result in nearly $15 million less in revenue than would be the case under its own proposal.

In answer to the complaints, Alitalia denies that its proposed fares are in any way uneconomic and alleges that the fares fully meet the needs of the traveling public and are accordingly in the public interest.

The year 1972 saw an encouraging increase in traffic growth on the North Atlantic, and along with it a significant increase in load factor for most carriers. Notwithstanding this favorable trend, however, overall economic results for the industry continued to be substandard. As for the U.S. carriers, despite an annual average load factor of about 60 percent, Pan American remained in a negative return position, and TWA's earnings were only 8.38 percent on investment.[2] Similar results have apparently been sustained by the foreign-flag carriers. For this reason, there seems to be a consensus among the carriers that improved yields and revenues are necessary if transatlantic scheduled services are to continue on an economically viable basis. It also seems clear that the 22/45-day excursion fare has been largely responsible for the erosion in average yield which has occurred this past year. There can be little doubt that this fare generated new travel. By the same token, it appears to have resulted in significant diversion from higher rated fares as evidenced by the fact that 25 percent of the total traffic carried by the U.S. carriers moved on these fares. Stated differently, one in every four transatlantic passengers traveled at the lowest fare available for individual service (excluding the youth fare). In our opinion, the economic validity of a fare introduced for promotional reasons and established on the basis of incremental added costs is brought into serious question when its usage achieves such a magnitude.

By Order 73-1-76, the Board indicated its acceptance of the fare package proposed by the U.S. carriers.[3] Our acceptance was based on the understanding that the structure was not advanced as a definitive one for the future, but rather as an acceptable one for the travel season immediately ahead. Indeed, the carriers did not support their proposal as one that would adequately compensate for the cost of providing scheduled service, but rather as a reasonably competitive response to changing market conditions which they anticipate will produce moderately improved yields and increased revenues. The U.S. carriers' structure incorporates a fare category which is somewhat lower than the level now offered on the 22/45-day excursion fare. However, the conditions applicable to use of this APEX fare are quite restrictive and should curtail economic diversion from other services. By the same token, the level of the 14/45-day excursion fare, which would be available with minimal restrictions, would be significantly above the level now applicable to the comparable fare. On this basis, the Board indicated its willingness to accept the structure proposed for the upcoming season, the most important consideration being a projected improvement in yield and a conclusion that the structure moved in the direction of more closely relating fares to the cost of providing the respective services.

We do not mean to imply that the Board considers the U.S. carrier proposal as the only, or necessarily the best, solution to the question of North Atlantic fares. As indicated in our earlier order, we believe it contains certain elements which represent distinct improvements which should be pursued over the longer term. This is not to say that the Board stands committed to the particular structure which the U.S. carriers propose. We are committed, however, to the necessity for improving the overall average yield from scheduled services on the North Atlantic, and are not prepared to accept the argument that these services need be priced competitively with charter services in order to maintain independent and profitable competitive operations.

For this reason, the Board is unable to accept Alitalia's filing. We endorse the simplification which it represents. However, we are unable to accept the significant reductions proposed in normal economy fares in the context of Alitalia's overall structure, and believe the diversion to the very low 14/60-day excursion fare which is likely to occur in the absence of meaningful restrictions on its use makes it extremely unlikely that transatlantic services could be operated at a profit. The same holds true, in our opinion, of the 14/21-day eastbound IIT fare, and the proposed westbound GIT fare which would be reduced substantially from present GIT fare levels.

As indicated earlier, the two individual fares are set at levels essentially comparable to the present 22/45-day fare. We recognize that the U.S. carrier structure incorporates an APEX fare which is significantly lower than the excursion fare Alitalia contemplates. However, we believe the restrictions on its availability are sufficient that it can reasonably be expected to be more generative this upcoming season than diversionary. Those travelers who prefer individual travel at their own option more than likely will continue to use the individual 14/45-day excursion fare which, under the U.S. carrier structure, would be set at a level about midway between the two currently effective excursion fares. The net result is that Pan American and TWA project yields of 4.7 cents and 5.1 cents per mile under their proposal. The yield anticipated to result from Alitalia's fare structure, on the other hand, would be approximately 4.3 cents per mile.

For the reasons stated, the Board finds that the normal economy fares the 14/60-day excursion fares, the 14/21-day individual inclusive tour fares, and the 10/21-day group inclusive tour fares proposed by Alitalia may be unjust, unreasonable, unjustly discriminatory, or unduly preferential or prejudicial and should be suspended pending investigation.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a), 403, 404, 801, and 1002, thereof,

It is ordered, That:

1. An investigation is instituted to determine whether the fares and provisions set forth in the appendix below, and rules, regulations, or practices affecting such fares and provisions, and subsequent revisions and reissues thereof, are or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, and if found to be unlawful, to take appropriate action to prevent the use of such fares and provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, the fares and provisions set forth in the appendix below are suspended and their use deferred from April 1, 1973, to and including March 31, 1974, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. This order shall be submitted to the President[4] and shall become effective on April 1, 1973;

4. Except to the extent granted herein, the complaints filed in Dockets 25162,

[2] Year ended Sept. 30, 1972.

[3] The Alitalia and U.S. carrier proposals are summarized in the attachment hereto.

[4] This order was submitted to the President on February 16, 1973.

25166, and 25168 are hereby dismissed; and

5. Copies of this order be filed in the aforesaid tariffs and be served upon Alitalia-Linee Aeree Italiane-S.p.A., Pan American World Airways, Inc., Trans World Airlines, Inc. and the National Air Carrier Association who are hereby made parties to the investigation.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

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

ROUND-TRIP FARE PROPOSALS, NEW YORK-ROME

		Current fares	PA/TW	Alitalia
First class		$1,036	$1,036	$1,036
Normal economy	Shoulder	640	616	570
	Peak	746	746	680
14/21 excursion	Shoulder	462	----	----
	Peak	525	----	----
22/45 excursion	Shoulder	324	----	----
	Peak	387	----	----
14/45 excursion	Shoulder	----	438	329
			(14/60)	
	Peak	----	523	399
14/21 IIT	Shoulder	----	350	329
			(EB only)	
	Peak	----	435	399
14/45 Apex	Shoulder	----	284	----
	Peak	----	353	----
Affinity group	Shoulder	368	----	----
	Peak	371	----	----
14/21 GIT	Shoulder	346	(10/21)	284
	Peak	409	(WB only)	359

APPENDIX

ALITALIA—TARIFF C.A.B. NO. 15 ISSUED BY JOHN M. SAMPSON, AGENT

This appendix applies only to the fares and provisions for transportation between points in the United States, on the one hand, and points in Italy, on the other, insofar as they apply for the account of ALITALIA-Linee Aeree Italiane-S.p.A.

The suspension ordered in ordering paragraph one does not stay the cancellation of fares and provisions on pages preceding the pages named in this appendix.

On 2d Revised Page 22, Rule 10 insofar as it applies to Normal Economy Class Fares published in section 33–K;

On 1st Revised Page 34–C, Rule 29;

On 1st Revised Page 34–D, Rules 29 and 29–A;

On 1st Revised Pages 34–E and 34–F, Rule 29–A;

On 2d Revised Pages 34–G and 34–H, Rule 29–B;

On 5th Revised Page 98 and 4th Revised Pages 99 and 100, all Column 4 Arbitraries insofar as they apply to the construction of through fares with fares published in Sections 33–L, 33–M and 33–N;

On 1st Revised Pages 226–I, all Normal Economy Class Fares in Section 33–K;

On 1st Revised Page 226–K, all 14–60 Day Excursion Fares in Section 33–L;

On 1st Revised Page 226–M, all 14–21 Day Individual Inclusive Tour Fares in Section 33–M;

On 1st Revised Page 226–O, all 10–21 Day Group Inclusive Tour Fares in Section 33–N.

[FR Doc.73-4120 Filed 3-2-73;8:45 am]

[Docket No. 25242; Order 73-2-102]

BRITISH OVERSEAS AIRWAYS CORP.

Order of Investigation and Suspension Regarding Transatlantic Fare Structure

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 14th day of February 1973.

By tariffs filed on January 15, 1973, for effect from April 1, 1973, British Overseas Airways Corp. (BOAC) proposes to revise the existing fare structure over the North Atlantic between the United States and the United Kingdom. As in the case of our recent disposition of U.S. carrier transatlantic fare proposals (Order 73–1–76), this order will be concerned with BOAC's proposal as it relates to the period from April 1, 1973 through October 31, 1973.

BOAC proposes to retain first-class and peak-season normal economy fares at status quo, while normal economy fares would be reduced $24 round trip during the shoulder period.[1] BOAC would also consolidate the existing 14–21-day excursion fare and the 22–45-day excursion fare into one 14–45-day excursion fare at shoulder and peak-period levels of $325 and $410, respectively. To this extent the proposal follows that filed by the U.S. carriers. However, BOAC would retain the present 14–21-day group inclusive tour fares, at levels $10 below those now in effect, and would retain affinity-group fares at present levels. BOAC also proposes a new Advance Purchase Excursion Fare (APEX), although at levels significantly below those proposed by the U.S. carriers and certain foreign carriers, and subject to differing conditions. The fare bound originating travel during the peak season (except for the 1 peak month of the peak) would be $240, and that for westbound originating travel in the same period would be $221, as compared with the U.S. carrier proposed level of $299. Eastbound, the fare is subject to minimum/maximum stay provisions of 10 days to 1 year; westbound these limitations would be 14 days to 1 year. Weekend surcharges would apply, reservations and full payment would be required 90 days prior to commencement of flight, subject to a 25-percent forfeiture in the event of cancellation. Contrary to the proposals of almost all other carriers, BOAC would extend the application of the 7–8-day winter group inclusive tour fare through May 15, 1973.

Complaints against BOAC's proposal have been filed by National Airlines, Inc. (National), Pan American World Airways, Inc. (Pan American), Trans World Airlines, Inc. (TWA), and the member carriers of the National Air Carrier Association (NACA). The complainants request suspension of BOAC's tariffs on the ground that the fares and rules are unjust, unreasonable, and unjustly discriminatory within the meaning of sections 404 and 1002(j) of the Federal Aviation Act of 1958, as amended.

The complaints object particularly to the yields and rules governing BOAC's proposed APEX fares. They allege that the per-mile yield resulting from this fare would be noncompensatory and would result in an overall loss of revenue. This loss would be compounded by the dilutionary impact of the more liberal minimum/maximum-stay provisions (10 days to 1 year for eastbound originating travel) to which the fares would be subject. The complainants content that the conditions attached to use of the APEX fare would not constitute a substantial encumbrance to potential travelers and that diversion from higher rated fare categories would be virtually unlimited. It is alleged that the only real constraint would be the 90-day advance purchase feature; but given the extremely low fare level this restraint would not materially lessen the probability of substantial diversion.

Pan American contends that BOAC's proposal, if applied in all transatlantic markets, would result in a revenue decline of $6.6 million from that which would accrue in 1973 under the present fare structure. The net impact on operating profit is estimated to be a reduction of $7.7 million. TWA estimates it would suffer a net revenue decrease of over $21 million as compared to its own filing.

As we have stated in other orders concerning the various North Atlantic fare proposals now before us, all of the North Atlantic operators appear to recognize the need to improve the economics of their services. To a considerable extent we attribute the lack of significant improvement in 1972 earnings, in the face of strong traffic growth and more satisfactory load factors, to the low-yield 22/45-day excursion fare introduced last April and the even lower youth fares. These two fares between them accounted for more than one-third of the total traffic. In our opinion, the economic soundness of these fare levels is brought into serious question when their usage reaches such dominance.

As indicated earlier, BOAC's proposed fare structure corresponds with that advanced by the U.S. carriers in a number of respects. However, it departs rather substantially where the APEX fare is concerned, both as to fare level and attendant conditions. As indicated in the attachment hereto, the U.S. carriers propose shoulder and peak-period APEX fares of $230 and $299, respectively.

[1] BOAC also proposes to retain the currently available youth fares. The issue of youth fares is under investigation in Docket 23780 and will not be further dealt with herein. We intend to dispose of the pending request for suspension of these fares promptly by separate order.

BOAC, on the other hand, proposes an APEX level for U.S.-originating passengers of $189 shoulder period, $240 peak period, and $290 peak of peak. During the shoulder period BOAC's fares would undercut those filed by the U.S. carriers by $31, and for most of the peak seasons the undercut would be $59. In addition, while the U.S. carriers' fare would be limited to a 14/45-day duration and would be subject to a $15 weekend surcharge, BOAC proposes a 10/365-day duration and a $10 weekend surcharge for eastbound originating travel. For westbound originating passengers, the fares would be reduced by as much as $69, and the weekend surcharge would be $7.

In Order 73-1-76, which dismissed complaints filed against the U.S. carriers' fare proposal, the Board commented on various aspects which it considered as steps in the direction of a fare structure more closely attuned to the economics of providing scheduled service. We also took note of the fact that the U.S. carriers anticipated a modest improvement in overall average yield under their proposed structure. On this basis, the Board indicated its willingness to permit the fares to become effective as filed for the period from April 1, 1973, through October 31, 1973, with the thought in mind that the IATA carriers would undertake a complete review of the entire North Atlantic fare structure at an early date for effect thereafter. We did not and do not intend that our action be construed as a commitment to the particular structure which the U.S. carriers propose. We are committed, however, to the necessity for improving the overall average yield from scheduled North Atlantic services.

In our opinion, BOAC's proposed fare structure more than likely would fall measurably short of this objective. Aside from the various issues raised by application of fares on a directional basis, we believe substantial and unnecessary diversion of traffic from higher rated services to the APEX fare could be expected, with a resulting significant dilution of present revenues. Information furnished by Pan American and TWA indicate their anticipation that the overall average yield under BOAC's structure would be 4.4 cents per mile, some 6 to 14 percent below the yields which they respectively estimate under the U.S. carrier structure. This expected result is clearly due primarily to the very low level of the proposed APEX fares.

While the level of the APEX fares and their more liberal availability for east bound originations constitute our primary concern, we also have considerable difficulty with other aspects of BOAC's proposal particularly as it may augur for the longer term. As we indicated in disposing of the U.S. carrier filings, the Board endorses the progress toward simplification of the structure which they reflect, and also the increased focus on accommodation of individual travel. We also expressed strong support for the concept of a charge for stopovers, at least on all promotional fares. BOAC, on the other hand, seeks to retain both the present group inclusive tour fares and those applicable to affinity group travel, and would continue to offer two free stopovers on the former. In both these respects, we believe BOAC's approach to be inconsistent with the trend toward which the carriers should be looking. Finally BOAC has failed to justify an extension of the low-level 7/8-day winter group inclusive tour fares beyond April 30, 1973.

For the reasons stated, the Board finds that the APEX fares, the 14/21-day group inclusive tour fares, and the winter group inclusive tour fares beyond April 30, 1973, proposed by BOAC may be unjust, unreasonable, unjustly discriminatory, or unduly preferential or prejudicial and should be suspended pending investigation.

As indicated previously, it seems apparent that the present 22/45-day excursion fares although generative have also resulted in a significant amount of diversion, and that these two developments taken together were largely responsible for the decline in yield in 1972. U.S. carrier traffic during the second and third quarters of 1972 showed an overall growth rate of 24 percent over the same period in 1971. In the face of this trend, however, the number of normal economy and short duration excursion fare passengers actually declined, from 726,165 to 680,762, a decrease of 7 percent. At the same time, long-range excursion-fare passengers more than doubled, increasing from 263,210 in 1971 (29/45-day excursion fare at New York-London round-trip level of $322, peak) to 570,853 (22/45-day excursion fare at $313 fare New York-London). In the Board's opinion, this growth in use of the long-duration excursion fare, which shows signs of approaching the volume of traffic moving on normal economy and short excursion fares, raises a serious question of the reasonableness of their continued availability. The Board intends to address itself to this matter in the near future and will take such action as it considers appropriate in the public interest.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a), 403, 404, 801, and 1002, thereof.

It is ordered, That:

1. An investigation is instituted to determine whether the fares and provisions set forth in the appendix below, and rules, regulations, or practices affecting such fares and provisions, and subsequent revisions and reissues thereof, are or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, and if found to be unlawful, to take appropriate action to prevent the use of such fares and provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, the fares and provisions set forth in the appendix below are suspended and their use deferred from April 1, 1973, to and including March 31, 1974,[2] unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. This order shall be submitted to the President[3] and shall become effective on April 1, 1973;

4. Except to the extent granted herein, the complaints filed in Dockets 25144, 25146, 25148, and 25149 are hereby dismissed; and

5. Copies of this order be filed in the aforesaid tariffs and be served upon British Overseas Airways Corp., National Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., and the National Air Carrier Association who are hereby made parties to the investigation.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[2] The 7/8-day winter group inclusive tour fares as identified in the 10th Revised Page 32 and 5th Revised Page 32A and 32B, published in section 18-H are suspended and their use deferred from May 1, 1973.

[3] This order was submitted to the President on Feb. 16, 1973.

ROUND-TRIP FARE PROPOSALS, NEW YORK-LONDON

		Current fares	PA/TW	BOAC
First class		$842	$842	$842
Normal economy	Shoulder	484	460	460
	Peak	590	590	590
14/21 excursion	Shoulder	349		
	Peak	412		
22/45 excursion	Shoulder	240		
	Peak	313		
14/45 excursion	Shoulder		325	325
	Peak		410	410
14/21 IIT	Shoulder		245	
	Peak		310	
			EB	WB
14/45 Apex	Shoulder		230	179
			199	
	Peak		269	221
			240	
			[1] 290	
Affinity group	Shoulder	219		219
	Peak	292		292
14/21 GIT	Shoulder	241		231
	Peak	304		294

[1] Peak of peak.

APPENDIX

BOAC—TARIFF CAB NO. 15 ISSUED BY JOHN M. SAMPSON, AGENT

This appendix applies only to fares and provisions for transportation between points in the United States, on the one hand, and points in the United Kingdom, on the other, for the account of British Overseas Airways Corp.

The suspension ordered in ordering paragraph 1 does not stay the cancellation of fares and provisions on pages preceding the pages named in this appendix.

On 11th Revised Page 20, Rule 8 Part B insofar as it applies to the construction of 7–8 Day Group Inclusive Tour Fares published in section 18–H on or after May 1, 1973;

On 8th Revised Page 28–B, 7th Revised Pages 29 and 30 and 10th Revised Page 31, Rule 16 insofar as it applies to 14–21 Day Group Inclusive Tour Fares published in section 18–F;

On 10th Revised Page 32 and 5th Revised Pages 32–A and 32–B, Rule 17 insofar as it applies to 7–8 Day Winter Group Inclusive Tour Fares published in section 18–H, on or after May 1, 1973;

On Original Pages 40–C and 40–D, Rule 47–A;

On 4th Revised Pages 112, 113, and 114, all Column 4 and 5 Arbitraries insofar as they apply to the construction of 7–8 Day Winter Group Inclusive Tour Fares published in section 18–H, on or after May 1, 1973;

On 1st Revised Pages 212–G and 212–H, section 18–D, all Round-Trip Advance Purchase Excursion Fares;

On Original Pages 212–K and 212–L, section 18–F, all 14–21 Day Group Inclusive Tour Fares;

On 1st Revised Page 212–N section 18–H all 7–8 Day Winter Group Inclusive Tour Fares insofar as they apply on or after May 1, 1973.

[FR Doc.73–4121 Filed 3–2–73;8:45 am]

[Docket No. 25249; Order 73–2–107]

DELTA AIR LINES, INC.

Order of Investigation and Suspension Regarding 7–17-Day Florida Excursion Fares

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 27th day of February 1973.

By tariff [1] marked to become effective March 5, 1973, Delta Air Lines, Inc. (Delta) proposes to establish 7–17-day limit midweek and weekend round trip excursion fares on both its day and night coach services from 24 points in the Northeast and Midwest to Fort Lauderdale/Miami, Orlando/Tampa, or West Palm Beach and return. The proposed weekend day excursion fares are 20 percent below the regular coach fares while the midweek fares represent a 25-percent discount. The proposed night coach excursion fares are set at 15 percent below the midweek and weekend excursion fares. The fares are to be applicable from May 1 to December 15, 1973. No blackout periods are proposed.

Delta estimates that it will carry 123,000 day excursion passengers in the 7½-month period the fares are to be effective of which 51,660 (42 percent) will be newly generated passengers. The contribution to profit after diversion and expenses is expected to be $2,573,000. With respect to the proposed night coach excursion fares, Delta alleges a concern that without these fares normal night coach passengers would shift to day excursion fares, which are proposed at somewhat lower levels than normal night coach service. Finally, Delta contends that its midweek-weekend pricing differential will minimize diversion and enhance the profit prospects.

Eastern Air Lines, Inc. (Eastern) and Northwest Airlines, Inc. (Northwest) have filed complaints alleging that the proposed four-level fare structure is too complex; that the lower midweek fare should not apply to the peak travel days of Monday and Friday; that excursion fares should not apply to night coach services; and that holiday blackouts should be imposed. Eastern further alleges that Delta has made no prima facie showing that the fares will have a favorable profit impact. It argues that to the extent an effort has been made to satisfy the profit impact test it has been directed to the day excursion fares, and that Delta has not shown the estimated generation/diversion ratio and profit impact which it anticipates from the night excursion fares.

Delta answers that the four-tiered structure is not unnecessarily complex in view of the peaking characteristics of the market; that the Monday/Friday designation as midweek is fully supported by directional peaks experienced in 1972; that documented results of its night coach excursion fares confirm the wisdom of extending the new fares to night coach operations; and that the availability of day excursion fares leaves no price incentive to patronize night services.

Upon consideration of the tariff filing, the complaints and answer thereto, and all relevant matters, the Board finds that the proposed fares may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful and should be investigated. The Board has also concluded to suspend the fares pending investigation.

Our primary difficulty with this filing relates to the proposed night coach excursion fares. As a conceptual matter, the Board is not persuaded of the economic validity of offering discounts on already discounted fares. In our opinion, the proposal would very probably have a substantial diversionary impact with a consequent erosion in yield. In any event, Delta has provided no estimate of generation/diversion or profit impact which it anticipates from the night coach excursion fares, and for this reason we are unable to make a meaningful evaluation of its proposal. Accordingly, and since the night excursion fares would have a significant impact [2] not only on Delta, but on Eastern, National, and Northwest as well, we will suspend the proposal.

The Board has also concluded to suspend the proposed day excursion fares since the tariff does not provide for blackout periods around holiday dates. In our opinion, appropriate blackout periods are necessary as a general proposition to minimize diversion and thereby preserve the economic validity of reduced excursion fares.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof.

It is ordered, That:

1. An investigation be instituted to determine whether the fares and provisions in Delta Air Lines, Inc.'s CAB No. 188, and rules, regulations, or practices affecting such fares and provisions, are or will be, unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful fares and provisions, and rules, regulations, or practices affecting such fares and provisions;

2. Pending hearing and decision by the Board, Delta Air Lines, Inc.'s CAB No. 188 is suspended and its use deferred to and including July 29, 1973, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension, except by order or special permission of the Board;

3. Except to the extent granted herein, the complaints in Dockets 25170 and 25181 are hereby dismissed;

4. The proceeding granted herein be assigned for hearing before an Administrative Law Judge of the Board at a time and place hereafter to be designated; and

5. Copies of this order be filed in the aforesaid tariff and served on Delta Air Lines, Inc., Eastern Air Lines, Inc., and Northwest Airlines, Inc., which are hereby made parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,[3]

Acting Secretary.

[FR Doc.73–4119 Filed 3–2–73;8:45 am]

[Docket No. 25243; Order 73–2–103]

LUFTHANSA GERMAN AIRLINES

Order of Investigation and Suspension Regarding Transatlantic Fare Structure

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 14th day of February 1973.

By tariffs filed on December 24, 1972, for effect April 1, 1973, Lufthansa German Airlines (Lufthansa) proposes to revise the existing fare structure over the North Atlantic between the United States and Germany. As in the case of our recent disposition of U.S.-carrier transatlantic fare proposals (Order 73–1–76), this order will be concerned with Lufthansa's proposal as it relates to the period from April 1, 1973 through October 31, 1973.

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[1] Delta Air Lines, Inc. Tariff CAB No. 188.

[2] The night coach excursion experiment permitted in 1972 was of a very short duration and did not affect the major east coast Florida markets. Moreover, Delta was the dominant night coach operator in each market which is not the case here.

[3] Members Minetti and Murphy filed partial dissenting statement as part of the original document.

Lufthansa proposes a simplified fare structure which is limited to four distinct categories of fares.[1] First-class fares and peak season normal economy fares would be retained at status quo, while normal economy fares would be reduced $24 round trip during the shoulder period. To this extent the proposal is consistent with that filed by the U.S. carriers. Lufthansa would also introduce a new 14/45-day excursion fare. However, the fares are set at a level which approximates the present 22/45-day excursion fare, and exceeds the U.S. carrier proposed APEX level by $5 and $9 round trip during the shoulder and peak periods, respectively. As with the existing 22/45-day excursion fare, no stopovers would be permitted and a weekend surcharge (Friday/Saturday eastbound, Saturday/Sunday westbound) of $15 would apply. Finally, Lufthansa proposes a 14/28-day individual inclusive tour fare at the same level as that applying to their 14/45-day excursion fare. One free stopover would be permitted in each direction, and a $100 purchase of ground accommodations would be required for the minimum stay, with $10 for each additional day.

Complaints against Lufthansa's tariff proposal have been filed by National Airlines, Inc. (National), Pan American World Airways, Inc. (Pan American), Trans-World Airlines, Inc. (TWA), and by the member carriers of the National Air Carrier Association (NACA), all of which request that immediate steps be taken to suspend the filing as unjust, unreasonable, and uneconomic. The thrust of the complainants' argument is that the two promotional fares proposed would be made available virtually without restriction, that most traffic would travel at one or the other of these fares, and that at the low yields involved the fares would prove to be economically disastrous to the scheduled industry. NACA alleges additional that the low level of the promotional fares, when combined with the absence of meaningful restrictions on their use, indicates that they are predatory in nature, and are aimed at the charter market.

Pan American contends that Lufthansa's fare srtucture, if implemented in 1973 throughout the transatlantic market, would generate a 4-percent increase in traffic over that which it anticipates were present fares to be retained. However, it also estimates that 76 percent of its traffic would move on the two promotional fares which, at a yield of 3.7 cents per mile, would result in a revenue loss of $7.6 million, and a reduction in operating profit of $8.9 million, as compared with its projection for 1973 with status quo in fares. When the yield of 3.7 cents is compared with Pan American's operating cost of 4.85 cents per revenue passenger mile, the unreasonableness of carrying such an extensive volume of traffic at these fares allegedly becomes apparent. TWA estimates that Lufthansa's promotional fares would generate a 12-percent increase in traffic over that anticipated at present fares. While this would translate into a revenue increase of $6.5 million, TWA projects a net reduction in operating profit of almost $5 million.

In its answer to the complaints, Lufthansa denies all allegations and objects to the suspension of its proposed fares unless the Board likewise suspends all fares proposed by all carriers on the North Atlantic for effect April 1, 1973.

The year 1972 saw a heartening resurgence in traffic growth on the North Atlantic, and along with it a significant increase in load factor for most carriers. Notwithstanding this favorable trend, however, overall economic results for the industry continued to be substandard. The U.S. carriers ended the year with an annual average load factor of about 60 percent; yet Pan American remained in a negative return position, and TWA's earnings were only 8.38 percent on investment.[2] Similar results have apparently been sustained by the foreign-flag carriers. Despite the differing philosophies which prevented an agreement on 1973 fares within the IATA forum, there seems to be a consensus among the carriers that improved yields and revenues are necessary if transatlantic scheduled services are to continue on an economically viable basis. It also seems clear that the 22/45-day excursion fare has been largely responsible for the erosion in average yield which has occurred this past year. There can be little doubt that this fare generated new travel. By the same token, it appears to have resulted in significant diversion, principally from the normal economy and 14/21-day excursion fares, as evidenced by the fact that 25 percent of the total traffic carried by the U.S. carriers moved on these fares. Stated differently, excluding youth fare travel, one in every four transatlantic passengers utilized the lowest fare for individual travel. In our opinion, the economic validity of a fare introduced for promotional reasons and established on the basis of incremental added costs is brought into serious question when its usage achieves such a magnitude.

By order 73-1-76, the Board indicated its acceptance of the fare package proposed by the U.S. carriers.[3] Our acceptance was based on the understanding that the structure was not advanced as a definitive one for the future, but rather as an acceptable one for the travel season immediately ahead. Indeed the carriers did not support their proposal as one that would adequately compensate for the cost of providing scheduled service, but rather as a reasonably competitive response to changing market conditions which is anticipated to produce moderately improved yields and increased revenues. The U.S. carriers' structure incorporates a fare category which is somewhat lower than the level now offered on the 22/45-day excursion fare. However, the conditions applicable to use of this APEX fare are quite restrictive and should curtail uneconomic diversion from other services. By the same token, the level of the 14/45-day excursion fare, which is available with minimal restrictions, would be significantly above that now applicable to the comparable long-duration fare. On this basis, the Board indicated its willingness to accept the structure proposed for the upcoming season, the most important consideration being a projected improvement in yield and a conclusion that the structure moved in the direction of more closely relating fares to the cost of providing the respective services.

We do not mean to imply that the Board considers the U.S. carrier proposal as the only, or necessarily the best, solution to the question of North Atlantic fares. As indicated in our earlier order, we believe it contains certain elements which represent distinct improvements which should be pursued over the the longer term. This is not to say, however, that the Board stands committed to the particular structure which the U.S. carriers propose. We are committed, on the other hand, to the necessity for improving the overall average yield from scheduled services on the North Atlantic, and are not prepared to accept the argument that these services need be priced competitively with charter services in order to maintain independent and profitable competitive operations.

It is for this reason that the Board is unable to accept Lufthansa's filing. We endorse the simplification which it represents and believe that consolidation of the two present individual excursion fares into one of 14/45 days' duration is a positive step forward. However, the diversion to this fare which is likely to occur in the absence of meaningful restrictions on its use, coupled with the very low level of the fare itself, make it extremely unlikely that transatlantic services could be operated at a profit. The same holds true, in our opinion, of the 14/28-day IIT fare. As indicated earlier, this proposed fare level is comparable to that contemplated by the United States and certain foreign-flag carriers for the APEX fare. While we are of the view that the APEX concept is of doubtful utility on scheduled services, we nevertheless believe that the restrictions on its availability are sufficient that it can reasonably be expected to be more generative this upcoming season than diversionary. Those travelers who prefer individual travel at their own option more than likely will use the individual 14/45-day excusion fare which, under the U.S.-carrier structure, would be set at a level about midway between the two currently effective excursion fares. The net

[1] Lufthansa also proposes to retain the currently available youth fares. The issue of youth fares is under investigation in Docket No. 23780 and will not be further dealt with herein. We intend to dispose of the pending request for suspension of these fares promptly by separate order.

[2] Year ended September 1972.

[3] The Lufthansa and U.S. carrier proposals are summarized in the attachment hereto.

result is that Pan American and TWA project yields of 4.7 cents and 5.1 cents per mile respectively, under their proposal. The yield anticipated to result from Lufthansa's fare structure, on the other hand, would be 4.3 cents per mile.

For the reasons stated, the Board finds that the 14/45-day excursion fares, and the 14/28-day individual inclusive tour fares proposed by Lufthansa may be unjust, unreasonable, unjustly discriminatory, or unduly preferential or prejudicial and should be suspended pending investigation.

As indicated previously, it seems apparent that the present 22/45-day excursion fares, although generative, also resulted in a significant amount of diversion and that these two developments taken together were largely responsible for the decline in yield in 1972.

U.S.-carrier traffic during the second and third quarters of 1972 showed a total growth rate of 24 percent over the same period in 1971. In the face of this trend, however, the number of normal economy and short-duration excursion-fare passengers actually declined from 726,165 to 680,762, a decrease of 35,383 or 7 percent. At the same time, long-range excursion-fare passengers more than doubled, increasing from 263,210 in 1971 (29/45-day excursion fare at New York-Frankfurt round trip level of $372, peak) to 570,853 (22/45-day excursion fare at $334 fare New York-Frankfurt). We believe this growth in use of the long-duration excursion fare, which shows signs of approaching the volume of traffic moving on normal economy and short excursion fares, raises a sufficiently serious question of the reasonableness of their continued availability. The Board intends to address itself to this matter in the near future and will take such action as it considers appropriate in the public interest.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a), 403, 404, 801, and 1002, thereof,

It is ordered, That:

1. An investigation is instituted to determine whether the fares and provisions set forth in the appendix below, and rules, regulations, or practices affecting such fares and provisions, and subsequent revisions and reissues thereof, are or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, and if found to be unlawful, to take appropriate action to prevent the use of such fares and provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, the fares and provisions set forth in the appendix below are suspended and their use deferred from April 1, 1973, to and including March 31, 1974, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. This order shall be submitted to the President [4] and shall become effective on April 1, 1973;

4. Except to the extent granted herein, the complaints filed in Dockets Nos. 25071, 25072, 25073, and 25083 are hereby dismissed; and

5. Copies of this order be filed in the aforesaid tariffs and be served upon Lufthansa German Airlines, National Airlines, Inc., Pan American World Airways, Inc., Trans-World Airlines, Inc., and the National Air Carrier Association, who are hereby made parties to the investigation.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

ROUND-TRIP FARE PROPOSALS, NEW YORK-FRANKFURT

		Current fares	PA/TW	Lufthansa
First class		$930	$930	$930
Normal economy	Shoulder	536	512	512
	Peak	678	678	678
14/21 excursion	Shoulder	412	----	----
	Peak	475	----	----
22/45 excursion	Shoulder	261	----	----
	Peak	334	----	----
14/45 excursion	Shoulder	----	388	261
	Peak	----	473	334
14/21 IIT	Shoulder	----	287 (14/28)	261
	Peak	----	352	334
14/45 Apex	Shoulder	----	256	----
	Peak	----	325	----
Affinity group	Shoulder	240	----	----
	Peak	313	----	----
14/21 GIT	Shoulder	283	----	----
	Peak	346	----	----

APPENDIX

LUFTHANSA—AIR TARIFFS CORPORATION, AGENT, C.A.B. NO. 44

This appendix applies only to fares and provisions for transportation between points in the United States, on the one hand, and points in Germany, on the other, for the account of Deutsche Lufthansa Aktiengesellschaft.

The suspension ordered in ordering paragraph 1 does not stay the cancellation of fares and provisions on pages preceding the pages named in this appendix.

On 3d revised page 80-F and original page 80-G rule 274.

On original and first revised pages 82-E, rule 294.

On original pages 274-M and 274-N, all fares and provisions.

[FR Doc.73-4122 Filed 3-2-73;8:45 am]

[Docket No. 25244; Order 73-2-104]

OLYMPIC AIRWAYS, S.A.

Order of Investigation and Suspension Regarding Transatlantic Fare Structure

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 14th day of February 1973.

By tariffs filed on December 29, 1972, for effect from April 1, 1973, Olympic Airways, S.A. (Olympic) proposes to revise the existing fare structure over the North Atlantic between the United States and Greece. As in the case of our recent disposition of U.S.-carrier transatlantic fare proposals (Order 73-1-76), this order will be concerned with Olympic's proposal as it relates to the period from April 1, 1973 through October 31, 1973.

Olympic proposes reductions in normal fares of approximately 15 percent in economy-class service and 24 percent in first-class service.[1] The present 14/21- and 22/45-day excursion fares would be consolidated into a single 14/60-day excursion fare at roundtrip levels which undercut present shoulder and peak-season 22/45-day excursion fares by $11 and $19, respectively. The $320 fare for nonaffinity groups of 20 now available during the shoulder period would be extended into the peak season at a level of $335, and $350 in the 1-month peak of the peak.[2] Olympic does not propose to apply a surcharge for weekend travel on its promotional fares, and would permit two stopovers in each direction at $20 each in connection with the 14/60-day excursion fare. The nonaffinity group fare is subject to no restrictions as to minimum or maximum length of stay, although stopovers would be prohibited.

Complaints against Olympic's tariffs have been filed by Pan American World Airways, Inc. (Pan American), Trans-World Airlines, Inc. (TWA), and the member carriers of the National Air Carrier Association (NACA), all of which request that the fares be suspended and investigated.

The complainants are unanimous in alleging that of all the North Atlantic fare proposals thus far filed with the Board, Olympic's would be the most destructive. Both Pan American and TWA object to the substantial reductions proposed in normal first-class and economy fares, although the NACA carriers apparently do not. All strenuously object to the nonaffinity group fare, contending that the virtual lack of restriction on its use makes this fare readily available to anyone as a practical matter. While the fare could be expected to attract considerable traffic to scheduled services, diversion

[4] This order was submitted to the President on February 16, 1973.

[1] In addition to the fares discussed herein, Olympic proposes to retain the currently available youth fares. The issue of youth fares is under investigation in Docket No. 23780 and will not be further dealt with here. We intend to dispose of the pending request for suspension of these fares promptly by subsequent order.

[2] The nonaffinity fares were originally filed as an experiment for effect from November 25, 1972, through May 31, 1973, pursuant to an order from the Government of Greece. Complaints against this earlier filing were filed by Pan American, TWA, and the NCAA carriers in Dockets Nos. 24849, 24853, and 24860, respectively, which will be disposed of herein.

from the excursion fare (which is subject to minimum/maximum-stay limitations) would be substantial. TWA estimates that 24 percent of the total traffic will move on the group fare. Pan American sets its estimate at 9 percent, on the other hand, since it anitcipates that 60 percent of the traffic will use the 14/60-day excursion fare, as compared with TWA's expectation of 20 percent.

Pan American contends that Olympic's fare structure would produce a 12-percent increase in traffic over that which could be expected in 1973 at current fares. However, this would be more than offset by the reduced yield, which is estimated at an overall average of 3.8 cents per mile. The ultimate result, assuming Olympic's pattern of fares throughout the trans-atlantic market, would be a reduction in revenue of $26.3 million, or 8.2 percent, from that which could be expected in 1973 at current fares. Considering the additional expense associated with carriage of newly generated traffic, Pan American projects a net reduction in operating profit of $29.5 million. TWA estimates that Olympic's pattern of fares would attract a 6-percent increase in traffic, but would result in a revenue reduction of $36.4 million compared with status quo in fares.

In its justification in support of the fare proposal, Olympic contends that the normal economy fares to Greece are today significantly higher on a per-mile basis than those applicable to London and should, therefore, be reduced; that first-class fares are unrealistically high and represent "paper" fares; and that the nonaffinity group fare and the 14/60-day excursion fare will serve to attract new traffic and minimize diversion to charter service. Olympic forecasts that a 20-percent rate of traffic growth can be expected at current fares, and that a growth rate of 30 percent can be achieved under its pattern of fares. It is alleged that this increase in traffic can readily be accommodated without additional capacity because of the low average load factor between the United States and Greece projected for 1973. Olympic estimates an overall revenue improvement of 4.4 percent, denies that its proposed transatlantic fares violate the Federal Aviation Act of 1958, as amended, and requests dismissal of the complaints.

The year 1972 was generally a disappointing one for the transatlantic air carriers. Despite significant gains in traffic and improved load factors, the economic results were less than satisfactory. Pan American remained in a negative return position and TWA's earnings were only 8.38 percent for the 12-month period ending September 1972. Similar results have apparently been sustained by the foreign-flag carriers. Simply stated, despite good traffic growth, the yield was too low to maintain a healthy economic climate. The cause of this has to a large extent been the low 22/45-day excursion fare which was used by 25 percent of the traffic. In our opinion, the economic validity of a fare introduced for promotional reasons and established on the basis of incremental added costs is brought into serious question when its usage achieves such a magnitude.

By Order 73-1-76, the Board indicated its acceptance of the fare package proposed by the U.S. carriers.[1] Our acceptance was based on the understanding that the structure was not advanced as a definitive one for the future, but rather as an acceptable one for the travel season immediately ahead. Indeed the carriers did not support their proposal as one that would adequately compensate for the cost of providing scheduled service, but rather as a reasonably competitive response to changing market conditions which is anticipated to produce moderately improved yields and increased revenues. The U.S. carriers' structure incorporates a fare category which is somewhat lower than the level now offered on the 22/45-day excursion fare. However, the conditions applicable to use of this Apex fare are quite restrictive and should curtail uneconomic diversion from other services. Moreover, the 14/45-day excursion fare is proposed at levels substantially above the present long-duration fare. On this basis, the Board indicated its willingness to accept the structure proposed for the upcoming season, the most important consideration being a projected improvement in yield and a conclusion that the structure moved into the direction of more closely relating fares to the cost of providing the respective services.

We do not mean to imply that the Board considers the U.S. carrier proposal as the only, or necessarily the best, solution to the question of North Atlantic fares. As indicated in our earlier order, we believe it contains certain elements which represent distinct improvements which should be pursued over the longer term. This is not to say that the Board stands committed to the particular structure which the U.S. carriers propose. We are committed, however, to the necessity for improving the overall average yield from scheduled services on the North Atlantic, and are not prepared to accept the argument that these services need be priced competitively with charter services in order to maintain independent and profitable competitive operations.

It is for this reason that the Board is unable to accept Olympic's filing. We endorse the simplification which it represents and the concept of establishing first-class and normal economy fares to Greece at a per-mile level more comparable to that applicable to Western European points. However, the reduction in first-class travel and normal economy fares which Olympic proposes would, in fact, undercut the London fare per mile by 21 and 12 percent, first-class and peak economy fares, respectively. Most importantly we believe Olympic's proposed excursion fare, which would be available for a 14/60-day period and which in the peak season would be only $24 above the Apex fare contemplated by the U.S. carriers, would very likely seriously undermine the economics of transatlantic service. This is equally true of Olympic's proposal to extend the nonaffinity group fare in the peak summer season at only a nominal increase in its level since travel at this fare is subject to virtually no restrictions other than that it must be undertaken as a group. The net result is that, while Pan American and TWA, respectively, project yields of 4.7 cents and 5.1 cents per mile under their proposal, the yield anticipated to result from Olympic's fare structure would be 3.8 cents per mile. Finally, Olympic projects a 30-percent increase in its traffic in 1973 and contends that it could accommodate this volume without the need to place additional equipment on the route. We are not persuaded that this would, in fact, be the result. In the 12-month period ending September 1972, Olympic experienced an average load factor across the Atlantic of 56 percent. A 30-percent growth in traffic would increase this average load factor to 73 percent—a level which does not seem reasonably attainable on an average annual basis if public demand is to be accommodated during peak periods. In fact, in July 1972 Olympic's eastbound load factor was 80 percent, and in August its westbound load factor was 83 percent. Clearly, it would not be possible to assure seats to accommodate a traffic increase of 30 percent during these periods without provision of additional capacity.

For the reasons stated, the Board finds that the first-class fare, normal economy fares, 14/60-day excursion fares, and the nonaffinity group fare proposed by Olympic may be unjust, unreasonable, unjustly discriminatory, or unduly preferential or prejudicial and should be suspended pending investigation. Further, as the effect of suspending the fares at issue will leave in force the present nonaffinity group fare (for application through May 31, 1973), we will likewise suspend this fare effective April 1, 1973.

As indicated previously, it seems apparent that the present 22/45-day excursion fares although generative have also resulted in a significant amount of diversion, and that these two developments taken together were largely responsible for the decline in yield in 1972.

U.S.-carrier traffic during the second and third quarters of 1972 showed a total growth rate of 24 percent over the same period in 1971. In the face of this trend, however, the number of normal economy and short-duration excursion-fare passengers actually declined from 726,165, to 680,762, a decrease of 35,383 or 7 percent. At the same time, long-range excursion-fare passengers more than doubled, increasing from 263,210 in 1971 (29/45-day excursion fare at New York–Athens round-trip level of $555, peak) to 570,853 (22/45-day excursion fare at $439 fare New York–Athens). We believe this growth in use of the long-duration

[1] The Olympic and U.S. carrier proposals are summarized in the attachment hereto.

excursion fares, which shows signs of approaching the volume of traffic moving on normal economy and short excursion fares, raises a sufficiently serious question of reasonableness of their continued availability. The Board intends to address itself to this matter in the near future and will take such action as it considers appropriate in the public interest.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a), 403, 404, 801, and 1002, thereof,

It is ordered, That:

1. An investigation is instituted to determine whether the fares and provisions set forth in the appendix hereof, and rules, regulations, or practices affecting such fares and provisions, and subsequent revisions and reissues thereof, are or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, and if found to be unlawful, to take appropriate action to prevent the use of such fares and provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, the fares and provisions set forth in the appendix below are suspended and their use deferred from April 1, 1973, to and including March 31, 1974, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. This order shall be submitted to the President [4] and shall become effective on April 1, 1973;

4. Except to the extent granted herein, the complaints filed in Dockets 25071, 25073, and 25083 and Dockets 24849, 24853, and 24860 are hereby dismissed; and

5. Copies of this order be filed in the aforesaid tariffs and be served upon Olympic Airways, S.A., Pan American World Airways, Inc., Trans World Airlines, Inc., and the National Air Carrier Association who are hereby made parties to the investigation.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[4] This order was submitted to the President on Feb. 16, 1973.

ROUND-TRIP FARE PROPOSALS, NEW YORK–ATHENS

		Current fares	TW	Olympic
First class		$1,244	$1,244	$950
Normal economy	Shoulder	756	732	640
	Peak	872	872	740
14/21 excursion	Shoulder	505		
	Peak	578		
22/45 excursion	Shoulder	381		
	Peak	439		
14/45 excursion	Shoulder		481 (14/60)	370
	Peak		576	420
14/21 IIT	Shoulder		444	
	Peak		509	
14/45 Apex	Shoulder		327	
	Peak		396	
Non Affinity group	Shoulder	[1] 320		[1] 320
	Peak			[1] 350
14/21 GIT	Shoulder	440		
	Peak	503		

[1] Per government of Greece order.

APPENDIX

OLYMPIC—TARIFF CAB NO. 44 ISSUED BY AIR TARIFFS CORPORATION, AGENT

This appendix applies only to fares and provisions for transportation between points in the United States, on the one hand, and points in Greece, on the other, for the account of Olympic Airways, S.A.

The suspension ordered in ordering paragraph 1 does not stay the cancellation of fares and provisions on pages preceding the pages named in this appendix.

On Original Pages 13 and 14, Rule 20(B) insofar as it applies to First Class and Economy Class Fares published in section 4 Table 350–A.

On 5th Revised Page 30, and 10th Revised Pages 31 and 32 and 1st Revised Page 33, Rule 85 insofar as it applies to the Affinity/Incentive Group Fares published in section 4 Tables 23 and 143, on or after April 1, 1973.

On 2d Revised Page 82–A Rule 291.

On 3d Revised Pages 83 and 84 Rule 300 insofar as it applies to the construction of through fares in connection with the Affinity/Incentive Group Fares published in section 4 Tables 23 and 143, on or after April 1, 1973.

On 4th Revised Pages 113 and 114 and 3d Revised Pages 115, 116, 117, and 118 and 4th Revised Page 119, all Column 4 and 5 Arbitraries, insofar as they apply for the construction of through fares in connection with the Affinity/Incentive Group fares published in section 4 Tables 23 and 143, on or after April 1, 1973.

On 3d Revised Page 159, 2d Revised Page 160, and 3d Revised Pages 161 and 162 Table 23 insofar as it applies to Affinity/Incentive Group Fares on or after April 1, 1973.

On 6th Revised Pages 211, 212, 213, and 214 Table 143 insofar as it applies to Affinity/Incentive Group Fares on or after April 1, 1973.

On 5th Revised Page 274–D all First Class and Economy Class Fares in Table 350–A.

On 4th Revised Page 274–K all 14–60 Day Excursion Fares in Table 354.

[FR Doc.73–4123 Filed 3–2–73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Canadian List 304]

CANADIAN STANDARD BROADCAST STATIONS

Notification List

FEBRUARY 5, 1973.

List of new stations, proposed changes in existing stations, deletions, and corrections in assignments of Canadian standard broadcast stations modifying the assignments of Canadian broadcast stations contained in the Appendix to the Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting January 30, 1941.

Call letters	Location	Power kw	Antenna	Schedule	Class	Antenna Height (feet)	Ground system		Proposed date of commencement of operation
							Number of radials	Length (feet)	
		920 kHz							
CFRY (minor change in patterns).	Portage la Prairie, Manitoba, N. 49°58'10", W. 98°22'30".	10	DA-2	U	III				E.I.O. 2-2-74.
		1250 kHz							
CJOK (assignment of call letters).	Fort McMurray, Alberta, N. 56°41'16", W. 111°19'55".	1D/0.5N	ND-190	U	IV	200	120	320	
		1300 kHz							
CBAF (correction to coordinates).	Moncton, New Brunswick, N. 46°03'57", W. 64°42'54".	5	DA-1	U	III				
		1340 kHz							
CJAN (correction to coordinates).	Asbestos, Quebec, N. 45°45'05", W. 71°56'59".	1D/0.25N	DA-D ND-N-190	U	IV	183	120	293	
		1340 kHz							
CFOM (in operation and correction to coordinates).	Quebec, Quebec, N. 46°48'32", W. 71°18'38".	0.25	ND-190	U	IV	180	120	275	
		1350 kHz							
CJLM (now in operation)	Joliette, Quebec, N. 45°59'10", W. 73°25'52".	10D/1N	DA-2	U	III				
		1380 kHz							
CKLC (nighttime power increase—PO 1380 kHz, 10D/5N, DA-2).	Kingston, Ontario, N. 44°12'30", W. 76°25'05".	10	DA-2	U	III				
		1470 kHz							
CHOW (increase in power—PO 1470 kHz, 1D/0.5N, DA-2).	Welland, Ontario, N. 42°56'52", W. 76°16'19".	1N/2.5D	DA-2	U	III				

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[SEAL]

[FR Doc.73-3949 Filed 3-2-73;8:45 am]

[Canadian List 305]

CANADIAN BROADCAST STATIONS

Notification List

FEBRUARY 21, 1973.

List of new stations, proposed changes in existing stations, deletions, and corrections in assignments of Canadian standard broadcast stations modifying the assignments of Canadian broadcast stations contained in the Appendix to the Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting January 30, 1941.

Call letters	Location	Power kw	Antenna	Schedule	Class	Antenna Height (feet)	Ground system		Proposed date of commencement of operation
							Number of radials	Length (feet)	
		910 kHz							
CHRL (increase in power and correction to coordinates and daytime antenna radiation—PO 910 kHz, 1 kw., DA-N).	Roberval, Quebec, N. 48°26'25", W. 72°06'47".	10D/2.5N	DA-N ND-D-*182.5*	U	III				
		1340 kHz							
CKBR (assignment of call letters).	Brooks, Alberta, N. 50°29'35", W. 111°53'05".	1D/0.25N	ND-190	U	IV	185	120	294	
		1540 kHz							
(New) N. 54°00'59", W. 123°59'24".	Vanderhoof, British Columbia. N. 54°00'59", W. 123°59'24".	1D/0.25N	ND-192	U	IV	200	120	250-310	E.I.O. 2-21-74.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[SEAL]

[FR Doc.73-4013 Filed 3-2-73;8:45 am]

[Report 637]

COMMON CARRIER SERVICES INFORMATION [1]

Domestic Public Radio Services Applications Accepted for Filing [2]

FEBRUARY 26, 1973.

Pursuant to §§ 1.227(b)(3) and 21.30 (b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the list below, must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business 1 business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cutoff dates are set forth in the alternative—applications will be entitled to consideration with those listed in the appendix if filed by the end of the 60-day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

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

[1] All applications listed in the appendix are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations, and other requirements.

[2] The above alternative cutoff rules apply to those applications listed in the appendix as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio, and Local Television Transmission Services (Part 21 of the rules).

APPENDIX

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

1349-C2-P-73—King Communications, Inc. (KQD310), C.P. for an additional facility (Location No. 3) to be located at 1731 N. Niagara, Saginaw, Mich., operating on 152.15 MHz.

5948-C2-P-(3)-73—Southern Bell Telephone & Telegraph Co. (KIQ998), C.P. to change antenna system and additional facilities at 268 North Ridgewood Avenue, Daytona Beach, Fla., operating on 152.54, 152.57, and 157.80 MHz base and 157.83 MHz test.

5949-C2-P-73—Tex-Com (KRM957), C.P. to change antenna system and location to East Hillside, Bloomington, Ind., operating on 152.06 MHz.

6118-C2-P-73—Northern Illinois Radio Phone & Paging Systems, Inc. (KSA256), C.P. to change antenna location, operation on 152.21 MHz at 1741 S. O'Plain Road, Warren Township, Ill.

6119-C2-P-(2)-73—Allegheny Mobile Telephone Co., Inc. (KGA252), C.P. to replace transmitters at Location Nos. 1 and 3. Location No. 1: Duquesne Reservoir, West Mifflin Boro, Pa., Location No. 3: 1724 Washington Road, Bethel, Pa., operating on frequencies 152.06 and 152.09 MHz.

6127-C2-AL-(17)-73—Tel-Page. Consent to assignment of license from Tel-Page, Assignor to Tel-Page, Assignee. Stations: KEJ894, KEC941, KGI787, KEC518, Rochester, N.Y.; KRH676, KEC521, KEC513, Buffalo, N.Y.; KRH631, KRH643, Syracuse, N.Y.; KEK295, KRH636, Elmira, N.Y.; KEK291, KQZ790, Watertown, N.Y.; KEK294, Utica, N.Y.; KSV967, KSV934, Jamestown, N.Y.; KTR997, Ionia, N.Y.

Major Amendments

8737-C2-P-(2)-72—(KGB874), Radio Broadcasting Co., Philadelphia, Pa. Amend to add standby facilities on frequency 454.050 MHz at Location No. 2 described as WFIL-FM Tower, Culp Street, Philadelphia, Pa. All other particulars to remain as reported on PN No. 600 dated June 12, 1972.

4186-C2-P-73—(New), Jim Bob Measures, doing business as Mobilfone, Springtown, Tex. Change base frequency from 152.09 MHz to 152.03 MHz. All other particulars of operation remain as reported in Public Notice No. 627 dated December 18, 1972.

9368-C2-P-72—Southern Radio-Phones, Inc. (KLF537), Prinston, Fla. Amended to change base frequency to 454.200 MHz. All other particulars to remain as stated on Public Notice dated July 10, 1972, Report No. 604.

Rural Radio Service

6120-C1-P-73—Virginia Telephone & Telegraph Co. (New), C.P. for a new station operating on 157.95 and 157.98 MHz at Fan Mountain, Route 805, Covesville, Va.

6121-C1-P-73—Continental Telephone Company of California (New), C.P. for a new station operating on 157.89 MHz at Cerro Coso College Site 2.5 miles South of Ridgecrest, Calif.

Informative

It appears that the following applications may be mutually exclusive and subject to the Commission's Rules regarding ex parte presentations, by reasons of potential electrical interference.

Wisconsin, frequency: 158.70. 8829-C2-P-72: Forward Electronic, Inc. (New). 744-C2-P-73: Curtain Call Communication (KTS230).

POINT-TO-POINT MICROWAVE RADIO SERVICE

Informative: Applicant proposes to provide specialized communications services between Charlotte, N.C., and Jacksonville, Fla., with Branches to Columbia, S.C., Charleston, S.C., Athens, Ga., Atlanta, Ga., and Savannah, Ga.

6085-C1-P-73—United Video, Inc. (New), South Tryon Street, Charlotte, N.C. Latitude 35°13'34" N., longitude 80°50'43" W. C.P. for a new station on frequency 3910.0H MHz toward York, S.C.

6086-C1-P-73—Same (New), 6 miles northeast of York, S.C. Latitude 35°01'50" N., longitude 81°08'03" W. C.P. for a new station on frequencies 4110.0V MHz toward Charlotte, N.C.; 3930.0H MHz toward Chester, S.C.

6087-C1-P-73—Same (New), 5.5 miles southeast of Chester, S.C. Latitude 34°40'08" N., longitude 81°05'14" W. C.P. for a new station on frequencies 4070.0V MHz toward York, S.C.; 3910.0H MHz toward Simpson, S.C.

6088-C1-P-73—Same (New), 0.5 mile east of Simpson, S.C. Latitude 34°18'35" N., longitude 81°01'58" W. C.P. for a new station on frequencies 4090.0V MHz toward Chester, S.C.; 3930.0H MHz toward Gilbert, S.C.

6089-C1-P-73—Same (New), 5 miles southeast of Gilbert, S.C. Latitude 33°53'28" N., longitude 81°18'59" W. C.P. for a new station on frequencies 4070.0H MHz toward Simpson, S.C.; 3910.0H MHz toward Kitchings Mill, S.C.; 6093.5H MHz toward Columbia, S.C.

6090-C1-P-73—Same (New), Senate Street, Columbia, S.C. Latitude 34°00'03" N., longitude 81°01'38" W. C.P. for a new station on frequency 6345.5H MHz toward Gilbert, S.C.

6091-C1-P-73—Same (New), 1.8 miles north of Kitchings Mill, S.C. Latitude 33°36'12" N., longitude 81°28'46" W. C.P. for a new station on frequencies 4090.0H MHz toward Gilbert, S.C.; 3930.0V MHz toward Bath, S.C.; 3850.0V MHz toward Norway, S.C.

6092-C1-P-73—Same (New), 3.3 miles southeast of Norway, S.C. Latitude 33°26'06" N., longitude 81°04'13" W. C.P. for a new station on frequencies 4150.0H MHz toward Kitchings Mill, S.C.; 3830.0V MHz toward Bowman, S.C.

6093-C1-P-73—Same (New), 2.3 miles southeast of Bowman, S.C. Latitude 33°19'24" N., longitude 80°39'40" W. C.P. for a new station on frequencies 4170.0H MHz toward Norway, S.C.; 3850.0V MHz toward Dorchester, S.C.

6094-C1-P-73—Same (New), 2.4 miles southwest of Dorchester, S.C. Latitude 33°05'25" N., longitude 80°24'47" W. C.P. for a new station on frequencies 4150.0V MHz toward Bowman, S.C.; 3910.0V MHz toward Ladson, S.C.

POINT-TO-POINT MICROWAVE RADIO SERVICE—Continued

6095-C1-P-73—Same (New), 3 miles south of Ladson, S.C. Latitude 32°55'32" N., longitude 80°07'31" W. C.P. for a new station on frequencies 4170.0H MHz toward Dorchester, S.C.; 10,715.0H MHz toward Charleston, S.C.

6096-C1-P-73—Same (New), King and Calhoun Streets, Charleston, S.C. Latitude 32°-47'09" N., longitude 79°56'11" W. C.P. for a new station on frequency 11,285.0H MHz toward Ladson, S.C.

6097-C1-P-73—Same (New), 4.5 miles north of Highway 278, Bath, S.C. Latitude 33°-28'50" N., longitude 81°50'23" W. C.P. for a new station on frequencies 4070.0H MHz toward Kitchings Mill, S.C.; 3910.0V MHz toward Greens Cut, Ga.; 11,665.0H MHz toward Augusta, Ga.

6098-C1-P-73—Same (New), Broad and Seventh Streets, Augusta, Ga. Latitude 33°28'29" N., longitude 81°57'48" W. C.P. for a new station on frequency 11,175.0H MHz toward Bath, S.C.

6099-C1-P-73—Same (New), 0.9 mile south of Greens Cut, Ga. Latitude 33°09'30" N., longitude 81°57'46" W. C.P. for a new station on frequencies 5945.2V MHz toward Harlem, Ga.; 4090.0V MHz toward Bath, S.C.; 5945.2V MHz toward Millen, Ga.

6100-C1-P-73—Same (New), 1.2 miles south of Harlem, Ga. Latitude 33°23'45" N., longitude 82°18'46" W. C.P. for a new station on frequencies 6375.2H MHz toward Washington, Ga.; 6197.2V MHz toward Greens Cut, Ga.

6101-C1-P-73—Same (New), 7 miles southeast of Washington, Ga. Latitude 33°38'24" N., longitude 82°40'10" W. C.P. for a new station on frequencies 5945.2V MHz toward Stephens, Ga.; 5974.8V MHz toward Harlem, Ga.

6102-C1-P-73—Same (New), 3 miles east of Stephens, Ga. Latitude 33°47'09" N., longitude 83°06'28" W. C.P. for a new station on frequencies 6375.2V MHz toward Eastville, Ga.; 6375.2H MHz toward Washington, Ga.

6103-C1-P-73—Same (New), 2.5 miles southeast of Eastville, Ga. Latitude 33°51'27" N., longitude 83°33'00" W. C.P. for a new station on frequencies 5945.2V MHz toward Grayson, Ga.; 5974.8H MHz toward Stephens, Ga.

6104-C1-P-73—Same (New), 1 mile northwest of Grayson, Ga. Latitude 33°54'46" N., longitude 83°58'34" W. C.P. for a new station on frequencies 6375.2V MHz toward Atlanta, Ga.; 6375.2H MHz toward Eastville, Ga.

6105-C1-P-73—Same (New), Lenox Towers, Atlanta, Ga. Latitude 33°50'59" N., longitude 84°21'51" W. C.P. for a new station on frequency 5945.2V MHz toward Grayson, Ga.

6106-C1-P-73—Same (New), 4.8 miles northeast of Millen, Ga. Latitude 32°49'53" N., longitude 81°51'43" W. C.P. for a new station on frequencies 6197.2H MHz toward Greens Cut, Ga.; 6315.9H MHz toward Statesboro, Ga.

6107-C1-P-73—Same (New), 7 miles west of Statesboro, Ga. Latitude 32°27'44" N., longitude 81°54'03" W. C.P. for a new station on frequency 5945.2V MHz toward Millen, Ga.; 6093.5H MHz toward Groveland, Ga.

6108-C1-P-73—Same (New), 0.2 mile north of highway 280, Groveland, Ga. Latitude 32°08'50" N., longitude 81°44'43" W. C.P. for a new station on frequency 6197.2H MHz toward Statesboro, Ga.; 6197.2H MHz toward Tison, Ga.; 6345.5H MHz toward Bloomingdale, Ga.

6109-C1-P-73—Same (New), 1.5 miles north of U.S. highway 80, Bloomingdale, Ga. Latitude 32°08'45" N., longitude 81°20'05" W. C.P. for a new station on frequency 5945.2V MHz toward Groveland, Ga.; 5945.2V MHz toward Savannah, Ga.

6110-C1-P-73—Same (New), Bull and Bryan Streets, Savannah, Ga. Latitude 32°04'50" N., longitude 81°05'31" W. C.P. for a new station on frequency 6197.2H MHz toward Bloomingdale, Ga.

6111-C1-P-73—Same (New), on highway 169, Tison, Ga. Latitude 31°55'50" N., longitude 82°01'30 W. C.P. for a new station on frequency 6093.5H MHz toward Groveland, Ga.; 6093.5H MHz toward Jesup, Ga.

6112-C1-P-73—Same (New), 5 miles west of Jesup, Ga. Latitude 31°36'34" N., longitude 81°58'04" W. C.P. for a new station on frequency 6197.2H MHz toward Tison, Ga.; 6197.2H MHz toward Blackshear, Ga.

6113-C1-P-73—Same (New), 7 miles east of Blackshear, Ga. Latitude 31°19'11" N., longitude 82°07'13" W. C.P. for a new station on frequency 6063.8V MHz toward Jesup, Ga.; 5945.2V MHz toward Racepond, Ga.

POINT-TO-POINT MICROWAVE RADIO SERVICE—Continued

6114-C1-P-73—Same (New), 0.2 mile east of U.S. Highway 1, Racepond, Gia. Latitude 30°59'23" N., longitude 82°07'33" W. C.P. for a new station on frequency 6197.2V MHz toward Blackshear, Ga.; 6197.2H MHz toward Toledo, Ga.

6115-C1-P-73—Same (New), 4.9 miles north of Toledo, Ga. Latitude 30°42'22" N., longitude 82°04'02" W. C.P. for a new station on frequency 5974.8H MHz toward Racepond, Ga.; 5945.2V MHz toward Verdie, Fla.

6116-C1-P-73—Same (New), 0.4 mile north of Verdie, Fla. Latitude 30°26'28" N., longitude 81°55'08" W. C.P. for a new station on frequency 6375.2H MHz toward Toledo, Ga.; 6197.2H MHz toward Orange Park, Fla.

6117-C1-P-73—Same (New), 4 miles west-northwest of Orange Park, Fla. Latitude 30°10'52" N., longitude 81°44'51" W. C.P. for a new station on frequency 5974.8H MHz toward Verdie, Fla.

6122-C1-P-73—American Telephone & Telegraph Co. (KCA22), 2 miles west of Foxboro, Mass. Latitude 42°03'40" N., longitude 71°17'18" W. C.P. to add frequencies 11,175H, 11,095H, and 11,015H MHz toward Brockton, Mass.

6123-C1-P-73—Same (New), Court and Putnam Streets, Brockton, Mass. Latitude 42°05'11" N., longitude 71°00'53" W. C.P. for a new station on frequencies 11,625H, 11,545H, and 11,465H MHz toward High Rock, Mass.

6129-C1-MP-73—Northwestern Bell Telephone Co. (WJL86), 1 mile east of Rugby, N. Dak. Latitude 48°21'19" N., longitude 99°58'39" W., modification of C.P. to change frequency 5962.6V MHz to 5952.6V MHz toward Willow City, N. Dak.

6130-C1-P-73—American Telephone & Telegraph Co. (KKH66), 3.5 miles northeast of Frisco, Tex. Latitude 33°10'31" N., longitude 96°46'18" W. C.P. to add frequency 4190H MHz toward Nevada, Tex.

6131-C1-P-73—Same (KLW22), 0.5 mile south of Nevada, Tex. Latitude 33°01'39" N., longitude 96°22'22" W. C.P. to add frequency 4198H MHz toward Adams, Tex.; frequency 4198H MHz toward Terrell, Tex.

6132-C1-P-73—Same (KKP96), 3.5 miles north of Terrell, Tex. Latitude 32°47'48" N., longitude 96°16'38" W. C.P. to add frequency 4190H MHz toward Nevada, Tex.; frequency 4190H MHz toward Kaufman, Tex.

6133-C1-P-73—Same (KKX63), 7.5 miles east of Kaufman, Tex. Latitude 32°34'36" N., longitude 96°10'52" W. C.P. to add frequency 4198H MHz toward Terrell, Tex.

Amendment

5445-C1-P-71 thru 5473-C1-P-71—MCI Lockheed Satellite Corp. (New), change identity of applicant from MCI Lockheed Satellite Corp. to CML Satellite Corp.

APPLICATIONS FILED PURSUANT TO SECTION 214 OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED

TELEPHONE WIRE FACILITIES

P-C-8562—Northwestern Bell Telephone Co., Informal (Section 63.03). For authority to supplement existing facilities between Western Electric Plant and Omaha, Nebr.

P-C-8563—Northwestern Bell Telephone Co., Informal (Section 63.03). For authority to supplement existing facilities between Omaha, Nebr. and Red Oak, Iowa.

P-C6678-2-A-1—American Telephone & Telegraph Co., Formal (Section 63.01). To lease and operate, jointly with its correspondents in Central America, a half interest in up to forty-nine (49) additional voice-grade landline circuits in the Mexican and COMTELCA microwave systems for the provision of A.T. & T.'s regularly authorized communications services between points in or reached via the United States and via certain countries in Central America.

APPLICATIONS FILED PURSUANT TO SECTION 214 OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED

TELEGRAPH WIRE FACILITIES

T-C-1896-23—Western Union International, Inc., Formal (Section 63.01). For authority to supplement existing facilities between the United States and the Ivory Coast.

T-C-1476-6—RCA Global Communications, Inc., Informal (Section 63.03). Requests supplemental authority to lease and operate one voice circuit between its New York, N.Y. and Washington, D.C. offices.

TELEGRAPH WIRE FACILITIES—Continued

T-C-2042-3—TRT Telecommunications Corps., Formal (Section 63.01). For authority to acquire and operate one voice-grade circuit subdivided for telegraph and other nonvoice use between Fort Lauderdale, Fla. and the Untied States/Mexico border and to discontinue services on a similar circuit presently operated between Pearl River, La. and the United States/Mexico border.

T-C-2195-1—ITT World Communications Inc., Formal (Section 63.01). For authority to supplement facilities between Puerto Rico and Virgin Islands and within Virgin Islands by acquiring and operating additional voice-grade circuits in microwave facilities.

[FR Doc.73-4009 Filed 3-2-73;8:45 am]

INTERCONNECTION ADVISORY COMMITTEE

Notice of Status Review Meeting

FEBRUARY 27, 1973.

In accordance with Public Law 92-463, announcement is made of a public meeting of the F.C.C. Interconnection Advisory Committee's Chairmen to be held Wednesday, March 14, 1973 at 1919 M Street NW., Room 621, 2:30 p.m.

1. *Purpose.* For the FCC Staff to review jointly with the various Subcommittee Chairmen the status of the work of their various interconnection advisory committees. Upon completion of the report of work in progress, the Chairmen will be requested to outline the scope of future work, if any, which they recommend be undertaken by the interconnection committees.

2. *Agenda.* The agenda for the March 14, 1973 meeting will be as follows:

1. Status report of work in progress by subcommittee chairmen for the:
   a. PBX Standards Advisory Committee.
   b. Dialer Devices Advisory Subcommittee.
   c. Answering Devices Advisory Subcommittee.
2. Target dates for reports to the FCC.
3. Recommendations for future work for the interconnection advisory committees. Estimates of time and resources required to complete future work.

It is suggested that those desiring more specific information, contact the Domestic Rates Division on (202) 632-6457.

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

[FR Doc.73-4092 Filed 3-2-73;8:45 am]

STEERING COMMITTEE OF FEDERAL/STATE-LOCAL ADVISORY COMMITTEE

Notice of Meetings

FEBRUARY 23, 1973.

The Steering Committee of the Cable Television Federal/State-Local Advisory Committee will hold open meetings on March 6 and 7, 1973. The March 6 meeting will begin at 10 a.m. and the March 7 meeting will begin at 9:30 a.m. Both meetings will be held in Room A110 of the FCC Annex located at 1229 20th Street NW., 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.73-4093 Filed 3-2-73;8:45 am]

[Dockets Nos. 19694, 19695; FCC 73-209]

B.B.C., INC., AND KIDD COMMUNICATIONS, INC.

Order Designating Applications for Consolidated Hearings on Stated Issues

In regard applications of B.B.C., Inc., Reno, Nev., Docket No. 19694, File No. BPH-7735, Requests: 106.9 MHz, No. 295; 28.92 kw. (H and V); —405.5 feet; Kidd Communications, Inc., Reno, Nev., Docket No. 19695, File No. BPH-7855, Requests: 106.9 MHz, No. 295; 35.8 kw. (H and V); —408 feet, for construction permits.

1. The Commissioner has before it (a) the captioned applications which are mutually exclusive and, therefore, must be designated for a comparative hearing; and (b) informal objections to B.B.C. Inc.'s application filed by Mr. Philip D. Doersam, general partner in Pendor Communications, licensee of FM station KGLR, Reno, Nev., and Mr. Carl E. Roliff, president of RAESCO, Inc., licensee of FM station KSRN, Reno, Nev.

2. The informal objections of Messrs. Doersam and Roliff allege that the community of Reno is currently saturated with radio stations which provide programing very similar to that proposed by B.B.C., Inc. (B.B.C.), and, therefore, that a grant of B.B.C.'s application would not serve the public interest; that B.B.C.'s proposed transmitter site is in a heavily populated residential area and would cause excessive interference to the reception of existing FM stations in the area adjacent to the transmitter (i.e., "blanketing" interference); that B.B.C. has not complied with § 73.315(e) of our rules which requires an applicant whose transmitter is likely to cause blanketing interference to submit a showing concerning the availability of other sites; and that the proposed transmitter-antenna location would result in blanketing interference to the reception of signals by aircraft pilots as they approach Reno's airport and would, therefore, present a safety hazard to pilots as well as residents on the ground. We find, however, that none of these allegations raises a substantial and material question of fact which must be resolved in the hearing process. In regard to the contention that Reno does not need another radio station because of the comprehensive variety of broadcast programing already available to listeners, we note that a similar argument was made by the petitioners in a proceeding (RM-1882) to delete channel 295 from Reno and channel 252A from Sparks. In our Memorandum Opinion and Order in RM-1882, adopted January 10, 1973 (FCC 73-41), in which the requests for deletion of the channels were denied, we stated that "* * * on the record we cannot make the decision that Reno * * * [does] not now, or will not in the future, need additional radio service * * *" and that "we do not wish to place artificial restraints on competition unless the overall public interest will be adversely affected by competition. * * *" The argument raised against B.B.C.'s application consists of vague, generalized and conclusory statements which are unsupported by facts. In the rulemaking proceeding, the petitioners also alleged that Reno could not support an additional radio service. The petitioners, both in that proceeding and in their objections to B.B.C.'s application, have failed to support this allegation with the type of specific data required to support the designation of a *Carroll* issue.[1] Further, the petitioners have not submitted sufficient information to show that the Reno and Sparks area could not benefit from an additional radio facility with the potential for additional radio programing, or that the overall public interest would be adversely affected by an additional facility. Accordingly, a hearing issue on this matter is not required.

3. B.B.C. has submitted an engineering statement in response to the allegations that its transmitter is located in a heavily populated residential area and that its location would result in excessive blanketing interference to the reception of other FM broadcast stations as well as to the reception of signals by aircraft pilots. The data provided by B.B.C. indicates that 97.8 percent of the area within 0.5 mile of the proposed B.B.C. transmitter site is zoned for industrial and other nonresidential uses. Thus, since B.B.C.'s transmitter is not located in a residential area, B.B.C. is not required by § 73.315(e) of our rules to file a showing concerning the availability of other sites. In addition, no significant information has been presented to suggest that B.B.C.'s transmitter will cause excessive blanketing interference to the reception of other FM stations or to the reception of signals by aircraft pilots. The objections raised by Messrs. Doersam and Roliff do not present sufficient data to raise a substantial and material question of fact as to whether the antenna-transmitter site will result in a safety hazard to pilots and residents living under the flight path of aircraft approaching Reno's airport. Although Mr. Roliff asserts that, as an aircraft pilot, he has had strong FM stations block his aircraft receiver on the final approach to Reno's airport, he does not state whether this problem might be attributable to an inferior receiver or poor selectivity in the receiver, intermediate frequency image interference, input overload or other discrete combinations of input frequencies. Mr. Doersam states that two existing FM stations in Reno, stations KNEV and KGLR, have been "suspected" of causing interference to FAA operations because of their proximity to the final approach to the Reno

[1] Carroll Broadcasting Co. v. FCC, 258 F. 2d 440 (1958); see Missouri-Illinois Broadcasting Co., 3 RR 2d 232 (1964).

airport. Nevertheless, as suggested by B.B.C., interference caused by station KGLR to reception of signals by aircraft pilots, might be attributable, for the most part, to the use of obsolete aircraft receivers which use an intermediate frequency of 20.7 MHz. In any event, insufficient facts have been alleged to warrant a hearing issue concerning possible interference by B.B.C. to the reception of aircraft signals.

4. Kidd Communications, Inc. (Kidd), will require $51,545 to construct and operate its proposed station for 1 year.[2] To meet this requirement, Kidd relies on $30,000 in stock subscriptions, including $15,000 each from Bernard D. Glimpse and Ralph E. Fuller. However, these stock subscribers have failed to submit any financial documents for the purpose of showing that they have sufficient net liquid assets to meet their commitments to purchase stock, as required by paragraph 4(b), section III, FCC Form 301. Furthermore, Kidd has not established the availability of funds from any other sources. Thus, since Kidd has not demonstrated its ability to meet its first-year costs, financial issues will be designated against it.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, because the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, *It is ordered*, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine, with respect to the application of Kidd Communications, Inc.:

(a) Whether Bernard D. Glimpse has sufficient net liquid assets to purchase $15,000 worth of stock in the applicant;

(b) Whether Ralph E. Fuller has sufficient net liquid assets to purchase $15,000 worth of stock in the applicant;

(c) Whether, in the event that the availability of $30,000 in stock subscriptions is established, the applicant has $21,545 available from other sources to meet its requirements; and

(d) Whether, in light of the evidence adduced under the preceding issues, the applicant is financially qualified.

(2) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications for construction permits should be granted.

7. *It is further ordered*, That the informal objections filed by Mr. Philip D. Doersam and Mr. Carl E. Roliff are dismissed for the reasons stated herein.

8. *It is further ordered*, That each of the applicants shall file a written appearance stating an intention to appear and present evidence on the specified issues, within the time and in the manner required by § 1.221(c) of our rules.

9. *It is further ordered*, That the applicants shall give notice of the hearing, within the time and in the manner specified in § 1.594 of our rules, and shall seasonably file the statement required by § 1.594(g).

Adopted: February 21, 1973.

Released: February 27, 1973.

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

[FR Doc.73-4091 Filed 3-2-73;8:45 am]

[Docket No. 19657; FCC 73R-89]

COSMOPOLITAN BROADCASTING CORP.

Memorandum Opinion and Order Enlarging Issues

In regard application of Cosmopolitan Broadcasting Corp., Newark, N.J., Docket No. 19657, File No. BRH-1359, BRSCA-746, for renewal of main, auxiliary, and SCA license for WHBI(FM).

1. Cosmopolitan Broadcasting Corp., whose application for renewal of license has been designated for hearing on various issues some of which relate to its performance in broadcasting foreign language programs, requests that the issues be enlarged to allow a determination to be made whether its programing has been meritorious "particularly with regard to programs designed to serve the needs and tastes of ethnic minorities within the stations service area."[1]

2. The addition of a meritorious programing issue is warranted, as indicated by the cases cited by petitioner and the Bureau. However, the issue as proposed departs from the wording used in these cases, and the Board is unable to agree with petitioner's argument in support of the change. The customary issue does not limit an applicant's showing to public service programing, it only emphasizes the importance of programs of this type. Therefore, Cosmopolitan will have the opportunity to offer evidence on the ethnic oriented phases of its past programing; but these programs do not automatically qualify as meritorious because they have been "designated" to serve the needs and tastes of ethnic minorities.[2]

3. As the Board has consistently held, the showing made under the new issue must be limited to the licensee's performance before it learned that its license was in jeopardy, and the parties are free to argue the weight which should be accorded such evidence. Western Communications Inc., ____ FCC 2d ____ 1973 (FCC 73R-1).

4. Accordingly, *it is ordered*, That the petition to enlarge issues, filed by Cosmopolitan Broadcasting Corp., is granted to the extent herein indicated and otherwise is denied, and that the issues herein are enlarged by the addition of the following issue:

To determine whether the programing of Station WHBI(FM) has been meritorious, particularly with regard to public service programs.

5. *It is further ordered*, That the burdens of proceeding with the introduction of evidence and proof under the issue added herein shall be on Cosmopolitan Broadcasting Corp.

Adopted, February 23, 1973.

Released: February 27, 1973.

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

[FR Doc.73-4090 Filed 3-2-73;8:45 a.m.]

[Docket No. 19558]

OVERSEAS DATAPHONE SERVICE

Inquiry Into Policy Regarding Future Authorization; Order Extending Time

1. By telegram dated February 23, 1973, ITT World Communications Inc. (ITTWC) requests a 2-week extension of time in which to file reply comments in the above-captioned inqury.[1] ITTWC alleges that the requested extension of time is needed because of the press of other regulatory matters in which ITTWC is presently participating. ITTWC represents that the other parties requested to respond to the inquiry have indicated that they have no objection to the grant of the requested extension.

2. We find that ITTWC has shown good cause for the requested extension of time.

3. Accordingly, it is ordered, pursuant to § 0.303(c) of the Commission's rules pertaining to Delegations of Authority that the request of ITT World Communications Inc. is granted; and the time to file reply comments in Docket No. 19558 is extended until March 14, 1973.

Adopted: February 26, 1973.

Released: February 27, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
BERNARD STRASSBURG,
Chief, Common Carrier Bureau.

[FR Doc.73-4094 Filed 3-2-73;8:45 am]

[2] Kidd's first-year costs consist of the following: downpayment on equipment, $4,414; 2 months' payments on equipment, $1,655; 14 months' interest payments on equipment, $3,476; miscellaneous expenses, $7,000; and operating expenses, $35,000.

[1] The petition to enlarge issues was filed Jan. 11, 1973; the Broadcast Bureau filed its comments on Jan. 22, 1973; the petitioner's response was filed Jan. 29, 1973.

[2] Thus, the Board specifically does not hold that foreign language and ethnic programs are to be viewed as public service programs if, regardless of their specific classification for logging purposes, they serve the needs of ethnic minorities.

[1] Notice of inquiry regarding future authorization (FCC 72-673) was published at 37 FR 16042, August 9, 1972; an order extending time was published at 38 FR 4690, February 20, 1973.

FEDERAL POWER COMMISSION

NATIONAL GAS SURVEY EXECUTIVE ADVISORY COMMITTEE

Renewal Order

FEBRUARY 23, 1973.

This order renews the National Gas Survey Executive Advisory Committee for the term from and after April 6, 1973, to a date not later than December 31, 1973. As presently constituted, the Executive Advisory Committee terminates April 6, 1973. The Commission contemplates that the work of all advisory committees participating in the National Gas Survey will be completed within the calendar year 1973. Hence, there will be no need or purpose of these committees beyond December 31, 1973.

This Committee was established pursuant to the Commission's order of April 6, 1971, 36 FR 6922, Order Establishing National Gas Survey Executive Advisory Committee and Designating Its Membership and Chiarmanship. That order reflects terms and conditions as set forth in the Commission's Order Authorizing the Establishment of National Gas Survey Advisory Committees and Prescribing Procedures, issued February 23, 1971, 36 FR 3851. The committee is affected by subsequent Commission orders amending prior orders, issued April 25, 1972, 37 FR 8578, June 27, 1972, 37 FR 13306, and December 19, 1972, 37 FR 28658.

As so constituted, the Executive Advisory Committee is in accord with the provisions of applicable statutory and Executive order requirements.

By notice published February 7, 1973, 38 FR 3545, the Chairman of the Commission has determined and certified that the renewal of the Executive Advisory Committee for the period set forth herein is necessary in the public interest in connection with the performance of duties imposed on the Commission by law. The Office of Management and Budget, Committee Management Secretariat, has ascertained that the renewal of the Committee is in accord with the requirements of the Federal Advisory Committee Act, 86 Stat. 770, 773–4.

The Federal Power Commission hereby determines that the continued establishment of the National Gas Survey Executive Advisory Committee is in the public interest in connection with the performance of duties imposed on the Commission by law. The Commission establishes and continues this committee in accordance with the provisions of this order, and provisions of an order of the Commission issued concurrently herewith which restates, for convenience purposes, the content of the Commission's February 23, 1971, order so as to reflect, in one order format, provisions of succeeding orders of this Commission which have changed portions of the February 23, 1971, order as necessary from time-to-time by reason of Commission determinations and subsequently enacted Executive orders and the Federal Advisory Committee Act.

1. *Purpose.* The Executive Advisory Committee shall constitute the principal policy advisory committee to the Commission and its staff in the Commission's planning, conduct, and execution of the National Gas Survey. In this policy advisory role, the Executive Advisory Committee will be called upon to offer suggestions (a) to assist the Commission and its Director of the National Gas Survey (Director) in their activities in formulating planning assumptions and directing the work of the Survey including the work of other advisory committees; (b) to assist in establishing priorities for work to be performed and in the coordination of all aspects of the Survey; (c) to assist in assembling and assimilating the vast amount of comprehensive, accurate, and reliable data required for the Survey; and (d) to assist in such other ways as it may from time to time be called upon by the Commission or the Director.

2. *Membership.* The Chairman, secretary, and other members of the Executive Advisory Committee, as currently constituted, as selected by the Chairman of the Commission with the approval of the Commission, are designated in the appendix hereto.

3. *Selection of future Committee members.* All future Committee members, alternates, and persons designated to act as Committee Chairmen shall be selected and designated by the Chairman of the Commission with the approval of the Commission.

4. The following paragraphs of the aforementioned order issued concurrently herewith—Restatement of Order Authorizing the Establishment of National Gas Survey Advisory Committees and Prescribing Procedures—are hereby incorporated by reference:

(3) Conduct of meetings.
(4) Minutes and records.
(5) Secretary of the Committee.
(6) Location and time of meetings.
(7) Advice and recommendations offered by the Committee.

5. The National Gas Survey Executive Advisory Committee, as established and continued by this order, shall terminate not later than December 31, 1973.

The Secretary of the Commission shall file with the chairman, Committee on Commerce, U.S. Senate; chairman, Interstate and Foreign Commerce Committee, House of Representative; and Librarian, Library of Congress, copies of this order together with the Commission's Restatement of Order Authorizing the Establishment of National Gas Survey Advisory Committees and Prescribing Procedures, as constituting the charter of the National Gas Survey Executive Advisory Committee.

The Secretary of the Commission shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX—NATIONAL GAS SURVEY EXECUTIVE ADVISORY COMMITTEE

Chairman William M. Eimer; Chairman of the Board, Texas Gas Transmission Corp.
Secretary William J. Drescher; Deputy Chief, Bureau of Natural Gas, Federal Power Commission.

MEMBERS

Robert O. Anderson, Chairman of the Board, Atlantic Richfield Co.
Donald F. Bittinger, Chairman of the Board, Washington Gas Light Co.
William J. Bowen, President, Florida Gas Co.
Howard Boyd, Chairman of the Board, El Paso Natural Gas Co.
Harry Bridges, President, Shell Oil Co.
Richard C. Byrd, General Counsel, Interstate Oil Compact Commission.
Marvin Chandler, Chairman of the Board, Northern Illinois Gas Co.
Hon. Edward E. David, Jr., Director, Office of Science and Technology.
Hon. Hollis M. Dole, Assistant Secretary (mineral resources), Department of the Interior.
B. R. Dorsey, Chairman of the Board, Gulf Oil Corp.
Buell G. Duncan, Chairman of the Board, Piedmont Natural Gas Co., Inc.
Frank E. Fitzsimmons, General President, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.
Dean Lawrence E. Fouraker, Harvard Graduate School of Business Administration.
Nelson W. Freeman, President, Tenneco Inc.
Baxter D. Goodrich, Chairman of the Board, Texas Eastern Transmission Corp.
Maurice F. Granville, Chairman of the Board, Texaco Inc.
A. F. Grospiron, President, Oil, Chemical and Atomic Workers International Union.
John W. Heiney, President, Indiana Gas Co., Inc.
Dale Helmerich, President, American Public Gas Association.
Robert R. Herring, President, Houston Natural Gas Corp.
Thomas H. Jenkins, Director, National Gas Survey, Federal Power Commission.
William W. Keeler, Chairman of the Board, Phillips Petroleum Co.
Hon. Virginia H. Knauer, Special Assistant to the President, Director, Office of Consumer Affairs.
Stanley Learned, Consultant—Independent.
Claude F. Machen, Chairman of the Board, Boston Gas Co.
Ralph T. McElvenny, Chairman of the Board, American Natural Gas Co.
Dean A. McGee, Chairman of the Board, Kerr-McGee Corp.
John G. McLean, President, Continental Oil Co.
Otto N. Miller, Chairman of the Board, Standard Oil Company of California.
George P. Mitchell, President, George Mitchell & Associates, Inc.
G. Montgomery Mitchell, President and Chief Executive Officer, Transcontinental Gas Pipe Line Corp.
Robert Mosbacher, Independent.
Richard L. O'Shields, President, Panhandle Eastern Pipe Line Co.
Hon. Arthur L. Padrutt, President, National Association of Regulatory Utility Commissioners, Wisconsin Public Service Commission.
John W. Partridge, Chairman of the Board, Columbia Gas System, Inc.
Joseph R. Rensch, President, Pacific Lighting Corp.
Hon. William D. Ruckelshaus, Administrator, Environmental Protection Agency.
Hon. Dixy Lee Ray, Chairman, Atomic Energy Commission.
John S. Shaw, Jr., President, Southern Natural Gas Co.
Hon. Raymond J. Sherwin, Judge, Superior Court (California), President, Sierra Club.
Shermer L. Sibley, Chairman of the Board, Pacific Gas & Electric Co.
Willis A. Strauss, Chairman of the Board, Northern Natural Gas Co.
John E. Swearingen, Chairman of the Board, Standard Oil Co. (Indiana).
G. J. Tankersley, President, The East Ohio Gas Co.
Hon. Russell E. Train, Chairman, Council on Environmental Quality.
Henry A. True, Jr., Partner, True Oil Co.
Dean William R. Upthegrove, College of Engineering, University of Oklahoma.
Rawleigh A. Warner, Jr., Chairman of the Board, Mobil Oil Corp.
Myron A. Wright, Chairman of the Board, Exxon Company, U.S.A.

[FR Doc.73-4002 Filed 3-2-73;8:45 am]

NATIONAL GAS SURVEY TECHNICAL ADVISORY COMMITTEES

Renewal Order

FEBRUARY 23, 1973.

This order renews the National Gas Survey Technical Advisory Committees, functioning separately as Technical Advisory Committee-Supply, Technical Advisory Committee-Transmission and Technical Advisory Committee-Distribution, for the term from and after April 6, 1973, to a date not later than December 31, 1973. As presently constituted, the three Technical Advisory Committees terminate April 6, 1973. The Commission contemplates that the work of all advisory committees participating in the National Gas Survey will be completed within the calendar year 1973. Hence, there will be no need or purpose of these committees beyond December 31, 1973.

These committees were established pursuant to the Commission's order of April 6, 1971, 36 FR 6922, Order Establishing National Gas Survey Technical Advisory Committees and Designating Initial Membership. That order reflects terms and conditions as set forth in the Commission's Order Authorizing the Establishment of National Gas Survey Advisory Committees and Prescribing Procedures, issued February 23, 1971, 36 FR 3851. The committees are affected by subsequent Commission orders amending prior orders, issued April 25, 1972, 37 FR 8578, June 27, 1972, 37 FR 13306 and December 19, 1972, 37 FR 28658.

As so constituted, the Technical Advisory Committees are in accord with the provisions of applicable statutory and Executive Order requirements.

By notice published February 7, 1973, 38 F.R. 3545, the Chairman of the Commission has determined and certified that the renewal of the Technical Advisory Committees for the period set forth herein is necessary in the public interest in connection with the performance of duties imposed on the Commission by law. The Office of Management and Budget, Committee Management Secretariat, has ascertained that the renewal of the committees is in accord with the requirements of the Federal Advisory Committee Act, 86 Stat. 770, 773–4.

The Federal Power Commission hereby determines that the continued establishment of the National Gas Survey Technical Advisory Committees is in the public interest in connection with the performance of duties imposed on the Commission by law. The Commission establishes and continues these committees in accordance with the provisions of this order, and provisions of an order of the Commission issued concurrently herewith which restates, for convenience purposes, the content of the Commission's February 23, 1971, order so as to reflect, in one order format, provisions of succeeding orders of this Commission which have changed portions of the February 23, 1971, order as necessary from time-to-time by reason of Commission determinations and subsequently enacted Executive orders and the Federal Advisory Committee Act.

1. Purpose. The Technical Advisory Committees shall be subordinate to the Executive Advisory Committee and shall report to such Committee and to the Director of the National Gas Survey (Director) on all matters delegated to them pertaining to the planning, conduct, and execution of the National Gas Survey.

The principal functions of the Technical Advisory Committee shall be as follows: (1) To carry out all directions of the Executive Advisory Committee or the Director pertaining to the planning, conduct and execution of the Survey; (2) to recommend guidelines, as requested by the Executive Advisory Committee or the Director, for the detailed work encompassed in the conduct of the Survey and to allocate work assignments to the task forces organizationally subordinate to them; (3) to recommend a proposed time schedule for the development and completion of all assignment phases of the Survey; (4) to coordinate all facets of work allocated to organizationally subordinate task forces; (5) to submit periodic reports to the Executive Advisory Committee and the Director as to the progress and status of the Survey together with such recommendations pertaining thereto as may be appropriate; and (6) to furnish such other assistance and advice to the Executive Advisory Committee and the Director as they may from time to time be called upon to contribute for the successful planning and conduct of the Survey.

2. Membership. Each of the Technical Advisory Committees shall be chaired by a member of the Executive Advisory Committee or such other person as selected, and be shall be designated as Vice Chairman of the respective Technical Advisory Committee. The Vice Chairman, FPC Survey Coordinating Representatives, Secretaries, the other committee members and alternates shall be selected and designated by the Chairman of the Commission with the approval of the Commission. The person or persons who are designated as the FPC Survey Coordinating Representatives and/or Secretary shall be full-time salaried officers or employees of the Commission. The FPC Survey Coordinating Representative may be designated to serve as Secretary of the Committee for which he is selected.

3. The Vice Chairmen, FPC Survey Coordinating Representatives and Secretaries, as currently constituted, as selected and approved in accordance with this order, are designated in the Appendix hereto.

4. The following paragraphs of the aforementioned order issued concurrently herewith—Restatement of Order Authorizing the Establishment of National Gas Survey Advisory Committees and Prescribing Procedures—are hereby incorporated by reference:

(2) Selection of Committee Members.
(3) Conduct of Meetings.
(4) Minutes and Records.
(5) Secretary of the Committee.
(6) Location and Time of Meetings.
(7) Advice and Recommendations Offered by the Committee.

5. The National Gas Survey Technical Advisory Committees, as established and continued by this order, shall terminate not later than December 31, 1973.

The Secretary of the Commission shall file with the Chairman, Committee on Commerce, United States Senate, Chairman, Interstate and Foreign Commerce Committee, House of Representatives, and Librarian, Library of Congress, copies of this order together with the Commission's Restatement of Order Authorizing the Establishment of National Gas Survey Advisory Committees and Prescribing Procedures, as constituting the charters of the National Gas Survey Technical Advisory Committees.

The Secretary of the Commission shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX—NATIONAL GAS SURVEY TECHNICAL ADVISORY COMMITTEES

TECHNICAL ADVISORY COMMITTEE—DISTRIBUTION

Vice Chairman G. J. Tankersley; President, The East Ohio Gas Co.
Deputy Vice Chairman Raibern H. Murray; Director, Marketing Consolidated Natural Gas Service Co., Inc.
FPC Survey Coordinating Representative and Secretary, Charles A. Gallagher; Engineer, National Gas Survey, Federal Power Commission.
Alternate TF FPC Survey Coordinating Representative and Secretary, James R. Spor; Industry Economist, National Gas Survey, Federal Power Commission.

FPC REPRESENTATIVES

Dr. Richard F. Hill, Advisor on Environmental Quality, Office of the Advisor on Environmental Quality.
Gordon K. Zareski, Chief, Planning and Development Division, Bureau of Natural Gas, Federal Power Commission.

COMMITTEE MEMBERS

Buell G. Duncan, Chairman of the Board, Piedmont Natural Gas Co., Inc.
James F. Gary, President, Honolulu Gas Co., Ltd.
Calvin R. Henze, President, Memphis Light, Gas & Water Division.
Robert R. Herring, President, Houston Natural Gas Corp.
C. C. Ingram, Chairman of the Board, Oklahoma Natural Gas Co.
Dr. Alfred E. Kahn, Dean, College of Arts and Sciences, and Professor of Economics, Cornell University.
Hon. Virginia H. Knauer, Special Assistant to the President; and Director, Office of Consumer Affairs.
Paul W. Kraemer, President, Minneapolis Gas Co.
George L. Morrow, President, The Peoples Gas Light & Coke Co.
John W. Partridge, Chairman of the Board, Columbia Gas System, Inc.
Robert T. Person, President, Public Service Company of Colorado.
Joseph R. Rensch, President, Pacific Lighting Corp.
M. Frederik Smith, Member, The National Parks Advisory Board and National Planning Association.
Robert H. Willis, President, Connecticut Natural Gas Corp.
William P. Woods, Chairman of the Board, Washington Natural Gas Co.

TECHNICAL ADVISORY COMMITTEE-SUPPLY

Vice Chairman Myron A. Wright; Chairman of the Board, Exxon Company, U.S.A.
Deputy Vice Chairman William T. Slick, Jr., Assistant Manager, Corporate Planning, Exxon Company, U.S.A.
FPC Survey Coordinating Representative and Secretary, Dr. Paul J. Root; Technical Director, National Gas Survey, Federal Power Commission.

FPC REPRESENTATIVES

Robert M. Jimeson, Assistant Advisor on Environmental Quality, Office of the Advisor on Environmental Quality.
Arthur L. Litke, Chief, Office of Accounting and Finance.
Dr. Haskell P. Wald, Chief, Office of Economics, Federal Power Commission.

COMMITTEE MEMBERS

Dr. Morris A. Adelman, Professor of Economics, Massachusetts Institute of Technology.
J. Dennis Bonney, Vice President, Standard Oil Company of California.
LeRoy Culbertson, Vice President, Phillips Petroleum Co.
W. Timothy Dowd, Executive Secretary, Interstate Oil Compact Commission.
Arthur T. Guernsey, Planning Manager, Shell Oil Co.
Dr. John W. Harbaugh, Chairman, Geology Department, Stanford University.
Thomas L. Kimball, Executive Director, National Wildlife Federation.
Frederick W. Lawrence, Washington Liaison, Stationary Sources, Air Programs, Environmental Protection Agency
Stanley Learned, Consultant, Independent.
Dr. Stewart Lee, Chairman, Department of Economics and Business Administration, Geneva College.
Hon. Vincent E. McKelvey, Director of Geological Survey, Department of the Interior.
Howard A. McKinley, Vice President, New Business Development, Western Hemisphere Petroleum Division, Continental Oil Co.
Dr. Edward J. Mitchell, Visiting Professor of Economics, Graduate School of Business and Public Administration, Cornell University.
Jeff Montgomery, President, Kirby Industries, Inc.
Gene P. Morrell, Vice President, Lone Star Gas Co.
Richard J. Murdy, Assistant to the President, Consolidated Natural Gas Co.
Dr. Bruce C. Netschert, Vice President, National Economic Research Associates, Inc.
Ernest L. Petree, Vice President, Exploration and Production, Gulf Oil Corp.
John W. Phenicie, Vice President, Amoco Production Co.
Dr. Howard W. Pifer III, Assistant Professor of Business Administration, Harvard University Graduate School of Business Administration.
Sam H. Schurr, Director, Energy and Mineral Resources, Resources for the Future, Inc.
Comdr. Joseph P. Trunz, Jr., Director, Naval Petroleum and Oil Shale Reserves, Department of the Navy.
Dr. Sherman A. Wengerd, Professor of Geology, University of New Mexico.
R. Earle Wright, Vice President, Gas Department, Texaco Inc.

TECHNICAL ADVISORY COMMITTEE-TRANSMISSION

Vice Chairman Willis A. Strauss, Chairman of the Board, Northern Natural Gas Co.
Deputy Vice Chairman Ferdinand L. Gagne; Manager, Industry Relations, Northern Natural Gas Co.
FPC Survey Coordinating Representative and Secretary, Thomas H. Jenkins (acting), Director, National Gas Survey.
FPC Representative Dr. Richard F. Hill, Advisor on Environmental Quality, Office of the Advisor on Environmental Quality, Federal Power Commission.

COMMITTEE MEMBERS

Orval C. Davis, President, Natural Gas Pipeline Company of America.
Dr. Robert O. Herrmann, Associate Professor of Agricultural Economics, Pennsylvania State University.
George F. Kirby, President, Texas Eastern Transmission Corp.
Wilber H. Mack, Chairman of the Board, American Natural Gas Co.
John W. Morton, President, Cities Service Gas Co.
William E. Towell, Executive Vice President, American Forestry Association.

[FR Doc.73-4003 Filed 3-2-73;8:45 am]

NATIONAL GAS SURVEY ADVISORY COMMITTEES

Establishment and Procedures; Restatement

FEBRUARY 23, 1973.

This order restates, for convenience purposes, portions of the content of the Commission's February 23, 1971, Order Authorizing the Establishment of National Gas Survey Advisory Committees and Prescribing Procedures, 36 FR 3851. Portions of that order have been changed from time to time by subsequent Commission orders.[1] This order correlates all such changes in one order format.[2]

The Commission stated, in part, as follows in its February 23, 1971, order, 36 FR 3851-52:

The Federal Power Commission has determined that a national gas survey is necessary and appropriate to the purposes of the Natural Gas Act, 15 U.S.C. 717(a), et seq. As carried out, the survey will serve the interests of all who are, and may be, dependent upon or affected by the use and further development of the Nation's natural gas resources. Within the areas to be studied, the Commission contemplates detailed analyses inter alia of factors of demand, supply and alternate fuel sources, facility expansion, economic and environmental considerations, inflation, interfuel competition, import-export relationships and policies, and regulatory considerations—Federal, State, and local. Other matters will be studied as appropriate.

To accomplish the objectives of the Natural Gas Act, in providing for the ultimate consumer and adequate and reliable supply of natural gas at a reasonable price and the Nation a vital energy resource base, the Commission will direct the conduct of the survey through the members of the Commission and its staff.

To assist the actions of the commissioners and commission staff, the Commission will use various advisory committees which shall be conducted under the general direction of the Commission. * * * All will be conducted pursuant to the general requirements as set forth in this order. The Commission contemplates the issuance of specific order or orders from time to time establishing each committee and denominating its membership and chairmanship.

The advice of all committees shall be limited to matters relating solely to the planning and carrying out of the national gas survey. The Commission will have complete responsibility for the national gas survey with respect to its conduct, scope, the ultimate recommendations and the acceptance of the final report. In discharging these responsibilities, the Commission will approve the survey's objectives, scope of work, organization and schedule of performance, make any required policy determinations and give its advice directed toward the coordination and cooperation between the survey and any intergovernmental, State, industry, agency or representative, including any other expertise as required.

The Commission's most recent order amending the February 23, 1971, order was occasioned by the Federal Advisory Committee Act, 86 Stat. 770, and Executive Order No. 11686, October 7, 1972, 37 FR 21421. See Order Amending National Gas Survey Orders, issued December 19, 1972, 37 FR 28658. The latter order stated, in part, as follows, 37 FR 28658-59:

The national gas survey advisory committees fall within the definition of "advisory committee" as used in the Federal Advisory Committee Act (section 3, 86 Stat. 770). These national gas survey advisory committees also fall within the definition of "advisory committee," including as a part thereof, industry or industrial advisory committees, as used in Executive Order No. 11671 (section 1(6)(7)), and Executive Order No. 11007, * * * (section 2(a)(b)). Executive Order No. 11671 superseded Executive Order No. 11007. * * *

The Federal Advisory Committee Act, particularly sections 8 and 10, sets forth governmental responsibilities for management controls for advisory committees established by an agency such as this Commission, and sets forth procedures that are to be followed in the conduct of advisory committees' affairs * * * [footnote omitted] Under section 9(a)(2), 86 Stat. 774, advisory committees which are established by an agency are to be determined "* * * to be in the public interest in connection with the performance of duties imposed on that agency by law." Section 9(b), 86 Stat. 774, states in part "* * * advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed * * * shall be made solely by * * * an officer of the Federal Government." In cases where advisory committees are to be established, charters are to be filed with the appropriate governmental agency and standing committees of the Congress having legislative jurisdiction over the agency, prior to the undertaking of committee meetings or actions, as well as with the Library of Congress * * * section 14, 86 Stat. 776, of the Act also specifies a termination date for advisory committee existence of not later than 2 years from the effective date of the Act (January 5, 1973) for advisory committees then in existence, unless otherwise renewed, and of not later than 2 years from the date of establishment for those established after January 5, 1973, unless otherwise renewed.

The charters of the various national gas survey advisory committees are the several Commission orders * * * all advisory committees meet under the chairmanship of, or in the presence of, a Federal governmental official, with all committee meetings at the call of, or with the advance approval of such governmental official and with an agenda approved by such official who has designated responsibilities for opening, adjourning and conducting all National Gas Survey Committee meetings. All meetings of the survey advisory committees are open to public observation; public notice of meetings, dates, times, places, and agendas, is given by publication in the FEDERAL REGISTER or by publication in local media; participation of interested persons in attendance before committees is pro-

[1] The particular Commission orders here referred to are designated on Appendix A hereto.

[2] By separate orders issued concurrently herewith, the Commission is renewing the terms of the National Gas Survey Executive Advisory Committee and the terms of three technical advisory committees, all for a period from and after Apr. 6, 1973, to a date not later than Dec. 31, 1973.

vided, subject to reasonable, necessary and appropriate controls by the attending governmental official or administrative regulations, to insure the conduct of committee affairs; minutes of all advisory committee meetings are required and verbatim transcripts are required for all meetings of the principal policy advisory committee of the national gas survey, the Executive Advisory Committee, convened after April 25, 1972; and the minutes and transcripts of all national gas survey advisory committee meetings or proceedings are retained within the public files of the Commission.

In fiscal year 1974, the projected cost to the Commission for the support of all national gas survey committees is $130,000 and 5.2 man-years; these amounts being for the period through December 31, 1973. In the full fiscal year 1973, the projected cost to the Commission for the support of these committees is $250,000 and 10.5 man-years. Commission orders establishing the national gas survey committees do not authorize the use of public funds for the payment of salaries or expenses of advisory committee members. Within the general budgetary authority of the Commission, appropriated funds of the Commission are used to defray personnel costs and expenses of Commission members and Commission staff personnel whose activities are directed to the conduct of the national gas survey, associated contracted services and travel expenditures of certain advisory committee members as may be approved by the Chairman of the Commission. Within the fiscal years 1971–1973, since the establishment of the national gas survey advisory committees and to date, 79 national gas survey advisory committee meetings have been held. Frequency of meetings, as indicated, should continue in fiscal year 1973 and through the first half of fiscal year 1974.

The numbered paragraphs of the Commission's February 23, 1971, order, as they have been revised from time to time by the Commission, are as follows:

1. *Purpose.* The committees shall advise and make recommendations to the Commission in planning and carrying out the Commission's proposed national gas survey.

2. *Selection of committee members.* All committee members, alternates and persons designated to act as committee chairmen shall be selected and designated by the Chairman of the Commission with the approval of the Commission.

3. *Conduct of meetings.* The Chairman of the Commission, or in his absence, the Vice Chairman of the Commission, or any full-time salaried officer or employee of the Commission designated by the Chairman of the Commission, who shall act as chairman of a committee, shall be responsible for opening, conducting and adjourning committee meetings when, in his judgment, adjournment is in the public interest. When a committee is chaired by a person, designated by the Chairman of the Commission as chairman of that committee, who is not a full-time salaried officer or employee of the Commission, no meeting of such committee shall be held except at the call of, or with the advance approval of, a full-time salaried officer or employee of the Commission designated by the Chairman of the Commission, and with an agenda formulated or approved by such officer or employee; and all such meetings shall be conducted in the presence of such full-time salaried officer or employee of the Commission, who shall be responsible for opening the meeting, assisting in the conduct thereof, and for adjourning any meeting whenever he considers adjournment to be in the public interest.

4. *Minutes and records.* The Chairman of the Commission having made the determinations as reflected in the Commission's order of December 19, 1972, it is directed:

(1) That National Gas Survey advisory committees shall not be permitted to receive, compile, or discuss data or reports showing the current or projected commercial operations of identified business enterprises;

(2) That the records of all National Gas Survey advisory committee meetings or proceedings shall be accurate and include as detailed minutes with respect to each, showing:

(a) The time and place of the meeting, an explanation of the extent to which the meeting was open to the public, an identification and listing of committee members and all other persons present and participating in the meeting, together with the interests or affiliations they represent and an explanation of the manner and extent of public participation in the meeting by members of the public who attended but did not present oral or written statements to the committee, including an estimate of the number of such persons;

(b) A complete and accurate description of all matters discussed and all conclusions reached;

(c) The written information made available for consideration by the committee, including copies of all reports received, issued or approved by the committee,

(d) All recommendations made and reasons therefor; and

(e) The respective advisory committee chairman's designation of a person to record the committee meeting minutes, which person shall be the same person as designated by the Chairman of the Commission as the Secretary or Alternate Secretary of the committee, and the advisory committee chairman's certification as to the accuracy of such minutes;

(3) That in addition to the foregoing, a verbatim transcript shall be kept of all meetings of the National Gas Survey Executive Advisory Committee convened after April 25, 1972; and

(4) That one form of the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agendas or other documents which were made available to or prepared for or by each National Gas Survey advisory committee shall be lodged and retained within the public files of the Commission.

5. *Secretary of the committee.* The Chairman of the Commission shall appoint a Secretary of each committee, including alternate secretaries where indicated, from among the members of the Commission staff who shall be responsible for preparing agendas, listing matters to be considered, supplying copies thereof and notifying committee members of the meetings, preparing detailed minutes of all committee meetings, and maintaining all records related to organization, membership and operations of the committee. As a part of such records, the Secretary or Alternate Secretary of each committee shall compile and report at least annually committee membership, functions and actions. The Secretary or Alternate Secretary shall be present during all committee meetings and the person so present shall include within his certification as to the accuracy of all minutes of the proceedings so recorded, the certification of the committee chairman.

6. *Location and time of meetings.* Unless otherwise directed, committee meetings will convene at the call of the Chairman of the Commission at the Office of the Federal Power Commission, located at 441 G Street NW., Washington, D.C. 20426, or at such place and time as may be designated by the chairman of the committee with the approval of the Chairman of the Commission. Ordinarily, these meetings will be held during the regular working hours of the Federal Power Commission.

7. *Advice and recommendations offered by the committee.* The advice and recommendations of the members of the committees may be presented to the Commission at committee meetings either orally or in written form. The advice of all committees shall be limited to matters relating solely to the planning and carrying out of the National Gas Survey and ultimate decisions based on the committees' advice or recommendations are reserved to the Federal Power Commission.

8. *Duration of the committee.* All committees shall terminate not later than 2 years subsequent to their date of establishment, unless the Commission determines in writing, not more than 60 days prior to the expiration of such 2-year period, that continued existence of a committee is in the public interest. A like determination by the Commission shall be required not more than 60 days prior to the end of each subsequent 2-year period to continue the existence of each committee thereafter.

The Secretary of the Commission shall file with the Chairman, Committee on Commerce, U.S. Senate, Chairman, Interstate and Foreign Commerce Committee, House of Representatives, and Librarian, Library of Congress, copies of this order.

The Secretary of the Commission shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX A

I. Order authorizing the establishment of National Gas Survey Advisory Committees and prescribing procedures. Issued February 23, 1971, 36 FR 3851.

II. Order amending National Gas Survey orders issued February 23, 1971, and April 6, 1971. Issued April 25, 1972, 37 FR 8578.

III. Order amending National Gas Survey Orders. Issued June 27, 1972, 37 FR 13306.

IV. Order amending National Gas Survey Orders. Issued December 19, 1972, 37 FR 28658.

[FR Doc.73-4004 Filed 3-2-73;8:45 am]

[Docket No. R-411]

ACCOUNTING AND RATE TREATMENT OF ADVANCE PAYMENTS FOR GAS DEVELOPMENT AND PRODUCTION

Order of Clarification and Denial of Rehearing or Modification

FEBRUARY 27, 1973.

On December 29, 1972, the Commission issued Order No. 465 amending its regulations under the Natural Gas Act so as to provide for an extension to December 31, 1973, of accounting and rate base treatment of advances made to suppliers by pipelines for gas to be delivered at a future date. Order No. 465 was issued as a result of a renotice (37 FR 13559, July 11, 1972) of the Commis-

sion's proposed rulemaking in Docket No. R–411 as well as a notice issued on October 24, 1972, (37 FR 23363, November 2, 1972) requesting comments on the proposed rulemaking in Docket No. R–411, based on the review of the summary of responses to the questionnaires filed by all pipeline companies that have filed advance agreements with us in accordance with Orders Nos. 410 (44 FPC 1142), 410–A (45 FPC 135), and 441 (46 FPC 1178).

On January 29, 1973, Mobil Oil Corp. (Mobil) and the Public Service Commission of New York (New York) each filed an application for rehearing of Order No. 465, in which they each recommend revocation of Order No. 465 or, at least, substantial modification of that order. On February 12, 1973, the Independent Petroleum Association of America (IPAA) also filed an application for rehearing requesting modification of Order No. 465.

Mobil alleges that Order No. 465 establishes a rule which is inherently preferential to pipelines and their producing affiliates in that it, inter alia, allows pipelines to make advances to their affiliates as well as to independent producers and include such advances in rate base. Mobil alleges that since it and other situated producers are not able to assess ratepayers for exploration ventures in this manner, they will be at a competitive disadvantage since the pipeline will fund its producing affiliate before it funds an independent producer and that this, in turn, will lead to a restructuring of the natural gas industry such that it will be dominated by pipelines and their producing affiliates. Moreover, New York argues that allowing a pipeline affiliate to obtain a working interest as a result of an advance is forcing ratepayers "to pay a return on consumer-contributed capital."

In Order No. 465 (mimeo. p. 9), we noted that our policy since the issuance of Opinion No. 568 (42 FPC 743, 752), was to treat pipeline-affiliated producers on a parity with independent producers in order to encourage "intensified exploration by the pipeline producers." To this end, in Order No. 465, we continued our policy of permitting advances from pipelines to their production affiliates to be included in rate base and removed the prohibition against acquisition of a working interest by a pipeline affiliate as the result of an advance. As noted in Schedule III(b) of Attachment D to Order No. 465, advances to pipeline affiliates play a very small role in the total advances program. We believe encouraging pipeline production is a necessary and proper means of alleviating the natural gas shortage, which will complement, and not discourage our efforts to encourage further exploration and development activity by independent producers.[1] Moreover, as we stated in Order No. 465 (mimeo. p. 10), permitting pipelines to capitalize advances made to their producer affiliates where such affiliates acquire a working interest, provides a useful incentive to pipeline production without increased cost to the consumer and allows the affiliate greater flexibility in entering into joint ventures with other producers. We also note that no capital contributions by consumers are required or contemplated by Order No. 465.

IPAA also alleges that Order No. 465 is preferential to pipelines and their affiliates and recommends that the Order be modified such that a pipeline's affiliate:

> Should be allowed to share in the total advance payments generated by the parent in the same ratio as the quantity of gas produced by the affiliate bears to the total gas through-put of the pipeline; and further, no independent producer should receive more than six (6) percent of the advance payments generated by a pipeline and the average should not be more than two (2) percent.

Upon consideration of IPAA's proposal, we find that it should not be adopted since it would restrict the scope of the advance program by placing unnecessary restrictions on advances made to independent producers and pipeline affiliated producers.

Mobil alleges that the Commission has prescribed a "permanent" rule in contravention to Public Service Commission of New York v. F.P.C., ____ F. 2d ____, CADC No. 71–1161, issued March 29, 1972; rehearing denied ____ F. 2d ____, issued May 19, 1972. However, examination of Order No. 465 reveals that it is "permanent" in the same sense as Order No. 441. As Mobil correctly points out, Order No. 465 provides that no advances may be made pursuant to contractual commitments entered into after December 31, 1973. However, advances may be made after that date if they are pursuant to contractual commitments entered into before December 31, 1973. A similar provision is included in Order No. 441 covering advances made pursuant to that order. The Court of Appeals found in Public Service, supra, (mimeo p. 7) that Order No. 441 was "temporary in effect, and is to apply only to contracts executed before January 1973." We see no distinction between Order No. 441 and Order No. 465 in this regard, and find that this provision of Order No. 465 does not violate the Court's mandate that the advances program be temporary in nature.

Mobil and New York allege that the data from the advances program were not subjected to meaningful review and analysis as required by Public Service, supra. Petitioners claim that a substantial portion of the 9.5 trillion cubic feet (Tcf) of proven reserves which we attributed to the advances program[2] came from offshore wells in southern Louisiana, where the Commission has plenary jurisdiction and where, it is alleged, the advances were unnecessary in stimulating exploration and development activity. New York uses a similar argument urging a reversal of our policy to reallow exporation advances for rate base treatment. New York argues further that the advances in the offshore area are merely commitment fees which raise the price of gas to the consumer with no commensurate benefit, and that offshore advances should therefore be prohibited.

As we noted in Order No. 441, 46 FPC 1178 at 1180, a primary purpose of the advances program is to aid capital formation for gas to accelerate the addition of new gas supplies to the interstate market. We do not now state nor have we stated that the 9.5 trillion cubic feet of proven reserves would never have been found or developed absent the advances program. However, our analysis of the data, comments, and pleadings filed in this proceeding indicates that the advances program was a significant and necessary factor in speeding the capital formation which led to the exploration, development, and dedication of 9.5 trillion cubic feet of proven reserves from onshore as well as offshore for use by the interstate market at the time in which it occurred.

Mobil notes that many of the responses to the renotice recommended higher field prices for both new and flowing gas as the best solution to the natural gas shortage and that it was "unlawful" for us to reject that proposal in this docket. The fact that we have decided to continue the advances experiment in no way means that we reject the concept of higher field prices.[3] However, we have determined in this proceeding that a continuation of the advances experiment until December 31, 1973, is a necessary complement to our other efforts to obtain additional supplies of natural gas for the interstate market.

Mobil claims that Order No. 465 is invalid because it was based on data collected by use of a questionnaire prepared by the Commission without the participation of Mobil and other producers. The questionnaire was developed to study the results of advances being included in the rate base of pipelines and the impact of such inclusion on the quantity of gas reserves made available to the pipelines making the advances. Therefore, we find that the absence of participation of Mobil and other producers in the preparation of the questionnaire was not prejudicial to the accuracy of the findings in Order No. 465.

Mobil also states, based on the assumption Order No. 465 will not be repealed, that several of the accounting sections (mimeo, pps. 12–16) of Order 465 require clarification. Mobil alleges that the accounting provisions fail to implement the "Commission's intentions that pipelines are to bear the costs of nonrecoverable advances regardless of contract provisions". New York also expresses concern that our modification of the full recoupment provision initiated in Order No. 441 may result in increased requests no clarification, but argues that

[1] See Order No. 455 issued Aug. 3, 1972, and Order No. 455–A issued Sept. 8, 1972, in Docket No. R–441.

[2] See Order No. 465, pp. 6–7.

[3] See Order No. 455, supra.

costs to the pipeline's customers. IPAA the 5-year repayment should be eliminated because it is unduly burdensome to the advances program.

In Order No. 465, we modified the requirement of Order No. 441 that producers fully repay an advance if the pipeline agreed to absorb any amounts not recovered by gas or other economic consideration from the producer. This means any amounts of an advance not fully recovered 5 years from the date gas deliveries commence or the date it is determined that recovery will be in other than gas, shall be removed from Account 166, rate base treatment thereof shall cease, and the pipeline's shareholders shall absorb the nonrecovered amounts. We do not find that this provision will unduly hamper the effectiveness of the advances program.

New York and Mobil also question how paragraph H of the accounting section of Order No. 465 (mimeo, p. 14) will operate in these changed circumstances. Paragraph H provides: "[i]f the recipient of an advance is unable to repay it [the advance] in full, through no fault of the pipeline or contractual provisions, in gas or other assets, the unpaid or nonrecoverable portions shall be credited to this account at the time such amount is recognized as nonrecoverable". Paragraph H then provides that the amounts of nonrecoverable advances shall be charged off below-the-line, as a non-cost-of-service item in Account 435 or when authorized by the Commission, charged to Account 186 for amortization to Account 813 as a cost-of-service item over a 5-year period. However, as noted above, rate base treatment ceases at the time the advance is recognized as nonrecoverable.[4] Therefore, the right of a pipeline to amortize such nonrecoverable advances to its cost-of-service remains subject to the Commission's determination in each case whether the nonrecoverability of an advance is through no fault of the pipeline or the contractual provisions of the advances agreement. Pipelines electing to enter into contracts not containing a provision for full repayment of the advance by the producer will, in general, be required to absorb the nonrecoverable amounts of such advances and not be permitted to charge such amounts to its cost-of-service.

Mobil alleges that the language in paragraph F (mimeo, p. 14) "serves to depart from the Commission's intent of treating advances as loans." Our intent in promulgating paragraph F was to insure that no advance would remain in Account 166 for more than 5 years without gas deliveries commencing or a determination being made that recovery would be in other than gas. Once one of these two events has occurred, the 5 year recovery period commences. In our previous orders, there was no limit on the time between inclusion of the advance in Account 166 and the commencement of the 5 year recovery period. Thus paragraph F does not depart from the Commission's concept of advances as loans but, in effect, offers added protection against excessive charges to the pipeline's customers.

Mobil questions the definition of the term "partial recovery" in paragraph E (mimeo, pps. 13–14) in light of earlier language in that paragraph citing the condition that no gas flows to the pipeline. "Partial recovery" in this instance means that some of the gas found as a result of the advance flows to the pipeline making such advance, but not enough to fully recoup such advance.

Notes A and C of the accounting section of Order No. 465 (mimeo, p. 15) define which order that pre-Order No. 465 advances shall be subject to. For purposes of clarification we note that the date of the *contract* rather than the date of the advance itself determines which order an advance shall be governed by.

The Commission finds:

The grounds for rehearing set forth in the applications for rehearing filed by New York, Mobil, and IPAA, present no new facts or principles of law which were not considered by the Commission in Order No. 465 issued December 29, 1972, in this proceeding, or which having now been considered, warrant any charge or modification of that order.

The Commission orders:

The applications for rehearing filed by New York and Mobil on January 29, 1973, and by IPAA on February 12, 1973, are hereby denied.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-4115 Filed 3-2-73;8:45 am]

[4] See also Order of Clarification and Denial of Rehearing in Docket No. R-411, 47 FPC 57 at 58.

[Dockets Nos. RP71-131; RP72-61]

ALGONQUIN GAS TRANSMISSION CO.

Notice of Stipulation and Agreement and Additional Tariff Provision

FEBRUARY 27, 1973.

Take notice that on February 12, 1973, Algonquin Gas Transmission Co. (Algonquin) submitted on the evidentiary record of these proceedings a stipulation and agreement and an incorporated addition to its tariff. On February 16, 1973, the presiding Administrative Law Judge certified the stipulation and agreement to the Commission.

The stipulation and agreement with its incorporated tariff addition is intended to cover, for the remainder of the present (1972–73) winter heating season, any emergency situation that may arise due to curtailments of natural gas deliveries on the Algonquin System.

The purpose of the agreement and incorporated tariff addition is to comply with the Commission's order to show cause issued in these dockets on January 29, 1973.

Any person desiring to be heard or to make any protest with reference to this filing should on or before March 9, 1973, file with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to participate as parties in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-4101 Filed 3-2-73;8:45 am]

[Docket No. E-8038]

CENTRAL MAINE POWER CO.

Notice of Proposed Supplement to Initial Rate Schedule

FEBRUARY 26, 1973.

Take notice that Central Maine Power Co. (Central Maine) on February 14, 1973, tendered for filing a proposed supplement to the initial rate schedule filed and pending in Docket No. E-7824. This filing consists of a modification of Maine Yankee Transmission Agreement (agreement) dated as of December 1, 1972, and provides a change in the applicability of section 4 of the agreement. Central Maine requests an effective date of December 1, 1972, or such other date as the agreement is made effective as a rate schedule.

Central Maine states that "the effect of the modification will be to resolve an ambiguity now existing between section 4 of the agreement, which requires all purchasing companies, including Central Maine, to pay for transmission services received, and Appendix A of the agreement which correctly indicates that Central Maine will not receive transmission services from the other signatory parties." Further, Central Maine avers that the proposed revision of section 4 is intended to make it clear that it will not be required to pay for transmission services.

Central Maine states that copies of this filing were served upon all parties to the agreement.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 9, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-4103 Filed 3-2-73;8:45 am]

COLORADO INTERSTATE GAS CO.

[Docket No. RP72-113]

Notice of Certification of Proposed Settlement Agreement

FEBRUARY 26, 1973

Take notice that on February 21, 1973, the presiding Administrative Law Judge Jensen certified to the Commission a proposed Stipulation and Agreement of Settlement (Settlement) filed by Colorado Interstate Gas Co. (CIG) on February 20, 1973.

CIG states that the filed Settlement constitutes a proposed settlement of the above-captioned proceeding. The Settlement as filed is based on jurisdictional cost of service of $95,225,024 with a rate base of $187,674,160. The Settlement rate of return is 8.37 percent with a return on equity of 12.42 percent.

The proposed Settlement contains a moratorium on further rate increases which states that no increase in jurisdictional rates will become effective prior to October 1, 1973. In addition the Settlement provides that CIG will compute its allowance for depreciation for Federal and State income tax purposes by use of the flow-through method of accounting for both pre- and post-1969 public utility property.

Any person desiring to make comments on said proposed Stipulation and Agreement should file written comments with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such comments should be filed on or before March 12, 1973.

Copies of the proposed stipulation and agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-4107 Filed 3-2-73;8:45 am]

[Docket No. CP73-218]

COLUMBIA GAS TRANSMISSION CORP.

Notice of Application

FEBRUARY 26, 1973.

Take notice that on February 13, 1973, Columbia Gas Transmission Corp. (Applicant), 20 Montchanin Road, Wilmington, DE 19807, filed in Docket No. CP73-218 an application pursuant to section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas compressor facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate an additional 3,000-hp. compressor unit at its Frametown Compressor Station, located in Applicant's Zone 2, Braxton County, W. Va. Applicant proposes to begin construction of such facilities in the early summer of 1973.

Applicant states that the additional horespower will provide additional seasonal capacity and flexibility to offset the effects of curtailment by three of Applicant's five nonaffiliated pipeline suppliers and to accommodate changing patterns of deliveries to Applicant's customers by optimizing utilization of existing storage facilities. Applicant further states that it will not provide any additional sales above the level of its existing authorizations.

It is stated that the construction and operation of the proposed compressor facilities are essential to assist Columbia in maintaining existing levels of service during the 1973-74 winter season and thereafter.

Applicant estimates that the total cost of the proposed facilities will be $658,000, to be financed from internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 19, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-4106 Filed 3-2-73;8:45 am]

[Docket No. RP71-128]

FLORIDA GAS TRANSMISSION CO.

Notice of Tariff Revision To Provide for Relief From Curtailment in Emergencies

FEBRUARY 27, 1973.

Take notice that on February 20, 1973, Florida Gas Transmission Co., Post Office Box 44, Winter Park, FL 32789, filed First Revised Sheets Nos. 19 and 20 to its FPC Gas Tariff, Original Volume No. 1, containing a proposed addition to the Priority of Service provision in section 9, General Terms and Conditions, to provide for relief from curtailment in emergency situations. The provision is as follows:

> Seller shall have the right to adjust curtailments pursuant to the foregoing provisions, to the extent necessary, to respond to emergency situations (including environmental emergencies) during periods of curtailment where supplemental deliveries are required to forestall irreparable injury to life or property; provided, however, that when supplemental deliveries are made to any customer pursuant to this emergency exception, Seller and such customer shall balance out such supplemental deliveries by added curtailments at times when such added curtailments do not result in an emergency situation for such customer.

The revision is proposed to become effective on March 23, 1973, or 30 days after filing.

Copies of the revised tariff sheets have been served on all of Florida Gas customers, the Florida Public Service Commission, and all intervenors in Docket No. RP66-4, et al.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 14, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the tariff revision are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-4100 Filed 3-2-73;8:45 am]

[Docket No. G-7437]

LA JOLLA PROPERTIES, INC.

Notice of Petition To Amend

FEBRUARY 26, 1973.

Take notice that on February 15, 1973, La Jolla Properties, Inc. (Petitioner), c/o William F. Pielsticker, Esq., 1400 Vickers, KSB&T Building, Wichita, KS 67202, filed in Docket No. G-7437 a petition to amend the Commission's order granting a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act in said docket by authorizing Petitioner to continue sales of natural gas formerly made by The Fourth National Bank and Trust Company, Wichita, Kans., to Colorado Interstate Corp. (Colorado), from the Hugoton Gas Field, Kearny County, Kans., all as more fully set forth in the petition to amend in this proceeding.

Petitioner proposes to continue sales of natural gas to Colorado from the Hugo-

ton Field at 12.5 cents per Mcf at 14.65 p.s.i.a., subject to downward B.t.u. adjustment.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 19, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-4102 Filed 3-2-73;8:45 am]

[Docket No. CP73-217]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Notice of Application

FEBRUARY 26, 1973.

Take notice that on February 13, 1973, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, IL 60603, filed in Docket No. CP73-217 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the replacement of pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to replace with 42-inch pipe approximately 6 miles of 24-inch pipe on Applicant's No. 1 Crawford pipeline in Will and Du Page Counties, Ill. Applicant states that it began its program of replacing portions of the original 24-inch No. 1 Crawford pipeline in 1968 and that the pipeline replacement proposed herein will complete the replacement program.

It is stated that the estimated cost of the proposed replacement is $2,084,000 and will be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 19, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-4113 Filed 3-2-73;8:45 am]

[Docket No. CP73-219]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Notice of Application

FEBRUARY 26, 1973.

Take notice that on February 14, 1973, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, IL 60603, filed in Docket No. CP73-219 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of certain facilities and the transportation and delivery of up to 200,000 Mcf of natural gas per day for Truckline Gas Co. (Trunkline), all as more fully explained in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport and deliver up to 200,000 Mcf at 14.73 p.s.i.a. of natural gas per day to Trunkline in accordance with an agreement between the parties dated December 14, 1972, and to construct, own, and operate the facilities necessary therefor. Applicant states that pursuant to said agreement Trunkline will cause Stingray Pipeline Company (Stingray) to deliver to Applicant up to 135,000 Mcf of natural gas per day during the first year, and up to 200,000 Mcf thereafter (Reserved Daily Capacity), at Applicant's existing Holly Beach delivery point, Cameron Parish, La., and that Applicant will redeliver the gas to Trunkline at the proposed Cameron delivery point, located at the intersection of Applicant's pipeline and Trunkline's pipeline in Cameron Parish, La. It is stated that the agreement of December 14, 1972, is for a 2-year term, with provision for continuation on a year-to-year basis thereafter.

It is stated that Trunkline will pay applicant a monthly demand charge equal to the product of the Mcf of Reserved Daily Capacity, times 54 miles, times 66 cents per Mcf mile, for the transportation of natural gas proposed herein. It is further stated that applicant will be paid an additional demand charge of 1.172 cents per Mcf on quantities of gas in excess of the Reserved Daily Capacity that are accepted for redelivery by applicant.

Applicant states that the facilities it proposes to construct, own, and operate at the redelivery point will cost an estimated $239,000; and the facilities it plans to construct, own, and operate, consisting of valves, pressure regulations, and other appurtenant facilities at the connection of its Louisiana pipeline with those facilities operated by Stingray, will cost an estimated $104,000. It is also stated that the costs of the aforementioned facilities will be financed from funds on hand, and Trunkline will reimburse applicant for the total cost of construction of those facilities which applicant will own and operate.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 19, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-4108 Filed 3-2-73;8:45 am]

[Docket No. CP73-215]

NORTHERN NATURAL GAS CO.

Notice of Application

FEBRUARY 26, 1973.

Take notice that on February 12, 1973, Northern Natural Gas Co. (Applicant), 2223 Dodge Street, Omaha, NE, filed in Docket No. CP73-215 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell and deliver volumes of raw natural gas to be produced in Lea County, N. Mex., to El Paso Natural Gas Co. (El Paso) for repurchase of volumes of residue gas from El Paso, 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 does not have enough system capacity to gather, process and transport volumes of gas available to it from its Lea County, N. Mex., sources. Applicant further states that El Paso, which also purchases, gathers and transports natural gas from fields located in Lea County, N. Mex., has excess capacity on its system, and that El Paso has contracted with Warren Petroleum Co. (Warren) to use a portion of Warren's processing capacity at Warren's Monument and Eunice Plants in Lea County to process gas for El Paso.

Applicant proposes to increase its takes of natural gas from its Lea County sources by utilizing the excess capacity on the El Paso system in accordance with the terms of an agreement between applicant and El Paso dated January 31, 1973. It is stated that pursuant to the aforementioned contract applicant will use its best efforts to sell and deliver up to 75,000 Mcf of raw, wet, sour natural gas per day to El Paso, or to Warren for El Paso's account, at approximately 100 p.s.i.a. or less, for an initial price of 18.87 cents per Mcf at 7 points of intersection in Lea County.

Applicant further states that El Paso will concurrently sell at 30.94 cents per Mcf, El Paso's currently effective price under Rate Schedule X-1, and deliver to Northern daily volumes of residue gas equal to the volume of gas remaining after El Paso processes the raw gas purchased from Northern, approximately 60,000 Mcf per day. It is also stated that such sale and delivery by El Paso will occur at an existing point of connection at the outlet of Mobil Oil Corp.'s Coyanosa Gasoline Plant, Pecos County, Tex., and/or at the point of intersection where Applicant's 16-inch mainline crosses El Paso's 12-inch line in Lea County, N. Mex. Applicant states that the gas so delivered will be processed, dehydrated, sweet, compressed, and delivered at approximately 900 to 1000 p.s.i.a.

Applicant states that it commenced the sale and delivery of raw natural gas to El Paso for the concurrent repurchase of attributable residue gas, and installed interconnecting delivery facilities at eight locations in Lea County, N. Mex., to make such sales and repurchases within the contemplation of § 157.22 of the Regulations under the Natural Gas Act (18 CFR 157.22).

Applicant requests authority to include the purchase of residue gas from El Paso in computing its "Annual Rate Adjustment to Reflect Charges in Gas Purchased Cost" under paragraph 20 of its FPC Gas Tariff, Third Revised Volume No. 1. Applicant states that the revenue that it will be receiving for the raw gas volumes sold to El Paso will approximate Applicant's cost of purchasing and gathering the Lea County, N. Mex., gas, the operation of paragraph 20 will allow Applicant to recover its actual cost of repurchasing the higher priced residue gas volumes from El Paso.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 19, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-4112 Filed 3-2-73;8:45 am]

[Docket No. RP71-107 (Phase I)]

NORTHERN NATURAL GAS CO.

Order Setting Expedited Hearing on Application for Extraordinary Relief and Permitting Interventions

FEBRUARY 26, 1973.

On January 29, 1973, Producers Gas Equities, Inc. (Producers) filed an application for extraordinary relief, requesting that the Commission exempt it from the curtailment provisions of paragraph 9 of the General Terms and Conditions of Northern Natural Gas Co.'s (Northern) FPC Gas Tariff, Third Revised Volume No. 1, as contained in Northern's settlement agreement approved subject to conditions by the Commission's order issued October 2, 1972.[1]

In support of its application, Producers alleges primarily that curtailment of Northern's gas service to it would result in curtailment of gas sales to its small oil field and farm industrial customers in contravention of the public interest, and that only a relatively small volume of gas is involved. Additionally, Producers alleges that curtailment of gas sales to its small oil field customers would cause not only economic hardship and inconvenience to oil lease operators but also would reduce oil production. On February 16, 1973, Northern filed an answer, stating inter alia that it does not oppose Producers' request for an exemption and further that Producers needs these overrun purchases of gas to meet requirements of its rural domestic and small industrial customers.

Pursuant to our Notice published in the FEDERAL REGISTER, petitions for and notices of intervention were due on or before February 16, 1973. On that date petitions for leave to intervene were filed by Farmland Industries, Inc. and Terra Chemicals International Inc., which request that a formal hearing be held to determine whether Producers' application should be granted. Both petitioners have shown an interest which warrants their participation herein.

We are of the view that Producers should be required to submit evidence supporting its application for extraordinary relief, and that an expedited public hearing thereon be held. Accordingly, we shall schedule dates for the filing of testimony and cross-examination that will facilitate a prompt determination of the merits of Producer's request.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing to determine whether the public convenience and necessity require the grant of the extraordinary relief sought.

(2) The participation of the above-named petitioners in this proceeding may be in the public interest.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, the Commission's rules of practice and procedure, and the Regulations under the Natural Gas Act (18 CFR, Ch. I), a public hearing shall be held commencing on March 20, 1973, at 10 a.m. (e.s.t.) in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC 20426 to determine whether the public convenience and necessity require the extraordinary relief sought by Producers.

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[1] Notice of Producers' application was issued and published in the Federal Register (38 FR 4028).

(B) On or before March 2, 1973, Producers shall file with the Commission and serve on all parties, including the Commission staff, such testimony and exhibits as it may choose to proffer in support of its proposed extraordinary relief.

(C) On or before March 9, 1973, any parties, including the Commission staff, may file answering testimony and exhibits in response to the evidence filed by Producers.

(D) On or before March 16, 1973, Producers may file rebuttal testimony in this proceeding.

(E) A presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for the purpose [see Delegation of Authority, 18 CFR 3.5 (d)] shall preside at the hearing in this proceeding pursuant to the Commission's rules of practice and procedure.

(F) All of the above-named petitioners are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such interveners shall be limited to matters affecting rights and interests specifically set forth in the respective petitions to intervene, and *Provided, further,* That the admission of such interveners shall not be construed as recognition by the Commission that they, or any of them, might be aggrieved because of any order or orders issued by the Commission in this proceeding.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-4110 Filed 3-2-73;8:45 am]

[Project 1881]

PENNSYLVANIA POWER & LIGHT CO.

Notice of Application for Change in Land Rights

FEBRUARY 26, 1973.

Public notice is hereby given that application was filed on August 25, 1972, under the Federal Power Act (16 USC 791a–825r) by the Pennsylvania Power & Light Co. (correspondence to: Mr. Edward M. Nagel, General Counsel and Secretary, Pennsylvania Power & Light Co., 901 Hamilton Street, Allentown, PA) for a change in land rights for constructed Project No. 1881, known as the Holtwood Project, located on the Susquehanna River in Lancaster and York Counties, Pa.

Applicant seeks Commission approval of a settlement agreement dated August 7, 1972, between Pennsylvania Power & Light Co. and the Commonwealth of Pennsylvania involving a transfer of an interest in 4.92 acres of project land of Holtwood Project No. 1881 required for highway construction in the vicinity of a bridge over Pequea Creek of Legislative Route No. 332, Section No. 3, Conestoga and Martic Townships, Lancaster County, Pa. The Commonwealth of Pennsylvania acquired an easement across project lands as a result of a condemnation proceeding in the Court of Common Pleas of Lancaster County. The Pennsylvania Department of Highways requires this right-of-way for channel alignment and removal or alteration of buildings and structures for highway construction purposes.

The settlement agreement provides for the right of the Licensee to use the land affected at any time for project purposes as contemplated in the license issued for Project No. 1881.

Any person desiring to be heard or to make protest with reference to said application should on or before April 4, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-4105 Filed 3-2-73;8:45 am]

[Project 2370]

PENNSYLVANIA ELECTRIC CO.

Notice of Application for Change in Land Rights

FEBRUARY 26, 1973.

Public notice is hereby given that application was filed November 30, 1971, under the Federal Power Act (16 U.S.C. 791a–825r) by the Pennsylvania Electric Co. (Correspondence to: Mr. W. R. Thomas, Secretary and Treasurer, Pennsylvania Electric Co., 1001 Broad Street, Johnstown, PA 15907) for change in land rights for constructed Project No. 2370, known as the Deep Creek Project, located on Deep Creek in Garrett County, Md.

Pennsylvania Electric Co., licensee for the Deep Creek Project No. 2370, requests Commission approval to sell 11 parcels of land (totaling 13 acres) to the Maryland State Highway Administration to accommodate portions of relocated State Highway No. 219. Pennsylvania Electric Co. (also seeks authorization to grant easements on three other parcels of land (a total of one-third acre) which would be used for drainage facilities and maintenance of State Highway No. 219. The parcels are located between the village of McHenry and Deep Creek Bridge.

Any person desiring to be heard or to make protest with reference to said application should on or before April 2, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-4111 Filed 3-2-73;8:45 am]

[Docket No. CI73-542]

TEXAS GULF, INC.

Notice of Application

FEBRUARY 26, 1973.

Take notice that on February 16, 1973, Texas Gulf, Inc. (Applicant), 811 Rusk Avenue, Houston, TX 77002, filed in Docket No. CI73-542 an application pursuant to section 7(c) of the Natural Gas Act and § 2.75 of the Commission's general policy and interpretations (18 CFR 2.75) for a certificate of public convenience and necessity, with pregranted abandonment authorization, authorizing the sale for resale and delivery of natural gas in interstate commerce to Columbia Gas Transmission Corp. (Columbia) from Block 213, East Cameron Area, Offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes under the optional gas pricing procedure to sell natural gas to Columbia from Block 273 at an initial rate of 45 cents per Mcf at 15.025 p.s.i.a., subject to upward and downward B.t.u. adjustment. The basic contract for the subject sale dated November 14, 1973, provides for 1 cent per Mcf price escalations each year, for reimbursement to Applicant for 100 percent of any increased taxes and for a term of 20 years. The price is to be reduced 0.02 cent per Mcf per mile of transportation of plant shrinkage volumes.

Applicant believes that the instant contract prices are reasonable as they effect Columbia, particularly in light of the report that Columbia recently contracted to purchase high-priced synthetic gas made from imported crude oil and naphtha and of the authorization which Columbia LNG Corp., was recently given in Dockets Nos. CP71-68 and CP71-289 which will permit deliveries of liquefied natural gas to Columbia at an initial rate of 90 cents per Mcf.

Applicant also believes that the assurance of a long-term supply of natural gas produced domestically and delivered at the instant contract prices is extremely beneficial to consumers faced with the prospect of paying in excess of $1 (initial price) for gas synthesized from crude oil or naphtha, gasified from coal, imported in liquid form from countries with uncertain political futures, or

transported over long distances from Alaska.

In the alternative, if the optional gas pricing procedure is not available, applicant requests that the subject sale be authorized under paragraph 12 of the Commission's notice of July 17, 1970, in Docket No. R-389A, Initial Rates for Future Sales of Natural Gas for All Areas. In that notice the Commission said that it would consider applications by independent producers notwithstanding that the proposed price may be in excess of area ceiling or guideline rates.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 19, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in 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.73-4114 Filed 3-2-73;8:45 am]

[Docket No. IT-5501; Project 2545]

THE WASHINGTON WATER POWER CO.

Notice of Extension of Time

FEBRUARY 26, 1973.

On February 20, 1973, The Washington Water Power Co. filed a motion for extension of time to April 2, 1973, in which to file its answer to the petition of the Secretary of the Interior for leave to intervene filed with the Commission on February 13, 1973.

Upon consideration, notice is hereby given that the time is extended to April 2, 1973, in which answers may be filed to the petition to intervene filed by the Secretary of Interior.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-4109 Filed 3-2-73;8:45 am]

[Docket No. E-7741]

VIRGINIA ELECTRIC & POWER CO.

Order Terminating Rate Proceeding and Accepting and Approving Revised Tariff Sheets

FEBRUARY 26, 1973.

On September 27 and 28, 1971, Virginia Electric & Power Co. (VEPCO) tendered for filing proposed changes in its FPC electric rate schedules. The filing was noticed on June 20, 1972, with protests and requests for intervention due by July 19, 1972. No comments were filed.

The proposed amendment to all contracts for the sale of electric energy to Rural Electric Cooperatives deletes section 10A of the agreement which presently prohibits electrical connection of the company's supply with another source except upon written notice to, and consent of, the company and substitutes a new provision which permits such electrical connection upon reasonable written notice and agreement between the parties on such measure and conditions, if any, as may be required for reliability of both systems.

VEPCO also submitted revised tariff sheets applicable to all municipalities and privately owned companies to include substantially the same change in terms and conditions that is proposed above for the cooperatives. In addition, the changes in the tariff applicable to the municipals and privately owned companies include the following: (1) The customer may use any other source of supply without notice or agreement when the systems of the company and customer are electrically isolated; (2) an article restricting the customer's sales for resale without VEPCO's prior consent would be eliminated; (3) substantial change in the customer's load would be subject to the availability of power and to agreement on such measures or conditions, if any, as may be required for reliability of both systems. (Formerly such change in load required notice to, and consent of, the company.) The revised tariff also provides that VEPCO would be free to seek any relief provided by the Federal Power Act if the customers interconnection with alternate energy supplies burdens VEPCO's system.

In a letter filed with the Commission on January 11, 1973, VEPCO requested approval of the proposed changes as expeditiously as possible and stated that they had no objection to the proposed changes and that the changes do not impose a hardship on the company or the customers, nor do they affect the reliability of VEPCO's service.

VEPCO states that changes were brought about as a result of a VEPCO licensing proceeding before the Atomic Energy Commission (AEC). VEPCO further states that pursuant to section 105 (c) of the Atomic Energy Act, as amended, the license application was submitted to the Department of Justice by AEC for analysis and advice on any antitrust matters. The advice of the Department of Justice was that no antitrust investigation would be ordered if, within 90 days from July 2, 1971, the company filed the tariff changes which are the subject of this proceeding.

Based on our own review of the proposed changes and VEPCO's filing that no hardship to either VEPCO or the customers will result from these changes, we will approve the proposed changes. We will conduct a similar review of all such tendered filings made on the basis of the Department of Justices' recommendation to determine whether they are in the public interest in light of our statutory responsibilities under the Federal Power Act. If our investigation indicates that the proposed changes might not be just and reasonable within the meaning of the Federal Power Act, we will hold evidentiary proceedings in which all of the parties, including the Department of Justice, will have an opportunity on the record to support or oppose the changes proposed.

The Commisison finds:

VEPCO's proposed changes in its FPC Electric Tariff, tendered for filing September 27 and 28, 1971, are just and reasonable and should be accepted for filing and approved as filed.

The Commisison orders:

The proposed changes in VEPCO's FPC Electric Tariff, Original Volume No. 1[1] are accepted for filing and are hereby made effective November 1, 1971, as requested.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73-4104 Filed 3-2-73;8:45 am]

[Project No. 1999]

WISCONSIN PUBLIC SERVICE CORP.

Notice of Application for New License

FEBRUARY 27, 1973.

Public notice is hereby given pursuant to section 4(e) of the Federal Power Act (16 U.S.C. 791a-825r) that application was filed on June 27, 1969 (revised February 26, 1970, and supplemented October 18, 1971, May 8, and July 27, 1972) by Wisconsin Public Service Corp. (correspondence to: Mr. C. A. McKenna, Secretary, Wisconsin Public Service Corp., 1029 North Marshall Street, Milwaukee, WI 53201) for Project No. 1999, known as the Wausau project, located on the Wisconsin River within the city of Wausau, Marathon County, Wis.

Applicant held a 50-year license which expired on June 30, 1970. The Commission has since issued three annual licenses to the applicant, the latest of which will expire on June 30, 1973.

The project, which affects the navigable waters of the United States, is operated as a run-of-the-river project. The project consists of: (1) A concrete and masonry dam about 1,036 feet long comprising a 98-foot powerhouse section, an overflow spillway section about 214 feet long and 26 feet high surmounted by 4-foot flashboards, a tainter gate section about 217 feet long and 34 feet high with seven 18 x 26 foot tainter gates, a needle section about 308 feet long and 31 feet

[1] Fourth Revised Sheet No. 1, Sixth Revised Sheet No. 2, First Revised Sheet No. 3, Fourth Revised Sheet No. 4, First Revised Sheet No. 8, First Revised Sheet No. 9.

high, and two bulkhead sections about 30 feet high with a total length of about 200 feet all located in the west channel of the Wisconsin River; (2) guard locks about 338 feet long and 22 feet high with three 10 x 20 foot tainter gates located upstream in the east channel of the river; (3) a reservoir which, with normal water surface elevation of 1,186.87 feet U.S.G.S., has an area of about 304 acres and extends upstream for about 5½ miles; (4) a powerhouse integral with the main dam containing three equally rated generating units with an aggregate capacity of 5,400 kw.; and (5) all other facilities and interests appurtenant to the operation of the project.

Applicant estimates that its total net investment is about $596,000 which is less than its estimate of fair value. Severance damages in the event of a Federal takeover of the project are estimated by the applicant to be approximately $375,000. Applicant estimates that annual taxes paid to State and local governments amount to about $25,000.

Two islands downstream of the project, Stack and Picnic, having a combined area of over 15 acres were sold to the city of Wausau for nominal consideration for as long as they were used for recreational purposes. If the city ceases to so use the land, title will revert back to the applicant. The channel between the shore and the city owned, 15 acre Oak Island has been filled so that the latter is now part of the east bank upon which the city has developed several baseball diamonds and a boat landing. A footbridge provides access to Stack Island which has been developed into a picnic area and wildlife refuge with shelter houses and running water. A footbridge located near the parking lot adjoining the municipal swimming pool on the west bank of the river provides access to Picnic Island, which has been landscaped to provide a picnic area and bird sanctuary.

No further recreational development is proposed or contemplated by State or local groups or the applicant at this time.

The project's output flows into the company's interconnected electric system which services parts of north central and northeastern Wisconsin and an adjacent part of Menominee County, Mich.

Any person desiring to be heard or to make protest with reference to said application should on or before April 26, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-4099 Filed 3-2-73;8:45 am]

FEDERAL RESERVE SYSTEM

FIRST AMTENN CORP.

Acquisition of Bank

First Amtenn Corp., Nashville, Tenn., 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 of the successor by merger to Farmers-Peoples Bank, Milan, Tenn. 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 15, 1973.

Board of Governors of the Federal Reserve System, February 23, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-4043 Filed 3-2-73;8:45 am]

FIRST INTERNATIONAL BANCSHARES, INC.

Acquisition of Bank

First International Bancshares, Inc., Dallas, Tex., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to Grove State Bank, Dallas, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than March 26, 1973.

Board of Governors of the Federal Reserve System, February 26, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-4044 Filed 3-2-73;8:45 am]

INDUSTRIAL NATIONAL CORP.

Order Approving Acquisition of Southern Discount Company

Industrial National Corp., Providence, R.I., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the act and section 225.4(b)(2) of the Board's Regulation Y to acquire all of the shares of Southern Discount Co., Atlanta, Ga. (Southern Discount), and to indirectly acquire through that acquisition Henson Financal Corp. (Henson Financial), a Georgia corporation, and Consumer Life Insurance Co., Inc. (Consumer Life), an Arizona corporation. Southern Discount engages in the activities of: (1) Making consumer loans or extensions of credit and purchasing installment sales finance contracts, and generally engaging in the business of a consumer finance company, including the discounting of consumer finance paper, and (2) acting as agent for the sale of credit life and accident and health insurance sold to consumer finance borrowers. Henson Financial will confine its activities to acting as agent in the sale of: (1) Uniform commercial code nonfiling insurance and (2) property damage insurance for collateral securing loans related to the consumer finance activities of Southern Discount. Consumer Life engages in underwriting credit life and accident and health insurance directly related to extensions of credit by Southern Discount. Such activities have been determined by the Board to be closely related to the business of banking (12 CFR 225.4(a)(1), (9), and (10)).

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors has been duly published (37 FR 16834). The time for filing comments and views has expired and none have been timely received.

Applicant, the parent holding company of Industrial National Bank of Rhode Island, has consolidated assets of $1.2 billion. Bank's total deposits of about $943 million make applicant the largest banking organization in Rhode Island, with over 50 percent of the commercial bank deposits in the State.[1] Applicant also has nonbanking subsidiaries engaged principally in mortgage banking, factoring, personal property leasing, data processing, and investment advisory services, but has no present consumer finance subsidiaries.

Southern Discount has total consolidated assets of $35.5 million and is the 69th largest independent finance company in the United States as of yearend 1971. It presently operates 67 small loan offices in the five southeastern States of Georgia, Florida, North Carolina, South Carolina, and Tennessee. Nearly 85 percent of Southern Discount's total volume of business in fiscal 1971 (ending June 30, 1971) was derived from its consumer loan business. The closest office of applicant's banking subsidiaries to offices of Southern Discount is over 500 miles distant. Southern Discount does not have a dominant position in any of the various markets in which it engages in making small loans. Rather, it appears that its market share with only a few exceptions is rather small in each case and that the

[1] All banking data are as of Dec. 31, 1971.

acquisition of Southern Discount by applicant can be considered as a "foothold" acquisition in the great majority of local markets in which it operates. Consummation of the proposal would have no significant adverse effects on existing or potential competition.

Southern Discount on its own and through its wholly owned subsidiary, Henson Financial, acts as agent for the sale of credit-related insurance. However, it does not appear to be a significant competitor in this product line in any of the areas it operates, nor does applicant have any subsidiary operating as an agent for credit-related insurance. For these reasons it does not appear that acquisition of Southern Discount and Henson Financial by applicant would have significantly adverse effects on either existing or potential competition.

Consumer Life engages in the activity of underwriting credit life insurance and credit accident and health insurance which is directly related to extensions of credit by Southern Discount. Consumer Life is a qualified underwriter in Florida, Georgia, North Carolina, South Carolina, and Tennessee. It had total assets as of June 30, 1971, of $12.5 million, and for the fiscal year ending that date had premium income of approximately $1.4 million. Affiliation of Consumer Life with applicant would have no significantly adverse effect on either existing or potential competition as Consumer Life does not appear to be a significant factor in its product line in any of the areas it operates, nor does applicant presently engage in such activity.

In adding credit life underwriting to the list of permissible activities for bank holding companies, the Board stated that, "To assume that engaging in the underwriting of credit life and credit accident and health insurance can reasonably be expected to be in the public interest, the Board will only approve applications in which an applicant demonstrates that approval will benefit the consumer or result in other public benefits. Normally such a showing would be made by a projected reduction in rates or increase in policy benefits due to bank holding company performance of this service." Applicant has committed itself to within 90 days reduce the rates charged by Consumer Life to its policyholders by 5 percent on all credit accident and health insurance written by it in all States in which it offers such policies. Furthermore, the rates charged by Consumer Life on its credit life insurance policies will be reduced by applicant by amounts varying from approximately 7 percent to 20 percent in the various States. Additionally, applicant will make an ongoing effort to determine if further benefits can be offered to the consumer. It is the Board's judgment that these benefits to the public outweigh any possible adverse effects.

Based upon the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the application is hereby approved. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

By order of the Board of Governors,[3] effective February 22, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-4045 Filed 3-2-73;8:45 am]

NORTHWEST BANCORPORATION

Order Approving Acquisition of Bank

Northwest Bancorporation, Minneapolis, Minn., has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 90 percent or more of the voting shares of Farmers and Merchants State Bank of Stillwater, Stillwater, Minn. (Bank).

As required by section 3(b) of the act, the Board gave written notice of receipt of the application to the Commissioner of Banks of the State of Minnesota and requested his views and recommendation thereon. The Commissioner did not formally object to the application but did suggest the desirability of a public hearing at which interested persons might express their views. Notice of receipt of the application was published in the FEDERAL REGISTER on August 3, 1971 (36 FR 14285) which provided an opportunity for interested persons to submit comments and views with respect to the proposed transaction. A copy of the application was forwarded to the Department of Justice for its consideration.

In view of the numerous comments received by the Board concerning this proposal, the Board determined that a public oral presentation with respect to this matter would be in the public interest. On November 18, 1971, notice of such public oral presentation to be held in Minneapolis, was published in the FEDERAL REGISTER (36 FR 22027). Subsequently, the Commerce Commission of the State of Minnesota unanimously recommended that the Board deny the application and requested a formal hearing. By notice published in the FEDERAL REGISTER on December 28, 1971 (36 FR 25071), the Board directed that a public hearing be held commencing on February 28, 1972, at the Federal Reserve Bank of Minneapolis, before Hon. Dent D. Dalby, Administrative Law Judge. All persons desiring to give testimony, present evidence or otherwise participate in the hearing held in Minneapolis, Minn., on February 28–March 3, 1972, were afforded an opportunity to do so. The time for filing comments and views has expired and all those received, as well as the entire record of the hearing, including the transcript, exhibits, exceptions, rulings, all briefs and memoranda filed in connection with the hearing, and the Recommended Decision, findings of fact, and conclusions of law filed by the Administrative Law Judge have been considered by the Board.

It is hereby ordered, For the reasons set forth in the Board's statement[1] of this date, that the said application be and hereby is approved, provided that 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 Minneapolis pursuant to delegated authority.

By order of the Board of Governors,[2] effective February 26, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-4046 Filed 3-2-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[70-5305]

AMERICAN ELECTRIC POWER CO.

Notice of Proposed Issue and Sale of Common Stock

FEBRUARY 27, 1973.

Notice is hereby given that American Electric Power Co., Inc., 2 Broadway, New York, NY 10004 (AEP), 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, 7, and 12(c) of the Act and Rules 42 and 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.

AEP proposes to offer up to 6,500,000 authorized but unissued shares of its common stock (additional common stock) for subscription by the holders of its outstanding shares of common stock on the basis of one share of the additional common stock for each ten (10) shares of common stock held on the rec-

[3] Voting for this action: Vice Chairman Robertson and Governors Mitchell, Brimmer, Sheehan and Bucher. Absent and not voting: Chairman Burns and Governor Daane.

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Minneapolis. Dissenting statement of Governors Robertson and Brimmer and Recommended Decision of the Administrative Law Judge filed as part of the original document and available upon request.

[2] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Sheehan, and Bucher. Voting against this action: Governors Robertson and Brimmer.

ord date. The record date will be March 28, 1973, or such later date as AEP's registration statement under the Securities Act of 1933 may become effective. The subscription price, to be determined by AEP's Board of Directors at about 3:45 p.m. on the day preceding the record date, will be not more than the closing price of AEP common stock on the New York Stock Exchange on the day prior to the record date and not less than 90 percent thereof. The subscription offer will expire April 17, 1973, unless the record date should be later than March 28, 1973, in which event the expiration date will be specified by amendment.

AEP further proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, such of the shares of the additional common stock as are not subscribed for pursuant to the subscription offer, together with any shares of common stock acquired by AEP pursuant to any stabilizing activities, which are also proposed to be effected by AEP in connection with the proposed transaction. The aggregate amount to be paid by AEP to the successful bidder or bidders for their commitments and obligations under the purchase contract will be determined by the competitive bidding procedure. The purchase contract will obligate the purchasers of the unsubscribed shares to make a public offering thereof promptly after the warrant expiration date. The stabilizing transactions may be effected on the New York Stock Exchange, in the over-the-counter market, or otherwise, but in no event will AEP acquire as a result of such transactions a net long position at any one time in excess of 650,000 shares of its common stock.

Rights to subscribe to the additional common stock will be evidenced by transferable subscription warrants which will be issued to all record holders of AEP common stock as promptly as practicable after the record date. No fractional shares will be issued; however, any holder with more than 10 shares, but not in exact multiples thereof, may purchase, at the subscription price, one extra share of additional common stock. A stockholder with less than 10 shares of common stock will be entitled to purchase, at the subscription price, one full share of additional common stock. In addition, each holder of a warrant or warrants who exercises such warrant or warrants in full will be given the privilege of subscribing, subject to allotment, at the same subscription price, for shares of additional unsubscribed common stock. AEP expects that subscription rights will be traded on the New York Stock Exchange and that, in addition, rights may be bought or sold through banks or brokers. In addition, AEP intends to afford to holders of warrants the opportunity to buy or to sell rights through AEP's subscription agent, such agent to charge 2 cents per right for its services in effecting such transactions.

No warrants will be mailed to stockholders with registered addresses outside the United States, Canada, and Mexico. Such stockholders will be informed in advance by AEP of their rights. Any of such warrants as to which no instructions have been received before 11 a.m. on the first full business day preceding the expiration date of the warrants will be sold for cash.

It is stated that the proceeds of the sale of the shares of additional common stock and any unsubscribed shares, together with other funds available to AEP are to be used by AEP to pay commercial paper as it matures, for working capital, to make additional investments in the common stock of its subsidiaries, and for other corporate purposes. At December 31, 1972, commercial paper in an aggregate amount of $140,824,000 was outstanding.

Estimates of the fees and expenses to be incurred in connection with the proposed issue and sale of common stock are to be filed by amendment. It is stated 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 person may, not later than March 23, 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.73-4084 Filed 3-2-73;8:45 am]

[812-3324]

FUNDAMATIC INVESTORS, INC.

Notice of Application

FEBRUARY 27, 1973.

Notice is hereby given that Fundamatic Investors, Inc., c/o Sidney R. Pine, Valicenti Leighton Reid & Pine, 437 Madison Avenue, New York, NY 10022 (Applicant), a diversified, open end management investment company registered under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 22(e)(3) of the Act for an order of the Commission permitting: (a) Suspension of the right of redemption of Applicant's outstanding redeemable securities; and (b) suspension of payment for shares which have been submitted for redemption but for which payment has not been made, such order to continue until either:

(1) 10 days after Applicant gives the Commission notice of intention to resume redemptions and payments therefor, or

(2) 60 days from the date of the order or until such later time as the Commission shall by order determine upon an application filed in good faith by the Applicant demonstrating the necessity for the continued suspensions.

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 states that on October 26, 1972, the Commission filed a complaint against it in the U.S. District Court for the Southern District of New York seeking injunctive relief against certain alleged violations of various provisions of the Act and the appointment of a receiver and trustee to take charge of Applicant, to perform such acts on behalf of Applicant as are required by the Act, to ascertain its true state of affairs, and to obtain appropriate relief. The complaint alleged, inter alia, that Applicant had failed to keep its general ledger current so that its net asset value had been computed inaccurately on certain occasions; that it was impossible to determine whether certain redemptions had been made at prices based on accurate net asset values; that it no longer had a functioning board of directors and, therefore, was unable to properly compute its net asset value; that on certain occasions it failed to pay redemptions within 7 days; that it had not filed its annual reports for 1971 with the Commission, nor had it transmitted an annual report to its shareholders; and that in willful violation of the Act it had failed to maintain certain other records. On October 30, 1972, the court issued an order to show cause and a temporary restraining order, and on November 10, 1972, the court issued a preliminary injunction against further violations of the Act and appointed a receiver as requested by the Commission. Applicant, acting through its receiver, submits that, in view of the matters set forth above, it is not reasonably practicable for Applicant to determine the value of its net assets within the meaning of section 22(e)(2)(B), and that, therefore, it is impossible for Applicant properly to compute its net asset value per share.

Section 22(e)(3) of the Act provides that the Commission may, by order, for the protection of the security holders of

the company, permit a registered investment company to suspend the right of redemption, or postpone the date of payment or satisfaction upon redemption of any redeemable security.

Applicant also requests that the Commission issue, together with this notice, a temporary order permitting: (a) Suspension of the right of redemption of Applicants' outstanding redeemable securities, and (b) suspension of payment for shares which have been submitted for redemption but for which payment has not been made, such order to continue in effect until further action is taken by the Commission.

The Commission has considered the matter and hereby finds, on the basis of information stated in the application, and in view of the nature of the application, that it is necessary for the protection of security holders of Applicant that there be issued together with the notice of the application a temporary order permitting the suspension of the right of redemption and postponement of payment until further order of the Commission.

Accordingly, *It is ordered*, Pursuant to section 22(e)(3) of the Act, that Applicant be, and is, hereby, permitted until further order of the Commission: (1) To suspend the right of redemption of its outstanding redeemable securities, and (2) to suspend payment for shares which have been submitted for redemption for which payment has not been made.

Notice is further given that any interested person may, not later than March 26, 1973, at 5:30 p.m., submit to the Commission in writing a request for a hearing on this 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 above. Proof of such service (by affidavit, or in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-4085 Filed 3-2-73;8:45 am]

[70-5298]

GENERAL PUBLIC UTILITIES CORP.

Notice of Proposed Amendment of Articles of Incorporation

FEBRUARY 27, 1973.

Notice is hereby given that General Public Utilities Corp., 80 Pine Street, New York, NY 10005 (GPU), 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 rule 62 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

GPU proposes to submit to its stockholders at its annual meeting to be held April 2, 1973, a proposal to amend its Articles of Incorporation to increase from 40 million to 55 million the aggregate number of authorized shares of common stock, par value $2.50 per share. It is stated that GPU presently has available for sale in future offerings a maximum of 876,463 shares which would not be sufficient to provide any appreciable additional common stock equity to GPU. It is contemplated that the additional shares of authorized stock, the issuance and sale of which are to be the subject of future filings with this Commission, will be used to provide the cash required for the common stock equity component of the capital requirements of the GPU holding company system. GPU expects that it will offer approximately 3,900,000 shares of common stock through a preemptive rights offering to its common shareholders on a 1-for-10 basis provided the proposed amendment shall be effected so as to authorize the additional shares.

The proposed amendment will require the affirmative vote of the holders of a majority of the 39,123,537 outstanding shares of common stock. GPU intends to solicit proxies by mail, in person, or by telephone or telegraph, by directors, officers and regular employees of GPU.

It is stated that the fees and expenses of GPU to be paid in connection with the proposed amendment will not exceed $7,000, including legal fees, and that GPU anticipates expenses of not more than $16,000 to reimburse out-of-pocket costs of those who forward the solicitation material to beneficial owners of the common stock. It is further stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

GPU has requested that the effectiveness of its declaration with respect to the solicitation of proxies from holders of its common stock be accelerated as provided in Rule 62.

Notice is further given that any interested person may, not later than March 29, 1973, request in writing that a hearing be held with respect to the proposed amendment, 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 pursuant to 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 mater, including the date of the hearing (if ordered) and any postponements thereof.

It appearing that the declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered, That the declaration regarding the proposed solicitation of proxies 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.73-4086 Filed 3-2-73;8:45 am]

[70-5261]

THE SOUTHERN CO. ET AL.

Capital Contributions to Subsidiary Companies by Holding Company

Notice is hereby given that The Southern Co., Post Office Box 720071, Atlanta, GA 30346 (Southern), a registered holding company, and its four electric utility subsidiary companies, Alabama Power Co. (Alabama), Georgia Power Co. (Georgia), Gulf Power Co. (Gulf), and Mississippi Power Co. (Mississippi), have filed a sixth post-effective amendment to their application-declaration in this proceeding pursuant to sections 6(a), 6(b), 7 and 12 of the Public Utility Holding Company Act of 1935 (Act) and Rules 45 and 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration as so amended, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated December 26, 1972 (HCAR No. 17824), Southern and the above-named subsidiary companies were authorized to issue and sell short-term notes to banks and commercial paper to dealers; and South-

ern was authorized to invest in three of its electric utility subsidiary companies an aggregate amount of $268,800,000 in the form of capital contributions through March 31, 1974 as follows: Alabama $102 million, Georgia $160,500,000 and Mississippi $6,300,000. Southern now proposes also to make a capital contribution of $7 million to Gulf, so that the aggregate amount of capital contributions to all four of its electric utility subsidiary companies now proposed by Southern is $275,800,000. (Said order of December 26, 1972, mistakenly mentioned a proposed capital contribution of $16,300,000 to Mississippi; the correct figure is $6,300,000 as hereinabove indicated.)

By the same order the applicants were authorized to file certificates of notification under Rule 24 in respect of the sales of commercial paper on a quarterly basis. The applicants hereby request authority to file such certificates under Rule 24 on a quarterly basis also with respect to the bank loans and the proposed capital contributions.

Alabama has revised the list of banks from which it proposes to make short-term borrowings, increasing the amounts for certain banks, decreasing the amount for others, deleting two (2) banks, and adding seven (7) banks. The total revised list now consists of seventy-two (72) banks against the original number of sixty-seven (67).

With respect to the proposed capital contribution to Gulf the post-effective amendment indicates that no State commission, and no Federal commission, other than this Commission, has jurisdiction over that transaction; and no fees or expenses are expected to be incurred in connection therewith.

Notice is further given that any interested person may, not later than March 23, 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 post-effective amendment to the application-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 applicants-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 application-declaration, as now amended or as it may be further amended, may be granted and 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.73-4087 Filed 3-2-73;8:45 am]

[File 500-1]

DCS FINANCIAL CORP.

Order Suspending Trading

FEBRUARY 26, 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 27, 1973 through March 8, 1973.

By the Commission.

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

[FR Doc.73-4066 Filed 3-2-73;8:45 am]

[812-3392]

DEAN WITTER & CO. INC.

Notice of Filing of Application

FEBRUARY 26, 1973.

Notice is hereby given that Dean Witter & Co., Inc., a registered broker-dealer corporation with its principal office at 14 Wall Street, New York, NY 10005 (Applicant), in conncetion with a proposed public offering of shares of Common Stock of Standard & Poor's/Inter-Capital Income Securities, Inc. (the Company), a registered, closed-end diversified management investment company, has filed an application pursuant to section 6(c) of the Investment Company Act of 1940 (the Act) for an order exempting Applicant and its co-underwriters from section 30(f) of the Act to the extent that such section adopts section 16(b) of the Securities Exchange Act of 1934 (the Exchange Act) with respect to their transactions incidental to the distribution of Company shares. All interested persons are referred to the Application on file with the Commission for a statement of the representations therein, which are summarized below.

Applicant: E. F. Hutton & Co., Inc. (One Battery Park Plaza, New York, NY 10004), Paine, Webber, Jackson & Curtis Inc. (140 Broadway, New York, NY 10005), and Reynolds Securities, Inc. (120 Broadway, New York, NY 10005), are the prospective representatives (the Representatives) of a group of underwriters (the Underwriters) being formed in connection with above public offering.

Shares of the Company are to be purchased by the Underwriters pursuant to an Underwriting Agreement (the Underwriting Agreement) to be entered into between the Underwriters, represented by the Representatives, and the Company. It is also contemplated that one or more dealers will offer and sell certain of the shares. It is intended that the several Underwriters will make a public offering of all the Company shares which such Underwriters are to purchase under the Underwriting Agreement at the price therein specified, as soon on or after the effective date of the Company's Registration Statement on Form S-4 (the Registration Statement) as the Representatives deem advisable, and such shares are initially to be offered to the public at a per share public offering price and subject to underwriting commissions to be specified in the prospectus incorporated in the Registration Statement (the Prospectus) at the time the Registration Statement becomes effective under the Securities Act of 1933, as amended. Although 4,400,000 shares have been included for registration in the Registration Statement, the actual number of shares which may be the subject of the proposed public offering may be decreased by the Representatives and the Company shortly before the effective date of the Registration Statement and the proposed public offering, depending upon market conditions and the exercise of an overallotment election granted to the Underwriters.

Applicant states that it is possible that the underwriting commitment of any one or more of the Underwriters, including each of the Representatives, will exceed 10 percent of the aggregate number of shares of the Company's Common Stock to be outstanding after the purchase by the several Underwriters pursuant to the Underwriting Agreement or upon the completion of the initial public offering or at some interim time. Since section 30(f) of the Act subjects every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of outstanding securities of the Company to the same duties and liabilities as those imposed by section 16 of the Exchange Act with respect to the transaction in the securities of the Company, such Underwriter or Underwriters would become subject to the filing requirements of section 16(a) of the Exchange Act and, upon resale of the shares purchased by them to their customers, subject to the obligations imposed by section 16(b) of the Exchange Act.

Rule 16b-2 under the Exchange Act exempts certain transactions in connection with a distribution of securities from the operation of section 16(b) thereof. Applicant states that the purpose of the purchase of the shares by the Underwriters will be for resale in connection with the initial distribution of shares.

Applicant states that such purchases and sales, therefore, will be transactions effected in connection with a distribution of a substantial block of securities within the purpose and spirit of Rule 16b–2.

Applicant states that it is possible that one or more of the Underwriters, through their participation in the distribution of the Company's shares, may not be exempt from section 16(b) of the Exchange Act by the operation of Rule 16b–2; they may fail to meet the requirement stated in Rule 16b–2(a)(3) that the aggregate participation of persons not within the purview of section 16(b) of the Exchange Act be at least equal to the participation of persons receiving the exemption under Rule 16b–2 since it is possible that one or more of the Underwriters who, pursuant to the Underwriting Agreement, will purchase more than 10 percent of the shares of the Company may be obligated to purchase more than 50 percent of the shares of the Company being offered.

In addition to purchases of shares from the Company and sales of shares to customers, there may be the usual transactions of purchase or sale incident to a distribution such as stabilizing purchases, purchases to cover overallotments or other short positions created in connection with such distribution, and sales of shares purchased in stabilization.

Applicant states that there is no inside information in existence since the Company, prior to the initial distribution of the shares, will have no assets, other than cash, or business of any sort, and all material facts with respect to the Company will be set forth in the Prospectus pursuant to which the shares will be offered and sold. No director or officer of the Applicant, E. F. Hutton & Co., Inc., Paine, Webber, Jackson & Curtis Inc., or Reynolds Securities, Inc., is a director or officer of either the Company or Standard & Poor's Counseling Corp., the Company's investment adviser (the Adviser), and Applicant states that it does not anticipate that any partner, director, or officer of any other Underwriter or Selected Dealer which may be an Underwriter, will be a director or officer of the Company or the Adviser.

Applicant submits that the requested exemption from the provisions of section 30(f) of the Act is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant further contends that the transactions sought to be exempted cannot lend themselves to the practices which section 16(b) of the Exchange Act and section 30(f) of the Act were enacted to prevent.

Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities, or transactions from the provisions of the Act and rules and regulations promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than March 22, 1973, at 5:30 p.m., submit to the Commission in writing a request for a hearing on this 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 above. Proof of such service (by affidavit, or in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the Application herein may be issued by the Commission upon the basis of the information stated in said Application, unless an order for hearing upon said Application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

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

[FR Doc.73–4065 Filed 3–2–73;8:45 am]

[File 500–1]

GOODWAY, INC.

Order Suspending Trading

FEBRUARY 26, 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 Act of 1934, that trading in such securities on the above-mentioned exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from February 27, 1973, through March 8, 1973.

By the Commission.

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

[FR Doc.73–4067 Filed 3–2–73;8:45 am]

BROKER-DEALER MODEL COMPLIANCE PROGRAM ADVISORY COMMITTEE

Notice of Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770, the Securities Exchange Commission announces the following public advisory committee meetings.

The Commission's Advisory Committee on a Model Compliance Program for Broker-Dealers, established on October 25, 1972 (Securities Exchange Act Release No. 9835), will be holding meetings open to the public at the offices of the American Stock Exchange, Inc., 86 Trinity Place, New York, NY, Room 1310, at 10 a.m., e.s.t., March 15–16, 1973.

This Advisory Committee was formed to assist the Commission in developing a model compliance program to serve as an industry guide for the broker-dealer community. Assisted by this Committee's work the Commission plans to publish a guide to broker-dealer compliance under the securities acts in order to advise broker-dealers of the standards to which they should adhere if investor confidence in the fairness of the market place is to be warranted and sustained. The Committee's recommendations are not intended to result in the expansion of Commission rules governing broker-dealers, but to inform broker-dealers as to the existing requirements and how they may comply with them.

The Committee's scheduled meetings will be for the purpose of reviewing drafts and proposals concerning the Committee's proposed report to the Commission on these compliance guidelines for broker-dealers.

These meetings are open to the public. Any interested person may attend and appear before or file statements with the Advisory Committee—which statements, if in written form, may be filed before or after the meeting or, if oral, at the time and in the manner and extent permitted by the Advisory Committee.

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

FEBRUARY 26, 1973.

[FR Doc.73–4068 Filed 3–2–73;8:45 am]

TARIFF COMMISSION

[TEA–I–27]

CERTAIN BALL BEARINGS

Notice of Hearing Rescheduling

The U.S. Tariff Commission has rescheduled from April 3, 1973, to May 1,

1973, the hearing in connection with the investigation instituted on January 31, 1973 (38 FR 3358-3359), under section 301(b) of the Trade Expansion Act of 1962 on a petition filed on behalf of the Anti-Friction Bearing Manufacturers Association, Inc. The hearing will be held Tuesday, May 1, 1973, at 10 a.m., e.d.t., in the Hearing Room, Tariff Commission Building, Eighth and E Streets NW., Washington, D.C. Requests for appearances at the hearing should be received by the Secretary of the Tariff Commission, in writing, at his office in Washington, D.C., not later than noon Thursday, April 26, 1973.

Issued: February 27, 1973.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-4149 Filed 3-2-73;8:45 am]

[337-L-58]

VARIABLE DISPLACEMENT FLOWER HOLDERS

Notice of Complaint Received

The U.S. Tariff Commission hereby gives notice of the receipt on January 22, 1973, of a complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), filed by McDermott & Green, Inc., of Sausalito, Calif., alleging unfair methods of competition and unfair acts in the importation and sale of certain variable displacement flower holders which are embraced within the claims of U.S. Patent No. 3,698,132 owned by the complainant. Our Own Imports, Inc., an affiliate of Cardinal China Co., Inc., Romanowski and High Streets, Carteret, N.J., has been named as the importer of the subject products.

In accordance with the provisions of § 203.3 of its rules of practice and procedure (19 CFR 203.3), the Commission has initiated a preliminary inquiry into the allegations of the complaint for the purpose of determining whether there is good and sufficient reason for a full investigation, and if so whether the Commission should recommend to the President the issuance of a temporary exclusion from entry under section 337(f) of the Tariff Act.

A copy of the complaint is available for public inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, D.C., and at the New York office of the Tariff Commission located in Room 437 of the customhouse.

Information submitted by interested persons which is pertinent to the aforementioned preliminary inquiry will be considered by the Commission if it is received not later than April 16, 1973. Extensions of time for submitting information will not be granted unless good and sufficient cause is shown thereon. Such information should be sent to the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, D.C. 20436. A signed original and nineteen (19) true copies of each document must be filed.

Issued: February 28, 1973.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-4150 Filed 3-2-73;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

KENTUCKY DEVELOPMENTAL PLAN

Notice of Submission of Plan and Availability for Public Comment

1. *Submission and description of plan.* Pursuant to section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) and § 1902.11 of Title 29, Code of Federal Regulations, notice is hereby given that an Occupational Safety and Health Plan for the State of Kentucky has been submitted to the Assistant Secretary of Labor for Occupational Safety and Health. The Assistant Secretary has preliminarily reviewed the plan, and hereby gives notice that the question of approval of the plan is in issue before him.

The plan designates the Department of Labor as the agency responsible for administering the plan throughout the State. It proposes to define the occupational safety and health issues covered by it as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1). All occupational safety and health standards promulgated by the U.S. Secretary of Labor have been adopted under the plan as well as certain standards deemed to be "as effective as" the Federal standard, except those found in 29 CFR Parts 1915, 1916, 1917, and 1918 (ship repairing, shipbuilding, shipbreaking, and longshoring). All Federal standards adopted by the State became effective on December 29, 1972.

Within the plan there is enabling legislation revising Chapter 338 of the Kentucky Revised Statutes which became law on March 27, 1972. The law as enacted and modified gives the Department of Labor, Division of Occupational Safety and Health, the statutory authority to implement an occupational safety and health plan modeled after the Federal Act. There are provisions within it granting the Commissioner of Labor the authority to inspect workplaces and to issue citations for the abatement of violations and there is also included a prohibition against advance notice of such inspections. The law is also intended to insure employer and employee representatives an opportunity to accompany inspectors and to call attention to possible violations; notification of employees or their representatives when no compliance action is taken as a result of employee alleged violations; protection of employees against discrimination in terms and conditions of employment; and adequate safeguards to protect trade secrets. There is provision made for the prompt restraint of imminent danger situations and a system of penalties for violation of the statute. There are also provisions creating the Kentucky Occupational Safety and Health Standards Board and the Kentucky Occupational Safety and Health Review Board.

The law has a further provision that the Department of Labor will enter into an agreement with the Public Service Commission which shall serve as the State agency in the administration of all matters relating to occupational safety and health with respect to employees of public utilities; a copy of the agreement is included in the plan.

The law is accompanied by an opinion from the Attorney General that the law will meet the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the constitution and other laws of the State.

The law sets forth the general authority and scope for implementing the Kentucky Plan, but at the same time, the plan is developmental within 29 CFR 1902.2(b) in that specific rules and regulations must be adopted to carry out the plan and to make it fully operative. There is set forth in the plan a time schedule for the development of a public employee program. The plan also contains a comprehensive description of personnel to be employed under the State's merit system as well as its proposed budget and resources.

2. *Location of plan for inspection and copying.* A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of Federal and State Operations, Occupational Safety and Health Administration, Room 305, Railway Labor Building, 400 First Street NW., Washington, DC 20210; Regional Administrator, Occupational Safety and Health Administration, Department of Labor 1375 Peachtree Street NE., Suite 587, Atlanta, GA 30309; and the Kentucky Department of Labor, Capital Plaza Tower, Frankfort, Ky. 40601.

3. *Public participation.* Interested persons are hereby given until April 4, 1973, to submit to the Assistant Secretary written data, views, and arguments concerning the plan. The submissions are to be addressed to the Director, Office of Federal and State Operations, Room 305, 400 First Street NW., Washington, DC 20210. The written comments will be available for public inspection and copying at the above address.

Any interested person(s) may request an informal hearing concerning the proposed plan, or any part thereof, whenever particularized objections thereto are filed by April 4, 1973. If the Assistant Secretary finds that substantial objections are filed, he shall hold a formal or informal hearing on the subjects and issues involved.

The Assistant Secretary of Labor for Occupational Safety and Health shall thereafter consider all relevant com-

ments and arguments presented and issue his decision as to approval or disapproval of the plan.

Signed at Washington, D.C., this 28th day of February 1973.

CHAIN ROBBINS,
Acting Assistant Secretary of Labor.

[FR Doc.73-4142 Filed 3-2-73;8:45 am]

WEST VIRGINIA DEVELOPMENTAL PLAN

Notice of Submission of Plan and Availabilty for Public Comment

1. *Submission and description of plan.* Pursuant to Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) and § 1902.11 of Title 29, Code of Federal Regulations, notice is hereby given that an Occupational Safety and Health Plan for the State of West Virginia has been submitted to the Assistant Secretary of Labor for Occupational Safety and Health. The Assistant Secretary has preliminarily reviewed the Plan, and hereby gives notice that the question of approval of the Plan is in issue before him.

The Plan identifies the Department of Labor, the Department of Health, and the Office of the Fire Marshall as the State agencies designated by the Governor of the State to administer the Plan throughout the State. It proposes to define the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1). All occupational safety and health standards promulgated by the United States Secretary of Labor will be adopted under the Plan, except those found in 29 CFR Parts 1915, 1916, 1917, and 1918 (ship repairing, ship building, ship breaking, and longshoring). The standards will be modified as they are modified by the Secretary of Labor.

The Plan includes proposed draft legislation to be considered by the West Virginia Legislature during its 1973 session amending Chapter 21 of the Code of West Virginia and related provisions, to bring them into conformity with the requirements of Part 1902. Under the proposed legislation, the Commissioner of Labor will have the statutory authority to implement an Occupational Safety and Health Plan modeled after the Federal Act. It provides for the coverage of all employees within the State except mining and mineral businesses covered under Chapter 22 of the Code of West Virginia and those businesses covered by the Federal Metal and Non-Metallic Mine Safety Act, Public Law 89-577. Enforcement and penalty provisions of the law will not apply to public employees.

There are provisions within the legislation granting the Commissioner of Labor the authority to inspect workplaces and to issue citations for the abatement of violations and there is included a prohibition against advance notice of any such inspection. The legislation is also intended to insure employer and employee representatives opportunity to accompany inspectors and to call attention to possible violations; notification of employees or their representatives when no compliance action is taken as a result of employee alleged violations; protection of employees against discrimination in terms and conditions of employment; adequate safeguards to protect trade secrets. There is provision made for the prompt restraint of imminent danger situations and a system of penalties for violation of the proposed legislation.

There is also included in the Plan proposed legislation transferring the Office of the State Fire Marshall from the Department of Insurance to the State Department of Labor.

The proposed legislation is accompanied by a statement of the Governor's support for it and an opinion from the Attorney General that it will meet the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the constitution and other laws of the State.

The proposed legislation sets forth the general authority and scope for implementing the West Virginia Plan, but at the same time, the Plan is developmental within 29 CFR Part 1902.2(b) in that specific rules and regulations must be adopted to carry out the plan and to make it fully operational. There is set forth in proposed Plan a timetable providing for the future drafting of various administrative rules, regulations, and procedures. The timetable covers such general areas as the promulgation of standards, the establishment of a Review Commission, the training and hiring of personnel, the promulgation of record-keeping and reporting requirements and the submission of proposed legislation. The Plan also contains a comprehensive description of personnel to be employed under the State's merit system as well as its proposed budget and resources.

2. *Location of plan for inspection and copying.* A copy of the Plan may be inspected during normal business hours at the following locations: Office of Federal and State Operations, Occupational Safety and Health Administration, Room 305, 400 First Street NW., Washington, DC 20210; Regional Administrator, Occupational Safety and Health Administration, Suite 623, Penn Square Building, 1317 Filbert Street, Philadelphia, PA 19107, Occupational Safety and Health Administration, Charleston Field Office, Charleston National Plaza, Suite 1726, 700 Virginia Street, Charleston, WV 25301; and the West Virginia Department of Labor, State Capitol Complex Building B, Room 438, Charleston, WV 25305.

3. *Public participation.* Interested persons are hereby given until April 4, 1973, in which to submit to the Assistant Secretary written data, views, and arguments concerning the Plan. The submissions are to be addressed to the Director, Office of Federal and State Operations, Occupational Safety and Health Administration, Railway Labor Building, Room 305, U.S. Department of Labor, Washington, DC 20210. The written comments will be available for public inspection and copying, at the expense of the person(s) requesting such copies, at the above address.

Any interested person(s) may request an informal hearing concerning the proposed Plan, or any part thereof, whenever particularized written objections thereto are filed by April 4, 1973. If the Assistant Secretary finds that substantial objections are filed, he shall hold a formal or informal hearing on the subjects and issues involved.

The Assistant Secretary of Labor for Occupational Safety and Health shall thereafter consider all relevant comments and arguments presented and issue his decision as to approval or disapproval of the Plan.

Signed at Washington, D.C., this 28th day of February 1973.

CHAIN ROBBINS,
Acting Assistant Secretary of Labor.

[FR Doc.73-4141 Filed 3-2-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 190]

ASSIGNMENT OF HEARINGS

FEBRUARY 28, 1973.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC 134781 Sub 2, Fast Freight Transfer, Inc., now assigned March 20, 1973, will be held in the Hearing Room, Florida Public Service Commission, 5720 Southwest 17th Street, Miami, FL.

I&S M-26462, General Increase, January 1973, Central & Southern Territory, now assigned March 13, 1973, at Washington, D.C., is canceled.

I&S M 26480, General Increase, January 1973, Rocky Mountain Territory, now assigned March 19, 1973, at Washington, D.C., is canceled.

MC-31389 Sub 151, McLean Trucking Co., now assigned April 16, 1973, at Atlanta, Ga., is postponed to April 23, 1973, in Room 305, 1252 West Peachtree Street NW., Atlanta, GA.

MC 1263 Sub 16, McCarty Truck Line, Inc., now being assigned April 9, 1973 (2 weeks), in the Circuit Court Room, Grundy County Courthouse, Trenton, Mo.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-4133 Filed 3-2-73;8:45 am]

[Ex Parte 241; Rule 19; 5th Rev. Exemption 19]

BANGOR AND AROOSTOOK RAILROAD CO.

Exemption From Mandatory Car Service Rules

It appearing, that there has been a substantial increase in the movement of grain and grain products originating at stations on the railroads listed herein; that major harvests of corn, milo, and soybeans are commencing in the areas served by these railroads; that boxcar supplies available to these railroads are inadequate to meet all of the needs of the shippers served by them; that surpluses of plain boxcars exist on certain railroads; and that these railroads have consented to the use of their cars by the railroads listed herein.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, I.C.C. R.E.R. No. 386, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation XM, with inside length 44 ft. 6 in. or less and regardless of door width, owned by the following railroad:

Bangor and Aroostook Railroad Co.[1]

are exempt from the provisions of Car Service Rules 1 and 2 when located empty on, or loaded by, any of the lines named below:

The Atchison, Topeka and Santa Fe Railway Co.
Burlington Northern Inc.
The Colorado and Southern Railway Co.
Fort Worth and Denver Railway Co.
Chicago & Eastern Illinois Railroad Co.
Chicago and North Western Railway Co.
Chicago, Milwaukee, St. Paul and Pacific Railroad Co.
Chicago, Rock Island and Pacific Railroad Co.
Illinois Central Gulf Railroad Co.
The Kansas City Southern Railway Co.
Missouri-Kansas-Texas Railroad Co.
Missouri Pacific Railroad Co.
Norfolk and Western Railway Co.
(Lines Connersville, Ind., and Montpelier, Ohio, and west, including stations on line between Connersville and Montpelier via New Castle, Muncie, Bluffton, Kingsland, Fort Wayne, and Butler, Ind.)
St. Louis-San Francisco Railway Co.
St. Louis Southwestern Railway Co.
Soo Line Railroad Co.
Union Pacific Railroad Co.

Effective February 28, 1973.

Expires April 30, 1973.

Issued at Washington, D.C., February 26, 1973.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.73-4135 Filed 3-2-73;8:45 am]

[Rev. S.O. 994; ICC Order 85]

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD CO. ET AL.

Rerouting or Diversion of Traffic

In the opinion of R. D. Pfahler, agent, the Chicago, Rock Island and Pacific Railroad Co. (RI) and the Louisiana & Arkansas Railway Co. (L&A) are unable to interchange all traffic routed for interchange between these railroads at Dallas, Tex., because of congestion in Dallas.

It is ordered, That:

(a) The RI and the L&A being unable to interchange all traffic routed for interchange between these railroads at Dallas, Tex., because of congestion in Dallas, these railroads are hereby authorized to divert and reroute traffic described in paragraphs (b) and (c) herein via RI-Howe, Oklahoma-The Kansas City Southern Railway Co. (KCS)-Shreveport, La., thence either KCS or L&A as applicable.

(b) This order shall apply to all traffic routed in either direction via RI-Dallas-L&A except traffic destined to points on the RI south of El Reno, Okla.

(c) This order shall apply to all traffic routed in either direction via RI-Dallas-L&A, or RI-Dallas-L&A-Shreveport-KCS, if originating at or destined to Shreveport, La., or points south thereof on the lines of the L&A or the KCS.

(d) *Concurrence of receiving roads to be obtained.* The railroad desiring to divert or reroute traffic under this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(e) *Notification to shippers.* Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(f) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(g) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(h) *Effective date.* This order shall become effective at 12:01 a.m., February 24, 1973.

(i) *Expiration date.* This order shall expire at 11:59 p.m., March 3, 1973, unless otherwise modified, changed, or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 23, 1973.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.73-4136 Filed 3-2-73;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

FEBRUARY 28, 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 March 20, 1973.

FSA No. 42637—*Used Empty Demountable Marine Container Bodies to Points in California.* Filed by Penn Central Transportation Co. (No. 1), for interested rail carriers. Rates on used empty demountable marine container bodies loaded flush on flat cars, as described in the application, from Kearny, Penn Central International Container Terminal (Ramp A), N.J., and Philadelphia (Packer Ave. Marine Terminal), Pa., to Los Angeles and Richmond, Calif.

Grounds for relief—Water competition.

Tariff—Penn Central Transportation Co., tariff 26707, I.C.C. No. 286. Rates are published to become effective on March 29, 1973.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-4134 Filed 3-2-73;8:45 am]

AGENT PERFORMING OWN OPERATIONS

Household Goods Regulations

The following is an administrative ruling of the Bureau of Operations made in response to questions propounded by the public, indicating what is deemed by the Bureau to be the correct application and interpretation of the act and/or regulations and is made in the absence of an authoritative decision on the subject by the Commission.

Question. Where an agent of a household goods carrier is to move a shipment under his own operating authority, must the estimate of charges, order for service, bill of lading, and other related documents be prepared and issued by the agent in his own name rather than in the name of his principal?

Answer. Yes. The provisions of the household goods regulations, including those which require that all estimates be in writing and that orders for service and bills of

[1] Delaware and Hudson Railway Co. and the Denver and Rio Grande Western Railroad Co. eliminated.

lading be issued, apply fully to agents when they conduct operations under their own operating authority. The wrongful issuance of any such documents in the name of the principal household goods carrier may subject the agent to penalties for violating the law and the regulations, and also may impose liability on the principal.

In Ex Parte No. MC–19 (Sub-No. 9), "Practices of Motor Common Carriers of Household Goods (Agency Relationships)," 115 M.C.C. 628, 649, the Commission imposed requirements on the principal by virtue of § 1056.20(c) of the household goods regulations (49 CFR 1056.20(c)) to use due diligence and to exercise reasonable care in selecting and maintaining agents. It put responsibility on the principal for all acts or omissions of the agent relating to the performance of interstate transportation held out in the name of the principal or where the shipper is misled to believe the transportation would be performed by the principal.

In view of the foregoing, it is the position of this Bureau that where an agent for a principal household goods carrier books a shipment for transportation under his authority, that agent must prepare and issue the estimate of charges, order for service, bill of lading, and other related documents in his own name and on his own forms, and not in the name of or on the forms of the principal household goods carrier.

The issuance of this ruling is meant to emphasize the intent and purpose of full disclosure of relevant facts, as expressed in recent proceedings. It was deemed necessary because of recurrent problems in this area and the determined action being taken by the Commission with respect to those problems.

[SEAL] R. D. PFAHLER, *Director.*

[FR Doc.73-4137 Filed 3-2-73;8:45 am]

[Notice 222]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before March 26, 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–74167. By order entered February 23, 1973, the Motor Carrier Board approved the transfer to Nannel Transportation, Inc., Plantation, Fla., of the operating rights set forth in Certificates Nos. MC–118290, MC–118290 (Sub-No. 3), and MC–118290 (Sub-No. 4), issued by the Commission November 18, 1960, July 6, 1965, and January 15, 1968, respectively, authorizing the transportation of bananas, malanga (arums), yucca (cassaya), calabaza (pumpkins), name (yam), mangoes, and avocados, in mixed shipments with bananas, from West Palm Beach and Miami, Fla., to Los Angeles and San Francisco, Calif.; coffee, other than in vacuum sealed containers, malt-syrup beverage, guava paste, guava cups, guava nectar, and Cuban crackers, from Miami, Fla., to Los Angeles and San Francisco, Calif.; and guava products, tasajo (beef jerked), and smoked or preserved fish, sausage, and salami, and canned beans, from Miami, Fla., to Los Angeles and San Francisco, Calif. Gerald F. Colfer, 1100 17th Street NW., Washington, DC 20036, attorney for applicants.

No. MC–FC–74234. By order entered February 15, 1973, the Motor Carrier Board approved the transfer to Bigheart Tri-States Corp., Tulsa, Okla., of the operating rights set forth in Permits Nos. MC–110760 and MC–110760 (Sub-No. 1), issued by the Commission November 9, 1953, and November 4, 1949, respectively, to Davis Lambert, doing business as Lambert & Hood, Mt. Carmel, Ill., authorizing the transportation of crude petroleum, in bulk, between points in Illinois, Indiana, and Kentucky, and coal spray oil, in bulk, from Princeton, Ind., and points within 3 miles thereof, to points in Illinois and Kentucky. Kirkwood Yockey, Suite 300 Union Federal Building, Indianapolis, IN 46204.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-4139 Filed 3-2-73;8:45 am]

[Notice 26]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

FEBRUARY 27, 1973.

The following are notices of filing of applications[1] for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC–67 (49 CFR 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, on or before March 20, 1973. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 17051 (Sub-No. 10 TA) (Correction), filed February 12, 1973, published in the FEDERAL REGISTER issue of February 22, 1973, and republished as corrected this issue. Applicant: BARNET'S EXPRESS, INC., 758 Lidgerwood Avenue, Elizabeth, NJ 07202, Mail: Post Office Box 111, Elizabeth Station 07207. NOTE: The purpose of this republication is to show the correct sub number assigned thereto as shown above, in lieu of previous publication which omitted the sub number in error. The rest of the notice remains as previously published.

No. MC 26396 (Sub-No. 64 TA) (correction), filed November 30, 1972, published in the FEDERAL REGISTER issue of December 15, 1973, and republished as corrected this issue. Applicant: POPELKA TRUCKING CO., doing business as: THE WAGGONERS, 201 West Park, Mailing: Post Office Box 990, Livingston, MT 59047. Applicant's representative: Wayne Waggoner (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood fence materials and wood poles*, from points in Idaho, Boundary, Bonner, Kootenai, Shoshone, Benewah, Latah, Clearwater, Lewis, Nez Perce Counties, Ohio, and St. Regis, Superior, and Troy, Mont., to points in Idaho, Indiana, and Michigan, for 180 days. Supporting shipper: North Pacific Lumber Co., Post Office Box 3915, Portland, OR 97208. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 215 U.S. Post Office Building, Billings, MT 59101. NOTE: The purpose of this republication is to correct the origin to Nez Perce Counties, Ohio, in lieu to Nez Perce Counties, Idaho, which was published in error.

No. MC 99866 (Sub-No. 2 TA), filed February 20, 1973. Applicant: VALLEY TRANSPORTATION & WAREHOUSE CO., INC., Post Office Box 836, 3034 North Scottsdale Road, Scottsdale AZ 85251. Applicant's representative: Baldo J. Lutich, 4747 North 22d Street, Suite 400, Phoenix AZ 85016. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (excluding liquid commodities in bulk), between Tucson, Casa Grande, and Phoenix, Ariz., on the one hand, and, on the other, the facilities of Hecla Mining Co., Lakeshore Project, located approximately 32 miles southwest of Casa Grande, Ariz., for 180

[1] Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

days. NOTE: The purpose of this application is to seek authority to continue the interstate movement of general commodities brought by other carriers into Tucson, Phoenix, and Casa Grande through to its destination at the Hecla Mine site, and likewise to initiate interstate movement of freight from the Hecla Mine site to Tucson, Phoenix or Casa Grande for the purpose of delivering it to other carriers in interstate movement. Supporting shipper: Hecla Mining Co., Lakeshore Project, Post Office Box 493, Casa Grande, AZ 85222. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 3427 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

No. MC 107515 (Sub-No. 834 TA), filed January 5, 1973. Applicant: REFRIGERATED TRANSPORT CO., INC., Post Office Box 308, 3901 Jonesboro Road SE., Forest Park, GA 30050. Applicant's representative: K. Edward Wolcott, Suite 1600 First Federal Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Synthetic yarn*, from Toccoa, Ga. to Bristow, Okla., for 180 days. Supporting shipper: Malcolm Spinning Co., 447 East Middle Street, Hanover, PA 17331. Send protests to: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1252 West Peachtree Street NW., Room 309, Atlanta, GA 30309.

No. MC 126555 (Sub-No. 20 TA), filed February 20, 1973. Applicant: UNIVERSAL TRANSPORT, INC., Post Office Box 268, Rapid City, SD 57701. Applicant's representative: Truman A. Stockton, Jr., The 1650 Grant Street Building, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bulk and in sacks, from Watertown, S. Dak. to points in Minnesota and North Dakota, for 180 days. Supporting shipper: The South Dakota Cement Plant, Rapid City, S. Dak. 57701, John E. Doane, Director of Transportation. Send protests to: J. L. Hammond, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 369, Federal Building, Pierre, S. Dak. 57501.

No. MC 135760 (Sub-No. 8 TA), filed February 21, 1973. Applicant: COAST REFRIGERATED TRUCKING CO. INC., Post Office Box 188, Holly Ridge, NC 28445. Applicant's representative: C. W. Fletcher (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pork products*, in vehicles equipped with mechanical refrigeration, from Detroit, Mich. to points in and east of Michigan, Wisconsin, Illinois, Kentucky, Tennessee, and Mississippi, for 180 days. Supporting shipper: Frederick & Herrud, Inc., and subsidiary Herrud Smoked Meats, Inc., 1487 Farnsworth Street, Detroit, MI 48211. Send protests to: Archie W. Andrews, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Post Office Box 26896, Raleigh, NC 27611.

No. MC 136384 (Sub-No. 3 TA), filed February 22, 1973. Applicant: PALMER MOTOR EXPRESS, INC., Post Office Box 103, Savannah, GA 31402. Applicant's representative: Frank D. Hall, Suite 713, 3384 Peachtree Road NE., Atlanta, GA 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except commodities in bulk, those requiring special equipment because of size or weight, classes A and B explosives, and household goods as defined by the Commission), (1) between Savannah, Ga., and Hampton, S.C.; from Savannah, Ga., via U.S. Highways 17 and 17A to their junction with U.S. Highways 601 and 321 at or near Hardeeville, S.C., thence over U.S. Highways 601 and 321 to their junction with U.S. Highway 601 near Robertville, S.C., thence over U.S. Highway 601 to Hampton, S.C., and return, serving all intermediate points; (2) between Savannah, Ga., and Hampton, S.C.: from Savannah, Ga., via U.S. Highways 17 and 17A to their junction with U.S. Highways 601 and 321 at or near Hardeeville, S.C., thence over U.S. Highways 601 and 321 to the junction of said highways at or near Tarboro, S.C., thence over U.S. Highway 321 to Garnett, S.C., thence over U.S. Highway 321 to its junction with South Carolina State Highway 363 at or near Luray, S.C., thence over South Carolina State Highway 363 to its junction with U.S. Highway 278 near Hampton, S.C., thence over U.S. Highway 278 to Hampton, S.C., and return, serving all intermediate points; (3) between Savannah, Ga., and Canadys, S.C.: from Savannah, Ga., via U.S. Highways 17 and 17A to their junction with Interstate Highway 95, U.S. Highways 601 and 301 at or near Hardeeville, S.C., thence over Interstate Highway 95 and U.S. Highway 17 to Pocotaligo, S.C., thence over U.S. Highways 17, 17A, and South Carolina State Highway 64 to Walterboro, S.C., thence over U.S. Highway 15 to Canadys, S.C., and return, serving all intermediate points:

(4) Between Savannah, Ga., and Canadys, S.C.: from Savannah, Ga., via U.S. highways 17 and 17A to their junction with South Carolina State Highway 170, thence over South Carolina State Highway 170 to its junction with U.S. Highway 278, thence over U.S. Highway 278 to its junction with South Carolina State Highway 462, thence over South Carolina State Highway 462 to its junction with Interstate Highway 95, and U.S. Highway 17 at or near Coosawhatchie, S.C., thence over Interstate Highway 95, and over U.S. Highway 17A to Walterboro, S.C., thence over U.S. Highway 15 to Canadys, S.C., and return, serving all intermediate points; (5) Between Hampton, S.C., and Cottageville, S.C.: from Hampton, S.C., via South Carolina State Highway 363 to its junction with South Carolina State Highway 63, thence over South Carolina State Highway 63 to its junction with U.S. Highway 17A at or near Walterboro, S.C., thence over U.S. Highway 17A to Cottageville, S.C., and return, serving all intermediate points; (6) between Savannah, Ga., and Hilton Head Island, S.C.: from Savannah, Ga., via U.S. highways 17 and 17A to their junction with South Carolina State Highway 170, thence over South Carolina State Highway 170 to its junction with South Carolina State Highway 46 at or near Pritchardville, S.C., thence over South Carolina State Highway 46 to its junction with U.S. Highway 278, thence over U.S. Highway 278 to Forest Beach, S.C., on Hilton Head Island, S.C., and return, serving all intermediate points;

(7) Between Savannah, Ga., and Walterboro, S.C.: from Savannah, Ga., via U.S. highways 17 and 17A to their junction with South Carolina State Highway 170, thence over South Carolina State Highway 170 to its junction with U.S. Highway 278, thence over South Carolina State Highway 170 and U.S. Highway 278 to their junction with South Carolina State Highway 170 (north of Jasper, S.C.), thence over South Carolina State Highway 170 to its junction with U.S. Highway 21 at or near Beaufort, S.C., thence over U.S. Highway 21 to Gardens Corner, S.C., thence over U.S. Highway 17 to Jacksonboro, S.C., thence over South Carolina State Highway 64 to Walterboro, S.C., and return, serving all intermediate points; (8) between Hampton, S.C., and Beaufort, S.C.: from Hampton, S.C., via U.S. Highway 278 to its junction with South Carolina State Highway 68, at or near Almeda, S.C., thence over South Carolina State Highway 68 to its junction with U.S. highways 17A and 21 at or near Yemassee, S.C., thence over U.S. highways 17A and 21 to Gardens Corner, S.C., thence over U.S. Highway 21 to Beaufort, S.C., and return, serving all intermediate points; and (9) with authority to serve all points other than those described in (1) through (8) above in Beaufort, Hampton, Jasper, and Colleton Counties, S.C., as off-route points in connection with the above described regular routes, for 180 days. NOTE: Applicant intends to tack the authority sought where possible so as to provide service throughout the territory described in paragraphs (1) through (9) above. Supporting shippers: There are approximately 36 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 136710 (Sub-No. 1 TA) (Correction), filed February 1, 1973, published in the FEDERAL REGISTER issue of February 22, 1973, and republished as corrected this issue. Applicant: FRANK W. EVANS, Jr., doing business as EXPORT ALLOYS, 113 Montrose Avenue, Baltimore, MD 21228. Applicant's repre-

sentative: Charles McD. Gillan, Jr., (same address as above). NOTE: The purpose of this republication is to show the correct sub number assigned as No. MC 136710 (Sub-No. 1 TA), in lieu of No. MC 136710 (Sub-No. L TA) which was published in error. The rest of the notice remains the same.

No. MC 138413 TA, filed February 15, 1973. Applicant: JOHN TOWNROW doing business as JOHN TOWNROW TRUCKING, 2660 West Ball Road, Anaheim, CA 92805. Applicant's representative: David A. Sutherlund, 2001 Massachusetts Avenue NW., Washington, DC 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Floor coverings, and materials, and supplies* used in the sale and installation of floor coverings, from points in Cartersville, Ga., Elkhart, Ind., Greenville, S.C., Kearny, N.J., Marcus Hook, Pa., Norcross, Ga., Trenton, N.J., and Wilburton, Okla., to points in Arizona, California, Idaho, Oregon, and Washington, for 180 days. Supporting shipper: LaSalle-Dietch Co., Inc., Western Division, a subsidiary of Magnavox Co., 12551 Fischer Road, Riverside, CA. Send protests to: John E. Nance, Officer-in-Charge, Interstate Commerce Commission, Bureau of Operations, 300 North Los Angeles Street, Room 7708, Los Angeles, CA 90012.

No. MC 138414 TA, filed February 15, 1973. Applicant: HAROLD JOHN BELL doing business as H. J. BELL, 320 South Yellowstone, Livingston, MT 59047. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crushed and/or broken limestone*, from Livingston and Gardiner, Mont., to Minot, N. Dak.; Portland, Beaverton, Corcallis, and Eugene, Oreg.; and Tacoma, Midway, Kent, Centralia, Chehalis, Longview, and Yakima, Wash., for 180 days. Supporting shipper: Livingston Marble & Granite Works, 711 East Park Street, Livingston, MT 59047. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 222 U.S. Post Office Buildin, Billings, Mont. 59101.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-4140 Filed 3-2-73;8:45 am]

[Notice 25]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

FEBRUARY 26, 1973.

The following are notices of filing of applications[1] for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67, (49 CFR 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of these applications must be filed with the field official named in the FEDERAL REGISTER publication, on or before March 20, 1973. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 8948 (Sub-No. 103 TA), filed February 15, 1973. Applicant: WESTERN GILLETTE, INC., 2550 East 28th Street, Post Office Box 58267, Vernon Station, Los Angeles, CA 90058. Applicant's representative: Charles Carbonaro (same address as applicant). Authority sought to operate as a *Common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between junction U.S. Highway 80 with California Highway 111 and Calexico, Calif., serving all intermediate points: From junction U.S. Highway 80 with California Highway 111, over California Highway 111 to Calexico, Calif., and return over the same route, and (2) serving all points in Imperial County, Calif., in connection with carrier's presently authorized routes over U.S. Highway 80 and California Highway 86 in said county, for 180 days. NOTE: Applicant requests authority to, and intends to, tack all authority held by it in Docket No. MC 8948 and related subs, and interline with other common carriers at any common service point. Supporting shipper: There are approximately 24 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission iin Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: John E. Nance, Officer in Charge, Interstate Commerce Commission, Bureau of Operations, Room 7708, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 39249 (Sub-No. 14 TA) (Correction), filed February 8, 1973, published in the FEDERAL REGISTER issue of February 20, 1973, and republished as corrected this issue. Applicant: MARTY'S EXPRESS, INC., 2335 Wheatsheaf Lane, Philadelphia, PA 19137. Applicant's representative: Ira G. Megdal, Suite 501, 1750 M Street NW., Washington, DC 20038. NOTE: The purpose of this partial republication is to show the correct MC No. 39249 (Sub-No. 14 TA), in lieu of MC No. 39249 TA. The rest of the application remains the same.

No. MC 42487 (Sub-No. 802 TA), filed February 9, 1973. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94025. Applicant's representative: V. R. Oldenburg, Post Office Box 5138, Chicago, IL 60680. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the plantsite of the Southwestern Co. at or near Franklin, Williamson County, Tenn., as an off-route point to present operations, for 180 days. NOTE: Applicant intends to tack the proposed authority with its existing authority at Nashville, Tenn., contained in Docket No. MC 42487 Sub 786. (This authority was acquired from Lewisburg Transfer Co., Inc. The authority was contained in Lewisburg Transfer Co., Inc., Docket No. MC 65282 Sub 7. The certificate in the name of Consolidated Freightways Corp. of Delaware has not yet been issued in our name, but when it is, it will be Sub 786). Applicant also proposes to interline with its present connecting carriers at points throughout the United States as provided in tariffs on file with the Interstate Commerce Commission. Supporting shipper: The Southwestern Co., 2968 Foster Creighton Drive, Post Office Box 8989, Nashville, TN 37211. Send protests to: Claud W. Reeves, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, CA 94012.

No. MC 73688 (Sub-No. 60 TA), filed February 12, 1973. Applicant: SOUTHERN TRUCKING CORPORATION, Post Office Box 7195, 1500 Orenda Avenue, Memphis, TN 38107. Applicant's representative: Robert E. Tate, Registered Practitioner, Post Office Box 517, Evergreen, AL 36401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe and pipe fittings, couplings, connections, and accessories* (except iron or steel and commodities because of size and weight require the use of special equipment), from the plant or warehouse sites of Armco Steel Corp., Metal Products Division, in Montgomery County, Ala., to points in the States of Arkansas, Georgia, Kansas, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia, and restricted to traffic originating at the above plant or warehouse sites and destined to points shown above and further restricted against the transportation of oilfield commodities as defined in Mercer-Extension-Oilfield Commodities, 74 MCC 459, for 180 days. Supporting shipper: Armco Steel Corp., 703 Curtis Street, Middletown, OH 45042. Send protests to:

[1] Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

Floyd A. Johnson, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 933 Federal Office Building, 167 North Main Street, Memphis, TN 38103.

No. MC 74942 (Sub-No. 3 TA), filed February 16, 1973. Applicant: PARVIN'S TRANSFER, INC., 15 East Harmony Street, Penns Grove, NJ 08069. Applicant's representative: Morton E. Kiel, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tomato products*, canned and preserved, from storage facilities of Heinz U.S.A. at Woodstown, N.J. to Allentown, King of Prussia, Forty Fort, Philadelphia, Reading, Robesonia, Bethlehem, Scranton, Shiremanstown, Mechanicsburg, and York, Pa., Wilmington and Seaford, Del., Baltimore, Cambridge, and Vienna, Md., Long Island, New Rochelle, Elmsford, Mount Kisco and New York, N.Y., Washington, D.C. and Norkfolk, Va.; for 180 days. Supporting shipper: Heinz U.S.A., Division of H. J. Heinz Co., Post Office Box 57, Pittsburgh, PA 15230. Send protests to: Richard M. Regan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 428 East State Street, Room 204, Trenton, NJ 08608.

No. MC 110563 (Sub-No. 102 TA), filed February 15, 1973. Applicant: COLDWAY FOOD EXPRESS, INC., 113 North Ohio Avenue, Post Office Box 747, Ohio Building, Sidney, OH 45365. Applicant's representative: John L. Maurer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, packinghouses* (except hides and commodities in bulk) as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766, from York, Nebr., to points in New York, Connecticut, Delaware, New Jersey, Ohio, Pennsylvania, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, Vermont, Rhode Island, Kentucky, Tennessee, Virginia, Illinois, Kansas, Missouri, Colorado, and Miami, Fla., for 180 days. Supporting shipper: Sunflower Beef Packers, Inc., York, Nebr. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

No. MC 112822 (Sub-No. 260 TA), filed February 14, 1973. Applicant: BRAY LINES INCORPORATED, Post Office Box 1191, 1401 North Little, Cushing, OK 74023. Applicant's representative: Joe W. Ballard (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except hides and commodities in bulk), from the plantsite of the Cudahy Co., Wallula, Wash., to Los Angeles, Calif., and its commercial zone; San Francisco, Richmond, San Jose, Oakland, Eureka, and San Leandro, Calif., for 180 days. Supporting shipper: The Cudahy Co., Art McCullough, Plant Traffic Manager, Wallula, Wash. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office Building, 215 Northwest Third, Oklahoma City, OK 73102.

No. MC 112854 (Sub-No. 31 TA), filed February 14, 1973. Applicant: HOLLEBRAND TRUCKING, INC., Post Office Box 164, Macedon Center Road, Ontario, NY 14520. Applicant's representative: S. Michael Richards, Post Office Box 225, Webster, NY 14580. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, from the facilities of Kettle Creek Mine located at or near Westport, Pa., to Johnson City, Bainbridge, Dresden, Ludlowville, and Palmyra, N.Y., for 180 days. Supporting shipper: Ringgold Coal Mining Co., Kittaning, Pa. 16201. Send protests to: Morris H. Gross, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 104, 301 Erie Boulevard West, Syracuse, NY 13202.

No. MC 114334 (Sub-No. 24 TA), filed February 12, 1973. Applicant: BUILDERS TRANSPORTATION COMPANY, 3710 Tulane Road, Memphis, TN 38116. Applicant's representative: Robert E. Tate, Post Office Box 517, Evergreen, AL 36401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe and pipe fittings, couplings, connections, and accessories* (except iron or steel and commodities because of size and weight require the use of special equipment), from the plant or warehouse sites of Armco Steel Corp., Metal Products Division, in Montgomery County, Ala., to points in Arkansas, Colorado, Georgia, Florida, Kansas, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia, and restricted to traffic originating at the above plant or warehouse sites and destined to points shown above and further restricted against the transportation of oilfield commodities as defined in Mercer Extension—Oilfield Commodities, 74 MCC 459, for 180 days. Supporting shipper: Armco Steel Corp., 703 Curtis Street, Middletown, OH 45042. Send protests to: Floyd A. Johnson, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 933 Federal Office Building, 167 North Main Street, Memphis, TN 38103.

No. MC 117765 (Sub-No. 155 TA), filed February 16, 1973. Applicant: HAHN TRUCK LINE, INC., 5315 Northwest Fifth Street, Post Office Box 75267, Oklahoma City, OK 73107. Applicant's representative: R. E. Hagan (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products and mineral feed mixtures*, from the plantsite of Barton Salt Co., Hutchinson, Kans. to Missouri (except Kansas City and St. Louis and their commercial zones), for 180 days. Supporting shipper: Junior Stucky, Traffic Manager, The Barton Salt Co., Post Office Box 1403, Hutchinson, KS 67501. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office Building, 215 Northwest Third, Oklahoma City, OK 73102.

No. MC 117799 (Sub-No. 48 TA), filed February 12, 1973. Applicant: BEST WAY FROZEN EXPRESS, INC., Room 205, 3033 Excelsior Boulevard, Minneapolis, MN 55416. Applicant's representative: K. O. Petrick (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Macaroni, noodles, spaghetti, or vermicelli, prepared with or without cheese, meat, vegetables, or sauce*, from Minneapolis, Minn. to points in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee, for 180 days. Restricted to traffic originating at the plantsite and warehouse facilities of the Creamette Co., Minneapolis, Minn. Supporting shipper: Creamette Co., 428 North First Street, Minneapolis, MN 55401. Send protests to: A. N. Spath, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 448 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

No. MC 118535 (Sub-No. 54 TA), filed February 15, 1973. Applicant: JIM TIONA, JR., 111 South Prospect, Butler, MO 64730. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products, and materials and supplies* used in the agricultural water treatment, food processing, wholesale grocery and institutional supply industries, when shipped in mixed loads with salt and salt products, from Grand Saline, Tex. to points in Iowa, Kansas, Missouri, and Nebraska, for 150 days. Supporting shipper: Morton Salt Co., 6175 The Paseo, Kansas City, MO 64110. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 600 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 119302 (Sub-No. 20 TA), filed February 16, 1973. Applicant: MILLER TRANSFER AND RIGGING CO., Post Office Box 6077, Akron, OH 44312. Applicant's representative: David Millner, 744 Broad Street, Newark, NJ 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Electric tools, lawn and garden equipment and component parts*, between the Black & Decker Manufacturing Co. plants at Tarboro and Fayetteville, N.C., Hampstead, Md., and

ports of entry on the international boundary line between the United States and Canada, located at or near Ogdensburg and Wellesley Island, N.Y., for 150 days. Restriction: The operations under the foregoing authority are to be limited to a transportation service to be performed under a continuing contract or contracts with the Black & Decker Manufacturing Co., at Towson, Md. Supporting shipper: The Black & Decker Manufacturing Co., Towson, Md. 21204. Send protests to: Franklin D. Bail, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 181 Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199.

No. MC 119774 (Sub-No. 67 TA), filed February 15, 1973. Applicant: EAGLE TRUCKING COMPANY, a corporation, 301 East Main Street, Post Office Box 471, Kilgore, TX 75662. Applicant's representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe and pipe fittings, couplings, connections, and accessories* (except iron or steel and commodities because of size and weight that require the use of special equipment), from the plant or warehouse sites of Armco Steel Corp., Metal Products Division, in Montgomery County, Ala., to points in Arkansas, Colorado, Georgia, Florida, Kansas, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia, for 180 days. Restricted to traffic originating at the above plant or warehouse site and destined to points shown above and further restricted against the transportation of oil field commodities, as described in Mercer Extension—Oil Field Commodities, 74 MCC 459. NOTE: Carrier does not intend to tack authority. Supporting shipper: Armco Steel Corp. (ARMCO), 703 Curtis Street, Middletown, OH 45042. Send protests to: District Supervisor E. K. Willis, Jr., Interstate Commerce Commission, Bureau of Operations, 1100 Commerce Street, Room 13C12, Dallas, TX 75202.

No. MC 124511 (Sub-No. 11 TA), filed February 7, 1973. Applicant: JOHN F. OLIVER, East Highway 54, Post Office Box 223, Mexico, MO 65265. Applicant's representative: John F. Oliver (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles* (except such articles because of size and weight require the use of special equipment) originating at the plantsite and storage facilities of Granite City Steel Co. at Granite City, Ill., to points in Missouri, for 180 days. Supporting shipper: Granite City Steel Co., Subsidiary of National Steel Corp., 20th and State Streets, Granite City, Ill. 62040. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 125362 (Sub-No. 4 TA), filed February 14, 1973. Applicant: THOMAS P. SMITH, 10045 East Michigan Avenue, Parma, MI 49269. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Newport, Ky.; Peoria, Ill.; and Evansville, Ind., to Jackson, Mich., for 180 days. Supporting shipper: John G. Stadelman, President, Stadelman Distributing Co., 4915 West Michigan Avenue, Jackson, MI 49201. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 225 Federal Building, Lansing, Mich. 48933.

No. MC 125616 (Sub-No. 6 TA), filed February 21, 1973. Applicant: W. PAUL HENRY, 300 Robinwood Drive, Hagerstown, Md. 21740. Applicant's representative: Peter A. Greene, Commonwealth Building, 1625 K Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Machinery and machinery parts*, from Waynesboro, Pa., to Dulles International Airport, Loudoun County, Va., and Washington National Airport, Gravelly Point, Va., restricted to traffic having an immediate prior or subsequent movement by air, for 180 days. Supporting shippers: Teledyne Landis Machine, Waynesboro, Pa. 17268 and Landis Tool Co., Waynesboro, Pa. 17268. Send protests to: Robert D. Caldwell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 12th Street and Constitution Avenue NW., Washington, D.C. 20423.

No. MC 125770 (Sub-No. 9 TA), filed February 14, 1973. Applicant: SPIEGEL TRUCKING, INC., 504 Essex Street, Harrison, NJ 07029. Applicant's representative: Charles J. Williams, 47 Lincoln Park, Newark, NJ 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel office furniture, equipment, and supplies*, for the account of Hillside Metal Products, Inc., from Jamestown, N.Y., to the plantsite of Hillside Metal Products, Inc. at Newark, N.J., for 180 days. Supporting shipper: Hillside Metal Products, Inc., 300 Passaic Street, Newark, NJ 07104. Send protests to: District Supervisor Robert E. Johnston, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 133478 (Sub-No. 7 TA), filed February 13, 1973. Applicant: HEARIN TRANSPORTATION, INC., Post Office Box 25448, 8565 Southwest Beaverton Hillsdale Highway, Portland, OR 97225. Applicant's representative: Nick I. Goyak, Attorney, 404 Oregon National Building, 610 Southwest Alder Street, Portland, OR 97205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plywood, lumber, particleboard and wood beams*, between the plantsite of Hearin Forest Industries at Vancouver, Wash., on the one hand, and, on the other, points in California. All for the account of Hearin Forest Industries, for 180 days. Supporting shipper: Hearin Forest Industries, Inc., Post Office Box 25387, Portland, OR 97225. Send protests to: District Supervisor W. J. Huetig, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Building, 319 Southwest West Pine, Portland, OR 97204.

No. MC 134958 (Sub-No. 2 TA), filed February 16, 1973. Applicant: HAMS EXPRESS, INC., 3499 South Third Street, Philadelphia, PA 19148. Applicant's representative: Joseph F. Murray (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat byproducts; articles distributed by meat packinghouses;* and *such commodities* as are used by meatpackers in the conduct of their business when destined to and for use by meatpackers, as described in sections A, C, and D, of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except commodities in bulk), (1) from the plantsite, warehouses and storage facilities used by Blue Bird Food Products Co., at or near Philadelphia, Pa., to points in California, and (2) from cold storage warehouses (a) at Cleveland, Ohio, to points in Ohio, Michigan, Illinois, and New York; (b) at Chicago, Ill., to points in Illinois, Ohio, Michigan, Missouri, Wisconsin, Colorado, Oklahoma, Arkansas, Kentucky, Nebraska, Indiana, and New York; and (c) at Milwaukee, Wis., to points in Illinois, Wisconsin, and Ohio; all authority in (2) on traffic having a prior movement to the said cold storage warehouse origin points from Philadelphia pursuant to the authority held by Hams in MC–134958, for 180 days. NOTE: Applicant would tack the cold storage authority sought at Cleveland, Chicago, and Milwaukee to authority held in MC–134958 to serve such points from Philadelphia. Supporting shipper: Bluebird Food Products Co., 3501 S. Third Street, Philadelphia, PA 19148. Send protests to: Peter R. Guman, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 1518 Walnut Street, Room 1600, Philadelphia, PA 19102.

No. MC 136051 (Sub-No. 2 TA), filed February 13, 1973. Applicant: RPD, INC., 2701 South Bayshore Drive, Miami, FL 33133. Applicant's representative: Albert W. Stout (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicle parts, components, supplies, materials, advertising materials, and equipment, materials and supplies utilized in the manufacture thereof*, between points in the St. Louis, Mo., commercial zone and the following Missouri counties: Cape Girardeau, Pemiscot, Mississippi, Dunklin, Perry, New Madrid, Scott, St. Genevieve, St. Charles, St. Louis, and Jefferson, and points in Arkansas, Mississippi, points in Tennessee on and west of Interstate Highway 65; points in Kentucky on and

west of Interstate Highway 75; and points in Illinois on and south of Interstate Highway 74, for 180 days. Supporting shipper: General Motors Corp., General Motors Parts Division, 6060 West Bristol Road, Flint, MI. 48554. Send protests to: District Supervisor Joseph B. Teichert, Interstate Commerce Commission, Bureau of Operation, 5720 Southwest 17th Street, Room 105, Miami, FL 33155.

No. MC 136453 (Sub-No. 3 TA), filed February 16, 1973. Applicant: MARTIN TRANSIT, INC., Route No. 2, Rock Falls, Ill. 61071. Applicant's representative: William J. Boyd, 29 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses* as described in Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides, skins, pelts and pieces thereof and commodities in bulk), from Sterling, Ill., to Chicago, Ill. (restricted to the movement of traffic which has an immediately subsequent movement by rail to destination outside of Illinois), for 180 days. Supporting shipper: Mr. Donald A. Chute, Armour Food Co., Phoenix, Ariz. Send protests to: Richard Chandler, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

No. MC 136998 (Sub-No. 2 TA), filed February 14, 1973. Applicant: KORAL SALES INC., doing business as KSI, Route 2, Box 659, Kenosha, WI 53140. Applicant's representative: Jerry Seidman (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic parts, general commodities, store gift packs and U do it components and parts*, from Elgin, Ill., to Columbus, Ohio, Richfield, Minn., Warren, Mich., Kansas City, Kans., Pittsburgh, Pa., San Diego, Calif., Cleveland, Ohio, Dallas, Tex., Clearwater, Fla., St. Louis, Mo., Houston, Tex., Fridley, Minn., Santa Clara, Calif., Huntington Beach, Calif., Milwaukee, Wis., Indianapolis, Ind., Beverly, N.J., and St. Petersburg, Fla., for 180 days. Supporting shipper: Dexter Tread Mills, Inc., 840 Saint Charles Road, Elgin, IL (Don Beyer, Traffic Manager). Send protests to: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, WI 53203.

No. MC 138036 (Sub-No. 3 TA), filed February 16, 1973. Applicant: J & S, INC., 127 Larchfield Drive, McKeesport, PA 15135. Applicant's representative: John Pillar, 2310 Grant Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by retail drug and variety stores, and *equipment, material and supplies*, used in the conduct of such business (excluding commodities in bulk) for the account of Thrift Drug Division of J. C. Penney Co., Inc., between points in Falls Township (Bucks County), Pa., on the one hand, and, on the other, points in Delaware, Maryland, New Jersey, and Pennsylvania, for 180 days. Supporting shipper: Thrift Drug Co., Division of J. C. Penney Co., Inc., 615 Alpha Drive, Pittsburgh, PA 15238. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

No. MC 138327 (Sub-No. 1 TA), filed February 15, 1973. Applicant: RUSSELL R. BROWN, doing business as BROWN TRANSPORT, 370 West 1050 North, Bountiful, UT 84010. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fish feed* in bags and bulk form, from Salt Lake City, Utah, to all parts of/in California, Washington, and Oregon, for 180 days. Supporting shipper: Moore-Clark Co., a division of RVM, Inc., 1674 Beck Street, Salt Lake City, UT 84116 (John A. Coates). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5239 Federal Building, 125 South State Street, Salt Lake City, UT 84111.

No. MC 138328 (Sub-No. 1 TA), filed February 13, 1973. Applicant: WERNER ENTERPRISES, 805 32d Avenue, Post Office Box 831, Council Bluffs, IA 51501. Applicant's representative: Charles J. Kimball, 2310 Colorado State Bank Building, 1600 Broadway, Denver, CO 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) *Upholstered furniture*, from Council Bluffs, Iowa, to points in Washington, Idaho, Montana, Wyoming, Colorado, Texas, Oklahoma, Kansas, Nebraska, South Dakota, North Dakota, Minnesota, Iowa, Missouri, Arkansas, Illinois, Indiana, Wisconsin, Michigan, and Ohio; and (B) *materials, equipment and supplies* used in the manufacture of upholstered furniture from points in California, Colorado, Missouri, Indiana, North Carolina, Georgia, New York, New Jersey, and Massachusetts to Council Bluffs, Iowa, for 180 days. Restricted to service under continuing contract to Charles Schneider and Co., Inc. Supporting shipper: Charles Schneider and Co., Inc., 518 North 10 Street, Council Bluffs, Iowa. Send protests to: Carroll Russell, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 711 Federal Office Building, Omaha, NE 68102.

No. MC 138381 (Sub-No. 1 TA), filed February 14, 1973. Applicant: CHADDERDON & SONS, INC., Le Center, Minn. 56057. Applicant's representative: Orban Chadderdon (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic containers*, from Le Center, Minn., to La Crosse, Merrill, and Antigo, Wis., also Humboldt, Iowa, for 180 days. Supporting shipper: Robb Container Corp., Post Office Box 419, Yorkville, IL 60560. Send protests to: A. N. Spath, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 448 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 138415 TA, filed February 15, 1973. Applicant: TRAILER EXPRESS, INC., Post Office Box 321, Topeka, IN 46571. Applicant's representative: Michael V. Gooch, 777 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Boats*, from Syracuse, Ind., to Alabama, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, Wyoming, and Suisun City/San Leandro, Calif., for 180 days. Supporting shipper: Sea Nymph Boats, Division of Stanray Corp., 200 South Michigan Avenue, Chicago, IL. Send protests to: District Supervisor J. H. Gray, Bureau of Operations, Interstate Commerce Commission, 345 West Wayne Street, Room 204, Fort Wayne, IN 46802.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc. 73-4138 Filed 3-2-73; 8:45 am]

CUMULATIVE LISTS OF PARTS AFFECTED—MARCH

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 March.

FEDERAL REGISTER PAGES AND DATES—MARCH

Pages	*Date*
5449–5609	Mar. 1
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federal register

MONDAY, MARCH 5, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 42

PART II

DEPARTMENT OF TRANSPORTATION

Coast Guard

■

FEDERAL COMMUNICATIONS COMMISSION

■

EMERGENCY POSITION INDICATING RADIOBEACONS

Proposed Rule Making

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Parts 33, 35, 75, 78, 94, 97, 161, 180, 185, 192, 196]

[CGD 73-24 PH]

EMERGENCY POSITION INDICATING RADIOBEACON

Carriage, Operational Testing, and Approval

The Coast Guard is considering amendments to the lifesaving equipment regulations and the operations regulations to require that certain inspected vessels in ocean and coastwise service carry an emergency position indicating radiobeacon (EPIRB) as part of their lifesaving equipment. Minimum tests to be conducted to insure that the equipment is operative would be prescribed. Finally, it is proposed to amend the lifesaving equipment specifications to include specifications for approval of emergency position indicating radiobeacons (EPIRB).

Interested persons are invited to participate in this rule making by submitting written data, views, or arguments to the Executive Secretary, Marine Safety Council (GCMC/82), 400 Seventh Street SW., Room 8234, Washington, DC 20590 (phone 202—426-1477). Written comments should include the docket number of this notice, the name and address of the person submitting the comments, and the specific section of the proposal to which each comment is addressed.

The Coast Guard will hold a public hearing April 18, 1973, at 10 a.m. in Room 7200, at the Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC, to receive written and oral comments from interested persons. The hearing will be conducted by a member or representative of the Marine Safety Council, who may apportion time for presentation. Each person desiring to speak at this hearing is requested to notify the Executive Secretary of the time needed for his presentation and is encouraged to submit a written copy or summary after the hearing of his oral presentation.

All communications received on or before April 30, 1973, will be fully considered before final action is taken on this proposal.

This proposal may be changed in light of comments received; however, acknowledgement of individual comments will not be made. All comments will be available for examination in Room 8234.

The regulations will take effect twelve (12) months after publication in the FEDERAL REGISTER as a final rule.

It is proposed to require that the following classes of inspected vessels in ocean and coastwise service:

1. Tank vessels,
2. Passenger vessels,
3. Cargo and miscellaneous vessels,
4. Small passenger vessels, and
5. Oceanographic vessels

carry an emergency position indicating radiobeacon (EPIRB) to be stowed in a manner such that should the vessel sink, it will float free and automatically activate and in a location where it will be readily accessible for testing and emergency use.

These proposals are the culmination of an effort dating from 1957 when a Coast Guard study of an extensive air-sea/search effort determined the probability of location of survivors and the cost involved for both a visual search and an electronic search using emergency beacons. Because the results showed a significant increase in the probability of survivor location and decrease in search cost, the study recommended that seagoing vessels be required to carry EPIRB's operating on 121.5 and 243 MHz.

The Coast Guard carried this proposal to the 1960 SOLAS Conference. The SOLAS Conference recognized the need for EPIRB's and recommendation No. 48 was adopted by the final 1960 SOLAS Convention, this recommendation states:

> The Conference, recognizing that an automatic nondirectional emergency position indicating radiobeacon, will improve safety of life at sea by greatly facilitating search and rescue, recommends that governments should encourage the equipping of all ships, where appropriate, with a device of this nature which shall be small, lightweight, floatable, watertight, shock resistant, self-energizing, and capable of 48 hours continuous operation. The organization should consult with the International Civil Aviation Organization (ICAO) and the International Telecommunications Union (ITU) with a view to determining the standard of worldwide application to which the radio characteristics should conform.

Several reports of Marine Boards of Investigation have noted the need for EPIRB's. Among these are the SS *Marine Sulphur Queen* which disappeared with all hands in February 1963; the *Daniel J. Morrel* which broke in two and sank with only one survivor in November 1966; and most recently the SS *Texaco Oklahoma*, which broke in two and sank with the loss of 31 lives, in March 1971. Other cases are on file which support the need for such a device. These cases indicate that many lives probably could have been saved through an early distress alert and prompt rescue of survivors and that millions of dollars expended on search efforts could have been saved.

In the case of the *Texaco Oklahoma*, the stern section with 31 persons on board remained afloat for about 27 hours. Those on board the vessel attempted to make their plight known by use of the lifeboat radio, by lights, and by flares, all without success. An AMVER plot indicates that there were 18 participating vessels within 120 miles of the stricken ship during this period. Numerous commercial and military aircraft frequent the area and would most likely have heard an EPIRB signal.

The SS *V. A. Fogg* was lost with all hands on February 1, 1972. The vessel exploded and as a result sank suddenly. When the vessel became overdue shortly thereafter, a massive search was launched which lasted 11 days before the sunken hull was located. An EPIRB would probably have shortened the search by several days.

In January 1972, the IMCO Subcommittee on Radio Communications recommended to the Maritime Safety Committee that as a matter of urgency, all administrations require that ships subject to SOLAS under their jurisdiction carry an EPIRB operating on 2182 kHz and/or 121.5 Mhz and/or 243 Mhz. This recommendation is being considered by the Maritime Safety Committee. Norway, Germany, France, and Japan have implemented requirements for EPIRB's to be carried on their vessels which are subject to the SOLAS Convention.

The National Transportation Safety Board has strongly supported the Coast Guard's recommendations regarding a requirement for the carriage of EPIRB's by seagoing vessels. They have made specific recommendations in the case of the SS *Texaco Oklahoma* and have recently published a Special Study of Survivor-Locator Systems for Distressed Vessels which stressed the value of EPIRB's.

Present statutory authority to require such devices is limited to inspected vessels. Although no requirement can be made under existing law, those uninspected vessels operating beyond the range of marine VHF radio distress coverage will be permitted by the Federal Communications Commission and encouraged to carry EPIRB's as part of their lifesaving equipment.

In consideration of the foregoing, it is proposed to amend Chapter I of Title 46 of the Code of Federal Regulations as follows:

PART 33—LIFESAVING EQUIPMENT

1. By adding § 33.15–30 to Part 33 to follow § 33.15–25 to read as follows:

§ 33.15–30 Emergency position indicating radiobeacon (EPIRB)–T/OC.

All vessels in ocean and coastwise service must be provided with an approved emergency position indicating radiobeacon (EPIRB). The EPIRB must be of the Type A class stowed in a location readily accessible for testing and emergency use and in a manner so that, if the vessel sinks, it will float free and activate automatically. Batteries must be replaced after the EPIRB is used in an emergency and on the date marked on the outside of the unit.

PART 35—OPERATIONS

2. By adding § 35.10–25 to Part 35 to follow § 35.10–20 to read as follows:

§ 35.10–25 Emergency position indicating radiobeacon (EPIRB)–T/OC.

The master shall insure that the EPI RB required in § 33.15–30 of this chapter is tested weekly using the integrated test circuit and output indicator to determine that the unit is operative.

§ 35.40–40 [Amended]

3. By amending § 35.40–40(a) of Part 35 by adding the word "EPIRB" after the words "life preserver."

PART 75—LIFESAVING EQUIPMENT

4. By adding § 75.60 to Part 75 to follow § 75.50–90 to read as follows:

§ 75.60 Emergency position indicating radiobeacon (EPIRB).

All vessels in ocean and coastwise service must be provided with an approved emergency position indicating radiobeacon (EPIRB). The EPIRB must be of the Type A class, stowed in a location readily accessible for testing and emergency use and in a manner so that, if the vessel sinks, it will float free and activate automatically. Batteries must be replaced after the EPIRB is used in an emergency and on the date marked on the outside of the unit.

PART 78—OPERATIONS

5. By adding § 78.17–85 to Part 78 to follow § 78.17–80 to read as follows:

§ 78.17–85 Emergency position indicating radiobeacon (EPIRB).

The master shall insure that the (EPIRB) required in § 75.60 of this subchapter is tested weekly using the integrated test circuit and output indicator to determine that the unit is operative.

6. By adding § 78.47–80 to Part 78 to follow § 78.47–75 to read as follows:

§ 78.47–80 Emergency position indicating radiobeacon (EPIRB).

The emergency position indicating radiobeacon (EPIRB) must be marked with the vessel's name.

PART 94—LIFESAVING EQUIPMENT

7. By adding § 94.60 to Part 94 to follow § 94.55–1 to read as follows:

§ 94.60 Emergency position indicating radiobeacon (EPIRB).

All vessels in ocean and coastwise service must be provided with an approved emergency position indicating radiobeacon (EPIRB). The EPIRB must be of the Type A class, stowed in a location readily accessible for testing and emergency use and in a manner so that, if the vessel sinks, it will float free and activate automatically. Batteries must be replaced after the EPIRB is used in an emergency and on the date marked on the outside of the unit.

PART 97—OPERATIONS

8. By adding § 97.15–65 to Part 97 to follow § 97.15–60 to read as follows:

§ 75.60 Emergency position indicating radiobeacon (EPIRB).

The master shall insure that the EPIRB required in § 94.60 of this subchapter is tested weekly using the integrated test circuit and output indicator to determine that the unit is operative.

9. By adding § 97.37–55 to Part 97 to follow § 97.37–50 to read as follows:

§ 97.37–55 Emergency position indicating radiobeacon (EPIRB).

The emergency position indicating radiobeacon (EPIRB) must be marked with the vessel's name.

PART 161—ELECTRICAL EQUIPMENT

10. By adding Subpart 161.011 to Part 161 to follow Subpart 161.008 to read as follows:

Subpart 161.011—Emergency Position Indicating Radiobeacons

Sec.

AUTHORITY: 46 U.S.C. 481; 49 CFR 1.4(b)(1)(ii); 1.46(b).

Subpart 161.011—Emergency Position Indicating Radiobeacons

§ 161.01–1 Purpose.

The intent of this specification is to establish the approval requirements for emergency position indicating radiobeacons (EPIRB) for use on vessels as lifesaving equipment.

§ 161.011–1 Purpose.

Emergency position indicating radiobeacons (EPIRB) are classed as follows:

(a) Type A—an EPIRB intended to be fitted on a vessel so that it is readily available for testing and emergency use, and capable of floating free of the vessel and activating automatically in the event the vessel sinks.

§ 161.011–10 Requirements.

An emergency position indicating radiobeacon (EPIRB)—Type A must:

(a) Comply with Title 47, Code of Federal Regulations, Part 83, of the rules of the Federal Communications Commission and operate on frequencies 121.5 and 243 MHz;

(b) Be activated by automatic means when released from a sinking vessel;

(c) Be fitted with a manually activated test switch, or comparable device, associated test circuit, and output indicator;

(d) Be fitted with a premounted antenna which will automatically deploy when released;

(e) Operate in the floating mode so that the signal is effective in expected sea conditions.

§ 161.011–15 Marking.

(a) Type A EPIRB's must be marked in accordance with Title 47, Code of Federal Regulations, Part 83, of the rules of the Federal Communications Commission.

(b) Type A EPIRB's must be marked with the type and U.S. Coast Guard approval number; for example, "Type A, U.S.C.G. 161.011."

(c) The expiration date must be placed on the batteries by the manufacturer and permanently and legibly marked on the outside of the EPIRB.

§ 161.011–20 Procedure for approval.

(a) EPIRB's for use on vessels to meet the requirements of Subpart 161.011 must be approved by the Commandant, U.S. Coast Guard, Washington, D.C. 20590. Application for approval and correspondence pertaining to this specification must be addressed to U.S. Coast Guard Headquarters (GMMT–3/83), 400 7th Street SW., Washington, DC 20590.

(b) Application for Type A EPIRB approval must include:

(1) Manufacturer's named place of manufacture, brand name, and/or model identification, and if applicable, the U.S. distributor(s).

(2) Proof of FCC type approval or type acceptance.

(3) A drawing (three copies) indicating typical "Float Free" vessel installation and general design arrangement of EPIRB.

(4) Technical description of EPIRB and its operation including statement on storage and operational life.

(5) Test report indicating satisfactory operation from drop at stowage height, satisfactory operation in expected sea conditions and compliance with FCC requirements.

(c) If found satisfactory, the U.S. Coast Guard will issue an approval number and publish notice of approval in the FEDERAL REGISTER and CG–190, Equipment List.

PART 180—LIFESAVING EQUIPMENT

11. By adding § 180.40 to Part 180 to follow § 180.35–10(b) to read as follows:

§ 180.40 Emergency position indicating radiobeacon (EPIRB).

All vessels in ocean and coastwise service must be provided with an approved emergency position indicating radiobeacon (EPIRB). The EPIRB must be of the Type A class, stowed in a location readily accessible for testing and emergency use and in a manner so that, if the vessel sinks, it will float free and activate automatically. Batteries must be replaced after the EPIRB is used in an emergency and on the date marked on the outside of the unit.

PART 185—OPERATIONS

12. By adding § 185.25–20 to Part 185 to follow § 185.25–15(a) to read as follows:

§ 185.20–25 Tests of emergency position indicating radiobeacon (EPIRB).

The person in charge of the vessel shall insure that the EPIRB is tested weekly using the integrated test circuit and output indicator to determine that the unit is operative.

13. By adding § 185.30–30 to Part 185 to follow § 185.30–25 to read as follows:

§ 185.30–30 Emergency position indicating radiobeacon (EPIRB).

The emergency position indicating radiobeacon (EPIRB) must be marked with the vessel's name.

PART 192—LIFESAVING EQUIPMENT

14. By adding § 192.55–5 to Part 192 to follow § 192.55–1 to read as follows:

§ 192.55–5 Emergency position indicating radiobeacon (EPIRB).

All vessels in ocean and coastwise service must be provided with an approved emergency position indicating radiobeacon (EPIRB). The EPIRB must be of the Type A class, stowed in a location readily accessible for testing and emergency use and in a manner so that, if the vessel sinks, it will float free and activate automatically. Batteries must be replaced after the EPIRB is used in an emergency and on the date marked on the outside of the unit.

PART 196—OPERATIONS

15. By adding § 196.15–65 to Part 196 to follow § 196.15–60 to read as follows:

§ 196.15–65 Emergency position indicating radiobeacon (EPIRB).

The master shall insure that the EPIRB required in § 192.60 of this chapter is tested weekly using the integrated test circuit and output indicator to determine that the unit is operative.

16. By adding § 196.37–49 to Part 196 to follow § 196.37–47 to read as follows:

§ 196.37–49 Emergency position indicating radiobeacon (EPIRB).

The emergency position indicating radiobeacon (EPIRB) must be marked with the vessel's name.

(46 U.S.C. 481; 49 CFR 1.4(b)(1)(ii); 1.46(b))

Dated February 21, 1973.

W. F. REA III,
Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc.73-3909 Filed 3-2-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 83]

[Docket No. 19693; FCC 73-202]

STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Emergency Position Indicating Radiobeacons

In the matter of amendments of Part 83, Stations on shipboard in the Maritime Services, to permit the use of the frequencies 121.5 MHz and 243 MHz by ship stations, survival craft stations, and emergency position indicating radiobeacons, Docket No. 19693.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. In the Aviation Radio Services both 121.5 and 243 MHz are available for communications related to emergencies and to search and rescue operations. Presently only the frequency 121.5 MHz is available in the maritime service, and then, only under certain limited conditions for radiobeacon purposes. Since both air and surface craft are generally involved in emergencies and search and rescue operations in offshore water areas, it appears that it would be in the best interests of safety of life at sea if there were fewer restrictions on the use of these frequencies in the maritime service.

3. The frequency 121.5 MHz is a universally used radiotelephone channel (class A3 emission) for aircraft in distress or conditions of emergency. It also provides aviation a common frequency for survival communications and for emergency locator beacons (emission A9). Locator beacons of this type are commonly referred to as Emergency Locator Transmitters (ELTs) or Emergency Position Indicating Radiobeacons (EPIRBs). In the maritime community the most universally used term is the latter, so that designation will be used herein. The use of 121.5 MHz by Maritime in the United States is presently limited to vessels which have been registered or documented by the U.S. Coast Guard. For the most part these are commercial vessels of over 5 gross tons. Its use is further limited to class A2 emission, and to vessels which are authorized to carry and are equipped with a ship station.

4. The frequency 243 MHz, normally used by military aircraft for survival purposes, is available nationally for use by survival craft stations and equipment used for survival purposes (footnote US 98). However no provisions have been made in Part 83 to implement this footnote for the maritime service. The proposed amendment of the rules, as set forth in the attached appendix, would provide for the use of both the frequencies 121.5 and 243 MHz by all U.S. vessels expected to operate in international waters beyond the range of marine VHF distress coverage for use in survival craft and emergency position indicating radiobeacon (EPIRB) stations. Marine use of these frequencies in EPIRBs would then be permitted in the same manner as they are used by civil aircraft in ELTs, with the same technical characteristics and packaging requirements as observed by aviation. This will increase the efficiency of search and rescue operations as well as provide greater safety for an increased number of vessels and will permit some degree of standardization of survival radiobeacons. In addition, the proposed amendment would provide for the use of radiotelephony (class A3 emission) on the frequency 121.5 MHz by authorized ship stations for emergency communications between ships and aircraft.

5. It is recognized that the EPIRB, as well as the aviation ELT, will often serve as a distress alerting device when other methods of communication are not successful or available. For this reason the proposed marine use of 121.5/243 MHz for EPIRBs is generally limited to the oceanic areas approximately 20 miles or more offshore, as described by the phrase "those whose vessels are expected to operate in international waters beyond the range of marine VHF distress coverage." It is felt that the safety of this rather limited number of vessels can be improved substantially and immediately by the use of EPIRBs, and that their use of the frequencies can be effectively controlled. However the millions of recreational boats which operate near the shore and in inland waters have been purposely excluded, since these vessels may use marine VHF radio or other extremely reliable methods to alert the shore to their situation. Also the potential inadvertent or improper use by this very large population could render the existing aviation distress and safety system, as well as the proposed offshore marine use, completely ineffective.

6. The proposed amendment to the rules conforms basically with the recommendations adopted by the Maritime World Administrative Radio Conference, Geneva 1967, and with Recommendation 48 of the 1960 Safety of Life at Sea Conference and subsequent recommendations of the Subcommittee on Radiocommunications and the Maritime Safety Committee of the Intergovernmental Maritime Consultative Organization (IMCO). More specifically the proposed amendment is in response to a recent request of the U.S. Coast Guard and to recent recommendations of the National Transportation Safety Board.

7. The proposed amendments to the rules, as set forth below are issued pursuant to authority contained in sections 4(i) and 303 (b), (c), (e), (f), and (r) of the Communications Act of 1934, as amended.

8. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before April 6, 1973, and reply comments on or before April 16, 1973. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

9. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its Headquarters in Washington, D.C.

Adopted: February 21, 1973.

Released: February 26, 1973.

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

1. Section 83.3 is amended by adding a new paragraph (n) to read as follows:

§ 83.3 Maritime Mobile Services.

* * * * *

(n) *Emergency position indicating radiobeacon station.* A station in the maritime mobile service consisting of a transmitter only, the distinctive emissions of which are intended to facilitate search and rescue operations.

* * * * *

2. Section 83.7 is amended by lettering all paragraphs and adding the following new definition:

§ 83.7 Technical.

* * * * *

(j) *Peak effective radiated power.* For emergency position indicating radiobeacon stations, the average power supplied to the antenna by the transmitter during one radio frequency cycle at the highest crest of the modulation envelope, multiplied by the relative gain of the antenna in a given direction. The relative gain is referenced to a quarter-wave loss-free monopole mounted on a one wavelength diameter ground plane.

3. Section 83.68 is amended to read as follows:

§ 83.68 Authority for survival craft stations and emergency position indicating radiobeacon stations.

(a) Authority to operate survival craft stations, which may include an emergency position indicating radiobeacon (EPIRB) station, will be granted only when the parent vessel is equipped with and authorized to operate a ship station.

(b) Authority to operate an EPIRB station will be granted only for use aboard vessels authorized to carry survival craft stations or to those whose vessels are expected to operate in international waters beyond the range of marine VHF distress coverage.

4. Paragraph (c) of § 83.131 is amended to read as follows:

§ 83.131 Authorized frequency tolerance.

* * * * *

(c) Authorized frequency tolerance for ship, survival craft, and emergency position indicating radiobeacon (EPIRB) stations operating on frequencies above 27.5 MHz.

* * * * *

(3) EPIRB stations on 121.5 and 243 MHz	50

* * * * *

5. Paragraph (a) of § 83.132 is amended to read as follows:

§ 83.132 Authorized classes of emission.

(a) * * *

(1) Stations using radiotelegraphy:

* * * * *

(iii) For the frequency 121.5 MHz....A2, A9.
(iv) For the frequency 243 MHz....A9.

(2) Stations using radiotelephony:

* * * * *

(ii) For the frequency 121.5 MHz....A3.

* * * * *

6. The table in paragraph (a) of § 83.133 is amended to read as follows:

§ 83.133 Authorized bandwidth.

* * * * *

Class of emission	Emission designator	Authorized bandwidth (kHz)
* * *	* * *	* * *
A9	3.2A9	5 [1]
* * *	* * *	* * *

[1] Applicable only to emergency position indicating radiobeacon stations.

7. Section 83.134 is amended by adding a new paragraph (h) to read as follows:

§ 83.134 Transmitter power.

* * * * *

(h) For emergency position indicating radiobeacon stations operating on the frequencies 121.5 and 243 MHz the peak effective radiated power on each frequency, measured during and at the end of 48 hours of continuous operation, and without replacement or recharge of batteries, shall not be less than 75 milliwatts. This specification shall apply to all units whether dry, or immersed for any or all of the 48-hour period in fresh or salt water, as long as the entire antenna extends above the water surface. The method of peak effective radiated power measurement specified in the Radio Technical Commission for Aeronautics (RTCA) Document No. DO–145 or DO–146 shall be employed. The required power shall obtain over an air temperature range from −20 to +55 degrees centrigrade.

8. Section 83.137 is amended by adding a new paragraph (i) to read as follows:

§ 83.137 Modulation requirements.

* * * * *

(i) Emergency position indicating radiobeacon stations operating on the frequencies 121.5 and 243 MHz shall employ a distinctive emission consisting of amplitude modulation of the carrier with an audio frequency sweeping downward over a range of not less than 700 Hz, within the range 1600 to 300 Hz, with a sweep rate between 2 and 4 times per second. The modulation applied to the carrier shall be in accordance with that specified in the Radio Technical Commision for Aeronautics (RTCA) Document No. DO–145 or DO–146.

9. Paragraph (b) of § 83.139 is amended to read as follows:

§ 83.139 Acceptability of transmitters for licensing.

* * * * *

(b) Each survival craft station transmitter or emergency position indicating radiobeacon station transmitter which has not been type approved pursuant to §§ 83.469 or 83.472 shall be type accepted for licensing.

* * * * *

10. Paragraphs (a) and (b) of § 83.141 are amended and a new paragraph (d) is added to read as follows:

§ 83.141 Special Requirements for survival craft stations.

(a) Equipment provided for use in survival craft stations shall, if capable of transmitting on:

* * * * *

(4) The frequency 121.5 MHz, be able to use A2 or A3 emission.

(b) If a receiver is provided, it shall be capable of receiving the frequency and type of emission which the transmitter is capable of using: *Provided*, That if the transmitter frequency is 8364 kHz the receiver shall be capable of receiving A1 and A2 emission throughout the band 8320–8745 kHz: *And further provided*, That if the transmitter frequency is 121.5 MHz using A3 emission, there shall be an associated receiver capable of receiving A3 emission.

* * * * *

(d) When an EPIRB station is contained as a part of a survival craft station, the EPIRB portion shall be limited to the frequencies 121.5 and 243 MHz (transmission only) and to A9 emission.

11. A new § 83.144 is added to read as follows:

§ 83.144 Special requirements for emergency position indicating radiobeacon stations.

(a) Emergency position indicating radiobeacon (EPIRB) stations are limited to transmission only, using A9 emission, on the frequencies 121.5 and 243 MHz.

(b) The EPIRB may be turned on by automatic means, such as water activated battery, or by an on-off switch. In any event, a positive means of turning the equipment off shall be provided. Where an on-off switch is employed, a guard or other means shall be provided to prevent inadvertent activation.

(c) The EPIRB shall be provided with a visual and/or audible indicator which clearly shows that the device is transmitting.

(d) In regard to testing, each EPIRB shall be capable of complying with the following requirements:

(1) May be fitted with a manually activated test switch, or comparable device, associated test circuit, and output indicator which shall, in the test position:

(i) Permit the operator to determine that the unit is operative;

(ii) Switch the transmitter output to a test circuit (dummy load), the impedence of which is equivalent to that of the antenna affixed to the EPIRB; and

(iii) Reduce radiation to a level not to exceed 15 microvolts per meter at a distance of twenty (20) feet, free space, irrespective of direction.

(2) If so equipped, the manually activated test switch, or comparable device, shall be of a type which must be held in position to operate, and which will switch the transmitter off and reconnect the output from the test circuit (dummy load) to the antenna when released. A guard or other means shall be provided to prevent its inadvertent activation.

(3) Means shall be provided to protect the indicator from damage due to dropping or contact with other objects.

(4) An EPIRB without a test circuit as described in paragraph (c) (1) and (2) of this section may be tested in coordination with, or under the control of the U.S. Coast Guard to insure that testing is conducted under electronic shielding, or other conditions sufficient to insure that no transmission or radiated energy occurs that could be received by a radio station and result in a false distress alarm. If testing with Coast Guard involvement is not practicable, brief operational tests are authorized provided the tests are conducted within the first five minutes of any hour, are not longer than three audio sweeps or one second,

whichever is longer, and, if available, a dummy load is used during test.

(e) The power and modulation requirements specified in this part for EPIRBs shall be met under the environmental test conditions, with the exception of the temperature limits, specified in the Radio Technical Commission for Aeronautics (RTCA) Document Nos. DO–145 or DO–146. The air temperature limits for testing these devices shall be from −20 to 55 degrees centigrade. Additionally those tests specified by RTCA with regard to altitude, decompression, and overpressure are not applicable to EPIRB stations.

(f) The equipment shall not incorporate any vacuum tubes in its design. Components shall be so rated that the equipment will meet the requirements specified for EPIRBs in this part after extended periods of inaction while carried in vessels and subjected to the environmental conditions prescribed. Operation into any load likely to occur in service, from open to short, shall not cause continuing degradation in performance.

(g) The operation of controls intended for use during normal operation in all possible combinations or sequences shall not result in a condition whose presence or continuation would be detrimental to the continued performance of the equipment. The number of controls shall be kept to a minimum to permit ease of operation of the equipment.

(h) The EPIRB shall have a battery for power supply which is independent of the vessel power supply. The battery, whether an original or replacement component, shall be designed as an integral part of the equipment or be securely attached thereto. The date (month and year) of the battery's manufacture shall be permanently and legibly marked on the battery and the expiration date (month and year) upon which 50 percent of its useful life has expired shall be permanently and legibly marked on both the battery and the outside of the transmitter. The useful life of the battery (established by the EPIRB manufacturer) is the length of time, after its date of manufacture, that the battery may be stored under normal marine environmental conditions without losing its ability to meet the transmitter power requirement prescribed in § 83.134(h). The electro-mechanical connectors on and to the battery must be corrosion resistant and positive in action, and may not rely for contact upon spring force alone.

(i) The equipment, exclusive of water activated batteries, shall be waterproof and shall not be activated by rain. The effects of standing water on the outer surface of the equipment shall have no significant adverse effect upon the performance of the EPIRB.

(j) Concise, unambiguous operating instructions, understandable by untrained personnel, shall be conspicuously and permanently displayed on the equipment. The display shall be weather resistant, waterproof, and abrasion resistant.

(k) The exterior of the equipment shall have no sharp edges or projections which could easily damage inflatable survival equipment, injure personnel or damage their clothing. Means shall be provided to secure the EPIRB to a survival craft or person.

(l) If the antenna is not designed to be stowed in its normal operating position ,the antenna shall be deployable to the designed length and operating position in a foolproof manner. The antenna shall be securely attached to the EPIRB and of such design that it is easy to de-ice. The antenna shall provide optimum performance at 121.5 and 243 MHz and its radiation pattern in the horizontal plane shall be essentially omnidirectional.

(m) The equipment shall be so designed that it may be deployed, its controls actuated, or the antenna erected, each by a single action task which can be performed by either hand.

12. Section 83.164(b) is amended to read as follows:

§ 83.164 Waivers of operator requirement.

* * * * *

(b) No radio operator authorization is required for the operation of a survival craft station or an emergency position indicating radiobeacon station while it is being used solely for survival purposes or to facilitate search and rescue operations.

13. Section 83.178 is amended by adding a new paragraph (e) to read as follows:

§ 83.178 Unauthorized transmissions.

Stations subject to this part shall not:

* * * * *

(e) Use telephony on 243 MHz.

14. Section 83.233 is amended to read as follows:

§ 83.233 Frequencies for use in distress.

* * * * *

Frequency band	Emission	Carrier frequency
405–535 kHz	A2	500 kHz.
1606–4000 kHz	A3, A3H	2182 kHz.
118–136 MHz	A2, A3, A9	121.5 MHz.
156–162 MHz	F3	156.8 MHz.
225–399.9 MHz	A9	243 MHz.

15. A new § 83.252 is added to read as follows:

§ 83.252 Equipment to facilitate search and rescue operations.

(a) Survival craft stations may transmit the signals, calls and messages described in this subpart.

(b) Emergency position indicating radiobeacons may transmit only the distinctive emission specified in § 83.137 and only on the frequencies 121.5 and 243 MHz.

16. Paragraph (c) of § 83.322 is amended and a new paragraph (d) is added to read as follows:

§ 83.322 Frequencies for use in distress.

* * * * *

(c) The frequency 121.5 MHz (using class A2 emission) is available for radiobeacon purposes to survival craft stations. The frequency 121.5 MHz (using A9 emission) is available to emergency position indicating radiobeacon (EPIRB) stations for facilitating search and rescue operations.

(d) The frequency 243 MHz (class A9 emission only) is available to EPIRB stations for facilitating search and rescue operations.

17. Section 83.326 is amended by adding a new paragraph (c) to read as follows:

§ 83.326 Identification of stations.

* * * * *

(c) Emergency position indicating radiobeacon stations do not require identification.

18. Paragraph (b) of § 83.352 is amended to read as follows:

§ 83.352 Frequencies for use in distress.

* * * * *

(b) The frequency 121.5 MHz (class A3 emission) is available to authorized ship stations for emergency communications between ships and aircraft.

19. Paragraph (c) of § 83.401 is amended to read as follows:

§ 83.401 Assignable frequencies for direction finding.

* * * * *

(c) In the event of distress, the following frequencies may be used for radio direction finding for purposes of search and rescue by any authorized ship or survival craft station or by emergency position indicating radiobeacon stations as described in this part.

410 kHz, 500 kHz, 2182 kHz, 8364 kHz, 121.5 HMz, 243 MHz

[FR Doc.73-3908 Filed 3-2-73;8:45 am]

federal register

MONDAY, MARCH 5, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 42

PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

■

MEDICAL ASSISTANCE PROGRAM

Intermediate Care Facility Services

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

[45 CFR Parts 234, 248, 249, 250]

MEDICAL ASSISTANCE PROGRAM

Intermediate Care Facility Services

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare. These regulations implement section 4 of Public Law 92-223, which transferred intermediate care facility services to the medical assistance program under title XIX of the Social Security Act, and provided for a program of independent professional review of such services, and sections 268, 271A, 278, 292, 297, 298, 299, 299A, and 299L of Public Law 92-603. Amendments to implement additional provisions of Public Law 92-603 related to intermediate care facilities will be issued at a future date. The existing regulations (45 CFR 234.130) for intermediate care facility services under title I, X, XIV, or XVI of the Act are being revised to describe their applicability under certain conditions or for a specified period. Other technical and conforming changes in current regulations are included. The proposed regulations set forth Federal policy with respect to:

1. Federal matching and limitations for intermediate care facility services under a State's plan for medical assistance under title XIX of the Social Security Act;

2. Methods and procedures to be followed by the States in certifying providers of intermediate care facility services under the program;

3. A Federal definition of an intermediate care facility in terms of the conditions and standards which must be met by a facility qualifying as a provider of intermediate care facility services;

4. Similarly, a Federal definition of an intermediate care facility for the mentally retarded;

5. A regular State program of independent professional review and a written plan of service prior to admission to or authorization of benefits in an intermediate care facility;

6. Reimbursement of intermediate care facilities under the medical assistance program.

As modifications are determined in the standards for payment and the procedures for the certification of skilled nursing facilities in accordance with Public Law 92-603, conforming changes will be made in the intermediate care facility regulations to the extent required.

Prior to the adoption of the proposed regulations, consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington, DC 20201, on or before April 4, 1973. Comments received will be available for public inspection in Room 5121 of the Department's offices at 301 C Street SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (area code 202—963-7361).

(Sec. 1102, 49 Stat. 647; sec. 1902(a)(31)(A), 85 Stat. 810; sec. 1905(c)(3), 85 Stat. 809; 42 U.S.C. 1302, 1396(a)(31)(A), 1396d(c)(3))

Dated: February 23, 1973.

PHILIP J. RUTLEDGE,
Acting Administrator,
Social and Rehabilitation Service.

Approved: February 26, 1973.

FRANK C. CARLUCCI,
Acting Secretary.

Chapter II, Title 45, Code of Federal Regulations, is amended as set forth below.

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

1. Section 234.130 of Part 234 is amended by revising paragraphs (a) and (c). Paragraph (a) is revised to specify the conditions and requirements to be met by States authorized by section 4(d) of Public Law 92-223, as amended by section 292 of Public Law 92-603, to provide intermediate care facility services under title XI of the Social Security Act. Policies for the provision of intermediate care facility services under the medical assistance program, title XIX of the Act, are being published simultaneously in Parts 249 and 250 of this chapter. Paragraph (c) is revised to specify the governing rules for Federal financial participation in payments for intermediate care facility services under the medical assistance program during the period beginning January 1, 1972, and ending on the date on which determination is made by the State under the provisions of § 249.11 of this chapter as to the facility's eligibility for such payments, but in no case later than 12 months following the date of publication of these regulations, as amended, § 234.130 reads as follows:

§ 234.130 Assistance in the form of institutional services in intermediate care facilities.

(a) *Applicability and State plan requirements.* A State which, on January 1, 1972, did not have in effect a State plan approved under title XIX of the Social Security Act may provide assistance under title I, X, XIV, or XVI of the Act in the form of institutional services in intermediate care facilities as authorized under title XI of the Act, until the first day of the first month (occurring after January 1, 1972) that such State does have in effect a State plan approved under title XIX of the Act. In any State which may provide such assistance as authorized under title XI of the Act, a State plan under title I, X, XIV, or XVI of the Act which includes such assistance must:

* * * * *

(c) *Federal financial participation.* (1) Federal financial participation is available under section 1121 of the Act in vendor payments for institutional services provided to individuals who are eligible under the respective State plan and who are residents in intermediate care facilities. The rate of participation is the same as for money payments under the respective title or, if the State so elects, at the rate of the Federal medical assistance percentage as defined in section 1905(b) of the Act. Such Federal financial participation ends on the date specified in paragraph (c)(2) of this section, or 12 months after the date when the State first has in effect a State plan approved under title XIX of the Act, whichever is later.

(2) For the period from January 1, 1972, to the date on which a determination is made under the provisions of § 249.11 of this chapter as to a facility's eligibility to receive payments for intermediate care facility services under the medical assistance program, title XIX of the Act, but not later than 12 months following the date of publication of these regulations, Federal financial participation in payments for such services under title XIX is governed by the provisions of this section, applied to State plans under title XIX.

* * * * *

PART 248—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

2. Section 248.60 of Part 248 is amended by revising paragraph (a)(1) and adding a new paragraph (b)(9) as set forth below.

§ 248.60 Institutional status.

(a) *Federal financial participation.* (1) Federal financial participation under title XIX of the Social Security Act is not available in medical assistance for any individual who is an inmate of a public institution except as a patient in a medical institution or as a resident of an intermediate care facility.

* * * * *

(b) *Definitions.* * * *

(9) "Resident" of an intermediate care facility is a patient or other individual who has been admitted to an intermediate care facility (including an institution for the mentally retarded or persons with related conditions) prior to the date of publication of these regulations, or after that date in accordance with § 250.24 of this chapter, and is receiving room, board, and a planned program of care and supervision on a continuous 24-hour-a-day basis, and in the case of institutions for the mentally retarded is also receiving active treatment (see § 249.10 (d)(1)(v) of this chapter).

PART 249—SERVICES AND PAYMENT IN MEDICAL ASSISTANCE PROGRAMS

3. Section 249.10 of Part 249 is amended by revising paragraph (b)(14); redesignating paragraph (b)(15) as paragraph (b)(17); reserving paragraph (b)(16); and by adding a new paragraph (b)(15), revising paragraph (c), and adding new subdivisions (iv), (v), and (vi) to paragraph (d)(1), as set forth below:

§ 249.10 Amount, duration, and scope of medical assistance.

* * * * *

(b) *Federal financial participation.* * * *

(14) *Inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals 65 years of age or over in an institution for tuberculosis or mental diseases.* For purposes of this subparagraph:

(i) (*a*) "Inpatient hospital services" in an institution for mental diseases are those items and services which are provided under the direction of a physician for the care and treatment of inpatients in a psychiartic hospital which meets the requirements under title XVIII, section 1861(f) of the Social Security Act.

(*b*) "Inpatient hospital services" in an institution for tuberculosis are those items and services which are provided under the direction of a physician for the care and treatment of inpatients in a tuberculosis hospital which meets the requirements under title XVIII, section 1861(g) of the Social Security Act.

(ii) "Skilled nursing facility services" are those items and services furnished by a skilled nursing facility as defined in paragraph (b)(4)(i) of this section.

(iii) "Intermediate care facility services" are those items and services furnished by an intermediate care facility as defined in paragraph (b)(15) of this section to residents who have been determined in accordance with § 250.2¼ of this chapter to be in need of such care.

(iv) An "institution for mental diseases" means an institution which is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services.

(v) An "institution for tuberculosis" means an institution which is primarily engaged in providing diagnosis, treatment, or care of persons with tuberculosis, including medical attention, nursing care, and related services.

(15) *Intermediate care facility services (other than such services in an institution for tuberculosis or mental diseases) for individuals who are determined, in accordance with section 1902(a)(31)(A) of the Act, to be in need of such care.* Intermediate care facility services may include services in a public institution (or distinct part thereof) for individuals determined to be mentally retarded or to have cerebral palsy, epilepsy, or other developmental disabilities as defined pursuant to Part C of the Developmental Disabilities Services and Facilities Construction Act. "Intermediate care facility services" means those items and services furnished by a facility which meets the following conditions:

(i) (*a*) It meets fully all requirements for licensure under State law to provide, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities. Payments to a facility which formerly met all requirements of the State for licensure, but is currently determined not to meet fully all such requirements, may be recognized by the single State agency for a period specified by the State standard-setting authority, if during such period such facility promptly takes all necessary steps to meet such requirements. Institutions operated by a governmental agency may be considered to be licensed if they meet all requirements which are applied for licensure to the same type of facility in any other ownership category (i.e., nonprofit or proprietary) within the State;

(*b*) In the case of a public institution for the mentally retarded or persons with related conditions, it is an institution (or distinct part thereof) primarily for the diagnosis, treatment, and rehabilitation of the mentally retarded or persons with epilepsy or cerebral palsy, which provides in a protected residential setting individualized on-going evaluation, planning, 24-hour supervision, coordination, and integration of health and/or rehabilitative services to help each resident reach his maximum of functioning capabilities;

(*c*) It meets such standards of safety and sanitation as are applicable to nursing homes under State law;

(*d*) It meets the standards for an intermediate care facility specified by the Secretary under § 249.12, or, in the case of an institution for the mentally retarded or persons with related conditions (or distinct part thereof), meets the standards for an intermediate care facility specified by the Secretary under § 249.13; and

(*e*) Effective no later than 12 months following the date of publication of these regulations, it has been determined by the single State agency in accordance with § 249.11 to meet all of the conditions in paragraph (b)(15)(i) of this section, as evidenced by an agreement executed between the single State agency and the facility for the provision of intermediate care facility services and the making of payments under the plan; or

(ii) Effective no later than 12 months following the date of publication of these regulations:

(*a*) In the case of a qualified participating provider of hospital services or skilled nursing facility services under title XIX or title XVIII of the Social Security Act, it has been determined by the single State agency in accordance with § 249.11 of this part to meet the standards of § 249.12(a)(1)(ii), (3), (4), (5), (6), (11)(iii) and (vi), and (14), as evidenced by an agreement between the single State agency and the facility for the provision of intermediate care facility services and the making of payments under the plan, or

(*b*) In the case of an institution for the mentally retarded or persons with related conditions (or distinct part thereof) participating as a provider of hospital services or skilled nursing facility services under title XIX or title XVIII of the Social Security Act, it has been determined by the single State agency in accordance with § 249.11 to meet the standards of § 249.13(a)(4), (6), (7), and (8) or, until July 1, 1976, § 249.13(a)(4), (6), (7), and (8)(i), (iii)(*a*), (iv), and (v), as evidenced by an agreement between the single State agency and the facility for the provision of intermediate care facility services and the making of payments under the plan.

(iii) The term "intermediate care facility" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ Scientist, Boston, Mass., but only with respect to institutional services deemed appropriate by the State.

(iv) The term "intermediate care facility" also includes any institution, located on an Indian reservation, which provides, on a regular basis, health-related care and services and is certified by the Secretary as meeting the provisions of paragraph (b)(15)(i)(*c*) of this section and the standards of § 249.12.

With respect to intermediate care facility services furnished by an intermediate care facility whose provider agreement has expired or has otherwise terminated, the State agency may continue to claim Federal financial participation in payments on behalf of eligible individuals for such services furnished by such institution during a period not to exceed 30 days starting with the date of expiration or other termination of its provider agreement, but only if such individuals were admitted to the home before the date of expiration or other termination of its provider agreement, and if the State agency makes a showing satisfactory to the Secretary that it has made reasonable efforts to facilitate the orderly transfer of such individuals from such institution to another facility.

(16) [Reserved]

(c) *Limitations.* (1) Federal financial participation in expenditures for medical and remedial care and services listed in paragraph (b) of this section is not available with respect to any individual who is an inmate of a public institution (except as a patient in a medical institution or as a resident of an intermediate care facility), or any individual who has not attained 65 years of age who is a patient in an institution for tuberculosis or mental diseases;

(2) Payments to institutions for the mentally retarded or persons with related conditions may not include reimbursement for vocational training and educational activities; and

(3) With respect to expenditures in any calendar quarter prior to January 1, 1975, Federal financial participation for intermediate care facility services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions is available only to the extent that:

(i) The cost of such services for individuals in such institution receiving assistance under the State plan in the current calendar quarter, and (ii) the cost of assistance and health, social, or rehabilitative services provided in the current quarter under a plan developed

and supervised by a Qualified Mental Retardation Professional (as defined in § 249.13(a)(6)) of such institution for individuals who were released from such institution during the preceding four quarters and would be eligible under the State plan if in such institution exceeds the product of the total number of eligible individuals receiving intermediate care facility services in the institution in the current quarter times the per capita per quarter non-Federal expenditures in the institution (or distinct part thereof) for the base year. Federal financial participation will be at 100 percent of the increase in costs over the base year for eligible individuals in such institution and would be eligible individuals released during the preceding four quarters until such participation is equal to the Federal medical assistance percentage times the cost of intermediate care facility services for eligible individuals in the institution (or distinct part thereof). When the increase exceeds the Federal medical assistance percentage times the cost of intermediate care facility services for eligible individuals in the institution, Federal financial participation will be at the Federal medical assistance percentage rate. For purposes of this subparagraph.

(*a*) The base year shall be the four quarters immediately preceding the quarter in which the State in which such institution is located elected to make such services available under its plan approved under title XIX;

(*b*) The per capita per quarter expenditures for the base year and the costs for intermediate care facility services in the institution for each subsequent period in which claims are made are those expenditures for inpatient care and services in such public institution (or distinct part thereof) determined in accordance with Office of Management and Budget circular A–87 and cost allocation procedures and guidelines prescribed by the Social and Rehabilitation Service;

(*c*) For purposes of determining the per capita per quarter cost, the number of eligible individuals receiving intermediate care facility services in the current quarter means the number of different eligible individuals receiving care for the whole quarter plus the full quarter equivalent number for eligible individuals receiving less than a full quarter's care. In determining the per capita expenditures for the base year, similar methods of computation shall be used;

(*d*) For purposes of determining the per capita per quarter non-Federal expenditures, non-Federal expenditures mean the total costs computed under paragraph (c)(3)(ii) (*b*) of this section less any Federal funds received directly or indirectly in relation to such costs;

(*e*) The cost of assistance and health, social, or rehabilitative services for individuals released from such institution during the preceding four quarters may include only those State and local expenditures for which Federal financial participation is not received;

(*f*) As a basis for determining the proper amount of Federal payments, as specified in this paragraph (c)(3) of this section, the State or appropriate political subdivision must submit to the single State agency, in such form and at such times as are specified by the single State agency, in accordance with the Department of Health, Education, and Welfare regulations and with Social and Rehabilitation Service guidelines, estimated and actual cost data and other necessary information for each such institution and for the services provided to individuals released from each such institution during the preceding four quarters; and

(*g*) The single State agency shall have on file adequate records to substantiate compliance with the requirements of this section and to assure that all necessary adjustments have been made.

(d) General provisions. (1) * * *

(iv) "Resident of an intermediate care facility" is a patient or other individual who has been admitted to an intermediate care facility (including an institution for the mentally retarded or persons with related conditions) prior to the date of publication of these regulations, or after that date in accordance with § 250.24 of this chapter, and is receiving room, board, and a planned program of care and supervision on a continuous 24-hour-a-day basis, and in the case of institutions for the mentally retarded is also receiving active treatment.

(v) For purposes of paragraph (d)(1)(iv) of this section and § 248.60(b) of this chapter, "active treatment" means:

(*a*) Daily participation, in accordance with an individual plan of care and service, in activities, experiences, or therapies which are part of a professionally developed and supervised program of health, social, or rehabilitative services offered by or procured by the institution for its residents;

(*b*) An individual plan of care and service which is a comprehensive written plan developed for each resident by an appropriate interdisciplinary professional team setting forth measurable goals or behaviorally stated objectives to be achieved through regularized activities, meaningful experiences or individually designed therapies, programed on an integrated basis. The overall objective of the plan is to assist the individual to attain or maintain the optimal physical, intellectual, social, or vocational functioning of which he is presently or potentially capable;

(*c*) A complete medical, psychological, and social diagnosis and evaluation, including evaluation of his need for institutional care, by an interdisciplinary professional team prior to but not to exceed 3 months before admission to the institution or, in the case of individuals who make application while in such institution, before requesting payment under the plan;

(*d*) Re-evaluation medically, psychologically, and socially at least every 6 months by the staff involved in carrying out the resident's individual plan of care and service, including review of the appropriateness of the individual plan of care and service, assessment of continuing need for institutional care, and consideration of alternate methods of care; and

(*e*) An individual postinstitutionalization plan (as part of the individual plan of care and service) developed prior to discharge by a Qualified Mental Retardation Professional (see § 249.13(a)(6)) and other appropriate social service professionals, including provision for appropriate services, protective supervision, and other follow-up services in the resident's new environment.

(vi) For purposes of paragraph (d)(1)(v) of this section, "an interdisciplinary professionals who meet the requirements cludes as a minimum a physician, a psychologist, a social worker, and other professionals who meet the requirements of § 24913(a)(6) and are necessary to the development and implementation of the individual plan of care and service.

* * * * *

4. Section 249.11 is redesignated as § 249.20 of Part 249, and as so redesignated is revised to read as set forth below:

§ 249.20 Free choice of providers of medical services: State plan requirement.

A State plan for medical assistance under title XIX of the Social Security Act must provide that any individual eligible for medical assistance under the plan may obtain the services available under the plan from any institution, agency, pharmacy, or practitioner, including an organization which provides such services or arranges for their availability on a prepayment basis, which is qualified to perform such services. This provision does not prohibit the State agency from establishing the fees which will be paid to providers for furnishing medical and remedial care available under the plan or from setting reasonable standards relating to the qualifications of providers of such care. In the case of Guam, Puerto Rico, and the Virgin Islands this provision applies only with respect to calendar quarters beginning after June 30, 1975.

5. New §§ 249.11, 249.12, and 249.13 are added to Part 249 as set forth below:

§ 249.11 Intermediate care facility services; State plan requirements.

A State plan for medical assistance under title XIX of the Social Security Act which includes intermediate care facility services must provide that:

(a) Any intermediate care facility receiving payments under the plan must supply to the licensing agency of the State full and complete information, and promptly report any changes which would affect the current accuracy of such information, as to the identity

(1) Of each person having (directly or indirectly) an ownership interest of 10 percent or more in such facility,

(2) In case a facility is organized as a corporation, of each officer and director of the corporation, and

(3) In case a facility is organized as a partnership, of each partner;

(b) The single State agency will, prior to execution of an agreement with any institution (including hospitals and skilled nursing facilities) for provision

of intermediate care facility services and making payments under the plan, obtain sufficient evidence through a written agreement with the agency of the State designated for the inspection of skilled nursing facilities under the plan that the institution meets the conditions set forth under § 249.10(b)(15);

(c) On-site inspections by qualified personnel will be made at least once during the term of a provider agreement or more frequently if there is a question of compliance, such as may be raised as a result of independent professional reviews, and the single State agency will review the information thus obtained;

(d) The single State agency agreement with a facility for payments under the plan will not exceed a period of 1 year, except that the initial agreement executed in accordance with these regulations may extend for a period of 6 months (for facilities certified with deficiencies, as provided for in this section) and 12 months (for facilities certified without deficiencies) following the end of the 12-month period from date of publication of these regulations. Execution of an agreement shall be contingent upon a determination of compliance with the provisions of § 249.10(b)(15), except that:

(1) In the case of any intermediate care facility determined or certified to be in substantial compliance (i.e., is in compliance except for deficiencies) with the requirements of § 249.12 or § 249.13, the single State agency may enter into an agreement with such intermediate care facility for the provision of services and making of payments under the plan for a period not to exceed 6 months: *Provided,* That on the basis of documented evidence derived from a survey the single State agency finds that:

(i) There is a reasonable prospect that the deficiencies can be corrected within 6 months and the intermediate care facility provides in writing a plan acceptable to the single State agency for so doing; and

(ii) The deficiencies noted, individually or in combination, do not jeopardize the health and safety of the residents and a written justification of such a finding is maintained on file;

and *Provided further,* That

(iii) No more than two successive agreements for 6 months are executed with any intermediate care facility having deficiencies, and no second agreement is executed if any of the deficiencies existing are the same as those which occasioned the prior agreement unless the single State agency finds on the basis of documented evidence derived from a survey that the facility has made substantial effort and progress in correcting such deficiencies; and

(2) In the case of an intermediate care facility determined to have deficiencies under the requirements for environment and sanitation (§ 249.12(a)(11) or § 249.13(a)(5) and (8)(v)), or of the Life Safety Code (§ 249.12(a)(13) or § 249.13(a)(3)), it may be recognized for certification as an intermediate care facility over a period not exceeding 2 years following the date of such determination: *Provided that:*

(i) The institution submits a written plan of correction which contains:

(*a*) The specific steps that it will take to meet all such requirements; and

(*b*) A timetable not exceeding 2 years from the date of the initial certification after publication of these regulations detailing the corrective steps to be taken and when correction of deficiencies will be accomplished;

(ii) The State agency makes a finding that the facility potentially can meet such requirements through the corrective steps and they can be completed during the 2 year allowable period of time;

(iii) During the period allowed for corrections, the institution is in compliance with existing State fire safety and sanitation codes and regulations;

(iv) The institution is surveyed by qualified personnel at least semiannually until corrections are completed and the single State agency finds on the basis of such surveys that the institution has in fact made substantial effort and progress in its plan of correction as evidenced by supporting documentation, signed contracts and/or work orders, and a written justification of such findings is maintained on file; and

(v) At the completion of the period allowed for corrections, the intermediate care facility is in full compliance with the Life Safety Code (NFPA, 21st Edition 1967), and the requirements for environment and sanitation set forth under § 249.12(a)(11) or § 249.13(a)(5) and (8)(v) of this part, except for any provisions waived by the single State agency in accordance with § 249.12(b) or § 249.13(b) of this part.

For the purposes of paragraph (d) of this section, waivers granted pursuant to § 249.12(b) or § 249.13(b) are not considered deficiencies;

(e) In the case of a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions, the single State agency will, prior to the execution of an agreement, obtain a written agreement from the State or political subdivision responsible for the operation of such public institution that the non-Federal expenditures in any calendar quarter prior to January 1, 1975, with respect to services furnished to patients in such institution (or distinct part thereof) in the State will not, because of payments made under the plan, be reduced below the average amount expended for such services in such institution in the four quarters immediately preceding the quarter in which the State in which such institution is located elected to make such services available under its approved plan;

(f) For purposes of determining continuing provider eligibility, the single State agency will review information contained in reports of independent professional review teams on inspections made pursuant to State plan provisions under § 250.24 of this chapter;

(g) All information and reports used in determining whether an institution meets the conditions set forth in § 249.10(b)(15) will be maintained on file for a period of at least 2 years by the appropriate State agency for ready access by the Department of Health, Education, and Welfare; and

(1) Copies of reports of inspection are completed by inspector(s) surveying the premises with notations indicating whether each standard for which inspection is made is or is not satisfied, with documentation of deficiencies; and

(2) Copies of official notices of waivers granted pursuant to § 249.12(b) or § 249.13(b) are on file; and

(h) Institutions which do not qualify under § 249.10(b)(15) are not recognized as intermediate care facilities for purposes of payment under title XIX of the Act.

§ 249.12 Standards for intermediate care facilities (other than institutions for the mentally retarded or persons with related conditions).

(a) *Standards.* The standards for an intermediate care facility which are specified by the Secretary pursuant to section 1905(c) of the Social Security Act and referred to in §§ 249.10(b)(15) and 249.11 are as follows. The facility:

(1) Maintains methods of administrative management which assure that:

(i) The facility is administered by a person licensed in the State as a nursing home administrator or, in the case of a hospital qualifying as an intermediate care facility, by the hospital administrator, with the necessary authority and responsibility for management of the institution and implementation of administrative policies;

(ii) An individual on the professional staff of the facility is designated as resident services director and is assigned responsibility for the coordination and monitoring of the residents' overall plan of service;

(iii) The numbers and categories of personnel are determined by the number of residents and their particular needs in accordance with accepted policies of effective institutional care and guidelines issued by the Social and Rehabilitation Service;

(iv) Written policies and procedures are developed by the administrator with the assistance of the resident services director and a registered nurse which govern all areas of service provided by the facility;

(v) There are written policies for the preservation of patient dignity and which prohibit mistreatment, neglect, or abuse of residents and which provide for the registration of resident complaints without threat of discharge or other reprisals;

(vi) A written account is maintained on a current basis for each resident with written receipts for all personal possessions and funds received by or deposited with the facility and for all expenditures and disbursements made by or in behalf of the resident;

(vii) There are written procedures for personnel to follow in an emergency including care of the resident, notification of the attending physician and other

persons responsible for the resident, arrangements for transportation, for hospitalization, or other appropriate services;

(viii) There is an orientation program for all new employees that includes review of all facility policies, including resident care policies and emergency and disaster instructions;

(ix) An inservice education program is planned and conducted for the development and improvement of skills of all the facility's personnel, including training related to problems and needs of the population served by the facility, and records are maintained which indicate the content of, and participation in, all staff development programs;

(x) There is available to staff, residents, consumer groups, and the interested public all policies of the facility including a written outline of its objectives and a statement of the rights of its residents; and

(xi) The admission, transfer, and discharge of residents of the facility are conducted in accordance with written policies which include at least the following provisions:

(*a*) Only those persons are accepted whose needs can be met within the accommodations and services provided by the facility;

(*b*) As changes occur in their physical or mental condition, necessitating service or care which cannot be adequately provided by the facility, residents are transferred promptly to hospitals, skilled nursing facilities, or other appropriate institutions; and

(c) The resident, his next of kin, the attending physician and the responsible agency, if any, are consulted in advance of the transfer or discharge of any resident, and casework services or other means are utilized to assure that adequate arrangements exist for meeting his needs through other resources;

(2) Maintains an organized resident record system which assures that:

(i) There is available to professional and other staff directly involved with the resident and to appropriate representatives of the State agency a record for each resident which includes as a minimum:

(*a*) Identification information and admission data including past resident medical and social history;

(*b*) Copies of all initial and periodic examinations and evaluations including all plans of care and service and periodic summaries of resident progress;

(*c*) Entries describing all treatments and services rendered and medications ordered and/or administered; and

(*d*) All symptoms and other indications of illness or injury brought to the attention of the staff by the resident or from other sources including the date, time, and action taken regarding each;

(ii) All information contained in the resident's record is privileged and confidential and written consent of the resident (or of a designated responsible agent acting on his behalf) is required for release of information;

(iii) Records are adequately safeguarded against destruction, loss, or unauthorized use; and

(iv) All records are retained in accordance with State statutes, or in their absence, for a minimum of 5 years following a resident's discharge;

(3) Maintains a rehabilitative program, either directly or through arrangements with qualified outside resources, consisting of at least physical therapy, occupational therapy, speech therapy and audiology, which is designed to preserve and improve abilities for independent function, prevent insofar as possible progressive disabilities, and restore maximum function and which is:

(i) Provided in accordance with accepted professional practices by qualified therapists or by qualified assistants or other supportive personnel under appropriate supervision;

(ii) Provided under a written plan of care, developed in consultation with the attending physician and an appropriate therapist. The plan is based on the attending physicians' orders and an assessment of the resident's rehabilitation potential;

(iii) Continued only upon the written order of the physician, after a report of the resident's progress is communicated to the attending physician within 2 weeks of the initiation of the service; the resident's progress is thereafter reviewed regularly, and the plan altered or revised as necessary; and

(iv) Recorded in the resident's record and is dated and signed by the person ordering or providing the service;

(4) Provides social services designed to promote preservation of the resident's physical and mental health and to prevent the occurrence or progression of personal and social problems; and:

(i) In the absence of a qualified social worker on the staff, who is a graduate of a school of social work accredited by the Council on Social Work Education, a designated staff member suited by training and experience is responsible for arranging for social services through health and welfare resources in the community, and for the integration of the social services with other elements of the resident's plan of care. Such staff member is provided consultation on a regular monthly basis by a qualified social worker; and maintains a written record of the frequency and nature of the qualified social work consultation and services provided or obtained; and

(ii) There is an evaluation of each resident's social needs, and a plan for providing such care is formulated and recorded in the resident's record, and periodically reevaluated in conjunction with the resident's total plan of care;

(5) Provides activities programing with the resident's participation designed to encourage restoration to self-care and maintenance of normal activity through physical exercise, intellectual, and sensory stimulation and social interaction which assures that:

(i) A current written outline for group and independent activities of sufficient variety to meet the needs of the various types of residents in the facility is maintained under the direction and supervision of a staff member qualified by experience and/or training in directing group activity or who has available consultation from a qualified recreational therapist, occupational therapist, occupational therapy assistant, or social worker;

(ii) Independent and group activities are planned for each resident as a matter of record and provided in accordance with his needs and interests and each resident's activity plan is reviewed with the resident's participation at least monthly and altered as needed with appropriate notations recorded describing his social functioning;

(iii) Adequate indoor and outdoor recreation areas are provided with sufficient equipment and materials available to support independent and group activities; and

(iv) Opportunities, as available, are provided for the resident's participation in activities of interest outside the facility through community educational, social, recreational, and religious resources;

(6) Provides health services under direct supervision of a health services supervisor in accordance with the following:

(i) Immediate supervision of the facility's health services on all days of each week is by a registered nurse or licensed practical (or vocational) nurse employed full time (exclusive of all other duties) on the day shift and who is currently licensed to practice in the State: *Provided that:*

(*a*) In the case of facilities where a licensed practical (or vocational) nurse serves as the supervisor of health services, consultation is provided by a registered nurse, through formal contact, at regular intervals, but not less than 4 hours weekly; and

(*b*) By January 1975, licensed practical (or vocational) nurses serving as health services supervisors have training that includes either graduation from a State-approved school of practical nursing or education and other training that is considered by the State authority responsible for licensing of practical nurses to provide a background that is equivalent to graduation from a State approved school of practical nursing, or has successfully completed the Public Health Service examination for waivered licensed practical (vocational) nurses;

(ii) The health services supervisor has the following responsibilities:

(*a*) The development and implementation of a written health care plan for each resident in accordance with instructions of the attending physician;

(*b*) General supervision, guidance and assistance for each resident in carrying out his personal health program to assure that preventive measures, treatments and medications prescribed by the attending physician are properly carried out and recorded; and

(*c*) The review and revision of resident health care plans, as needed, but not less than quarterly;

(iii) Restorative nursing care is provided to assist each resident to achieve and maintain the highest possible degree of function, self-care and independence;

(iv) Health services personnel are sufficient in numbers and qualifications so that:

(a) There is on duty, awake and fully dressed, a sufficient number of responsible staff members at all times immediately accessible to all residents and qualified by training and experience to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies;

(b) In the presence of minor illness and for temporary periods, bedside care under the direction of the resident's physician is available from or supervised by a registered nurse or licensed practical nurse; and

(c) All resident health needs are met and each resident receives treatments, medications, diet and other health services as prescribed and planned, all hours of each day and all days of each week;

(7) Maintains policies and procedures to assure that each resident's health care is under the continuing supervision of a physician who sees the resident as needed and in no case less often than quarterly unless justified otherwise and documented by the attending physician;

(8) Provides effective arrangements through which services required by the resident but not regularly provided within the facility can be obtained promptly when needed. This includes but is not limited to laboratory, X-ray and other diagnostic services, routine and emergency dental care, podiatry services, optometrical services and supplies, and other required equipment, supplies and appliances;

(9) Maintains policies and procedures relating to drugs and biologicals which provide that:

(i) (a) If the facility maintains a pharmacy department, it employs a licensed pharmacist; or

(b) If the facility does not have a pharmacy, it has formal arrangements with a licensed pharmacists to provide consultation on methods and procedures for ordering, storage, administration and disposal and recordkeeping of drugs and biologicals;

(ii) All medications administered to a resident are ordered in writing by the resident's attending physician;

(iii) Medications not limited as to time or number of doses when ordered are automatically stopped in accordance with written policies of the facility and the attending physician is notified;

(iv) Self-administration of medications is allowed only with the permission of the resident's attending physician;

(v) The health services supervisor (if a registered nurse) or the registered nurse consultant, reviews monthly each resident's medications and when appropriate notifies the physician. Medications are reviewed quarterly by the attending physician;

(vi) All medications are administered by medical and nursing personnel in accordance with the Medical and Nurse Practice Acts of the State; and

(vii) The facility complies with the Federal and State laws and regulations relating to the procurement, storage, dispensing, administration and disposal of narcotics, those drugs subject to the Drug Abuse Control Amendment of 1965 and other legend drugs;

(10) Provides arrangements for professional planning and supervision of menus and meal service of both regular and special diets so that:

(i) In the absence of a qualified dietitian or nutritionist on the staff as defined under § 249.33(b)(4)(i), a designated staff member suited by training and experience is responsible for planning and supervision of menus and meal service. Such staff member is provided regularly scheduled consultation from a qualified dietitian or nutritionist. A facility having a contract with an outside food management company may meet this requirement if the company has a dietition who provides on a regularly scheduled basis, consultant services to the facility;

(ii) A current diet manual recommended by the State survey agency is readily available to food service and health service personnel;

(iii) There is a sufficient number of food service personnel to meet the dietary needs of the residents and there are food service personnel on duty daily over a period of 12 or more hours;

(iv) Procedures are established and regularly followed which assure that the serving of meals to residents for whom special or restricted diets have been medically prescribed is supervised and their acceptance by the resident is observed and recorded in the resident's record;

(v) At least three meals or their equivalent are served daily, at regular times with not more than 14 hours between a substantial evening meal and breakfast;

(vi) Menus are planned at least 2 weeks in advance and sufficient food to meet the nutritional needs of residents is prepared as planned for each meal. When changes in the menu are necessary, substitutions provide equal nutritive value. Records of menus as actually served are retained for 30 days;

(vii) Individuals needing special equipment, implements or utensils to assist them when eating have such items provided; and

(viii) All food is procured from approved sources and stored, prepared, distributed and served under sanitary conditions;

(11) Maintains adequate conditions relating to environment and sanitation in accordance with the standards specified in this subparagraph; except that the single State agency may waive the application to an intermediate care facility of any such standard for such periods and under such conditions as are set forth in paragraph (b) of this section;

(i) The facility is constructed, equipped and maintained to provided a safe, functional, sanitary and comfortable environment. Its electrical and mechanical systems (including water supply and sewage disposal) are designed, constructed and maintained in accordance with recognized safety standards and comply with applicable State and local codes and regulations; and:

(a) The facility complies with all applicable State and local codes governing construction;

(b) Corridors used by residents are equipped with firmly secured handrails;

(c) Blind, nonambulatory or physically handicapped residents are not housed above the street level floor unless the facility is 1-hour protected non-combustible construction (as defined in National Fire Protection Association Standard #220), fully sprinklered 1-hour protected ordinary construction or fully sprinklered 1-hour protected wood frame construction;

(d) Reports of periodic inspections of the structure by the fire control authority having jurisdiction in the area are on file in the facility;

(e) An adequate supply of hot water for resident use is available at all times. Temperature of hot water at plumbing fixtures used by residents is automatically regulated by control valves;

(f) Laundry facilities (when applicable) are located in areas separate from resident units and are provided with the necessary washing, drying and ironing equipment; and

(g) Elevators are installed in the facility if resident rooms are located on floors above the street level;

(ii) Each major subdivision has at least the following basic service areas: workroom or area for staff, storage and preparation area for drugs and biologicals, storage space for linen, equipment and supplies, toilet and handwashing facilities;

(iii) Resident bedrooms are designed and equipped for the comfort and privacy of the resident. Each room has or is conveniently located near adequate toilet and bathing facilities which are appropriate in size and design to meet the needs of both ambulatory and nonambulatory residents. Each room has direct access to a corridor and outside exposure with the floor at or above grade level. Resident rooms have no more than four beds with not less than 3 feet between beds;

(iv) Provision is made for isolating residents with infectious diseases in well-ventilated single bedrooms having separate toilet and bathing facilities;

(v) Areas utilized to provide therapy services are of sufficient size and appropriate design to accommodate necessary equipment, conduct examinations and provide treatment;

(vi) The facility provides one or more areas for resident dining and diversional and social activities; and

(a) There is as least one dayroom area on each resident floor. Areas used for corridor traffic shall not be considered as dayroom space; and

(b) If a multipurpose room is used for dining and diversional and social activities, there is sufficient space to accommodate all activities and prevent their interference with each other;

(vii) The facility has kitchen and dietary service areas adequate to meet food service needs. These areas are properly ventilated and equipped for sanitary refrigeration, storage, preparation, and serving of food, as well as for dish and

utensil cleaning and refuse storage and removal. Dietary areas comply with the local health or food handling codes. Food preparation space is arranged for the separation of functions and is located to permit efficient service to residents and is used for only dietary functions;

(viii) The facility employs sufficient housekeeping and maintenance personnel to maintain the interior and exterior of the facility in a safe, clean, orderly manner; and

(ix) The facility has a written, rehearsed plan to be followed in case of fire, explosion, or other emergency. It specifies persons to be notified, locations of alarm signals and fire extinguishers, evacuation routes, procedures for evacuating residents, frequency of fire drills, and assignment of specific tasks and responsibilities to the personnel of each shift;

(12) Maintains written arrangements with one or more general hospitals and skilled nursing facilities under which such institutions agree to timely acceptance, as patients thereof, of acutely ill residents of the intermediate care facility who are in need of hospital or skilled nursing facility care; except that, as provided in paragraph (b) of this section, the single State agency may waive this requirement wholly or in part with respect to any intermediate care facility which is unable to effect such an arrangement with a hospital or skilled nursing facility;

(13) Meets such provisions of the Life Safety Code of the National Fire Protection Association (21st Edition, 1967) as are applicable to institutional occupancies; except that the single State agency may waive the application to any intermediate care facility of specific provisions of such code for such periods and under such conditions as are set forth in paragraph (b) of this section; and except that the requirements of this subparagraph need not apply in any State if the Secretary makes a finding that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents in intermediate care facilities; and

(14) Maintains adequate arrangements for required institutional services through a written agreement with an outside resource in those instances where the facility does not employ a qualified professional person to render a required service. The responsibilities, functions, and objectives, and the terms of agreement of each such resource are delineated in writing and signed by the administrator or authorized representative and the resource, and there is available in writing the terms of agreement reached between the facility and any resource retained for consultation. Such terms include, as a minimum the responsibilities of both the facility and the resource, the qualifications of the resource, a description of the work scheduled and amount of time to be given by the resource, the basis of remuneration and the duration of the agreement.

(b) *Waivers.* The single State agency may waive certain standards imposed pursuant to paragraph (a) of this section as set forth in this paragraph, except as they may be required under State law:

(1) One or more of the specific provisions for environment and sanitation pursuant to paragraph (a)(11) of this section or one or more specific provisions of the applicable fire and safety code pursuant to paragraph (a)(13) of this section may be waived if the single State agency finds on the basis of documented evidence derived from a survey that:

(i) Such provision(s), if rigidly applied, would result in unreasonable hardship upon the facility;

(ii) The waiver of the specific provision(s) does not adversely affect the health and safety of the residents in the facility and a written justification of such determination is maintained on file;

(iii) Where structural changes in the facility are necessary to meet a provision, the change is of such magnitude as to be infeasible, or economically impracticable; delay in making such changes would not adversely affect the health and safety of residents; and an explanation of this finding is maintained on file;

and upon assurance that:

(iv) The conditions of waiver in paragraphs (b)(1) (i), (ii), and (iii) of this section are redetermined at the time of each survey and written evidence of such redetermination is maintained on file; and

(v) The waiver of requirements is rescinded at any time any of the conditions of paragraphs (b)(1) (i), (ii), and (iii) of this section are found no longer to apply.

(2) The provision for arrangements with one or more general hospitals and skilled nursing facilities pursuant to paragraph (a)(12) of this section may be waived wholly or in part if by reason of remote location or other good and sufficient reason the facility is unable to effect such an arrangement with a hospital and skilled nursing facility. However, this requirement may not be waived in whole if it can be satisfied in part. A finding of remote location or other good and sufficient reason may be made when the single State agency finds that:

(i) There is no general hospital or skilled nursing facility serving the area in which the facility is located; or

(ii) There are one or more general hospitals or skilled nursing facilities serving the area and the facility has attempted in good faith and has exhausted all reasonable possibilities to enter into an agreement with such institutions, and

(a) The facility has provided copies of letters, records of conferences, or other evidence to support its claim that it has attempted in good faith to enter into an agreement, and

(b) Hospitals or skilled nursing facilities in the area have, in fact, refused to enter into an agreement with the facility in question.

§ 249.13 Standards for intermediate care facility services in institutions for the mentally retarded or persons with related conditions.

(a) *Standards.* The standards for intermediate care facility services in institutions for the mentally retarded or persons with related conditions which are specified by the Secretary pursuant to section 1905 (c) and (d) of the Social Security Act and referred to in §§ 249.10 (b)(15) and 249.11 are as follows. The institution:

(1) Is administered by a person licensed in the State as a nursing home administrator or, in the case of a hospital qualifying as an institution for the mentally retarded or persons with related conditions, by the hospital administrator, with the necessary authority and responsibility for management of the institution and implementation of administrative policies;

(2) Maintains written arrangements with one or more general hospitals and skilled nursing facilities under which such institutions agree to timely acceptance, as patients thereof, of acutely ill residents of the institution who are in need of hospital or skilled nursing facility care; except that, as provided in paragraph (b) of this section, the single State agency may waive this requirement wholly or in part with respect to any institution for the mentally retarded or persons with related conditions which is unable to effect such an arrangement with a hospital or skilled nursing facility;

(3) Meets such provisions of the Life Safety Code of the National Fire Protection Association (21st Edition, 1967) as are applicable to institutional occupancies, except that the single State agency may make a determination with the approval of the Secretary, to apply appropriate residential occupancy requirements of the Code for institutions for the mentally retarded or persons with related conditions, whose residents are, in the opinion of competent medical authority, capable of exercising average judgment in taking action for self-preservation under emergency conditions; and except that:

(i) The Life Safety Code shall not apply in any State if the Secretary makes a finding that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents in such institutions; and

(ii) The single State agency may waive the application to any such institution of specific provisions of such Code for such periods and under such conditions as are set forth in paragraph (b) of this section;

(4) Provides health services under the direct supervision of a health services supervisor in accordance with the following:

(i) The health services supervisor is a registered nurse who is currently licensed to practice in the State, a licensed practical (or vocational) nurse currently licensed in the State, who has had training that includes either graduation from a State approved school of practical nursing or education and other training that is considered by the State authority responsible for the licensing of practical nurses to provide a background that is equivalent to graduation form a State approved school of practical nursing, or who has successfully completed the Public Health Service examination for waivered licensed practical nurses and who is employed full time (exclusive of all other duties) on the day shift, except that:

(a) In the case of an institution where a licensed practical (or vocational) nurse serves in charge of health services, supervisory consultation is provided by a registered nurse, through formal contract, at regular intervals, but not less than 4 hours weekly; and

(b) In the case of an institution (or group home) with less than 15 beds which has only residents certified by a physician as not in need of professional nursing service, and which otherwise meets requirements in this section, the requirements for a professional nurse in charge of health services may be met if the institution arranges through formal contract with an organized health agency for a registered nurse or public health nurse to visit as required for the care of minor illnesses, injuries, or emergencies, and consultation on the health aspects of the individual plan of care and service; and

(ii) The health services supervisor has the responsibility for the development, implementation, and review of the health aspects of the plan of care and service as appropriate for each resident and in accordance with physician's instructions and in coordination with other resident services;

(5) Maintains adequate conditions relating to environment and sanitation in accordance with standards specified in this subparagraph:

(i) The institution is constructed, equipped, and maintained to provide a safe, functional, sanitary, and comfortable environment. Its electrical and mechanical systems (including water supply and sewage disposal) are designed, constructed, and maintained in accordance with recognized safety standards and comply with applicable State and local codes and regulations; and

(a) The institution complies with all applicable State and local codes governing construction;

(b) Blind, nonambulatory, or physically handicapped residents are not housed above the street level floor unless the institution is 1-hour protected noncombustible construction (as defined in NFPA Standard No. 220), fully sprinklered 1-hour protected ordinary construction, or fully sprinklered 1-hour protected wood frame construction;

(c) Reports of periodic inspections of the structure by the fire control authority having jurisdiction in the area are on file in the institution;

(d) An adequate supply of hot water for resident use is available at all times. Temperature of hot water at plumbing fixtures used by residents is automatically regulated by control valves;

(e) Laundry facilities (when applicable are located in areas separate from resident units and are provided with the necessary washing, drying, and ironing equipment; and

(f) Elevators of sufficient size to accommodate a wheelchair are installed in the institution having three or more stories above ground;

(ii) Each major subdivision has at least the following basic service areas: Workroom or area for staff, storage and preparation area for drugs and biologicals, storage space for linen, equipment, and supplies, toilet and handwashing facilities;

(iii) Provision is made for isolating residents with infectious diseases in well-ventilated single bedrooms having separate toilet and bathing facilities; and

(iv) The institution has kitchen and dietary service areas adequate to meet food service needs. These areas are properly ventilated and equipped for sanitary refrigeration, storage, preparation, and serving of food, as well as for dish and utensil cleaning and refuse storage and removal. Dietary areas comply with the local health or food handling codes. Food preparation space is arranged for the separation of functions and is located to permit efficient service to residents and is used only for dietary functions.

(v) The single State agency, however, may waive for such periods and under such conditions as the approved plan provides any requirement imposed by this subparagraph in accordance with the regulations set forth in paragraph (b) of this section;

(6) Provides for a Qualified Mental Retardation Professional who is responsible for supervising the implementation of each resident's individual plan of care and service, integrating the various aspects of the institution's programs, recording each resident's progress and initiating periodic review of each individual plan of care and service for necessary modifications or adjustments. The term "Qualified Mental Retardation Professional" means:

(i) A psychologist with a doctoral or master's degree from an accredited program and with specialized training or 1 year of experience in treating the mentally retarded;

(ii) A physician licensed under State law to practice medicine or osteopathy and with specialized training or 1 year of experience in treating the mentally retarded;

(iii) An educator with a master's degree in special education from an accredited program;

(iv) A social worker with a master's degree from an accredited program and with specialized training or 1 year of experience in working with the mentally retarded;

(v) A physical or occupational therapist who is a graduate of a program of physical or occupational therapy approved by the Council on Medical Education of the American Medical Association, and where applicable is licensed in the State, and who has specialized training or 1 year of experience in treating the mentally retarded;

(vi) A speech pathologist or audiologist who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed the equivalent educational and experiential requirements for such a certificate and has specialized training or 1 year of experience in treating the mentally retarded; or

(vii) A registered nurse who has specialized training in or 1 year of experience treating the mentally retarded;

(7) Maintains adequate arrangements for required institutional services through a written agreement with an outside resource in those instances where the institution does not employ a qualified professional person to render a required service. The responsibilities, functions, and objectives, and the terms of agreement of each such resource are delineated in writing and signed by the administrator or authorized representative and the resource, and there is available in writing the terms of agreement reached between the institution and any resource retained for consultation. Such terms include, as a minimum, the responsibilities of both the institution and the resource, the qualifications of the resource, a description of the work scheduled and amount of time to be given by the resource, the basis of remuneration and the duration of the agreement;

(8) Meets the standards for Residential Facilities for the Mentally Retarded, 1971, established by the Accreditation Council for Facilities for the Mentally Retarded, of the Joint Commission on Accreditation of Hospitals, or, until July 1, 1976, is one which:

(i) Provides all necessary resident living services, training and guidance in the activities of daily living, and development of self-help and social skills for maximum independence, and, according to the needs of the individual resident, provides directly or through formal arrangements the following:

(a) Dental services to provide evaluation, diagnosis, treatment and annual review, including care for dental emergencies administered by or under the supervision of a dentist licensed in the State to practice dentistry or dental surgery;

(b) Dietary and food service, including arrangements for professional planning and supervision of menus and meal service of both regular and special diets to assure that:

(1) In the absence of a qualified dietitian or nutritionist on the staff, a designated staff member suited by training and experience is responsible for planning and supervision of menus and meal service. Such staff member is provided regularly scheduled consultation from a qualified dietitian or nutritionist. An institution having a contract with an outside food management company may meet this requirement if the company has a dietitian who provides on a regularly scheduled basis, consultant services to the institution;

(2) A current diet manual recommended by the State survey agency is readily available to food service personnel and supervisors of health services;

(3) There is a sufficient number of food service personnel to meet the dietary needs of the residents and there are food service personnel on duty daily over a period of 12 or more hours;

(4) Procedures are established and regularly followed which assure that the serving of meals to residents for whom special or restricted diets have been medically prescribed is supervised;

(5) At least three meals or their equivalent are served daily, at regular times with not more than 14 hours between a substantial evening meal and breakfast;

(6) Menus are planned at least 2 weeks in advance and sufficient food to meet the nutritional needs of residents is prepared as planned for each meal. When changes in the menu are necessary, substitutions provide equal nutritive value. Records of menus as actually served are retained for 30 days;

(7) Individuals needing special equipment, implements or utensils to assist them when eating have such items provided; and

(8) All food is procured from approved sources and stored, prepared, distributed and served under sanitary conditions.

(c) Health services to achieve and maintain an optimum level of health for each resident including a complete physical examination at least annually, formal arrangements to provide for medical emergencies on a 24-hour, 7-days-a-week basis, administered by or under the supervision of a physician licensed under State law to practice medicine or osteopathy, and nursing services in accordance with the needs of its residents;

(d) Pharmacy services including arrangements for drugs and biologicals which provide that:

(1) (i) If the institution maintains a pharmacy department, it employs a licensed pharmacist; or

(ii) If the institution does not have a pharmacy, it has formal arrangements with a licensed pharmacist to provide consultation on methods and procedures for ordering, storage, administration and disposal and recordkeeping of drugs and biologicals;

(2) All medications administered to residents are ordered in writing by the resident's attending physician;

(3) Medications not limited as to time or number of doses when ordered are automatically stopped and the attending physician is notified;

(4) Self-administration of medications is allowed only with permission of the resident's attending physician;

(5) The registered nurse in charge or the registered nurse consultant reviews monthly each resident's medications and, when appropriate, notifies the attending physician and medications are reviewed quarterly by the attending physician;

(6) All medications are administered by medical and nursing personnel in accordance with the Medical and Nurse Practice Acts of the State; and

(7) The institution complies with the Federal and State laws and regulations relating to the procurement, storage, dispensing, administration and disposal of narcotics, those drugs subject to the Drug Abuse Control Amendment of 1965 and other legend drugs.

(e) Physical and occupational therapy services for purposes of initiation, monitoring and followup of individualized treatment programs rendered by or under the supervision of a physical therapist or an occupational therapist who is a qualified mental retardation professional;

(f) Psychological services including participation in the evaluation and periodic reviews, individual treatment, and consultation and training services to program staff rendered by a psychologist who is a qualified mental retardation professional;

(g) Social services available to all residents and their families, including evaluation and counseling, with referral to, and use of, other community resources as appropriate, participation in periodic reviews and planning for community placement, discharge and followup services rendered by or under the supervision of a social worker who is a qualified mental retardation professional;

(h) Speech pathology and audiology services to maximize the communication skills of residents for purposes of initiation, monitoring and follow-up of individualized treatment programs under the direction of a therapist who is a Qualified Mental Retardation Professional; and

(i) Organized indoor and outdoor recreational activities for all residents consistent with their needs and capabilities, including provision of adequate recreation areas, sufficient equipment and materials to support independent and organized activities;

(ii) Maintains methods of administrative management which assure that the institution:

(a) Has a written statement of the objectives, goals, and policies of the institution which is available to staff, consumer representatives, and interested public, and which includes a statement of the rights of its residents and its relationship to the parents of its residents, or to their surrogates;

(b) Develops, with the assistance of a registered nurse, qualified social worker, and other professional staff, written policies and procedures which govern all areas of service provided by the institution;

(c) Has an orientation program for all new employees that includes review of institutional policies, resident care and services policies, and emergency and disaster instructions;

(d) Plans and conducts an in-service educational program for the development and improvement of skills of all the institution's personnel, including training relating to the problems and needs of the mentally retarded, and maintains records which indicate the content of and participation in staff development programs;

(e) Has written policies that prohibit mistreatment, neglect, or abuse of residents, protect them from exploitation, and provide for the registration of resident complaints without threat of discharge or other reprisal;

(f) Has written policies which provide that residents are admitted upon the recommendation of an interdisciplinary professional team as defined in § 249.10 (d) (1) (vi) which has determined that the resident is in need of the care and services provided by such institution;

(g) Has transfer, discharge, and release policies which include at least the following provisions:

(1) As changes occur in their physical or mental condition, necessitating service or care which cannot be adequately provided by the institution, residents are transferred promptly to hospitals, skilled nursing facilities, or other appropriate facilities; and

(2) Except in an emergency, the resident, his next of kin, the attending physician, and the responsible agency, if any, are consulted in advance of the transfer, release, or discharge of any resident, and casework services or other means are utilized to assure that adequate arrangements exist for meeting his needs through other resources;

(h) Has written procedures for personnel to follow in an emergency including care of the resident, notification of the attending physician and other persons responsible for the resident, arrangements for transportation, for hospitalization or other appropriate services; and

(i) Maintains a written account of all personal possessions and funds received by or deposited with the institution on a current basis for each resident with written receipts for all expenditures and disbursements made by or in behalf of the resident;

(iii) Has an organized staff sufficient in numbers and qualifications to carry out its policies, responsibilities, and functions, including all necessary arrangements for professional medical and rehabilitative services, and which includes:

(a) Resident living staff to conduct a resident living program designed to provide training in activities of daily living and development of self-help and social skills, and to carry out the recommendations and plans for treatment of each resident under the supervision of a person (or persons) whose training and experience is appropriate for the program and who is qualified to supervise and direct activities of daily living, and:

(1) For units including infants, children (to puberty), adolescents requiring considerable adult guidance and supervision, severely and profoundly retarded, moderately and severely physically handicapped, and residents who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychoticlike behavior, a minimum staff-to-resident ratio of 1: 2;

(2) For units serving moderately retarded adolescents and adults requiring habit training, a minimum staff-to-resident ratio of 1: 2.5; and

(3) For units serving residents in vocational training programs and adults who work in sheltered employment situations, a minimum staff-to-resident ratio of 1: 5;

(b) All professional personnel necessary to provide the professional programs and services as specified in paragraph (a) (8) (i) of this section and in accordance with the needs of its residents;

(c) Health services staff to assure that:

(1) Each resident receives treatments, medications, diet, and other health services as prescribed and planned, all hours of each day and all days of each week; and

(2) In the presence of minor illness and for temporary periods, bedside care under the direction of the resident's physician is provided by or supervised by a registered nurse or licensed practical nurse; and

(d) A responsible staff member is on duty at all times who is immediately accessible, to whom residents can report injuries, symptoms of illness, and emergencies;

(iv) Maintains a record for each resident which is readily available to professional and other staff directly involved with the resident and to appropriate representatives of the State agency. All information contained in a resident's record must be considered privileged and confidential. These records include:

(a) Identification information statement of the resident's legal status and medical, social, and developmental history;

(b) Copies of all initial and periodic examinations and evaluations including recommendations and plans of care and service and modifications thereof, and of periodic summaries of the resident's progress in the treatment program;

(c) Entries describing all medical treatment rendered and medication administered and a report of any accidents, extraordinary incidents, surgeries, illnesses, and treatment thereof;

(d) A signed order by a qualified Mental Retardation Professional for any physical restraints; and

(e) A copy of the discharge summary and post-institutionalization plan of care and service;

(v) Has resident living areas equipped and designed as follows:

(a) Resident rooms and toilet facilities meet the following requirements:

(1) Each room has direct access to a corridor and outside exposure with the floor at or above grade level;

(2) The number of residents in multi-resident rooms does not exceed 12 persons;

(3) There is a minimum of 60 square feet of floor space per resident in a multi-resident room. Single rooms shall have a minimum of 80 square feet of floor space;

(4) Each resident is provided, in addition to a suitable bed, adequate changes of linen, closet space, and a chest of drawers for his personal belongings, and other appropriate furniture;

(5) All residents' rooms are located near toilet and bathing facilities, appropriate in size and design to meet the needs of both ambulatory and non-ambulatory residents;

(6) There is one toilet and one lavatory for each eight residents. A lavatory is provided with each toilet facility. The toilets are installed in separate stalls for ambulatory residents or in curtained areas for non-ambulatory residents to insure privacy; and

(7) There is one tub or shower for each 12 residents. If a central bathing area is provided, each tub or shower is divided by curtains to insure privacy. Showers and tubs are equipped with adequate safety accessories; and

(b) The institution provides one or more areas for resident dining and diversional and social activities; and

(1) There is at least one dayroom area on each resident floor. Areas used for corridor traffic are not to be counted as dayroom space; and

(2) If a multi-purpose room is used for dining and diversional and social activities, there is sufficient space to accommodate all activities and prevent their interference with each other;

(vi) Assures that areas utilized to provide therapy services and other professional services are of sufficient size and appropriate design to accommodate necessary equipment, conduct screenings, and provide treatment;

(vii) Employs sufficient housekeeping and maintenance personnel to maintain the interior and exterior of the institution in a safe, clean, orderly manner; and

(viii) Has a written and regularly rehearsed plan for staff and residents to be followed in case of fire, explosion or other emergency. It specifies persons to be notified, locations of alarm signals and fire extinguishers, evacuation routes, procedures for evacuating residents, frequency of fire drills, and assignment of specific tasks and responsibilities to the personnel of each shift.

(b) *Waivers.* The single State agency may waive certain standards imposed pursuant to paragraph (a) of this section as set forth in this paragraph, except as they may be required under State law:

(1) One or more of the specific provisions for environment and sanitation pursuant to paragraph (a) (5) and (8) (v) of this section or one or more specfic provisions of the applicable fire and safety code pursuant to paragraph (a) (3) of this section may be waived if the single State agency finds on the basis of documented evidence derived from a survey that:

(i) Such provision(s), if rigidly applied, would result in unreasonable hardship upon the institution;

(ii) The waiver of the specific provision(s) does not adversely affect the health and safety of the residents in the institution and a written justification of such determination is maintained on file;

(iii) Where structural changes in the institution are necessary to meet a provision, the change is of such magnitude as to be infeasible, or economically impracticable; delay in making such changes would not adversely affect the health and safety of residents; and an explanation of this finding is maintained on file;

and upon assurance that:

(iv) The conditions of waiver in paragraph (b) (1) (i), (ii), and (iii) of this section are redetermined at the time of each survey and written evidence of such redetermination is maintained on file; and

(v) The waiver of requirements is rescinded at any time any of the conditions of paragraph (b) (1) (i), (ii), and (iii) of this section are found no longer to apply.

(2) The provision for arrangements with one or more general hospitals and skilled nursing facilities pursuant to paragraph (a) (2) of this section may be waived wholly or in part if by reason of remote location or other good and sufficient reason the institution is unable to effect such an arrangement with a hospital and skilled nursing facility. However, this requirement may not be waived in whole if it can be satisfied in part. A finding of remote location or other good and sufficient reason may be made when the single State agency finds that:

(i) There is no general hospital or skilled nursing facility serving the area in which the institution is located; or

(ii) There are one or more general hospitals or skilled nursing facilities serving the area and the institution has attempted in good faith and has exhausted all reasonable possibilities to enter into an agreement with such facilities, and

(a) The institution has provided copies of letters, records of conferences, or other evidence to support its claim that it has attempted in good faith to enter into an agreement, and

(b) Hospitals or skilled nursing facilities in the area have, in fact, refused to enter into an agreement with the institution in question.

PART 250—ADMINISTRATION OF MEDICAL ASSISTANCE PROGRAMS

6. A new § 250.24 is added to Part 250 as set forth below:

§ 250.24 Independent professional review in intermediate care facilities.

(a) *State plan requirements.* A State plan for medical assistance under title XIX of the Social Security Act which includes intermediate care facility services must:

(1) Provide, with respect to individuals eligible under the State plan who are admitted to an intermediate care facility or who make application while in such a facility, for an interdisciplinary professional review (covering physical, emotional, social and cognitive factors) of the need for the care in and the services provided by such a facility and for a written individual plan of care and service. Under this requirement, the folowing methods are followed in each case prior to admission or, in the case of individuals who make application while in an intermediate care facility, prior to authorization of payments:

(i) Each eligible individual receives a comprehensive medical, social, and psychological evaluation, which includes:

(a) Diagnoses, summaries of present medical, psychological and social findings, medical and social family history, mental and physical functional capacity, prognoses, range of service needs and amounts of care required;

(b) An evaluation by an ageny worker of the resources available in the home, family and community; and

(c) An explicit recommendation by the interdisciplinary professional team with respect to admission or in the case of persons who make application while in an intermediate care facility, continued care in such facility. Where admission is not indicated, but must nevertheless be recommended or implemented because of current lack of appropriate alternatives, such finding is noted and plans are initiated for the active exploration of alternatives;

(ii) The individual plan of care and service is formulated in accordance with the findings and recommendations of the evaluation team and includes: written objectives; orders for medications, treatments, restorative and rehabilitative services, therapies, diet, activities, and special procedures designed to meet the objectives; plans for continuing care (including provisions for review and necessary modifications of the plan) and discharge; and

(iii) Written reports of the evaluation and the written individual plan of care and service are delivered to the facility and entered in the individual's record at the time of admission or, in the case of individuals already in the facility, immediately upon completion.

(2) Provide for redetermination at least semi-annually of the individual's continuing need for institutional care and consideration of alternate methods of care by medical and other professional personnel who are not themselves directly responsible for the care of the resident and who are not employed by or financially interested in any such facility.

(3) Provide for periodic on-site inspection to be made in all intermediate care facilities caring for individuals under the plan by one or more independent professional review teams which shall:

(i) (*a*) Include one or more physicians or registered nurses, and psychologists, social workers, or other appropriate health and social service professional;

(*b*) In the case of institutions for the mentally retarded, include one or more physicians or registered nurses, and psychologists, social workers, or other appropriate health, social service, mental retardation and special education professionals;

(*c*) In the case of institutions for mental diseases, include one or more psychiatrists (or other physicians knowledgeable about mental institutions) or registered nurses, and psychologists, social workers, or other appropriate health, social service, and mental health professionals; and

(*d*) Where there is no physician on the review team, assure availability of a physician to provide consultation to the team;

(ii) Function under the supervision of a team member knowledgeable about institutional care and services, and

(*a*) In the case of an intermediate care facility serving a geriatric population, be knowledgeable about the specific problems and needs of the geriatric resident;

(*b*) In the case of an institution for the mentally retarded, be knowledgeable about the specific problems and needs of the mentally retarded resident; and

(*c*) In the case of an institution for mental diseases, be knowledgeable about the specific problems and needs of the mentally ill resident; and

(iii) Have no members who have a financial interest in or are employed by any intermediate care facility, or who provide professional services to any intermediate care facility reviewed by the team of which they are members.

(4) Provide that:

(i) There are a sufficient number of teams, so distributed within the State that on-site inspections can be made in all intermediate care facilities caring for residents under the plan at appropriate intervals;

(ii) No physician member of a team inspects the care of residents for whom he is the attending physician;

(iii) At least one inspection by an independent professional review team is made in each intermediate care facility within 1 year from the effective date of these regulations and thereafter at intervals to be determined by the team and the single State agency for each facility on the basis of consideration of the quality of care being rendered in the facility and the needs of residents in the facility, but not less often than annually;

(iv) No facility is notified of the time of an inspection more than 48 hours before the arrival of the independent professional review team; and

(v) The independent professional review team inspection includes personal contact with and observation of each resident receiving assistance under the plan by a team member or members, and review of each such resident's records including the individual plan of care and service. Such reviews and observations are to determine the adequacy of the services available to meet the current health, rehabilitative, and social needs and promote the optimal physical, mental, and psychosocial functioning of residents; the adequacy, appropriateness, and quality of services actually being rendered each individual receiving services under the plan; the necessity and desirability of the continued placement of such residents in such facilities; the feasibility of meeting their health and rehabilitative needs through alternative institutional or noninstitutional services; and in the case of institutions for the mentally retarded, whether the mentally retarded individual is also receiving active treatment. Under this requirement, such determinations may be based upon consideration of such items as whether:

(*a*) The medical, social, and psychological evaluation and the individual plan of care and service are complete and current, the individual plan of care and service is being followed, and all services ordered (including dietary orders) are being rendered and properly recorded;

(*b*) Prescribed medications have been reviewed by the attending physician at least quarterly, and tests or observations of residents indicated by their medication regimen have been made at appropriate times and properly recorded;

(*c*) Progress notes are made regularly by all professionals working with the resident and appear to be consistent with the observed condition of the resident;

(*d*) Adequate health services are being rendered each resident as evidenced by such observations as cleanliness, absence of signs of malnutrition or dehydration and apparent activity and alertness;

(*e*) Adequate rehabilitative services are being rendered each resident as evidenced by a planned program of activities to prevent regression, the progress toward meeting the plan objectives and the apparent maintenance of optimal physical, mental, and psychosocial function;

(*f*) The resident currently requires any service not available in or actually being furnished by the particular facility or through arrangements with others; and

(*g*) Each resident actually needs continued placement in the facility or there is an appropriate plan to transfer the resident to an alternate method of care.

(5) *Provide*, That:

(i) A full and complete report on each inspection visit is promptly submitted by the independent professional review team to the single State agency covering the observations, conclusions, and recommendations of the team with respect to the adequacy, appropriateness and quality of all resident services provided in the facility or through arrangements, as well as specific findings with respect to individuals;

(ii) The single State agency forwards a copy of each inspection report both to the facility involved and its functioning utilization review committee, to the agency of the State responsible for licensure and to the agencies responsible for certification or approval of the facilities involved for purposes of title XIX and to other agencies of the State which require the information in such reports in the performance of their official functions; and

(iii) Reports and recommendations are followed by documented corrective action on the part of the single State agency.

(b) *Coordination of medical review and independent professional review.* Periodic inspections by independent professional review teams as required by paragraph (a) of this section may be conducted by medical review teams (see § 250.23) where the composition of such a team meets the requirements of paragraph (a) (3) of this section or is modified or supplemented to meet such requirements for purpose of its independent professional review activities, and where such medical review team is willing and able to undertake in addition to its regular medical review program the on-site inspection functions required by paragraph (a) (4) of this section.

(c) *Coordination of utilization review and independent professional review.* (1) Periodic inspections by independent professional review teams as required by paragraph (a) of this section may be conducted by noninstitution based utilization review com-

mittees where the composition of such a committee meets the requirements of paragraph (a)(3) of this section, or is modified or supplemented to meet such requirements for purpose of its independent professional review activities, and where such committee is willing and able to undertake in addition to its regular utilization review program the on-site inspection functions required by paragraph (a)(4) of this section.

(2) In the case of a facility which is not concurrently a provider of service under title XVIII of the Act, an inspection by an independent professional review team conducted according to the requirements of paragraph (a) of this section, whether or not performed by a utilization review committee as provided in paragraph (c)(1) of this section, may, at the discretion of the single State agency, be considered to satisfy the requirement for utilization review of long-stay cases for the next regularly scheduled meeting of the utilization review committee.

7. Section 250.30 is amended by revising paragraph (a)(6) and adding a new paragraph (b)(3)(iii) as set forth below:

§ 250.30 Reasonable charges.

(a) *State plan requirements.* * * *

(6) Provide that participation in the program will be limited to providers of service who accept, as payment in full, the amounts paid in accordance with the fee structure, except that, with respect to payment for care furnished in skilled nursing facilities and services in intermediate care facilities, existing supplementation programs are permitted where the State has determined and advised the Secretary of Health, Education, and Welfare that its payments for such care or services furnished under the plan are less than the reasonable cost of such care or services permitted under Federal regulations, and the State has, prior to January 1, 1971, in the case of skilled nursing facilities, and July 1, 1973, in the case of intermediate care facilities, provided the Secretary with a plan for phasing out such supplementation within a reasonable period after the applicable date.

* * * * *

(b) *Upper limits.* * * *

(3) * * *

(iii) *Intermediate care facility services.* Customary charges which are reasonable. Schedules of payments established by the State agency shall not exceed an upper limit based on the average per diem rate paid for skilled nursing facility services in the State. Schedules will be acceptable if within the upper limits either on a facility-by-facility basis or on the basis of average payments according to a reasonable classification of facilities based on levels of care. (A financial audit of the facilities is not required, but the State shall establish schedules of payments which are consistent with the intent that upper limits do not exceed average amounts paid for skilled nursing facility services.)

* * * * *

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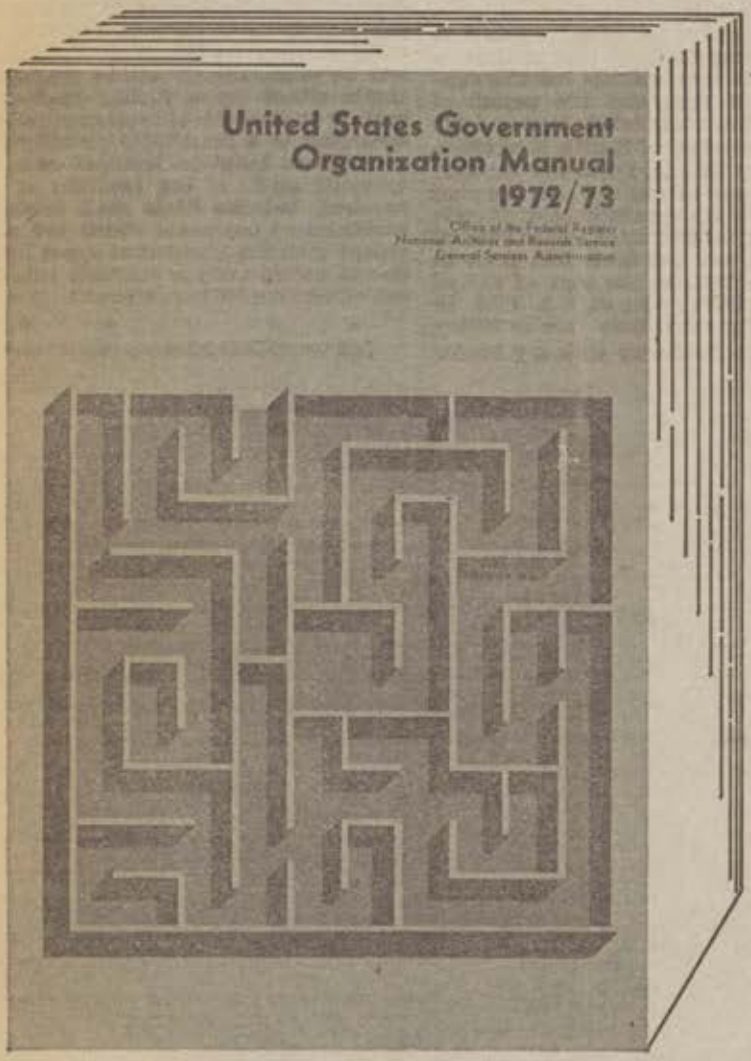

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