federal register

WEDNESDAY, MARCH 7, 1973

WASHINGTON, D.C.

Volume 38 ■ Number 44

Pages 6127–6267

PART I

(Part II begins on page 6257)

HIGHLIGHTS OF THIS ISSUE

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

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federal register

Area Code 202 Phone 962–8626

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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NOTE: There were no items published after October 1, 1972, that are eligible for inclusion in this list.

Presidential Documents

Title 3—The President

PROCLAMATION 4192

National Beta Club Week

By the President of the United States of America

A Proclamation

Nearly 150,000 young Americans in junior and senior high schools throughout the country live by the Beta Club motto: "Let us lead by serving others." By striving for high standards of honesty, accomplishment, leadership, and service to others, Beta Club members are preparing themselves in the finest possible way for the responsibilities of citizenship and leadership which will be theirs in the years ahead.

To call public attention to the commendable activities and positive achievements of the Beta Club, the Congress, by a joint resolution approved October 19, 1972 (86 Stat. 917) has requested the President to designate the week which begins on the first Sunday in March, 1973 as National Beta Club Week.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby designate the week of March 4 through March 10, 1973, as National Beta Club Week, in recognition of the significant contributions being made by Beta Club members to the well-being of our country.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of March, in the year of our Lord nineteen hundred seventy-three, and of the Independence of the United States of America the one hundred ninety-seventh.

Richard Nixon

[FR Doc.73-4502 Filed 3-5-73;4:26 pm]

EXECUTIVE ORDER 11705

The Honorable Cleo A. Noel, Junior
George Curtis Moore

As a special mark of respect to the memory of the Honorable Cleo A. Noel, Junior, Ambassador of the United States of America to the Democratic Republic of the Sudan, and to George Curtis Moore, Counselor of Embassy of the United States of America in the Democratic Republic of the Sudan, murdered in the performance of their duty, it is hereby ordered, pursuant to the provisions of Section 4 of Proclamation 3044 of March 1, 1954, as amended, that on the day of interment, March 7, 1973, the flag of the United States shall be flown at half-staff on all buildings, grounds, and naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions. I also direct that the flag shall be flown at half-staff on the same day at all United States embassies, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

Richard Nixon

THE WHITE HOUSE,
March 6, 1973.

[FR Doc.73-4552 Filed 3-6-73;12:23 pm]

Rules and Regulations

Title 21—Food and Drugs

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

SUBCHAPTER C—DRUGS

PART 130—NEW DRUGS

Subpart A—Procedural and Interpretive Regulations

STATEMENT OF POLICY CONCERNING NEW DRUG STATUS OF CERTAIN INTRAUTERINE DEVICES

On June 5, 1971, there was published in the FEDERAL REGISTER (36 FR 10983), a proposed policy statement regarding the new drug status of intrauterine devices incorporating heavy metals, drugs, or other substances used for the purpose of contraception.

In response to the proposal, three comments were received. One comment, from two physicians at a medical college, supported the policy statement as it was proposed. Specifically, these physicians were concerned about the long-term systemic effects of heavy metals, particularly copper, when used in devices placed in the uterine cavity.

Two comments, from individual pharmaceutical firms, offered no disagreement with the basic intent of the proposal, but recommended or offered a differently worded statement of policy. One firm recommended revised wording that would exclude from the provisions of this section intrauterine devices with components added for improvement of the physical characteristics of the basic IUD material. The other firm commented that the proposal did not define clearly enough those intrauterine devices that would require a new drug application and those that would not. The Commissioner agrees that the proposal was not sufficiently definitive to provide adequate guidance as to the new drug status of these products. Therefore, the order has been revised to exclude from consideration as new drugs the following: (1) IUD's fabricated solely from inactive materials such as inactive plastics or metals and (2) IUD's with substances added to improve the physical characteristics if such substances do not contribute to contraception through chemical action on or within the body and are not dependent upon being metabolized for the achievement of the contraceptive purpose.

If questions arise that cannot be resolved by applying the provisions of the policy statement, the Food and Drug Administration, upon request, will express its opinion as to the new drug status of any such intrauterine device.

Having considered the comments received, the Commissioner concludes that the proposed policy statement should be revised for clarification and adopted as set forth below.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201 (g), (p), 505, 701(a), 52 Stat. 1041–42, as amended, 1052–53, as amended, 1055; 21 U.S.C. 321 (g), (p), 355, 371(a)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), Part 130, Subpart A is amended by adding the following new section:

§ 130.50 Certain intrauterine devices for human use for the purpose of contraception.

(a) The Food and Drug Administration has become aware of the increased clinical use for the purpose of contraception of intrauterine devices that incorporate heavy metals, drugs, or other active substances. The amount of local irritation caused by such active materials has been reported as being correlated, in animal studies, to the efficacy of such devices in achieving their contraceptive effect. Several investigators have reported different pregnancy rates which appear to be dependent on the type of metal used and/or the amount of exposed surface of the metal. Drugs have been incorporated with otherwise inert intrauterine devices to increase the contraceptive effect, decrease adverse reactions, or provide increased medical acceptability.

(b) Intrauterine devices used for the purpose of contraception and incorporating heavy metals, drugs, or other active substances to increase the contraceptive effect, to decrease adverse reactions, or to provide increased medical acceptability, are not generally recognized as safe and effective for contraception and are new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act. A completed and signed "Notice of Claimed Investigational Exemption for a New Drug" (Form FD 1571 set forth in § 130.3(a)(2)) must therefore be submitted to cover clinical investigations to obtain evidence that such preparations are safe and effective for this use. An approved new drug application is required for the marketing of such articles.

(c) Paragraphs (a) and (b) of this section do not apply to the following:

(1) Intrauterine devices fabricated solely from inactive materials (e.g., inactive plastics or metals).

(2) Intrauterine devices with substances added to improve the physical characteristics if such substances do not contribute to contraception through chemical action on or within the body and are not dependent upon being metabolized for the achievement of the contraceptive purpose.

(3) Intrauterine devices that contain a component, such as barium, added exclusively for the purpose of visualization by X-ray.

Effective date. This order is effective on March 7, 1973.

(Secs. 201 (g), (p), 505, 701(a), 52 Stat. 1041–42, as amended, 1.52–53, as amended, 1055; 21 U.S.C. 321(g), (p), 355, 371(a))

Dated: February 28, 1973.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc.73-4321 Filed 3-6-73;8:45 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Mebendazole Oral, Veterinary

The Commissioner of Food and Drugs has evaluated a new animal drug application (91–736V) filed by Pitman-Moore, Inc., Washington Crossing, N.J. 08560, proposing the safe and effective use of mebendazole oral, veterinary, as an anthelmintic 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), Part 135c is amended by adding the following new section:

§ 135c.104 Mebendazole oral, veterinary.

(a) *Chemical name of mebendazole.* Methyl 5-benzoylbenzimindazole-2-carbamate.

(b) *Specifications.* The drug is an oral powder in which each gram contains 166.7 milligrams of mebendazole.

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

(d) *Conditions of use.* (1) The drug is used in horses in the treatment of infections caused by large roundworms (*Parascaris equorum*), large strongyles (*Strongylus edentatus, S. equinus, S. vulgaris*), small strongyles (*Cyclicocyclus spp., Gyalocephalus spp., Poteriostumum spp., Trichonema spp., Triodontophorus spp.*), and pinworms (*oxyuris equi*), including many larval stages.

(2) The drug is administered at 1 gram of mebendazole per 250 pounds of body weight per dose.

(3) The drug is administered in either of the following ways:

(i) Sprinkling directly on the grain portion of the ration; or

(ii) By dissolving in 2–4 pints of water and administering by stomach tube.

(4) The drug is compatible with carbon disulfide, which can be used concurrently for bot control (*Gastrophilus spp.*). Routine cautions regarding the use of carbon disulfide must be observed.

(5) Do not administer to horses intended for use as food.

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

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

Effective date. This order shall be effective on March 7, 1973.

Dated: March 1, 1973.

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

[FR Doc.73-4320 Filed 3-6-73;8:45 am]

SUBCHAPTER E—HAZARDOUS SUBSTANCES

PART 191—HAZARDOUS SUBSTANCES: DEFINITIONS AND PROCEDURAL AND INTERPRETATIVE REGULATIONS

PART 191b—REQUIREMENTS FOR ELECTRICALLY OPERATED TOYS OR OTHER ELECTRICALLY OPERATED ARTICLES INTENDED FOR USE BY CHILDREN

Certain Electrically Operated Toys and Other Electrically Operated Children's Articles; Classification as Banned Hazardous Substances

In the FEDERAL REGISTER of January 21, 1972 (37 FR 1020), the Commissioner of Food and Drugs proposed to classify as banned hazardous substances certain electrically operated toys and other electrically operated children's articles.

In response to the proposal, approximately 40 comments were received from interested parties including the Association of Home Appliance Manufacturers (AHAM), Consumer Electronics Group (CEG), Consumers Union (CU), Model Railroad Industry Association (MRIA), National Electrical Manufacturers Association (NEMA), National Retail Merchants Association (NRMA), Toy Manufacturers of America (TMA), Underwriters' Laboratories (UL), consumers, consumer interest groups, individual manufacturers, an insurance company, and a research and development firm.

Ten of the comments supported the proposal as published. The principal issues raised in the remainder and the Commissioner's conclusions are as follows:

1. *Definitions.* Several comments indicated that the definition of an electrically operated toy or other electrically operated article for use by children (§ 191b.1(a)(1) is too broad and can be interpreted to include almost every electrically operated household product. The definition has been clarified to specifically exclude articles designed primarily for use by adults which may be used incidentally by children.

2. *Coverage.* Many of the comments from industry and trade associations stated that § 191b.2 coverage, as proposed, is ambiguous in its application to model trains, race cars, and certain other items operated with or without a transformer. Clarification has been added in this regard by excluding components which are powered by circuits of 30 volts r.m.s. (42.4 volts peak) or less from the definition of an electrically operated toy or other electrically operated article intended for use by children to all articles defined in § 191b.1(a)(1) that are intended to be powered by electrical current from nominal 120 v. (110–125 v.) branch circuits and those components powered by circuits of more than 30 volts r.m.s. (42.4 volts peak). Proposed § 191b.2 has been deleted since the provisions thereof appear elsewhere in the order.

3. *Labeling*—a. *Specific items.* The labeling provisions regarding the name and address of the manufacturer and the catalog number or equivalent (proposed §§ 191b.3(b)(1) (i), (ii) and 191b.3(b)(2) (i), (ii) have been deleted. A regulation in this regard is currently being developed and will be applicable to all children's articles, including electrically operated toys.

UL suggested that the information regarding the factory and date of manufacture appear on the toy itself rather than on the shelf package as proposed by § 191b.3(b)(2)(iii). Placement of information as to the date (month and year) of manufacture on the shelf package will simplify recordkeeping activities for retailers and distributors. Also, in the event that certain production runs of an item are found to be defective, the markings on the shelf package will expedite recalls since the articles can be identified without removal from their package. As revised, labeling with regard to the manufacturer's establishment is required only when toys are produced or assembled at more than one location. Section 191b.3(b)(4) provides for the placement of this information on both the toy and the shelf pack or package. The text of proposed § 191b.3(b)(2)(iii) has been revised and redesignated as § 191b.3(b)(2)(i).

b. *Markings.* CU suggested that it would be desirable for a manufacturer to mark the surface that would require the largest size of lettering if a choice exists. Such an additional requirement is unnecessary since § 191b.3(a) requires the labeling to be prominently and conspicuously displayed under customary conditions of purchase, storage, and use.

In response to several comments, the nature and characteristics of the required markings in § 191b.3 have been clarified.

c. *Precautionary statements.* Several comments questioned the proposed requirement (§ 191b.3(e)(1)) of placing the statement "CAUTION—Electric Toy" on the toy itself in addition to the shelf package. CEG suggested that the statement "CAUTION—Electrically Operated Product" be accepted in lieu of the above for articles not considered "toys" but intended for use by children.

Placing the precautionary statement "CAUTION—ELECTRIC TOY" on the toy itself is not a burdensome requirement and is necessary for toy safety since it draws attention to the fact that electrically operated toys can present hazards of an electrical or thermal nature during use. Conceivably this could be the only precautionary statement required on a toy and thus would serve the purpose of warning against misuse and potential abuse. The suggestion regarding the use of an alternate warning for electrically operated products not considered "toys" is acceptable and § 191b.3(e)(1) has been changed accordingly.

d. *Shelf package.* CEG suggested deleting § 191b.3(e)(5) which requires precautionary markings on the shelf packages of toys that contain one or more inherent hazards (for example, hot, small, or sharp parts). CEG contended that the information will be assumed and that if too much labeling is present, the information is not likely to be read. UL suggested that a reference be made to regulations that define the hazards from hot, small, and sharp parts. The labeling requirements regarding small and sharp parts have been deleted pending promulgation of regulations defining such hazards. The CEG suggestion regarding precautionary labeling of "hot parts" on the shelf package is acceptable in view of the other precautionary statements on the package. The requirement thus has been deleted.

e. *Flexible plastic packaging material.* The provisions regarding flexible plastic packaging materials (proposed § 191b.3(e)(6)) have been deleted. A regulation in this regard is currently being developed and will be applicable to all children's articles, including electrically operated toys.

f. *Instructions.* Regarding proposed § 191b.3(f), a toy manufacturer commented that it is impossible to write assembly instructions that can be completely understood by young children. A revision is not considered necessary because electrically operated toys requiring assembly should not be intended for use by children too young to comprehend the instructions. Additional language is necessary with regard to advising a parent to periodically examine toys for potentially hazardous defects. Proposed § 191b.3(f) has been revised accordingly and has been redesignated § 191b.3(e)(3).

4. *Manufacturing requirements* (previously designated *Nonelectrical construction*)—a. *General.* A toy firm suggested that since many toy components are imported, compliance with manufacturing requirements such as those prescribed by § 191b.4(a)(2) would be extremely difficult. The manufacturer or importer of a product is responsible for determining

whether it is in compliance with applicable regulations. This responsibility includes inspection of imported components for safety and suitability.

Several comments indicated that the recordkeeping requirements (§ 191b.4(a)(3)) should be clarified. It is not the intention of the Commissioner to require recordkeeping for each individual toy, but rather for the sale and shipment of quantities (lots) of a particular toy. This order does not require that such records be kept for more than 3 years.

A toy company suggested that since no appropriate governmental requirements for components have been established, the provision in that regard (§ 191b.4(a)(4), last sentence) should be deleted. The paragraph has been clarified to properly reflect the purpose of this regulation. Each component of an electrically operated toy shall comply with applicable requirements established herein.

b. *Coatings.* The reference to paints and other surface-coating materials (proposed § 191b.4(b)) has been deleted from the regulation since all toys or other articles intended for use by children are subject to § 191.9(a)(6)(ii), including those that are electrically operated (37 FR 5229 and 16078).

c. *Electrically operated sewing machines.* In response to a recommendation by a retailer, § 191b.4(h)(3) concerning electrically operated sewing machines has been changed to take into account the safety feature presented by the presser foot attachment on these articles.

d. *Overload protection.* Proposed § 191b.4(h)(4) has been deleted since overload protection is adequately dealt with in § 191b.6(e)(5).

5. *Electrical design and construction*—a. *Switches.* Several comments suggested that the double pole requirements in § 191b.5(a) be made applicable only to those toys with replaceable incandescent lamps. This suggestion is consistent with the purpose of these regulations, and § 191b.5(a) has been changed to limit the scope of the double pole requirement to switches that control a replaceable incandescent lamp, electrode, or lampholder contact which is at a potential of more than 30 volts r.m.s. (42.2 volts peak).

b. *Lamps.* TMA and a toy firm requested that illuminating devices for microscopes be excluded from the coverage of § 191b.5(b) which prescribes lamp requirements. Any person may apply to the Commissioner for an exemption or other amendment of these regulations by submitting a petition which shall set forth a statement of the grounds upon which the petitioner relies.

Comments from CEG, TMA, and two toy firms suggested that an unnecessary hardship will be placed on manufacturers by the requirement (§ 191b.5(b)(2)) for an interlock to protect lamp sockets. This suggestion is valid and the regulation has been changed to permit use of special fastening devices that cannot be opened manually or with a flat-bladed screwdriver or pliers. This provision is included in § 191b.5(b)(1) of the order.

c. *Power supply connections (cords and plugs).* CU suggested that electrically operated toys designed to be hand held, used with water, or likely to be used out-of-doors, be required to be double insulated or provided with a three-conductor grounding-type power supply cord. Such a requirement would be impracticable because many homes are not equipped with grounding apparatus and the grounding of adaptors would not provide a satisfactory solution. Based on available accident and injury information, there is no justification for double insulation.

A toy firm questioned the distance specification in § 191b.5(f)(3), redesignated § 191b.5(e)(3) in this order, regarding the face of the attachment-plug cap. The firm failed to see why this distance is so much greater than the one-eighth inch presently found on the majority of cord plugs in use. The five-sixteenths of an inch distance specified in the regulation is a precautionary measure intended to minimize the incidence of accidental contact of children's fingers with the metal blades of the plug during insertion.

The same firm contended that no safety is added by the minimum length specification in § 191b.5(f)(5), designated as § 191b.5(e)(5) in this order, for the power cord. This contention is rejected. The minimum length requirement of 5 feet serves as a safety feature in that it affects the potential proximity of a child's play area to a wall outlet.

TMA and two toy firms contended that certain requirements in § 191b.5(f), redesignated § 191b.5(e) in this order, are inappropriate for transformers that have a 110-volt primary plug integrated into the transformer case. This contention is correct and the regulation has been changed to exclude such transformers from the requirements dealing with power supply connections.

d. *Wiring.* CEG commented that the requirements in § 191.5(h), redesignated § 191b.5(g) in this order, concerning internal wiring of a toy are superfluous and too detailed. The organization suggested that subparagraph (1), plus a recommended revision, would offer sufficient guidance. The commissioner concludes that the detailed nature of paragraph (g) is necessary in order to properly interpret general performance requirements (for example, adequate mechanical strength). Subparagraphs (2) through (5) of § 191b.5(g) establish requirements to preclude the development of certain electrical hazards. These requirements are particularly important safeguards since many electrically operated toys are used and abused for a number of years.

In reply to an inquiry by NEMA, nichrome alloy is an acceptable material for use in current-carrying parts.

e. *Strain relief.* CEG recommended that a performance standard rather than the design standard in § 191b.5(i), redesignated § 191b.5(h) in this order, be adopted regarding strain relief. Such a revision is not warranted because the requirements, although design oriented, are not design restrictive.

UL and NEMA recommended that a knot be an acceptable means of strain relief if the toy is found to comply with the performance requirements in § 191b.6. A knot in itself does not provide a sufficient degree of protection against hazards that may develop as a result of abuse. However, a knot associated with a loop around a fixed structural component does offer sufficient protection if the performance requirements in § 191b.6 are met. Section 191b.5(i)(4) has been changed accordingly and redesignated as § 191.b5(h)(4).

6. *Performance*—a. *General.* Various revisions were suggested regarding the conditions described in § 191b.6(a) under which a toy shall not present a fire or accident hazard. The comments suggested that these requirements present problems of interpretation. To minimize such problems without interfering with the purpose of the regulation, § 191b.6(a) has been changed so that the requirement in question is in terms of "normal use and reasonably foreseeable damage or abuse conditions" instead of "abnormal conditions."

b. *Enclosures.* Regarding § 191b.6(b) on testing enclosures, UL recommended that the breakage of a lamp be considered a test failure with the qualification that this breakage be disregarded if a second test does not result in breakage. This suggestion cannot be adopted because it would be unreasonable to expect a lamp to survive a drop test.

c. *Drop test.* Regarding the drop test in § 191b.6(b)(1), UL suggested that their own drop test procedures are adequate and that any diversion from their standard is unnecessary. After review of the UL toy standard's drop test, it is concluded that the procedures set forth in § 191b.6(b)(1) are more stringent, but also more reasonable in terms of actual use conditions, and more restrictive in terms of performance than the UL test. The test has been redesignated as an impact test in the final order.

CEG recommended that floor-standing toys be excluded from the drop test requirement. The drop test is inappropriate for certain floor-standing toys; therefore, § 191b.6(b)(1) has been changed to exclude toys with a weight of more than 10 pounds from the requirement.

d. *Rod pressure test.* UL and NEMA questioned the increase of the force level in the rod pressure test in § 191b.6(b)(2) to 25 pounds from the 20-pound specification in the UL toy standard. Recently gathered anthropometric data support the conclusions that the 25-pound level is unreasonable, and the specification has been changed to 20 pounds. The test has been redesignated as a compression test in the final order.

e. *Pressure test.* NEMA suggested that the pressure test in § 191b.6(b)(3) be brought into accord with a similar procedure in the UL electrical toy standard. Section 191b.6(b)(3) specifies in part that a toy surface measuring 24 or more square inches shall be subject to the pressure test. This minimum area can be reasonably expected to be subjected

to a pressure or load, such as the weight of a child, and should therefore be capable of supporting such pressure without producing a hazardous condition. Limiting this testing to surface areas in excess of 48 square inches, as in the UL standard, is concluded to be too exclusive for child protection purposes.

f. *Strain-relief test.* UL, NEMA, and two toy firms commented that deformation of the anchoring surface and/or displacement of the strain-relief unit cannot be completely avoided when a power cord is subjected to a direct pull of 35 pounds, but that such a displacement or deformation should not produce a stress resulting in a hazardous condition. The Commissioner finds these comments to be valid and the final order has been revised accordingly. The 40-pound specification in § 191b.6(c)(4)(i), which in this order appears in § 191b.6(h)(1) because § 191b.6(c)(4) has been redesignated as § 191b.6(h), has been changed to 35 pounds.

CEG commented that the 3-foot drop test (with cord held in place) in § 191b.6(c)(4)(iii) does not relate to any reasonably foreseeable abuse. Another comment, by a toy firm, agreed to the valadity of this strain-relief test but suggested that a weight limitation be included, especially for toys to be used on a floor. Although this testing procedure is deemed an appropriate simulation of reasonably foreseeable abuse, the weight limitation suggestion is valid and § 191b.6(c)(4)(iii), redesignated § 191b.6(h)(3) in this order, has been changed to limit applicability to toys weighing 10 pounds or less.

g. *Stability.* With reference to the "no spillage" requirement in § 191b.6(d), UL suggested that a specification be added as to the height to which containers can be filled with molten material or hot liquids. Such a designation is the responsibility of the manufacturer and such specified level should be one element in insuring that spillage does not occur under the conditions described in § 191b.6(d).

7. *Electrical performance*—a. *Power input.* A toy firm suggested that the amperage limitation in § 191b.6(e)(1) be deleted since no relationship between amperage and danger of a toy would be present if the article complies with the other provisions of the regulations. Despite other safety provisions, the amperage restriction is necessary to limit available power to a relatively safe use level to guard against any unforeseen hazards.

b. *Dielectric strength.* In response to several comments, the procedural requirements for the dielectric strength test in § 191b.6(e)(2) have been revised for clarification.

c. *Leakage current and repeated dielectric withstand tests.* NEMA and a retailer suggested that the relative humidity requirement in § 191b.6(e)(3) be revised to 85 percent. The association submitted that testing under conditions of 90–95 percent relative humidity has resulted in condensation within small motors that prohibits leakage testing because of the presence of water. The retailer commented that the 90–95 percent requirement is far in excess of what is possible in actual use conditions. In the interest of safety, portions of the proposed regulations are a departure from established industry standards. The requirement in question, however, is identical to that established in the UL electrical toy standard and, in the absence of Federal regulations, has been adhered to by many firms in the toy industry. The requirement is deemed appropriate and the suggested change has not been adopted.

NEMA suggested that the leakage current measurement be taken outside of the humidity compartment within 1 minute after removal of the toy. The association noted that difficulties are encountered when this measurement is taken within the compartment. Although taking this measurement within the compartment may present some degree of difficulty, the derived benefits outweigh this difficulty. When the measurement is performed within the compartment, and thus under controlled conditions, the reliability of the test is not affected. Such is not the case outside the chamber where variations may be expected to occur as a result of changes in the temperature and relative humidity.

d. *Motor operation.* NEMA commented that the requirements in § 191b.6(e)(4) on motor operation are confusing and contradictory. This criticism is valid and the regulation has been revised to establish two testing conditions: One for maximum normal load and one for locked rotor. Maximum acceptable temperatures have been established for both conditions.

e. *Motor overload.* Regarding the requirement in § 191b.6(e)(5)(i) that no pitting of the switch contacts shall occur as a result of the motor overload test, two toy firms stated that pitting of the switch contacts will always be evident after a motor control switch is subjected to this test. This contention is not necessarily true. The manufacturer is responsible for incorporating a motor-control switch with a sufficient horsepower rating to insure that such pitting does not occur.

f. *Switch overload.* In response to an inquiry by UL, visual inspection is an acceptable means of judging the performance of a switch subjected to the overload test specified in § 191b.6(e)(5)(i). The final order has been revised accordingly.

8. *Classification of toy parts or surfaces.* Regarding the classified types, according to use or function, set forth in subdivisions of § 191b.6(g)(2):

a. A toy firm inquired as to whether their small wall-mount transformer qualifies as a type A or type B surface. This particular transformer has surfaces classified as both Types A and B. The product has plastic grips likely to be grasped for the purpose of carrying (Type A) and parts that may be touched but which need not be grasped for carrying (Type B).

b. A toy firm suggested that the specifications regarding Type E surfaces in § 191b.6(g)(2)(vii) are overly stringent and that no body of knowledge indicates that such are necessary. These precautionary measures are necessary to restrict the child's access to high temperatures for toys that must operate at the temperature required to accomplish baking or cooking functions.

c. TMA suggested that a ¼-inch-diameter rod 2 inches long is a more realistic instrument for determining the accessibility of Types D, D-marked, and E parts of surfaces than the ¼-inch-diameter rod 3 inches long specified in § 191b.6(g)(2)(vii). A toy firm commented that the use of two probes is more realistic: ¼-inch-diameter rod 2 inches long to insure exclusion of a child's fingers and ⅜-inch-diameter rod 3 inches long to insure the exclusion of an adult's fingers. The specified probe (¼-inch-diameter rod 3 inches long) is deemed appropriate since it takes into account the normal width of a child's finger and the extended length of an adult's finger.

9. *Thermal requirements.* CU recommended that toys, other than educational or hobby-type toys, be limited to those surface temperature indicated in § 191b.7 as not requiring a warning marking, and that educational- or hobby-type toys conform to the temperature specifications in § 191b.7. This recommendation is unreasonable in light of the specific safety requirements established for toys as well as educational- and hobby-type products.

The Arkansas Consumer Research Group commented that the size of lettering is unspecified for the age labeling required by § 191b.6(g)(3). The group suggested that this labeling be unmistakably clear and prominent and that the letters be at least one-third the size of the largest letters on the display panel and of different type or color for contrast. The Commissioner finds that prominence of the label information is essential and the regulation has been changed accordingly. The lettering heights set forth in § 191b.3(d) are considered appropriate and reasonable for child protection.

TMA commented that § 191b.6(g)(3) requires labeling of certain hobby items intended for children over 12 years and that such age is unnecessarily restrictive. The organization recommended that the age be changed to 7. Section 191b.6(g)(3) does not require age labeling per se. It removes temperature restrictions on those hobby-type products properly labeled as being intended for children over 12 years of age; however, the maximum surface temperature of such products may not exceed those reasonably required to accomplish the intended task. A change to age 7 in this context is undesirable in terms of affording adequate child protection.

10. *Temperature measurements.* Regarding the requirements of § 191b.6(g)(5)(i), CEG recommended that thermocouples of wire diameters between

Nos. 24 and 30 AWG (American Wire Gage) be acceptable in the instruments used to measure temperatures. This change is unnecessary in view of the fact that the use of No. 30 AWG wire for temperature measurement is presently an accepted practice.

11. *Maximum acceptable surface temperatures.* A consumer recommended reduction of the temperature limits for toy surfaces specified in § 191b.7, suggesting that such are unacceptably high and present a definite hazard to children. These maximum acceptable surface temperatures are based upon the best available data and a revision is unwarranted. The values in the table are based upon (a) the premise that 149° F. is the temperature above which a 1-second contact will provide the threshhold for irreversible tissue damage and (b) the assumption that the reaction time of normal children, as well as normal adults, is significantly less than that which would permit a 1-second period of contact. Acceptable temperatures for the different surface types have been graded in accordance with the 149° F. value with consideration given to the accessibility of the surfaces during normal use.

12. *Maximum acceptable material temperatures.* A toy firm commented that the specifications in § 191b.8 regarding maximum acceptable toy material temperatures are confusing and their understanding is that the temperatures are those historically used under normal, but not abnormal (stalled rotor) conditions. Clarification in this regard is available in § 191b.6(g)(4) which specifies test conditions.

CEG noted that the temperatures in the table in § 191b.8 are the same as those listed in the UL electrical toy standard but are labeled "maximum acceptable material temperatures" and not "maximum acceptable temperature rises." The Commissioner has concluded that maximum temperature rises are misleading because they are dependent on an established ambient temperature and are not directly relatable to a potential burn hazard.

NEMA suggested that there is a redundancy in § 191b.8 with regard to the construction of a toy insofar as the use of totally enclosed motors are concerned. This redundancy has been eliminated by a revision of the requirements for locked-rotor motor temperatures.

13. *Effective date.* Several comments expressed concern over the effective date of these regulations. Suggestions as to an alternate date vary from early 1973, to December 31, 1973, with a reservation that the requirements be applicable only to those toys and other children's articles leaving the factory after the effective date. The Commissioner concludes that an effective date of 180 days after publication in the FEDERAL REGISTER is a necessary and reasonable time to allow affected persons to achieve full compliance. Only those articles introduced into interstate commerce after such date are subject to the provisions of these regulations. All electrically operated toys or other electrically operated articles intended for use by children are subject, not only to the provisions of these regulations, but also to any other applicable provisions of Part 191.

Therefore, having considered the comments received and other relevant material, the Commissioner concludes that the proposal, with changes, should be adopted as set forth below.

Accordingly, pursuant to provisions of the Federal Hazardous Substances Act (secs. 2 (f)(1)(D), (r), (s), (t), 3(e)(1), 74 Stat. 372, 374, 375, as amended 83 Stat. 187–189; 15 U.S.C. 1261, 1262) and under authority delegated to the Commissioner (21 CFR 2.120), Subchapter E of Title 21, Chapter 1, is amended as follows:

1. In Part 191, by adding the following new paragraph (b) to § 191.9a:

§ 191.9a Banned toys and other banned articles intended for use by children.

* * * * *

(b) *Electrically operated toys and other electrically operated children's articles presenting electrical, thermal, and/or certain mechanical hazards.* Under the authority of section 2(f)(1)(D) of the act and pursuant to provisions of section 3(e) of the act, the Commissioner has determined that the following types of electrically operated toys or other electrically operated articles intended for use by children present electrical, thermal, and/or certain mechanical hazards within the meaning of section 2 (r), (s), and/or (t) of the act because in normal use or when subjected to reasonably foreseeable damage or abuse, the design or manufacture may cause personal injury or illness by electric shock and/or presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces, or because of certain mechanical hazards:

(1) Any electrically operated toy or other electrically operated article intended for use by children (as defined in § 191b.1(a)(1)) that is introduced into interstate commerce and which does not comply with the requirements of Part 191b of this chapter.

2. By adding the following new Part 191b, Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children, to Subchapter E:

Sec.
191b.1 Definitions.
191b.2 [Reserved]
191b.3 Labeling.
191b.4 Manufacturing requirements.
191b.5 Electrical design and construction.
191b.6 Performance.
191b.7 Maximum acceptable surface temperatures.
191b.8 Maximum acceptable material temperatures.

AUTHORITY: Secs. 2 (f)(1)(D), (r), (s), (t), 3(e)(1), 74 Stat. 372, 374, 375 as amended 83 Stat. 187–189; 15 U.S.C. 1261, 1262.

§ 191b.1 Definitions.

(a) The following definitions apply to this Part 191b:

(1) The term "electrically operated toy or other electrically operated article intended for use by children" means any toy, game, or other article designed, labeled, advertised, or otherwise intended for use by children which is intended to be powered by electrical current from nominal 120 volt (110–125 v.) branch circuits. Such articles are referred to in this part in various contexts as "toy" or "electrically operated toy." If the package (including packing materials) of the toy or other article is intended to be used with the product, it is considered to be part of the toy or other article. This definition does not include components which are powered by circuits of 30 volts r.m.s. (42.4 volts peak) or less, or articles designed primarily for use by adults which may be used incidentally by children.

§ 191b.2 [Reserved]

§ 191b.3 Labeling.

(a) *General.* Electrically operated toys, and the instruction sheets and outer packaging thereof, shall be labeled in accordance with the requirements of this section and any other applicable requirements of the Federal Hazardous Substances Act and regulations promulgated thereunder. All labeling shall be prominently and conspicuously displayed under customary conditions of purchase, storage, and use. All required information shall be readily visible, noticeable, clear, and, except where coding is permitted, shall be in legible English (other languages may also be included as appropriate). Such factors governing labeling as location, type size, and contrast against background may be based on necessary condensations to provide a reasonable display.

(b) *Specific items.* (1) The toy shall be marked in accordance with the provisions of paragraph (d) of this section to indicate:

(i) The electrical ratings required by paragraph (c) of this section.

(ii) Any precautionary statements required by paragraph (e) of this section.

(2) The shelf pack or package of the toy shall be labeled in accordance with the provisions of paragraph (d) of this section to indicate:

(i) The date (month and year) of manufacture (or appropriate codes).

(ii) The electrical ratings required by paragraph (c) of this section.

(iii) Any precautionary statements required by paragraph (e) of this section.

(3) Each toy shall be provided with adequate instructions that are easily understood by children of those ages for which the toy is intended. The instructions shall describe the applicable installation, assembly, use, cleaning, maintenance (including lubrication), and other functions as appropriate. Applicable precautions shall be included as well as the information required by paragraphs (b)(1) and (b)(2) of this section. The instructions shall also contain a statement addressed to parents recommending that the toy be periodically examined for potential hazards and that any potentially hazardous parts be repaired or replaced.

(4) If a toy is produced or assembled at more than one establishment, the toy and its shelf pack or package shall have a distinctive mark (which may be in code) identifying the toy as the product of a particular establishment.

(c) *Rating.* (1) A toy shall be marked to indicate its rating in volts and also in amperes and/or watts.

(2) If a toy utilizes a single motor as its only electric energy consuming component, the electrical rating may be marked on a motor nameplate and need not be marked elsewhere on the toy if the nameplate is readily visible after the motor has been installed in the toy.

(3) A toy shall be rated for alternating current only, direct current only, or both alternating and direct current.

(4) The alternating current rating shall include the frequency or frequency range requirement, if necessary because of a special component.

(d) *Markings.* (1) The markings required on the toy by paragraph (b) of this section shall be of a permanent nature, such as paint-stenciled, die-stamped, molded, or indelibly stamped. The markings shall not be permanently obliterable by spillage of any material intended for use with the toy and shall not be readily removable by cleaning with ordinary household cleaning substances. All markings on the toy and labeling of the shelf pack or package required by paragraph (b) of this section shall contrast sharply with the background (whether by color, projection, or indentation) and shall be readily visible and legible. Such markings and labeling shall appear in lettering of a height not less than that specified in paragraph (d)(2) of this section, except that those words shown in capital letters in paragraph (e) of this section shall appear in capital lettering of a height not less than twice that specified in paragraph (d)(2) of this section.

(2) Minimum lettering heights shall be as follows:

SURFACE AREA DISPLAYING MARKING, MINIMUM HEIGHT OF LETTERING

Square inches	*Inches*
Under 5	1/16
5 or more and under 25	1/8
25 or more and under 100	3/16
100 or more and under 400	1/4
400 or more	1/2

(e) *Precautionary statements*—(1) *General.* Electrically operated toys shall bear the statement: "CAUTION—ELECTRIC TOY." The shelf pack or package and the instructions of such toys shall bear the statement in the upper right-hand quarter of the principal display panel: "CAUTION—ELECTRIC TOY: Not recommended for children under ____ years of age. As with all electric products, precautions should be observed during handling and use to prevent electric shock." The blank in the preceding statement shall be filled in by the manufacturer, but in no instance shall the manufacturer indicate that the article is recommended for children under 8 years of age if it contains a heating element. In the case of other electrically operated products which may not be considered to be "toys" but are intended for use by children, the term "ELECTRICALLY OPERATED PRODUCT" may be substituted for the term "ELECTRIC TOY."

(2) *Thermal hazards.* (i) Toys having Type C or Type D surfaces (described in § 191b.6(g)(2)) which reach temperatures greater than those shown in paragraph (e)(2)(ii) of this section shall be defined as hot and shall be marked where readily noticeable when the hot surface is in view with the statement: "HOT—Do Not Touch." When the marking is on other than the hot surface, the word "HOT" shall be followed by appropriate descriptive words such as "Molten Material," "Sole Plate," or "Heating Element," and the statement "Do Not Touch." An alternative statement for a surface intended to be handheld as a functional part of the toy shall be "HOT _____—Handle Carefully," the blank being filled in by the manufacturer with a description of the potential hazard such as "Curler" or "Cooking Surface."

(ii) Surfaces requiring precautionary statements of thermal hazards are those exceeding the following temperatures when measured by the test described in § 191b.6(g)(4):

Surface type (see § 191b.6(g)(2))	Thermal inertia type [1]	Temperature	
		Degrees C.	Degrees F.
C	1	65	149
C	2	75	167
C	3	85	185
C	4	95	203
D	1	55	131
D	2	70	158
D	3	80	176
D	4	90	194

[1] Thermal inertia types are defined in terms of lambda as follows:
Type 1: Greater than 0.0045 (e.g., most metals).
Type 2: More than 0.0005 but not more than 0.0045 (e.g., glass).
Type 3: More than 0.0001 but not more than 0.0005 (e.g., most plastics).
Type 4: 0.0001 or less (e.g., future polymeric materials).
The thermal inertia of a material can be obtained by multiplying the thermal conductivity (cal./cm./sec./degree C.) by the density (gm./cm.^{3}) by the specific heat (cal./gm./degree C.)

(3) *Lamp hazards*—(i) *Replaceable incandescent lamps.* A toy with one or more replaceable incandescent lamps, having a potential difference of more than 30 volts r.m.s. (42.4 volts peak) between any of its electrodes or lampholder contacts and any other part or ground, shall be marked inside the lamp compartment where readily noticeable during lamp replacement with the statement: "WARNING—Do not use light bulbs larger than —— watts", the blank being filled in by the manufacturer with a number specifying the wattage rating of the lamp. Such toys shall bear the statement: "WARNING—Shock Hazard. Pull plug before changing light bulb" on the outside of the lamp compartment where it will be readily noticed before gaining access to the lamp compartment.

(ii) *Nonreplaceable incandescent lamps.* A toy which utilizes one or more nonreplaceable incandescent lamps (other than pilot or indicator lamps) shall be marked where clearly visible with the statement: "SEALED UNIT—Do not attempt to change light bulb" or equivalent.

(4) *Water.* If not suitable for immersion in water, a toy cooking appliance (such as a corn popper, skillet, or candymaker) or other article which may conceivably be immersed in water shall be marked with the statement: "DANGER—To prevent electric shock, do not immerse in water; wipe clean with damp cloth" or equivalent.

§ 191b.4 Manufacturing requirements.

(a) *General.* (1) Only materials safe and suitable for the particular use for which the electrically operated toy is intended shall be employed.

(2) Toys shall be produced in accordance with detailed material specifications, production specifications, and quality assurance programs. Quality assurance programs shall be established and maintained by each manufacturer to assure compliance with all requirements of this part.

(3) The manufacturer or importer shall keep and maintain for 3 years after production or importation of each lot of toys (i) the material and production specifications and the description of the quality assurance program required by paragraph (a)(2) of this section, (ii) the results of all inspections and tests conducted, and (iii) records of sale and distribution. These records shall be made available upon request at reasonable times to any officer or employee acting on behalf of the Secretary of Health, Education, and Welfare. The manufacturer or importer shall permit such officer or employee to inspect and copy such records, to make such inventories of stock as he deems necessary, and to otherwise verify the accuracy of such records.

(4) Toys shall be constructed and finished with a high degree of uniformity and as fine a grade of workmanship as is practicable in a well-equipped manufacturing establishment. Each component of a toy shall comply with the requirements set forth in this part.

(b) [Reserved]

(c) *Protective coatings.* Iron and steel parts shall be suitably protected against corrosion if the lack of a protective coating would likely produce a hazardous condition in normal use or when the toy is subjected to reasonably foreseeable damage or abuse.

(d) *Mechanical assembly*—(1) *General.* A toy shall be designed and constructed to have the strength and rigidity necessary to withstand reasonably foreseeable damage and abuse without producing or increasing a shock, fire, or other accident hazard. An increase in hazards may be due to total or partial structural collapse of the toy resulting in a reduction of critical spacings, loosening or displacement of one or more components, or other serious defects.

(2) *Mounting.* Each switch, lampholder, motor, automatic control, transformer, and similar component shall be

securely mounted and shall be prevented from turning, unless the turning of such component is part of the design of the toy and produces no additional hazard such as reduced spacings below acceptable levels or stress on the connection. Friction between tight-fitting surfaces shall not be considered sufficient for preventing the turning of components. The proper use of a suitable lockwasher or a keyed and notched insert plus a suitable lockwasher for single-hole mountings shall be acceptable. Each toy shall be designed and constructed so that vibrations occurring during normal operation and after reasonably foreseeable damage or abuse will not affect it adversely. Brush caps shall be tightly threaded or otherwise designed to prevent loosening.

(3) *Structural integrity.* Heating elements shall be supported in a substantial and reliable manner and shall be structurally prevented from making contacts inside or outside of the toy which may produce shock hazards. The current-carrying component(s) of the heating element shall be enclosed, and the enclosure shall be designed or insulated to prevent the development of a shock or fire hazard that may result from element failure. A toy operating with a gas or liquid under pressure, such as an electrically operated steam engine, shall be tested with respect to its explosion hazard and shall be provided with a pressure relief device that will discharge in the safest possible direction; that is, avoiding direct human contact and avoiding the wetting of electrical contacts.

(e) *Insulating material.* (1) Material to be used for mounting uninsulated live electrical elements shall be generally accepted as suitable for the specific application, particularly with regard to electrical insulation (voltage breakdown) and good aging characteristics (no significant change in insulating characteristics over the expected lifetime of the toy).

(2) Material used to insulate a heating element from neighboring parts shall be suitable for the purpose. If plain asbestos in a glass braid is used to so insulate the heating element, it shall be tightly packed and totally enclosed by the braid, and the overall thickness, including the braid, shall not be less than one-sixteenth inch. Hard fiber may be used for electrically insulating bushings, washers, separators, and barriers, but is not sufficient as the sole support of uninsulated live metal parts.

(f) *Enclosures*—(1) *General.* Each toy shall have an enclosure constructed of protective material suitable for the particular application, for the express purpose of housing all electrical parts that may present a fire, shock, or other accident hazard under any conditions of normal use or reasonably foreseeable damage or abuse. Enclosures shall meet the performance requirements prescribed by § 191b.6(b).

(2) *Accessibility.* An enclosure containing a wire, splice, brush cap, connection, electrical component, or uninsulated live part or parts at a potential of more than 30 volts r.m.s. (42.4 volts peak) to any other part or to ground:

(i) Shall be sealed by welding, riveting, adhesive bonding, and/or by special screws or other fasteners not removable with a common household tool (screwdriver, pliers, or other similar household tool) used as intended; and

(ii) Shall have no opening permitting entry of a 0.010-inch-diameter music wire that could contact a live part. Cross-notch-head screws, spring clips, bent tabs, and similar fasteners shall not be considered suitable sealing devices for enclosures since they are easy to remove with common household tools. Bent tabs shall be acceptable if, due to metal thickness or other factors, they successfully resist forceful attempts to dislodge them with ordinary tools.

(3) *Nonapplication.* The requirements of this paragraph are not applicable to an insulating husk enclosure or equivalent that covers the electrodes of a replaceable incandescent lamp and its lampholder contacts. The primary function of an enclosure containing a lamp shall be to protect it from breakage during normal use or reasonably foreseeable damage or abuse.

(g) *Spacings.* The distance, through air or across the surface of an insulator, between uninsulated live metal parts and a metallic enclosure and between uninsulated live metal parts and all other metal parts shall be suitable for the specific application as determined by the dielectric strength requirements prescribed by § 191b.6(e)(2). Electrical insulating linings on barriers shall be held securely in place.

(h) *Special safety features*—(1) *Moving parts.* If the normal use of a toy involves accident hazards, suitable protection shall be provided for the reduction of such hazards to an acceptable minimum. For example, rotors, pulleys, belting, gearing, and other moving parts shall be enclosed or guarded to prevent accidental contact during normal use or when subjected to reasonably foreseeable damage or abuse. Such enclosure or guard shall not contain openings that permit entrance of a ¼-inch-diameter rod and present a hazardous condition.

(2) *Switch marking.* Any toy having one or more moving parts which perform an inherent function of the toy and which may cause personal injury shall have a switch that can deenergize the toy by a simple movement to a plainly marked "OFF" position. Momentary contact switches which are normally in the "OFF" position need not be so marked.

(3) *Electrically operated sewing machines.* Electrically operated toy sewing machines shall be designed and constructed to eliminate the possibility of a child's finger(s) being pierced by a needle. For the purpose of this subparagraph, a clearance of not more than five thirty-seconds of an inch below the point of the needle when in its uppermost position or below the presser foot, if provided, shall be considered satisfactory.

(4) *Pressure relief valves.* A pressurized enclosure shall have an automatic pressure relief device and shall be capable of withstanding hydrostatic pressure equal to at least five times the relief pressure.

(5) *Containers for heated materials.* Containers intended for holding molten compounds and hot liquids shall be designed and constructed to minimize accidental spillage. A pot or pan having a lip and one or more properly located pouring spouts and an adequately thermally insulated handle may provide satisfactory protection. Containers intended solely for baking need not be designed and constructed to minimize accidental spillage. Containers shall be of such material and construction that they will not deform or melt when subjected to the maximum operating temperature occurring during normal use or after reasonably foreseeable damage or abuse.

(6) *Water.* Electrically operated toys (such as toy irons) shall not be designed or manufactured to be used with water except for toy steam engines or other devices in which the electrical components are separate from the water reservoir and are completely contained in a sealed chamber. Toys requiring occasional or repeated cleaning with a wet cloth shall be constructed to prevent seepage of water into any electrically active area that may produce a hazardous condition.

§ 191b.5 Electrical design and construction.

(a) *Switches.* (1) Switches and other control devices of electrically operated toys shall be suitable for the application and shall have a rating not less than that of the load they control (see § 191b.6(e)(5)(ii) regarding electrical switch overload). A switch that controls a replaceable incandescent lamp, electrode, or lampholder contact which is at a potential of more than 30 volts r.m.s. (42.4 volts peak) to any other part or to ground shall open both sides of the circuit and shall have a marked "OFF" position. A switch that may reasonably be expected to be subjected to temperatures higher than 50° C. (122° F.) shall be constructed of materials which are suitable for use at such temperatures.

(2) Switches shall be located and protected so that they are not subject to mechanical damage that would produce a hazard in normal use or from reasonably foreseeable damage or abuse (see § 191b.6(b)).

(b) *Lamps.* (1) A replaceable incandescent lamp having a voltage of more than 30 volts r.m.s. (42.4 volts peak) between any of its electrodes or lampholder contacts and any other part or ground shall be in an enclosure that has at least one door or cover permitting access to the lamp. Such door(s) or cover(s) of the enclosure shall be so designed and constructed that they cannot be opened manually or with a flat bladed screwdriver or pliers.

(2) With all access doors and covers closed, the lamp enclosure shall have no opening that will permit entry of a straight rod 6 inches long and one-fourth inch in diameter if such entry would

present an electrical hazard. The lamp shall be located no less than one-half inch from any ¼-inch-diameter opening in the enclosure.

(3) A toy having one or more lampholders shall be designed and constructed so that no live parts other than the contacts of the lampholders are exposed to contact by persons removing or replacing lamps. The shells of all lampholders for incandescent lamps shall be at the same potential.

(4) If the potential between the contacts of a lampholder for a replaceable incandescent lamp and any other part or ground is greater than 30 volts r.m.s. (42.4 volts peak), the contacts shall be located in an insulating husk or equivalent.

(c) *Transformers.* Transformers that are integral parts of toys shall be of the 2-coil insulated type.

(d) *Automatic controls.* Automatic controls for temperature regulation shall have the necessary capacity and reliability for their particular application.

(e) *Power supply connections (cords and plugs).* (1) A toy shall be provided with a suitable means for attachment to the power supply circuit.

(2) A toy requiring a power cord shall have a flexible cord that is permanently attached to the toy.

(3) The perimeter of the face of the attachment-plug cap shall be not less than five-sixteenths of an inch from any point on either blade of the plug.

(4) The body of the attachment-plug cap shall decrease in cross section from the face but shall have an expansion of the body, after a suitable distance from the face, sufficient to provide an effective finger grip.

(5) A flexible electrical power cord provided on a toy shall be type SP–2 (as defined in the "National Electrical Code," Chapter 4, article 400, pages 184–194 (1971),[2] published by the National Fire Protection Association), or its equivalent, or a heavier general-use type, and shall be not less than 5 feet nor more than 10 feet in length when measured as the overall length of the attached cord outside the enclosure of the toy, including fittings, up to the face of the attachment-plug cap.

(6) A flexible cord and plug shall have a current-carrying capacity of not less than the ampere rating of the toy.

(7) Cords on toys which are intended to come in direct contact with water or other liquids during use shall be of a jacketed type. Cords on toys with which water or other liquids are to be indirectly used (such as for cooling a mold) shall be plastic covered.

(8) Transformers in which the primary coil connects directly to the branch circuit outlet shall not be subject to the requirements of paragraph (e) (2), (4), and (5) of this section.

(f) *Bushings.* (1) At the point where a power supply cord passes through an opening in a wall, barrier, or the overall enclosure of a toy, a suitable and substantial bushing, insulating bushing, or equivalent shall be reliably secured in place and shall have smooth surfaces and well-rounded edges against which the cord may bear.

(2) If a cord hole is in wood, porcelain, phenolic composition, or other suitable insulating material, the surface of the hole is acceptable without a bushing if the edges of the hole are smooth and well-rounded. Where a separate insulating bushing is required, a bushing made of ceramic material or a suitable molded composition is acceptable if its edges are smooth and well-rounded.

(3) In no instance shall a separate bushing of wood, rubber, or any of the hot-molded shellac-and-tar compositions be considered acceptable.

(g) *Wiring.* (1) The internal wiring of a toy shall consist of suitable insulated conductors having adequate mechanical strength, dielectric properties, and electrical capacity for the particular application.

(2) Wireways shall be smooth and entirely free of sharp edges, burrs, fins, and moving parts that may abrade conductor insulation. Each splice and connection shall be mechanically secure, shall provide adequate and reliable electrical contact, and shall be provided with insulation at least equivalent to that of the wire involved unless adequate spacing between the splice and all other metal parts is permanently assured.

(3) A wire connector for making a splice in a toy shall be a type that is applied by a tool and for which the application force of the tool is independent of the force applied by the operator.

(4) Soldered connections shall be made mechanically secure before soldering.

(5) Current-carrying parts shall be made of silver, copper, a copper alloy, or other electrically conductive material suitable for the particular application.

(h) *Strain relief.* (1) A means of strain relief shall be provided to prevent mechanical stress on a flexible cord from being transmitted to terminals, splices, or interior wiring.

(2) If suitable auxiliary insulation is provided under a clamp for mechanical protection, clamps of any material are acceptable for use on Type SP–2 (as defined in the "National Electrical Code," chapter 4, article 400, pages 184–194 (1971),[2] published by the National Fire Protection Association), or equivalent rubber-insulated cord. For heavier types of thermoplastic-insulated cord, clamps may be without auxiliary insulation unless the clamp may damage the cord insulation.

(3) A flexible cord shall be prevented from being pushed into the toy through the cord-entry hole if such displacement would result in a hazardous condition.

(4) A knot in the cord shall not be considered an acceptable means of strain relief, but a knot associated with a loop around a smooth, fixed structural component shall be considered acceptable.

(i) *Additional requirements.* Except for the electrodes of a replaceable incandescent lamp and its lampholder contacts, a potential of more than 30 volts r.m.s. (42.4 volts peak) shall not exist between any exposed live part in a toy and any other part or ground.

§ 191b.6 Performance.

(a) *General.* Electrically operated toys and components thereof shall be tested by the appropriate methods described in this section and shall pass the tests in such a manner as to provide the necessary assurance that normal use and reasonably foreseeable damage or abuse will not produce a hazard or a potentially hazardous condition. The toy shall be capable of passing all applicable tests with any door, cover, handle, operable part, or accessory placed in any normal position. A toy shall not present a fire, casualty, or shock hazard when operated continuously for 6 hours under conditions of normal use and reasonably foreseeable damage or abuse, including the most hazardous position in which the toy can be left.

(b) *Enclosurers.* For purposes of this section, the term "enclosure" means any surface or surrounding structure which prevents access to a real or potential hazard. An enclosure shall withstand impact, compression, and pressure tests (see paragraph (b) (1), (2), and (3) of this section) without developing any openings above those specified, reduction of electrical spacings below those specified, or other fire, casualty, or shock hazards, including the loosening or displacement of components but excluding breakage of a lamp. After completion of each test, the toy shall comply with the requirements of the dielectric strength test described in paragraph (e) (2) of this section and, upon visual examination, shall not evidence the development of any hazards. Rupture of a fuse shall be considered a test failure.

(1) *Impact test.* A toy weighing 10 pounds or less shall be dropped four times from a height of 3 feet onto a 2½ inch thick concrete slab covered with 0.125 inch nominal thickness vinyl tile. The impact area shall be at least 3 square feet. The test shall be conducted while the toy is energized and operating and with all dead metal of the toy that may be energized connected together electrically and grounded through a 3-ampere plug fuse. The toy shall be dropped in random orientation. After each drop the test sample shall be allowed to come to rest and examined and evaluated before continuing.

(2) *Compression test.* Any area on the surface of the enclosure that is accessible to a child and inaccessible to flat-surface contact during the impact test shall be subjected to a direct force of 20 pounds for 1 minute. The force shall be applied over a period of 5 seconds through the axis of a ½-inch-diameter metal rod having a flat end with the edge rounded to a radius of one thirty-second of an inch to eliminate sharp edges. The axis of the rod shall be perpendicular to the

[2] Copies may be obtained from: National Fire Protection Association, 60 Batterymarch Street, Boston, MA 02110.

[2] Copies may be obtained from: National Fire Protection Association, 60 Batterymarch Street, Boston, MA 02110.

surface being tested. During the test the toy shall rest on a flat, hard surface in any test-convenient position.

(3) *Pressure test.* If any portion of the top of a toy has a flat surface measuring 24 square inches or more and a minor dimension of at least 3 inches, that surface shall be subjected to a direct vertical pressure increasing to 50 pounds over a period of 5 seconds and maintained for 1 minute. The force shall be applied through a steel ball 2 inches in diameter. During the test the toy shall be in an upright position on a flat, horizontal solid surface.

(c) *Handles and knobs*—(1) *General.* For the purposes of tests in this paragraph, the parts of a lifting handle on a toy that are within seven-sixteenths of an inch of the surface to which the handle is attached, or the parts of a lifting knob that are within one-fourth inch of the surface to which the knob is attached, are considered to be for support purposes, and the remainder of the handle or knob is considered to be generally functional in nature. A handle or knob shall withstand crushing and lifting tests (see paragraph (c) (2) and (3) of this section) without fracture of the handle or knob, development of an opening that may pinch the hand, or breakage of the means used to fasten the handle or knob in place.

(2) *Crushing test.* The functional portion of a handle or knob shall be subjected to a crushing force increasing to 20 pounds over a period of 5 seconds and maintained for 1 minute. The force shall be applied through two flat and parallel hardwood blocks, each at least 2½ inches thick and each having dimensions slightly exceeding those of the handle or knob being tested. The crushing force between the blocks shall be exerted in any direction perpendicular to the major axis of the handle or knob.

(3) *Lifting test.* The support portion of a handle or knob shall be subjected to a force equal to four times the weight of the object it is intended to support. The direction of the lifting force shall be as intended by the design of the toy and shall be applied through a ½-inch-wide strap through or around a handle or by fingers or the equivalent on a knob. The force shall be applied over a period of 5 seconds through the center of gravity of the toy and maintained for 1 minute.

(d) *Stability.* A toy shall not overturn while resting in an upright position on a flat surface inclined 15° from horizontal. No spillage of molten material or hot liquids from containers shall occur while the toy is operating in this position under normal conditions of use. During this test, casters, if any, shall be in the position most likely to result in tipping, but shall not be artificially held in one position to prevent a natural rotation to another position.

(e) *Electrical*—(1) *Power input.* The actual current flow in a toy without a heating element shall not exceed 110 percent of the rated value, and shall not exceed 5.5 amperes, at rated voltage. The power input to a toy with a heating element shall not exceed 105 percent of the rated value at rated voltage. The power input rating of a toy employing one or more incandescent lamps as the only power-consuming components shall be considered to be the total rated wattage of such lamps. The rated voltage shall be considered to be the mean value of a marked voltage range.

(2) *Dielectric strength.* (i) A toy shall be capable of withstanding without breakdown for 1 minute a 60-cycle-per-second (60 Hertz) essentially sinusoidal potential of 1,000 volts applied between live parts and any dead metal parts.

(ii) If a toy employs a low-voltage secondary winding (either in the form of a conventional transformer or as an insulated coil of a motor), the toy shall also be capable of withstanding without breakdown for 1 minute a sinusoidal test potential applied between the high-voltage and low-voltage windings. The test potential shall be applied at the rated frequency of the toy and shall have a value of 1,000 volts plus twice the rated voltage of the high-voltage winding. The test potential shall be supplied from a suitable capacity-testing transformer, the output voltage of which can be regulated. The waveform of the test voltage shall approximate a sine wave as closely as possible.

(iii) The applied test potential shall be increased rapidly and uniformly from zero until the required test value is reached and shall be held at that value for 1 minute. Unless otherwise specified, the toy shall be at the maximum operating temperature reached in normal use prior to conducting the tests.

(iv) The dielectric strength requirements of this subparagraph may also be determined by subjecting the toy to a 60-cycle-per-second (60 Hertz) essentially sinusoidal potential of 1,200 volts for 1 second. If the dielectric strength is determined by this method, the toy need not be in a heated condition.

(3) *Leakage current and repeated dielectric withstand tests.* (i) Both before and after being conditioned, a toy intended to operate from a source exceeding 42.4 volts peak shall:

(*a*) Not have a leakage current exceeding 0.5 milliampere, except that during the interval beginning 5 seconds and terminating 10 minutes after the toy is first energized, the leakage current of toys with heating elements other than lamps shall not exceed 2.5 milliamperes; and

(*b*) Comply with the requirements of a repeated dielectric withstand test both with and without preheating.

(ii) All accessible parts of a toy shall be tested for leakage current. If an insulating material is used for the enclosure or part of the enclosure, the leakage current shall be measured using a metal foil with an area not exceeding 10 by 20 centimeters in contact with accessible surfaces of such insulating material. Where the accessible surface of insulating material is less than 10 by 20 centimeters, the metal foil shall be the same size as the surface. The metal foil shall be so applied that it will not affect the temperature of the toy. The accessible parts shall be tested individually, collectively, and from one part to another.

(iii) Following the initial leakage current test, the toy shall be cooled down or heated up to 32° C. (90° F.). The toy shall then be conditioned for 48 hours in air at a temperature of 32°±2° C. (89.6°±3.6° F.) and with a relative humidity of 90–95 percent. The specified relative humidity shall be maintained inside a closed compartment in which a saturated solution of potassium sulphate is kept in a suitable container. Leakage current measurements shall be made, as specified in paragraph (e) (3) (ii) of this section and before the toy is energized, while the toy is in the humidity compartment.

(iv) With the connections intended for the source of supply connected thereto and then connected to the ungrounded side of a power supply circuit having a voltage equal to 110 percent of the rated voltage of the toy, the leakage current through a noninductive 1,500-ohm resistor connected between the grounded side of the supply circuit and each dead metal part (accessible and inaccessible) shall, when stable, be measured in accordance with the test provisions established in ANSI Standard C 101.1–1971, "American National Standard for Leakage Current for Appliances," approved November 17, 1970,* published by American National Standards Institute.

The toy shall then be removed from the humidity chamber, energized, and tested again after attaining its normal operating temperature. From these measurements, a leakage current with no resistance shall be calculated and used to determine compliance.

(v) For a toy whose outer enclosure consists wholly or partly of insulating material, the term "dead metal part" means metal foil tightly wrapped around the exterior of the enclosure in a manner that covers, but does not enter into, any enclosure openings.

(4) *Motor operation.* (i) A motor provided as part of a toy shall be capable of driving its maximum normal load in the toy without introducing any potentially hazardous condition. The performance of the toy shall be considered unacceptable if, during the test, temperatures in excess of those specified in § 191b.7 for Type D surfaces are attained on any accessible surface. The performance of the toy shall also be considered unacceptable if the rise in temperature during the test causes melting, scorching, embrittlement, or other evidence of thermal damage to the insulating material used to prevent exposure of live metal parts.

(ii) A motor-operated toy shall be tested with the motor stalled if the construction of the toy is such that any person can touch moving parts associated with the motor from outside the toy. The

*Copies may be obtained from: American National Standards Institute, 1430 Broadway, New York, NY 10018.

performance of the toy shall be considered unacceptable if, during the test, temperatures higher than those specified in § 191b.8 are attained or if temperatures higher than those specified for Type C surfaces in § 191b.7 are attained on any accessible surface of the motor.

(5) *Overload*—(i) *Motor.* A motor-control switch that is a part of a toy shall be horsepower-rated to cover the load or shall be capable of performing acceptably when subjected to an overload test consisting of 50 cycles of operation by making and breaking the stalled-rotor current of the toy at maximum rated voltage. There shall be no electrical or mechanical failure nor any visible burning or pitting of the switch contacts as a result of this test.

(ii) *Switch.* To determine if a motor-control switch is capable of performing acceptably when subjected to overload conditions, the toy shall be connected to a grounded supply circuit of rated frequency and maximum rated voltage with the rotor of the motor locked into position. During the test, exposed dead metal parts of the toy shall be connected to ground through a 3-ampere plug fuse such that any single pole, current-rupturing device will be located in the ungrounded conductor of the supply circuit. If the toy is intended for use on direct current, or on direct current as well as alternating current, the exposed dead metal parts of the toy shall be so connected as to be positive with respect to a single pole, current-rupturing device. The switch shall be operated at a rate of not more than 10 cycles per minute. The performance of the toy shall be considered unacceptable if the fuse in the grounding connection is blown during the test.

(f) *Hydrokinetic*—(1) *General.* Electrically operated toy steam engines shall be capable of performing acceptably when subjected to the tests described in this paragraph.

(2) *Preliminary test.* The ultimate strength of the boiler assembly shall first be determined by applying a hydrostatic pressure to the boiler with all openings blocked (the pressure-relief valve, steam exhausts, and any whistle or other accessory shall be removed and the resulting openings sealed); however, a water or other type of gage shall be left in place. The hydrostatic pressure shall be applied slowly and the ultimate value which is attained shall be recorded.

(3) *Pressure-relief test.* A pressure gage shall be connected to the boiler assembly which shall then be operated normally. The pressure at which the pressure-relief valve functions shall be noted while the engine is shut off (if a shutoff valve is provided) and with the whistle, if any, turned off. The test shall be discontinued and shall be considered a failure if the observed pressure exceeds one-fifth the value attained in the preliminary test described in paragraph (f)(2) of this section.

(4) *Operating pressure test.* If the boiler is still intact and no failure has occurred, the pressure-relief valve shall then be rendered inoperable and all other valves (such as a whistle and exhaust from the assembly) shall be tightly closed. Operation shall be continued until the pressure becomes constant. This test shall be discontinued and shall be considered a failure if the observed pressure exceeds one-third the value attained in the preliminary test described in paragraph (f)(2) of this section. During this test, all valves, gaskets, joints, and similar components shall be sufficiently tightened to prevent leakage. Rupture of the boiler or of any other fittings supplied with the engine shall be considered a failure.

(5) *Hydrostatic test.* If there has been no failure, two previous untested toys shall withstand for 1 minute a hydrostatic pressure of 5 times the pressure at which the safety valve operated or 3 times the constant pressure observed with the pressure-relief valve inoperable, whichever is greater. During this test, all openings shall be blocked (the pressure-relief valve, steam exhaust from the assembly, and any whistle or other outlet); however, a water or other type of gage shall remain in place. Rupture of the boiler or of a gage shall be considered a failure.

(g) *Thermal*—(1) *General.* The normal operation of a toy includes performance in normal use and after being subjected to reasonably forseeable damage or abuse likely to produce the highest temperatures or, in the case of motor-operated toys, the load that most closely approximates the severest conditions of normal use or reasonably foreseeable damage or abuse.

(2) *Classification.* Parts or surfaces of a toy are classified according to their use or function as follows (for the purposes of paragraph (g)(2)(v), (vi), and (vii) of this section, accessibility shall be defined as the ability to reach a heated surface with a ¼-inch-diameter rod 3 inches long):

(i) *Type A.* A part or surface of a toy (such as a handle) likely to be grasped by the hand or fingers for the purpose of carrying the toy or lifting a separable lid.

(ii) *Type B.* A part or surface of a toy that is (*a*) part of a handle, knob, or similar component, as in Type A (described in subdivision (i) of this subparagraph), but which is not normally grasped or contacted by the hand or fingers for carrying (including parts of a handle within seven-sixteenths of an inch of the surface to which the handle is attached and parts of a finger knob within ¼ inch of the surface to which the knob is attached, if the remainder of the knob is large enough to be grasped), or (*b*) a handle, knob, or part that may be touched but which need not be grasped for carrying the toy or lifting a lid, door, or cover (e.g., support part of a handle or knob).

(iii) *Type C.* A part or surface of a toy that can be touched by casual contact or that can be touched without employing the aid of a common household tool (screwdriver, pliers, or other similar household tool) and that is either (*a*) a surface that performs an intended heating function (e.g., the soleplate of a flatiron, a cooking surface, or a heating element surface), or (*b*) a material heated by the element and intended to be used as the product of the toy, excluding pans, dishes, or other containers used to hold the material to be cooked or baked if a common utensil or other device is supplied with the toy and specific instructions are established for using such a device to remove the container from the heated area.

(iv) *Type C marked.* A Type C surface which has been marked with a precautionary statement of thermal hazards in accordance with § 191b.3(e)(2).

(v) *Type D.* An accessible part or surface of a toy other than Types A, B, C, or E (see subdivisions (i), (ii), (iii), and (vii) of this subparagraph).

(vi) *Type D marked.* A Type D surface which has been marked with a precautionary statement of thermal hazards in accordance with § 191b.3(e)(2).

(vii) *Type E.* A heated surface in an oven or other article that is inaccessible or protected by an electrical-thermal safety interlock. Such interlocks shall prohibit the operation of a heating device whenever such surfaces are accessible and shall not allow accessibility to such surfaces until the temperatures of those surfaces have been reduced to levels below those established for Type D surfaces (paragraph (g)(2)(v) of this section).

(3) *Requirements.* When tested under the conditions described in paragraph (g)(4) of this section, a toy shall not attain a temperature at any point sufficiently high to constitute a fire hazard or to adversely affect any materials employed and shall not show a maximum temperature higher than those established by §§ 191b.7 and 191b.8. These maximum surface temperature requirements are not applicable to educational- or hobby-type products such as lead-casting sets and wood-burning tools which are appropriately labeled on the shelf pack or package as being intended only for children over 12 years of age provided that the maximum surface temperature of any such toy does not exceed that reasonably required to accomplish the intended technical effect. Such toys shall be provided with specific instructions and the warning statements required by and in accordance with § 191b.3 (d) and (e), and shall be appropriately identified as educational or hobby-type products.

(4) *Test conditions*—(i) *General.* Tests shall be conducted while the toy is connected to a circuit of 60-cycle-per-second (60 Hertz) current using the materials supplied with the toy or using materials otherwise intended to be used with the toy. Following such tests, the toy shall be energized for a 6-hour period to determine that no hazardous conditions would result from unattended use of the toy.

(ii) *Temperature.* Normally, tests shall be performed at an ambient (room) temperature of 25° C. (77° F.); however, a test may be conducted at any

ambient temperature within the range of 21° to 30° C. (69.8° to 86° F.).

(iii) *Voltage.* The toy shall be tested at the voltage indicated in the manufacturer's rating or at 120 volts, whichever is greater.

(5) *Temperature measurements*—(i) *General.* Temperatures shall be measured by means of instruments utilizing thermocouples of No. 30 AWG (American Wire Gage) wire (either copper and constantan or iron and constantan) and potentiometer-type instruments that are accurate and are calibrated in accordance with current good laboratory practices. The thermocouple wire shall conform with the requirements for "special" thermocouples as listed in the table of limits of error of thermocouples (Table VIII) in "American Standard for Temperature Measurement Thermocouples, C96.1–1964," [5] approved June 9, 1964, by American National Standards Institute, Inc. The Standard was sponsored and published by the Instrument Society of America.

(ii) *Test procedures.* The thermocouple junction and adjacent thermocouple lead wire shall be securely held in good thermal contact with the surface of the material whose temperature is being measured. In most cases, good thermal contact will result from securely taping or cementing the thermocouple in place. If a metal surface is involved, brazing or soldering the thermocouple to the metal may be necessary. The surface temperatures of a toy shall be measured with the toy operating in any unattended condition (e.g., with and without opening and closing doors or covers) for a sufficient period of time to allow temperatures to become constant, or, in the case of a toy with a thermostatically controlled heating element, for a sufficient period of time to determine the maximum surface temperature attained. A temperature shall be considered to be constant when three successive readings taken at 15-minute intervals indicate no change.

(iii) *Heating devices.* Toy ovens, casting toys, popcorn and candymakers, and other toys requiring the insertion of any materials or substances shall be additionally tested by feeding crumpled strips of newspaper and tissue paper into or onto the toy in place of the intended materials or substances. The test strips shall be conditioned for at least 48 hours in air at a temperature of 25°±4° C. (77°±7° F.) and a relative humidity of 50 percent ±5 percent. The test strips shall be 2 inches wide by 8 inches long before crumpling. The crumpled paper shall occupy not more than 25 percent of the accessible volume. The performance of the toy shall be considered unacceptable if flaming occurs within a 60-minute period following the attainment of normal operating temperatures. If a light bulb is used for heating purposes, the test shall be conducted using the largest wattage bulb that can be easily inserted into the socket.

(h) *Strain-relief test.* (1) The strain-relief means provided on the flexible power cord of a toy shall be capable of withstanding a direct pull of 35 pounds applied to the cord for 2 minutes without displacement of the strain-relief unit or a deformation of the anchoring surface that would produce a stress which would result in a potentially hazardous condition. A 35-pound weight shall be attached to the cord and supported by the toy in such a manner that the strain-relief means is stressed from any angle that the construction of the toy permits. The test shall be conducted with the electrical connection within the toy disconnected.

(2) The initial 2-minute test shall be conducted with the force vector parallel to the longitudinal axis of the cord and perpendicular to the anchoring surface of the strain-relief unit. Each test at other angles of stress shall be conducted for periods of 1 minute. The strain-relief means is not acceptable if, at the point of disconnection of the cord, there is any movement of the cord to indicate that stress would have resulted on the connections.

(3) Except for toys weighing more than 10 pounds, the strain-relief unit and its support base shall be designed and constructed in such a manner that no indication of stress would result which would produce a hazard when the cord is held firmly in place 3 feet from the strain-relief unit and the toy is dropped the 3 feet at any angle.

§ 191b.7 Maximum acceptable surface temperatures.

The maximum acceptable surface temperatures for electrically operated toys shall be as follows:

Surface type (as described in § 191b.6(g)(2))	Thermal inertia type [1]	Temperatures	
		Degrees C.	Degrees F.
A	1	50	122
A	2	55	131
A	3	60	140
B	1	55	131
B	2	65	149
B	3	75	167
C (unmarked)	1	65	149
C (unmarked)	2	75	167
C (unmarked)	3	85	185
C (unmarked)	4	95	203
C marked	1	70	158
C marked	2	90	194
C marked	3	110	230
C marked	4	130	266
D (unmarked)	1	55	131
D (unmarked)	2	70	158
D (unmarked)	3	80	176
D (unmarked)	4	90	194
D marked	1	60	140
D marked	2	75	167
D marked	3	100	212
D marked	4	125	257
E	[2]	[2]	[2]

[1] Thermal inertia types are defined in terms of lambda as follows:
Type 1: Greater than 0.0045 (e.g., most metals).
Type 2: More than 0.0005 but not more than 0.0045 (e.g., glass).
Type 3: More than 0.0001 but not more than 0.0005 (e.g., most plastics).
Type 4: 0.0001 or less (e.g., future polymeric materials).
The thermal inertia of a material can be obtained by multiplying the thermal conductivity (cal./cm./sec./degrees C.) by the density (gm./cm.^{3}) by the specific heat (cal./gm./degrees C.).

[2] All types.

[3] No limit.

§ 191b.8 Maximum acceptable material temperatures.

The maximum acceptable material temperatures for electrically operated toys shall be as follows (Classes 105, 130, A, and B are from "Motors and Generators," Standard MG–1–1967 [6] published by the National Electrical Manufacturers Association):

Material	Degrees C.		Degrees F.	
Capacitors	[1]		[1]	
Class 105 insulation on windings or relays, solenoids, etc.:				
Thermocouple method [2]	90		194	
Resistance method	110		230	
Class 130 insulation system	110		230	
Insulation:				
Varnished-cloth insulation	85		185	
Fiber used as electrical insulation	90		194	
	Class A	Class B	Class A	Class B
Insulation on coil windings of a.c. motors (not including universal motors) and on vibrator coils:				
In open motors and on vibrator coils—thermocouple or resistance method [2]	100	120	212	248
In totally enclosed motors—thermocouple or resistance method [2]	105	125	221	257
Insulation on coil windings of d.c. motors and of universal motors:				
In open motors:				
Thermocouple method [2]	90	110	194	230
Resistance method	100	120	212	248
In totally enclosed motors:				
Thermocouple method [2]	95	115	203	239
Resistance method	105	125	221	257
Phenolic composition [3]		150	302	[4]
Rubber- or thermoplastic-insulated wires and cords [3]		60	140	[4]
Sealing compound	[5]		[5]	
Supporting surface while the toy is operating normally		90	194	[4]
Wood and other similar combustible material		90	194	

[1] If the capacitor has no marked temperature limit, the maximum acceptable temperature will be assumed to be 65° C. (149° F.) for an electrolytic type and 90° C. (194° F.) for other than an electrolytic type.

[2] The temperature indicated refers to the hottest spot on the outside surface of the coil measured by the thermocouple method.

[3] The limitations on rubber- and thermoplastic-insulated wires and cords and on phenolic composition do not apply if the insulation or the phenolic has been investigated and found to have special heat-resistant properties, or if the insulation meets the thermal requirements.

[4] 40 less than melting point.

[5] 104 less than melting point.

[5] Copies may be obtained from: Instrument Society of America, 530 William Penn Place, Pittsburgh, PA 15219.

[6] Copies may be obtained from: National Electrical Manufacturers Association, 155 East 44th Street, New York, NY 10017.

Effective date. This order shall become effective on September 3, 1973.

(Secs. 2(f)(1)(D), (r), (s), (t), 3(e)(1), 74 Stat. 372, 374, 375, as amended 83 Stat. 187–189; 15 U.S.C. 1261, 1262)

Dated: March 2, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

NOTE: Incorporation by reference provisions approved by the Director of the Federal Register March 1, 1973.

[FR Doc.73-4322 Filed 3-6-73;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7263]

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

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

PART 301—PROCEDURE AND ADMINISTRATION

Expenses of Work Incentive Programs

By a notice of proposed rule making appearing in the FEDERAL REGISTER on October 3 and October 19, 1972 (37 FR 20700, 22387), amendments to the Income Tax Regulations (26 CFR Part 1) and the regulations on procedure and administration (26 CFR Part 301) were proposed in order to conform such regulations to the provisions of section 601 of the Revenue Act of 1971 (85 Stat. 553), relating to the Work Incentive (WIN) program tax credit. 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 Income Tax Regulations (26 CFR Part 1) which are contained in paragraphs 1 and 2 of the appendix to the notice of proposed rule making, subject to the changes indicated below, are adopted by this document. The proposed amendments to the Income Tax Regulations (26 CFR Part 1) and the regulations on procedure and administration (26 CFR Part 301) which are contained in paragraphs 3 through 16 of the appendix to the notice of proposed rule making will be the subject of a subsequent document.

The WIN tax credit, enacted as title VI of the Revenue Act of 1971, is effective for taxable years beginning after 1971. The new tax credit is designed to encourage private business to hire persons participating in the Federal Work Incentive Program. The Labor Department has estimated that as many as 1.5 million welfare recipients are eligible for jobs which would give rise to a WIN tax credit.

The new tax provisions permit employers to claim a dollar-for-dollar business income tax credit of 20 percent of the wages paid to a WIN program employee for services performed in their trade or business during the first 12 months of employment, whether these months are consecutive or not, provided the 12 months of employment are completed within a 2-year period and the employee is paid wages comparable to those paid other employees doing similar work.

The credit for a taxable year may not exceed $25,000, plus 50 percent of the taxpayer's income tax liability in excess of $25,000. In the case of a married individual who files a separate return, the credit may not exceed $12,500 plus 50 percent of the taxpayer's income tax liability in excess of $12,500. The latter limitation does not apply if the spouse of the taxpayer has no Work Incentive Program expenses for, and no unused credit carryback or carryover to, the taxable year of such spouse which ends within or with the taxpayer's taxable year.

An eligible WIN program employee must be certified under procedures previously announced by the Labor Department on May 14, 1972.

Guidelines are provided in the new regulations for determining what constitutes the first 12 months of employment during which wages are eligible for the tax credit, and what constitutes a termination of employment, or a failure to pay comparable wages, thereby giving rise to a recapture of previously allowed WIN tax credit. Rules are set forth for the carrybacks and carryforwards, and for credit, for recomputing the allowable credit in the case of net operating loss carrybacks and carryfordwards, and for the operation of the credit and credit-recapture provisions in cases concerning small business (subchapter S) corporations, trusts and estates, and partnerships.

Section 1.50A–3(c)(2) of the new regulations provides the rules for determining the first 12 months of employment (whether or not consecutive), the wages for which are eligible for the WIN credit. Under these rules, the first month begins with the date the employee reports for work, the second month begins with the corresponding date of the following calendar month, and so forth. If the employee performs any services whatsoever in any of these monthly periods, that monthly period counts in determining the employee's first 12 months of employment (whether or not consecutive). These rules were selected from among several possibilities because they are easy for both taxpayers and the Internal Revenue Service to apply.

Section 1.50A–4(b) of the new regulations provides that, for certain purposes, an employee will not be deemed to terminate his employment voluntarily if he quits because his employer makes his working conditions so untenable that he is, in effect, compelled by the employer to quit. This rule is included in the regulations to prevent an employer from avoiding certain adverse treatment of a previously allowed WIN credit by, in effect, compelling the employee to quit. Such a termination cannot be said to be voluntary on the part of the employee.

Several changes have been made in these final regulations from the proposed version. One of these changes deals with section 50A(c)(2)(A)(ii) of the Internal Revenue Code and § 1.50A–4(c) of the new regulations which provide that a previously allowed work incentive program credit is not subject to recapture on account of the early termination of the employment of a WIN employee where the employee becomes disabled to perform the services required by such employment. This exception to the recapture provisions of section 50A(c)(1) does not apply if before the end of the first 12 months of employment (whether or not consecutive) and the following 12 calendar months, the disability of a terminated WIN employee is removed, but the employer fails to offer reemployment to such employee. It may be difficult in many cases for the employer to know whether such employee's disability has been removed, and therefore to know whether to offer reemployment to such employee in order to avoid having his credit for the expenses incurred with respect to that employee recaptured. Therefore, the final regulations have been changed from the proposed version to make it clear that before the recapture tax can be imposed because of a termination of employment due to disability, the disability must be removed, the employer must know of the removal of such disability, and the employer must fail to offer reemployment to the employee, all within the above-described period of time.

Section 1.50A–3(a)(1)(ii) of the proposed regulations contains a rule that a temporary suspension of employment (such as for a model change in the automobile industry) is not considered to be a termination of employment if the suspension is for less than 60 days and is required by the circumstances in the particular industry. It was felt this rule would be too harsh for small employers who may need to temporarily suspend their employees while they retool or reequip their plants. Such a temporary suspension of employment could be dictated by considerations facing a particular employer rather than by circumstances within his industry as a whole. Thus, under the rule contained in the proposed regulations such an employer might be considered to have terminated a WIN employee's employment. Paragraph (a)(1)(ii) of § 1.50A–3 of the proposed regulations has been revised by deleting the requirement that a temporary suspension of employment must be required by the circumstances in a particular industry. Language has been added to make it clear that only the installation of new equipment or the retooling of existing equipment by the taxpayer which results in a suspension of employment which is not longer than 60 days will not be deemed a termination of employment.

Another change in the final regulations deals with the agreement to be signed by the shareholders of an electing small business (subchapter S) corporation (a corporation which elects under subchapter S of the Internal Revenue Code to be taxed, in general, as a

partnership). Generally, § 1.50A–5(b) of the new regulations provides that if a corporation makes a valid election under section 1372 of the Code to be a subchapter S corporation, the employment of any WIN employee whose initial date of employment occurred prior to this election shall be considered as terminated, and the credit claimed with respect to the expenses incurred for such employee may be recaptured. However, if the shareholders and the corporation execute the agreement provided for in the regulations, the credit will not be recaptured.

This agreement, which is provided for in paragraph (b)(2), of § 1.50A–5, has been revised to cover two situations in which the shareholders and the electing corporation agree to be jointly and severally liable to pay a recapture tax. The first situation, which was also covered in the proposed regulations, occurs if a WIN employee is terminated before the close of the first 12 months of employment (whether or not consecutive) or before the close of the following 12 calendar months. The second situation, which has been added by the final regulations, specifies that the shareholders and the corporation must pay the recapture tax if during the above period the corporation pays a WIN employee wages which are less than wages paid other employees who are performing comparable services. This agreement applies only to the credit which was allowed the corporation before the election under Subchapter S.

Form 4878, Credit for Wages Paid or Incurred in Work Incentive (WIN) Programs, is to be used to compute and claim the WIN credit. This form is available at local IRS offices.

Adoption of amendments to the regulations. On October 3 and October 19, 1972, notice of proposed rule making with respect to the Income Tax Regulations (26 CFR Part 1) and the regulations on procedures and administration (26 CFR Part 301) under sections 39, 40, 42, 50A, 50B, 6411, 6501, 6511, 6601, and 6611 of the Internal Revenue Code of 1954 to conform such regulations to section 601 of the Revenue Act of 1971 (85 Stat. 553), relating to credit for certain expenses incurred in work incentive programs, was published in the FEDERAL REGISTER (37 FR 20700, 22387). After consideration of all relevant matter presented by interested persons regarding the proposed rules, the amendment of the Income Tax Regulations (26 CFR Part 1) under sections 39, 40, 42, 50A, and 50B is hereby adopted, subject to the following changes.

PARAGRAPH 1. Section 1.50A–1, as set forth in paragraph 2 of the appendix to the notice of proposed rule making, is amended by revising paragraph (a) and so much of paragraph (b) as follows subparagraph (2) to read as set forth below.

PAR. 2. Section 1.50A–2, as set forth in paragraph 2 of the appendix to the notice of proposed rule making, is amended by revising paragraphs (a)(2), (b), and (c) thereof to read as set forth below.

PAR. 3. Section 1.50A–3, as set forth in paragraph 2 of the appendix to the notice of proposed rule making, is amended by revising subdivision (ii) of paragraph (a) (1) and (c) of the example contained in subdivision (ii) of paragraph (b)(3) thereof to read as set forth below.

PAR. 4. Section 1.50A–4, as set forth in paragraph 2 of the appendix to the notice of proposed rule making, is amended by revising paragraphs (c) and (d), by revising subparagraph (1) of paragraph (f), by revising subdivision (i) of example (1) of paragraph (f)(2), by revising subdivision (ii)(*a*) of paragraph (g)(1) to correct a typographical error, by revising subdivision (iii) of paragraph (g)(3), and by revising subdivision (i) of example (4) of paragraph (g)(5). These revised provisions read as set forth below.

PAR. 5. Section 1.50A–5, as set forth in paragraph 2 of the appendix to the notice of proposed rule making, is amended by revising subparagraph (2) of paragraph (b) to read as set forth below.

PAR. 6. Section 1.50A–6, as set forth in paragraph 2 of the appendix to the notice of proposed rule making, is amended by revising paragraph (b) thereof to read as set forth below.

PAR. 7. Section 1.50A–7, as set forth in paragraph 2 of the appendix to the notice of proposed rule making, is amended by revising subdivisions (ii) and (iii) of paragraph (a)(2), by revising subparagraph (3) of paragraph (a), and by revising subdivision (i) of example (1) of paragraph (b). These revised provisions read as set forth below.

PAR. 8. Section 1.50B–1, as set forth in paragraph 2 of the appendix to the notice of proposed rule making, is amended by revising subparagraph (1) of paragraph (a), by revising example (2) of subparagraph (2) of paragraph (a), and by revising paragraph (h). These revised provisions read as set forth below.

PAR. 9. Section 1.50B–2, as set forth in paragraph 2 of the appendix to the notice of proposed rule making, is amended by revising subparagraphs (2) and (3) of paragraph (a) and by revising subdivision (iii) of example (1) of paragraph (c). These revised provisions read as set forth below.

PAR. 10. Section 1.50B–3, as set forth in paragraph 2 of the appendix to the notice of proposed rule making, is amended by revising subparagraphs (2), (3), and (4) of paragraph (a), by revising paragraph (d), and by revising example (2) of paragraph (f). These revised provisions read as set forth below.

PAR. 11. Section 1.50B–4, as set forth in paragraph 2 of the appendix to the notice of proposed rule making, is amended by revising subparagraph (2) of paragraph (a) and by revising subdivision (i) of example (4) of paragraph (c) to correct a typographical error. These revised provisions read as set forth below.

PAR. 12. Section 1.50B–5, as set forth in paragraph 2 of the appendix to the notice of proposed rule making, is amended by revising so much of subparagraph (2) of paragraph (b) thereof as follows subdivision (ii) to read as set forth below.

(Secs. 40(b) and 7805 Internal Revenue Code of 1954 (85 Stat. 553; 68A Stat. 917; 26 U.S.C. 40(b), 7805))

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

Approved: March 2, 1973.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (36 CFR Part 1) and the regulations on procedure and administration (36 CFR Part 301) to the provisions of section 601 of the Revenue Act of 1971 (85 Stat. 553), relating to credit for certain expenses incurred in work incentive programs, such regulations are amended as follows:

Sec.	
1.39	Statutory provisions; certain uses of gasoline, special fuels, and lubricating oil.
1.40	Statutory provisions; expenses of work incentive programs.
1.40–1	Expenses of work incentive program.
1.42	Statutory provisions; overpayments of tax.
1.50A	Statutory provisions; amount of credit.
1.50A–1	Determination of amount.
1.50A–2	Carryback and carryover of unused credit.
1.50A–3	Recomputation of credit allowed by section 40.
1.50A–4	Exceptions to the application of § 1.50A–3.
1.50A–5	Electing small business corporation.
1.50A–6	Estates and trusts.
1.50A–7	Partnerships.
1.50B	Statutory provisions; definitions; special rules.
1.50B–1	Definitions of WIN expenses and WIN employees.
1.50B–2	Electing small business corporations.
1.50B–3	Estates and trusts.
1.50B–4	Partnerships.
1.50B–5	Limitations with respect to certain persons.
1.6411	Statutory provisions; tentative carryback adjustments.
1.6411–1	Tentative carryback adjustments.
1.6411–2	Computation of tentative carryback adjustment.
1.6411–3	Allowance of adjustments.
301.6411	Statutory provisions; tentative carryback adjustments.
301.6501(m)	Statutory provisions; limitations on assessment and collections; tentative carryback adjustment period.
301.6501(m)–1	Tentative carryback adjustment assessment period.
301.6501(o)	Statutory provisions; limitation on assessment and collection; work incentive program credit carrybacks.
301.6501(o)–1	Work incentive program credit carrybacks, taxable years beginning after December 31, 1971.

Sec.
301.6511 Statutory provisions; limitations on credit or refund; special rules applicable to income taxes.
301.6511(d)-7 Overpayment of income tax on account of work incentive program credit carryback.
301.6601 Statutory provisions; interest on underpayment, nonpayment, or extensions of time for payment, of tax.
301.6601-1 Interest on underpayments.
301.6611 Statutory provisions; interest on overpayments.
301.6611-1 Interest on overpayments.

PARAGRAPH 1. Section 1.39 is redesignated as § 1.42 and the historical note thereto is revised. There is inserted immediately after § 1.38-1 new §§ 1.39, 1.40 and 1.40-1. These redesignated, revised, and new provisions read as follows:

§ 1.39 Statutory provisions; certain uses of gasoline, special fuels, and lubricating oil.

SEC. 39. *Certain uses of gasoline, special fuels, and lubricating oil*—(a) *General rule.* There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of the amounts payable to the taxpayer—

(1) Under section 6420 with respect to gasoline used during the taxable year on a farm for farming purposes (determined without regard to section 6420(h)),

(2) Under section 6421 with respect to gasoline used during the taxable year (A) otherwise than as a fuel in a highway vehicle or (B) in vehicles while engaged in furnishing certain public passenger land transportation service (determined without regard to section 6421(i)),

(3) Under section 6424 with respect to lubricating oil used during the taxable year otherwise than in a highway motor vehicle (determined without regard to section 6424(g)), and

(4) Under section 6427 with respect to fuels used for nontaxable purposes or resold during the taxable year (determined without regard to section 6427(f)).

(b) *Transitional rules.* For purposes of paragraphs (1) and (2) of subsection (a), a taxpayer's first taxable year beginning after June 30, 1965, shall include the period after June 30, 1965, and before the beginning of such first taxable year. For purposes of paragraph (3) of subsection (a), a taxpayer's first taxable year beginning after December 31, 1965, shall include the period after December 31, 1965, and before the beginning of such first taxable year.

(c) *Exception. Credit shall not be allowed* under subsection (a) for any amount payable under section 6421, 6424, or 6427, if a claim for such amount is timely filed, and under section 6421(i), 6424(g), or 6427(f) is payable, under such section.

[Sec. 39 as added by sec. 809(c), Excise Tax Reduction Act 1965 (79 Stat. 167) and as amended by sec. 207(c) Airport and Airway Development Act 1970 (84 Stat. 248)]

§ 1.40 Statutory provisions; expenses of work incentive programs.

SEC. 40. *Expenses of work incentive programs*—(a) *General rule.* There shall be allowed, as a credit against the tax imposed by this chapter, the amount determined under Subpart C of this part.

(b) *Regulations.* The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section and Subpart C.

[Sec. 40 as added by sec. 601(a), Rev. Act 1971 (85 Stat. 553)]

§ 1.40-1 Expenses of work incentive program.

Section 1.50A-1 through 1.50B-6, inclusive, are prescribed under the authority granted the Secretary or his delegate by section 40(b) of the Code to prescribe such regulations as may be necessary to carry out the purposes of section 40 and Subpart C, Part IV, Subchapter A, Chapter 1 of the Code.

§ 1.42 Statutory provisions; overpayments of tax.

SEC. 42. *Overpayments of tax.* For credit against the tax imposed by this subtitle for overpayments of tax, see section 6401.

[Sec. 42 as renumbered by sec. 601(a), Rev. Act 1971 (85 Stat. 553); as previously renumbered as sec. 39 by sec. 2(a), Rev. Act 1962 (76 Stat. 962); and as previously renumbered as sec. 40 by sec. 809(c), Excise Tax Reduction Act 1965 (79 Stat. 167)]

PAR. 2. There are inserted immediately after § 1.50-1 the following new sections:

RULES FOR COMPUTING CREDIT FOR EXPENSES OF WORK INCENTIVE PROGRAMS

§ 1.50A Statutory provisions; amount of credit.

SEC. 50A. *Amount of credit*—(a) *Determination of amount*—(1) *General rule.* The amount of the credit allowed by section 40 for the taxable year shall be equal to 20 percent of the work incentive program expenses (as defined in section 50B(a)).

(2) *Limitation based on amount of tax.* Notwithstanding paragraph (1), the credit allowed by section 40 for the taxable year shall not exceed—

(A) So much of the liability for tax for the taxable year as does not exceed $25,000, plus

(B) 50 percent of so much of the liability for tax for the taxable year as exceeds $25,000.

(3) *Liability for tax.* For purposes of paragraph (2), the liability for tax for the taxable year shall be the tax imposed by this chapter for such year, reduced by the sum of the credits allowable under—

(A) Section 33 (relating to foreign tax credit),

(B) Section 35 (relating to partially tax exempt interest),

(C) Section 37 (relating to retirement income),

(D) Section 38 (relating to investment in certain depreciable property), and

(E) Section 41 (relating to contributions to candidates for public office).

For purposes of this paragraph, any tax imposed for the taxable year by section 56 (relating to minimum tax for tax preferences), section 531 (relating to accumulated earnings tax), section 541 (relating to personal holding company tax), or section 1378 (relating to tax on certain capital gains of Subchapter S corporations), and any additional tax imposed for the taxable year by section 1351(d)(1) (relating to recoveries of foreign expropriation losses), shall not be considered tax imposed by this chapter for such year.

(4) *Married individuals.* In the case of a husband or wife who files a separate return, the amount specified under subparagraph (A) and (B) of paragraph (2) shall be $12,500 in lieu of $25,000. This paragraph shall not apply if the spouse of the taxpayer has no work incentive program expenses for, and no unused credit carryback or carryover to, the taxable year of such spouse which ends within or with the taxpayer's taxable year.

(5) *Controlled groups.* In the case of a controlled group, the $25,000 amount specified under paragraph (2) shall be reduced for each component member of such group by apportioning $25,000 among the component members of such group in such manner as the Secretary or his delegate shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning assigned to such term by section 1563(a).

(b) *Carryback and carryover of unused credit*—(1) *Allowance of credit.* If the amount of the credit determined under subsection (a)(1) for any taxable year exceeds the limitation provided by subsection (a)(2) for such taxable year (hereinafter in this subsection referred to as "unused credit year"), such excess shall be—

(A) A work incentive program credit carryback to each of the 3 taxable years preceding the unused credit year, and

(B) A work incentive program credit carryover to each of the 7 taxable years following the unused credit year, and shall be added to the amount allowable as a credit by section 40 for such years, except that such excess may be a carryback only to a taxable year beginning after December 31, 1971. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 10 taxable years to which (by reason of subparagraphs (A) and (B)) such credit may be carried, and then to each of the other 9 taxable years to the extent that, because of the limitation contained in paragraph (2), such unused credit may not be added for a prior taxable year to which such unused credit may be carried.

(2) *Limitation.* The amount of the unused credit which may be added under paragraph (1) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided by subsection (a)(2) for such taxable year exceeds the sum of—

(A) The credit allowable under subsection (a)(1) for such taxable year, and

(B) The amounts which, by reason of this subsection, are added to the amount allowable for such taxable year and attributable to taxable years preceding the unused credit year.

(c) *Early termination of employment by employer, etc.*—(1) *General rule.* Under regulations prescribed by the Secretary or his delegate—

(A) *Work incentive program expenses.* If the employment of any employee with respect to whom work incentive program expenses are taken into account under subsection (a) is terminated by the taxpayer at any time during the first 12 months of such employment (whether or not consecutive) or before the close of the 12th calendar month after the calendar month in which such employee completes 12 months of employment with the taxpayer, the tax under this chapter for the taxable year in which such employment is terminated shall be increased by an amount (determined under such regulations) equal to the credits allowed under section 40 for such taxable year and all prior taxable years attributable to work incentive program expenses paid or incurred with respect to such employee.

(B) *Carrybacks and carryovers adjusted.* In the case of any termination of employment to which subparagraph (A) applies, the carrybacks and carryovers under subsection (b) shall be properly adjusted.

(2) *Subsection not to apply in certain cases*—(A) *In general.* Paragraph (1) shall not apply to—

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer,

(ii) A termination of employment of an individual who, before the close of the period

referred to in paragraph (1)(A), becomes disabled to perform the services of such employment, unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

(iii) A termination of employment of an individual, if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

(B) *Change in form of business, etc.* For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) By a transaction to which section 381 (a) applies, if the employee continues to be employed by the acquiring corporation, or

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

(3) *Special rule.* Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under subpart A.

(d) *Failure to pay comparable wages*—(1) *General rule.* Under regulations prescribed by the Secretary or his delegate, if during the period described in subsection (c)(1)(A), the taxpayer pays wages (as defined in section 50B(b)) to an employee with respect to whom work incentive program expenses are taken into account under subsection (a) which are less than the wages paid to other employees who perform comparable services, the tax under this chapter for the taxable year in which such wages are so paid shall be increased by an amount (determined under such regulations) equal to the credits allowed under section 40 for such taxable year and all prior taxable years attributable to work incentive program expenses paid or incurred with respect to such employee, and the carrybacks and carryovers under subsection (b) shall be properly adjusted.

(2) *Special rule.* Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under Subpart A.

[Sec. 50A as added by sec. 601(b), Rev. Act 1971 (85 Stat. 554)]

§ 1.50A–1 Determination of amount.

(a) *In general.* Except as otherwise provided in this section and in § 1.50A–2, the amount of the work incentive program (WIN) credit allowed by section 40 for the taxable year is equal to 20 percent of the taxpayer's WIN expenses (as determined under paragraph (a) of § 1.50B–1). The amount equal to 20 percent of the WIN expenses shall be referred to in this section and §§ 1.50A–2 through 1.50B–5 as the "credit earned."

(b) *Limitation based on amount of tax.* Notwithstanding the amount of the credit earned for the taxable year, under section 50A(a)(2) the credit allowed by section 40 for the taxable year is limited to—

(1) If the liability for tax (as defined in paragraph (c) of this section) is $25,000 or less, the liability for tax; or

(2) If the liability for tax is more than $25,000, then, the first $25,000 of the liability for tax plus 50 percent of the liability for tax in excess of $25,000. However, such $25,000 amount may be reduced in the case of certain married individuals filing separate returns (see paragraph (e) of this section); corporations which are members of a controlled group (see paragraph (f) of this section); estates and trusts (see paragraph (c) of § 1.50B–3); and organizations to which section 593 applies, regulated investment companies or real estate investment trusts subject to taxation under Subchapter M, Chapter 1 of the Code, and cooperative organizations described in section 1381(a) (see § 1.50B–5). The excess of the credit earned for the taxable year over the limitations described in this paragraph for such taxable year is an unused credit which may be carried back or forward to other taxable years in accordance with § 1.50A–2.

(c) *Liability for tax.* For the purpose of computing the limitation based on amount of tax, section 50A(a)(3) defines the liability for tax as the income tax imposed for the taxable year by Chapter 1 of the Code (including the 6 percent additional tax imposed by section 1562(b)), reduced by the sum of the credits allowable under—

(1) Section 33 (relating to taxes of foreign countries and possessions of the United States),

(2) Section 35 (relating to partially tax-exempt interest received by individuals),

(3) Section 37 (relating to retirement income),

(4) Section 38 (relating to investment in certain depreciable property), and

(5) Section 41 (relating to contributions to candidates for public office).

For purposes of this paragraph, the tax imposed for the taxable year by section 56 (relating to imposition of minimum tax for tax preferences), section 531(relating to imposition of accumulated earnings tax), section 541 (relating to imposition of personal holding company tax), or section 1378 (relating to tax on certain capital gains of Subchapter S corporations), and any additional tax imposed for the taxable year by section 1351(d)(1) (relating to recoveries of foreign expropriation losses), shall not be considered tax imposed by Chapter 1 of the Code for such year. Thus, the liability for tax for purposes of computing the limitation based on amount of tax for the taxable year is determined without regard to any tax imposed by section 56, 531, 541, 1351(d)(1) or 1378 of the Code. In addition, any increase in tax resulting from the application of section 50A (c) and (d) and § 1.50A–3 (relating to recomputation of credit allowed due to early termination of employment by employer, or failure to pay comparable wages) shall not be treated as tax imposed by Chapter 1 of the Code for purposes of computing the liability for tax. See section 50A (c)(3) and (d)(2).

(d) *Example.* The application of paragraphs (a), (b), and (c) of this section may be illustrated by the following example:

Example. X Corporation's WIN expenses for its taxable year ending December 31, 1973, are $500,000. X's credit earned for its taxable year is $100,000 (20 percent of $500,000). X's income tax for such year, computed without regard to credits against tax and without regard to any tax imposed by section 56, 531, 541, 1351(d)(1) or 1378, is $190,000. That amount includes $5,000 resulting from the application of section 50A(c)(3) and § 1.50 A–3. X is allowed under section 33 a foreign tax credit of $50,000. X's liability for tax is comptued as follows:

Income tax (including increase in tax under section 50A(c)(3), but before any credits and without regard to any tax imposed by section 56, 531, 541, 1351(d)(1) or 1378)		$190,000
Less:		
Increase in tax resulting from application of section 50A(c)(3)	$5,000	
Foreign tax credit	50,000	
		55,000
Liability for tax		135,000

Under section 50A(a)(2) and paragraph (b) of this section, X's limitation based on amount of tax for the taxable year is $80,000 ($25,000 plus 50 percent of $110,000). X Corporation's credit allowed by section 40 for the taxable year therefore is $80,000. X has an unused credit for the year of $20,000 ($100,000 less $80,000) which it may carry back or forward to other taxable years in accordance with § 1.50A–2.

(e) *Married individuals.* If a separate return is filed by a husband or wife, the limitation based on amount of tax under paragraph (b) of this section shall be computed by substituting a $12,500 amount for the $25,000 amount in applying such paragraph (b). However, this reduction of the $25,000 amount to $12,500 applies only if the taxpayer's spouse is entitled to a credit under section 40 for the taxable year of such spouse which ends with, or within, the taxpayer's taxable year. The taxpayer's spouse is entitled to a credit under section 40 either because of incurring WIN expenses for such taxable year of the spouse (whether directly incurred by such spouse or whether apportioned to such spouse, for example, from an electing small business corporation, as defined in section 1371(b)), or because of a credit carryback or carryover to such taxable year under § 1.50A–2. The determination of whether an individual is married shall be made under the principles of section 143 and the regulations thereunder.

(f) *Apportionment of $25,000 amount among component members of a controlled group*—(1) *In general.* In determining the limitation based on amount of tax under section 50A(a)(2) in the case of corporations which are component members of a controlled group of corporations on a December 31, only one $25,000 amount is available to such component members for their taxable years that include such December 31. See subparagraph (2) of this paragraph for apportionment of such amount among such component members. See subparagraph (3) of this paragraph for the definition of "component member."

(2) *Manner of apportionment.* (i) In the case of corporations which are com-

ponent members of a controlled group on a particular December 31, the $25,000 amount may be apportioned among such members for their taxable years that include such December 31 in any manner the component members may select, provided that each such member less than 100 percent of whose stock is owned, in the aggregate, by the other component members of the group on such December 31 consents to an apportionment plan. The consent of a component member to an apportionment plan with respect to a particular December 31 shall be made by means of a statement signed by a person duly authorized to act on behalf of the consenting member, stating that such member consents to the apportionment plan with respect to such December 31. The statement shall set forth the name, address, employer identification number, and taxable year of each component member of the group on such December 31, the amount apportioned to each such member under the plan, and the location of the Internal Revenue Service center where the statement is to be filed. The consent of more than one component member may be incorporated in a single statement. The statement shall be timely filed with the Internal Revenue Service center where the component member having the taxable year first ending on or after such December 31 files its return for such taxable year and shall be irrevocable after such filing. If two or more component members have the same such taxable year, a statement of consent may be filed by any one of such members. Such statement shall be considered as timely filed if filed on or before the due date (including any extensions of time) of such member's income tax return which includes such December 31. However, if the due date (including any extensions of time) of the return of such member is on or before December 15, 1972, the required statement shall be considered as timely filed if filed on or before March 15, 1973. Each component member of the group on such December 31 shall keep as a part of its records a copy of the statement containing all the required consents.

(ii) An apportionment plan adopted by a controlled group with respect to a particular December 31 shall be valid only for the taxable year of each member of the group which includes such December 31. Thus, a controlled group must file a separate consent to an apportionment plan with respect to each taxable year which includes a December 31 as to which an apportionment plan is desired.

(iii) If an apportionment plan is not timely filed, the $25,000 amount specified in section 50A(a)(2) shall be reduced for each component member of the controlled group, for its taxable year which includes a December 31, to an amount equal to $25,000 divided by the number of component members of each group on such December 31.

(iv) If a component member of the controlled group makes its income tax return on the basis of a 52–53 week taxable year, the principles of section 441(f)(2)(A)(ii) and paragraph (b)(1) of § 1.441–2 apply in determining the last day of such taxable year.

(3) *Definitions of controlled group of corporations and component member of controlled group.* For the purpose of this paragraph, the terms "controlled group of corporations" and "component member" of a controlled group of corporations shall have the same meaning assigned to those terms in section 1563 (a) and (b) and the regulations thereunder. For purposes of applying § 1.1563–1(b)(2)(ii)(c), an electing small business corporation shall be treated as an excluded member whether or not it is subject to the tax imposed by section 1378.

(4) *Members of a controlled group filing a consolidated return.* If some component members of a controlled group join in filing a consolidated return pursuant to § 1.1502–3(a)(3), and other component members do not join, then, unless a consent is timely filed apportioning the $25,000 amount among the group filing the consolidated return and the other component members of the controlled group, each component member of the controlled group (including each component member which joins in filing the consolidated return) shall be treated as a separate corporation for purposes of equally apportioning the $25,000 amount under subparagraph (2)(iii) of this paragraph. In such case, the limitation based on the amount of tax for the group filing the consolidated return shall be computed by substituting for the $25,0000 amount the total of the amount apportioned to each component member which joins in filing the consolidated return. If the affiliated group, filing the consolidated return and the other component members of the controlled group adopt an apportionment plan, the affiliated group shall be treated as a single member for the purpose of applying subparagraph (2)(i) of this paragraph. Thus, for example, only one consent executed by the common parent to the apportionment plan is required for the group filing the consolidated return. If any component member of the controlled group which joins in the filing of the consolidated return is an organization to which section 593 applies or a cooperative organization described in section 1381(a), rules similar to the rules contained in paragraph (a)(3)(ii) of § 1.1502–3 are applicable.

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

Example (1). At all times during 1972 Smith, an individual, owns all the stock of corporations X, Y, and Z. Corpcration X files an income tax return on a calendar year basis. Corporation Y files an income tax return on the basis of a fiscal year ending June 30. Corporation Z files an income tax return on the basis of a fiscal year ending September 30. On December 31, 1972, X, Y, and Z are component members of the same controlled group. X, Y, and Z all consent to an apportionment plan in which the $25,000 amount is apportioned entirely to Y for its taxable year ending June 30, 1973 (Y's taxable year which includes December 31, 1972). Such consent is timely filed. For purposes of computing the credit under section 40, Y's limitation based on amount of tax for its taxable year ending June 30, 1973, is so much of Y's liability for tax as does not exceed $25,000, plus 50 percent of Y's liability for tax in excess of $25,000. X's and Z's limitations for their taxable years ending December 31, 1972, and September 30, 1973, respectively, are equal to 50 percent of X's liability for tax and 50 percent of Z's liability for tax. On the other hand, if an apportionment plan is not timely filed, X's limitation would be so much of X's liability for tax as does not exceed $8,333.33, plus 50 percent of X's liability in excess of $8,333.33, and Y's and Z's limitations would be computed similarly.

Example (2). At all times during 1972, Jones, an individual, owns all the outstanding stock of corporations P, Q, and R. Corporations Q and R both file returns for taxable years ending December 31, 1972. P files a consolidated return as a common parent for its fiscal year ending June 30, 1973, with its wholly owned subsidiaries N and O. On December 31, 1972, N, O, P, Q, and R are component members of the same controlled group. No consent to an apportionment plan is filed. Therefore, each member is apportioned $5,000 of the $25,000 amount ($25,000 divided equally among the five members). The limitation based on the amount of tax for the group filing the consolidated return (P, N, and O) for the year ending June 30, 1973 (the consolidated taxable year within which December 31, 1972, falls), is computed by using $15,000 instead of the $25,000 amount. The $15,000 is arrived at by adding together the $5,000 amounts apportioned to P, N, and O.

§ 1.50A–2 Carryback and carryover of unused credit.

(a) *Allowance of unused credit as carryback or carryover*—(1) *In general.* Section 50A(b)(1) provides for carrybacks and carryovers of any unused credit. An unused credit is the excess of the credit earned for the taxable year (as determined under paragraph (a) of § 1.50A–1) over the limitation based on amount of tax for such taxable year (as determined under paragraph (b) of § 1.50A–1). Subject to the limitation contained in paragraph (b) of this section, an unused credit shall be added to the amount allowable as a credit under section 40 for the years to which the unused credit can be carried. The year with respect to which an unused credit arises shall be referred to in this section as the "unused credit year."

(2) *Taxable years to which unused credit may be carried.* An unused credit shall be a work incentive program (WIN) credit carryback to each of the 3 taxable yeas preceding the unused credit year and a WIN credit carryover to each of the 7 taxable years succeeding the unused credit year, except that an unused credit shall be a carryback only to taxable years beginning after December 31, 1971. An unused credit must be carried first to the earliest of the taxable years to which it may be carried, and then to each of the other taxable years (in order of time) to the extent that the unused credit may not be added (because of the limitation contained in paragraph (b) of this section) to the amount allowable as a credit under section 40 for a prior taxable year.

(b) *Limitation on allowance of unused credit.* The amount of the unused credit from any particular unused credit year which may be added to the amount allowable as a credit under section 40 for any of the preceding or suc-

ceeding taxable years to which such credit may be carried shall not exceed the amount by which the limitation based on amount of tax for such preceding or succeeding taxable year exceeds the sum of (1) the credit earned for such preceding or succeeding year, and (2) other unused credits carried to such preceding or succeeding year which are attributable to unused credit years prior to the particular unused credit year.

(c) *Corporate acquisitions.* For the carryover of unused credits in the case of certain corporate acquisitions, see section 381(c)(24) and the regulations thereunder. [§ 1.381(c)(24)–1]

(d) *Periods of less than 12 months.* A fractional part of a year which is considered as a taxable year under sections 441(b) and 7701(a)(23) shall be treated as a preceding or a succeeding taxable year for the purpose of determining under section 50A(b) and this section the taxable years to which an unused credit may be carried.

(e) *Example.* The provisions of paragraphs (a) through (d) of this section may be illustrated by the following example:

Example. Corporation X files its income tax return on the basis of the calendar year. X's credit earned and its limitation based on amount of tax for each of its taxable years 1972 through 1978 are as follows:

	Credit earned	*Limitation based on amount of tax*
1972	$175,000	$200,000
1973	250,000	160,000
1974	200,000	210,000
1975	210,000	230,000
1976	230,000	260,000
1977	260,000	220,000
1978	270,000	280,000

(i) Corporation X's credit earned for 1972, $175,000, is allowable in full as a credit under section 40 for 1972 since such amount is less than the limitation based on amount of tax for such year, $200,000. Since the limitation based on amount of tax for 1973 is $160,000, only $160,000 of the $250,000 credit earned for such year is allowable under section 40 as a credit for 1973. The unused credit for 1973 of $90,000 ($250,000 less $160,000) is a WIN credit carryback to 1972 and a WIN credit carryover to 1974 and subsequent years up to and including 1980. The portion of the $90,000 unused credit which shall be added to the amount allowable as a credit under section 40 for 1972 and 1974 and subsequent years is computed as follows:

(a) *1972.* The portion of the unused credit for 1973 ($90,000) which is allowable as a credit for 1972 is $25,000. This amount shall be added to the amount allowable as a credit for 1972. The balance of the unused credit for 1973 to be carried to 1974 is $65,000. These amounts are computed as follows:

Carryback to 1972		$90,000
1972 limitation based on tax	$200,000	
Less: Credit earned for 1972	$175,000	
Unused credits attributable to years preceding 1973	0	
	175,000	
Limit on amount of 1973 unused credit which may be added as a credit for 1972		25,000
Balance of 1973 unused credit to be carried to 1974		65,000

(b) *1974.* The portion of the balance of the unused credit for 1973 ($65,000) allowable as a credit for 1974 is $10,000. This amount shall be added to the amount allowable as a credit for 1974. The balance of the unused credit for 1973 to be carried to 1975 is $55,000. These amounts are computed as follows:

Carryover to 1974		$65,000
1974 limitation based on tax	$210,000	
Less: Credit earned for 1974	$200,000	
Unused credits attributable to years preceding 1973	0	
	200,000	
Limit on amount of 1973 unused credit which may be added as a credit for 1974		10,000
Balance of 1973 unused credit to be carried to 1975		55,000

(c) *1975.* The portion of the balance of the unused credit for 1973 ($55,000) allowable as a credit for 1975 is $20,000. This amount shall be added to the amount allowable as a credit tfor 1975. The balance of the unused credit for 1973 to be carried to 1976 is $35,000. These amounts are computed as follows:

Carryover to 1975		$55,000
1975 limitation based on tax	$230,000	
Less: Credit earned for 1975	$210,000	
Unused credits attributable to years preceding 1973	0	
	210,000	
Limit on amount of 1973 unused credit which may be added as a credit for 1975		20,000
Balance of 1973 unused credit to be carried to 1976		35,000

(d) *1976.* The entire balance of the unused credit for 1973 ($35,000) is allowable as a credit for 1976, since the limitation based on amount of tax for 1976 exceeds the sum of the credit earned for 1976 and unused credits attributable to years prior to 1973 by an amount in excess of $35,000. Since the balance of the unused credit for 1973 has been fully allowed, no portion thereof remains to be carried to subsequent taxable years. This is illustrated as follows:

Carryover to 1976		$35,000
1976 limitation based on tax	$260,000	
Less: Credit earned for 1976	$220,000	
Unused credits attributable to years preceding 1973	0	
	220,000	
Limit on amount of 1973 unused credit which may be added as a credit for 1976		40,000
Balance of 1973 unused credit to be carried to 1977		0

(ii) Since the limitation based on amount of tax for 1977 is $220,000, only $220,000 of the $260,000 credit earned for such year is allowable as a credit for 1977. The unused credit for 1977 of $40,000 ($260,000 less $220,000) is a WIN credit carryback to 1974, 1975, and 1976 and a WIN credit carryover to 1978 and subsequent years. The portions of the $40,000 unused credit which shall be added to the amount allowable as a credit for such years are computed as follows:

(a) *1974.* The portion of the unused credit for 1977 ($40,000) allowable as a credit for 1974 is zero. The balance of the unused credit for 1977 to be carried to 1975 is $40,000. These amounts are computed as follows:

Carryback to 1974		$40,000
1974 limitation based on tax	$210,000	
Less: Credit earned for 1974	$200,000	
Unused credits attributable to years preceding 1977 (unused credit from 1973)	10,000	
	210,000	
Limit on amount of 1977 unused credit which may be added as a credit for 1974		0
Balance of 1977 unused credit to be carried to 1975		40,000

(b) *1975.* The portion of the unused credit for 1977 ($40,000) allowable as a credit for 1975 is zero. The balance of the unused credit for 1977 to be carried to 1976 is $40,000. These amounts are computed as follows:

Carryback to 1975		$40,000
1975 limitation based on tax	$230,000	
Less: Credit earned for 1975	$210,000	
Unused credits attributable to years preceding 1977 (unused credit from 1973)	20,000	
	230,000	
Limit on amount of 1977 unused credit which may be added as a credit for 1975		0
Balance of 1977 unused credit to be carried to 1976		40,000

(c) *1976.* The portion of the unused credit for 1977 ($40,000) allowable as a credit for 1976 is $5,000. This amount shall be added to the amount allowable as a credit for 1976. The balance of the unused credit for 1977 to be carried to 1978 is $35,000. These amounts are computed as follows:

Carryback to 1976		$40,000
1976 limitation based on tax	$260,000	
Less: Credit earned for 1976	$230,000	
Unused credits attributable to years preceding 1977 (unused credit from 1973)	35,000	
	255,000	
Limit on amount of 1977 unused credit which may be added as a credit for 1976		5,000
Balance of 1977 unused credit to be carried to 1978		35,000

(d) *1978.* The portion of the balance of the unused credit for 1977 ($35,000) allowable as a credit for 1978 is $10,000. This amount shall be added to the amount allowable as a credit for 1978. The balance of the unused credit for 1977 to be carried to 1979 and subsequent years is $25,000. These amounts are computed as follows:

Carryover to 1978		$35,000
1978 limitation based on tax	$280,000	
Less: Credit earned for 1978	$270,000	
Unused credits attributable to years preceding 1977	0	
	270,000	
Limit on amount of 1977 unused credit which may be added as a credit for 1978		10,000
Balance of 1977 unused credit to be carried to 1979		25,000

(f) *Electing small business corporation.* An unused credit of a corporation which arises in an unused credit year for which the corporation is not an electing small business corporation (as defined in section 1371(b)) and which is a carryback or carryover to a taxable year for which the corporation is an electing small business corporation shall not be added to the amount allowable as a credit under section 40 to the shareholders of such corporation for any taxable year. However, a taxable year for which the corporation is an electing small business corporation shall be counted as a taxable year for purposes of determining the taxable years to which such unused credit may be carried.

§ 1.50A–3 Recomputation of credit allowed by section 40.

(a) *General rule*—(1) *Early termination of employment by employer*—(i) *In general.* If the employment of any employee, with respect to whom work incentive program (WIN) expenses (as defined in paragraph (a) of § 1.50B–1) are taken into account under paragraph (a) of § 1.50A–1, is terminated by the taxpayer at any time during the first 12 months of such employment (whether or not consecutive) or before the close of the 12th calendar month after the calendar month in which such employee completes the first 12 months of employment (whether or not consecutive) with the taxpayer, then subparagraph (3) of this paragraph shall apply. See paragraph (c) of this section for rules relating to the determination of the first 12 months of employment (whether or not consecutive). See § 1.50A–4 for rules relating to other circumstances under which a termination of employment will not be treated as a termination of employment to which the provisions of subparagraph (3) of this paragraph are applicable.

(ii) *Rules for determining whether a termination of employment has occurred.*

For purposes of this section, the taxpayer is deemed to have terminated the employment of any WIN employee (as defined in paragraph (h) of § 1.50B–1) if the employment relationship (as determined under common law principles) has terminated. A layoff for any reason is considered a termination of employment for purposes of the preceding sentence. However, a temporary suspension of employment of any WIN employee necessitated by the installation of new equipment or by the retooling of existing equipment (such as for a model changeover in the automobile industry) shall not be deemed to be a termination of employment if such suspension is for a period of time no longer than 60 days. For purposes of this section, the death of the taxpayer is considered a termination of the employment relationship between the taxpayer and any WIN employee.

(2) *Failure to pay comparable wages*—(i) *In general.* If, at any time during the period described in subparagraph (1)(i) of this paragraph, the taxpayer pays wages (as defined in section 50B(b) and paragraph (b) of § 1.50B–1) to an employee, with respect to whom WIN expenses are taken into account under paragraph (a) of § 1.50A–1, which are less than the wages paid to other employees of the taxpayer who perform comparable services, then subparagraph (3) of this paragraph shall apply.

(ii) *Comparable services.* (*a*) For purposes of subdivision (i) of this subparagraph, the term "comparable services" refers to services performed in work positions which require similar education, training, and skills. Comparable services are those associated with other work positions which require similar levels of judgment and responsibility, which make similar physical and mental demands of an employee, and which could easily be performed by the employee without substantial additional training or experience.

(*b*) If substantial training, skill, or experience are material to the performance of a particular job, a taxpayer may pay wages to a WIN employee which are less than those paid to other employees of the taxpayer who possess such training, skill, or experience. However, there must be a reasonable relationship between the lower wages or salary of such WIN employee and his relative lack of training, skill, or experience.

(3) *Recomputation of credit earned.* (i) If, by reason of subparagraph (1) or (2) of this paragraph, this subparagraph (3) is applicable, then the credit earned for all credit years (as defined in subdivision (ii)(*a*) of this subparagraph) shall be recomputed under the principles of paragraph (a) of § 1.50A–1 by not taking into account WIN expenses with respect to the employee (or employees) described in subparagraph (1) or (2) of this paragraph. There shall be recomputed under the principles of §§ 1.50A–1 and 1.50A–2 the credit allowed for all credit years and for any other taxable year affected by reason of the reduction in credit earned for such credit year or years, giving effect to such reduction in the computation of carrybacks or carryovers of unused credit from any taxable year. If the recomputation described in the preceding sentence results, in the aggregate, in a decrease (taking into account any recomputation under this paragraph in respect of prior recapture years, as defined in subdivision (ii)(*b*) of this subparagraph) in the credits allowed for any credit year and for any other taxable year affected by the reduction in credit earned for any credit year, then the income tax for the recapture year shall be increased by the amount of such decrease in credits allowed. For treatment of such increase in tax, see paragraph (b) of this section. For special rules in the case of an electing small business corporation (as defined in section 1371(b)), an estate or trust, or a partnership, see respectively, § 1.50A–5, § 1.50A–6 or § 1.50A–7.

(ii) For purposes of this section and §§ 1.50A–4 through 1.50B–6—

(*a*) The term "credit year" means a taxable year in which WIN expenses with respect to the employee described in subparagraph (1) or (2) of this paragraph are taken into account under paragraph (a) of § 1.50A–1.

(*b*) The term "recapture year" means a taxable year in which a termination of employment (within the meaning of subparagraph (1) of this paragraph) or a failure to pay comparable wages (within the meaning of subparagraph (2) of this paragraph) occurs by reason of which the rule of subparagraph (3) of this paragraph becomes applicable.

(*c*) The term "recapture determination" means a recomputation made under this paragraph.

(b) *Increase in income tax and reduction of WIN credit carryback and carryover*—(1) *Increase in tax.* Except as provided in subparagraph (2) of this paragraph, any increase in income tax under this section shall be treated as income tax imposed on the taxpayer by Chapter 1 of the Code for the recapture year notwithstanding that without regard to such increase the taxpayer has no income tax liability, has a net operating loss for such taxable year, or no income tax return was otherwise required for such taxable year.

(2) *Special rule.* Any increase in income tax under this section shall not be treated as income tax imposed on the taxpayer by Chapter 1 of the Code for purposes of determining the amount of the credits allowable to such taxpayer under—

(i) Section 33 (relating to taxes of foreign countries and possessions of the United States),

(ii) Section 35 (relating to partially tax-exempt interest received by individuals),

(iii) Section 37 (relating to retirement income),

(iv) Section 38 (relating to investment in certain depreciable property),

(v) Section 39 (relating to certain uses of gasoline, special fuels, and lubricating oil),

(vi) Section 40 (relating to expenses of work incentive programs), and

(vii) Section 41 (relating to contributions to candidates for public office).

(3) *Reduction in credit allowed as a result of a net operating loss carryback.* (i) If a net operating loss carryback from the recapture year or from any taxable year subsequent to the recapture year reduces the amount allowed as a credit under section 40 for any taxable year up to and including the recapture year, then there shall be a new recapture determination under paragraph (a) of this section for each recapture year affected, taking into account the reduced amount of credit allowed after application of the net operating loss carryback.

(ii) Subdivision (i) of this subparagraph may be illustrated by the following example:

Example. (a) X Corporation, which makes its returns on the basis of a calendar year, hired WIN employees on March 1, 1972, and incurred $10,000 in WIN expenses with respect to these employees for the year. For the taxable year 1972, X Corporation's credit earned of $2,000 (20 percent of $10,000) was allowed under section 40 as a credit against its liability for tax of $2,000. In 1973 and 1974 X Corporation had no liability for tax and had no WIN expenses. In January 1974, X Corporation terminated the employees for whom the WIN expenses had been incurred. Since these terminations were not subject to the exceptions provided by § 1.50A–4, there was a recapture determination under paragraph (a) of this section. The income tax imposed by chapter 1 of the Code on X Corporation for the taxable year 1974 was increased by the $2,000 decrease in its credit earned for the taxable year 1972 (that is, the $2,000 original credit earned minus zero recomputed credit earned).

(b) For the taxable year 1975, X Corporation has a net operating loss which is carried back to the taxable year 1972 and reduces its liability for tax, as defined in paragraph (c) of § 1.50A–1, for such taxable year to $800. As a result of such net operating loss carryback, X Corporation's credit allowed under section 40 for the taxable year 1972 is limited to $800 and the excess of $1,200 ($2,000 credit earned minus the $800 limitation based on amount of tax) is a WIN credit carryover to the taxable year 1973.

(c) For 1975 there is a recapture determination under subdivision (i) of this subparagraph for the 1974 recapture year. The $2,000 increase in the income tax imposed on X Corporation for the taxable year 1974 is redetermined to be $800 (that is, the $800 credit allowed after taking into account the 1975 net operating loss minus zero credit which would have been allowed taking into account the 1974 recapture determination). In addition, X Corporation's $1,200 WIN credit carryover to the taxable year 1973 is reduced by $1,200 ($2,000 minus $800) to zero and X Corporation is entitled to a $1,200 refund of the $2,000 tax paid as a result of the 1974 recapture determination.

(4) *Statement of recomputation.* The taxpayer shall attach to his income tax return for the recapture year a separate statement showing in detail the computation of the increase in income tax imposed on such taxpayer by Chapter 1 of the Code and the reduction in any WIN credit carryovers.

(c) *Period of employment*—(1) *Initial date of employment.* For purposes of this section and §§ 1.50A–4 through 1.50B–6, the initial date of employment (for purposes of applying paragraph (a)(1) and (2) of this section and paragraphs (a)(1)

and (f) of § 1.50B–1) is the date the WIN employee reports to the taxpayer (or in the case where the taxpayer is a partner of a partnership, a beneficiary of an estate or trust, or a shareholder of an electing small business corporation, to such partnership, estate, trust, or electing small business corporation) for work.

(2) *Computation of the first 12 months of employment (whether or not consecutive).* For purposes of computing the first 12 months of employment (whether or not consecutive), the first month of employment shall begin with the initial date of employment (as defined in subparagraph (1) of this paragraph) of the WIN employee, the second month of employment shall begin with the corresponding date in the following month, the third month of employment shall begin with the corresponding date in the next following month, and so forth. If the WIN employee performs any services during any such month (as determined under the preceding sentence), that month shall be counted in computing the WIN employee's "first 12 months of employment (whether or not consecutive)". If the WIN employee performs no services during any such month, that month shall not be counted in computing the WIN employee's "first 12 months of employment (whether or not consecutive)". Thus, if the initial date of employment of a WIN employee is June 15, the first month of employment of such employee shall be the period beginning June 15, and ending July 14. The second month of employment is the period beginning July 15 and ending August 14. If during such second month of employment the employee performs no services for the taxpayer, that month is not counted in determining the employee's first 12 months of employment (whether or not consecutive).

§ 1.50A–4 Exceptions to the application of § 1.50A–3.

(a) *In general.* Notwithstanding the provisions of paragraph (a) of § 1.50A–3, a termination of employment shall not be deemed to occur if paragraph (b) (relating to voluntary termination of employment), paragraph (c) (relating to termination of employment due to disability), paragraph (d) (relating to termination of employment due to misconduct), paragraph (f) (relating to transactions to which section 381(a) applies), or paragraph (g) (relating to mere change in form of conducting a trade or business) applies.

(b) *Voluntary termination of employment.* A termination of employment shall not be deemed to occur for purposes of paragraph (a) of § 1.50A–3 if the employee voluntarily leaves the employment of the taxpayer. If the taxpayer makes the working conditions of the employee so untenable that the employee is, in effect, compelled by the taxpayer to quit, or if the employee is coerced into quitting, the employee will not be deemed to have voluntarily left the employment of the taxpayer. For purposes of the preceding sentence, a substantial reduction in the benefits of employment of an employee (such as a substantial decrease in the hours of the employee's working week) shall constitute untenable working conditions. An employee has voluntarily left the employment of the taxpayer if he leaves for any reason external to his employment, such as sickness or death in the employee's family which the employee feels necessitates his quitting work with the taxpayer to remain at home. Any employee who participates in an authorized strike (as finally determined by a court, labor relations administrative body, or arbiter) will not be deemed to have voluntarily left the employment of the taxpayer.

(c) *Termination of employment due to death or disability.* A termination of employment shall not be deemed to occur for purposes of paragraph (a) of § 1.50A–3 if, after the initial date of employment (as defined in paragraph (c)(1) of § 1.50A–3) and before the close of the period referred to in paragraph (a)(1) of § 1.50A–3, the employee becomes disabled, by reason of illness or injury (including a disability relating to the employment), to perform the services required by such employment, unless, before the close of such period:

(1) Such disability is removed,

(2) The employer knows of the removal of the disability, and

(3) The employer fails to offer reemployment to such employee.

The death of an employee shall not be deemed a termination of employment for purposes of paragraph (a) of § 1.50A–3.

(d) *Termination of employment due to misconduct.* A termination of employment shall not be deemed to occur for purposes of paragraph (a) of § 1.50A–3 if it is determined by the appropriate State administrative agency or State court that under the applicable State unemployment compensation law such termination was due to the misconduct of the WIN employee. If the WIN employee is not covered by the applicable State unemployment compensation law (or if the employee did not work for the minimum period required to qualify for unemployment compensation or if the employee did not apply for unemployment compensation), a termination of employment shall not be deemed to occur for purposes of paragraph (a) of § 1.50A–3 if the taxpayer demonstrates by convincing evidence that, were such employee covered by the applicable State unemployment compensation law (or if the employee had worked for such minimum period or if the employee had applied for unemployment compensation), he could reasonably have been found by such administrative agency or court to have been terminated for misconduct.

(e) *Recordkeeping requirement.* A taxpayer who is claiming that a termination of employment falls within the provisions of paragraph (b), (c), or (d) of this section shall maintain sufficient records to support his claim until the expiration of the pertinent period of limitations.

(f) *Transactions to which section 381 (a) applies*—(1) *General rule.* The employment relationship between the taxpayer and a WIN employee (as defined in paragraph (h) of § 1.50B–1) shall not be deemed terminated for purposes of paragraph (a) of § 1.50A–3 in the case of a transaction to which section 381(a) (relating to carryovers in certain corporate acquisitions) applies. If there is a termination of employment (within the meaning of paragraph (a) of § 1.50A–3 and this section) by the acquiring corporation with respect to the WIN employee described in the preceding sentence, or if the acquiring corporation fails to pay comparable wages to such employee (within the meaning of paragraph (a)(2) of § 1.50A–3), then paragraph (a)(3) of § 1.50A–3 shall apply to the acquiring corporation with respect to the credit allowed the acquired corporation as well as the credit allowed the acquiring corporation with respect to such employee. For purposes of the preceding sentence, the initial date of employment (as defined in paragraph (c)(1) of § 1.50A–3) of such employee with respect to the acquired corporation shall be deemed to be the initial date of employment of such employee with respect to the acquiring corporation and employment by the acquired corporation shall be deemed employment by the acquiring corporation.

(2) *Examples.* This paragraph may be illustrated by the following examples:

Example (1). (i) X Corporation, a wholly owned subsidiary of Y Corporation, incurred WIN expenses of $12,000 for its taxable year ending December 31, 1972, with respect to WIN employees hired on March 1, 1972. Both X and Y made their returns on the basis of a calendar year. For the taxable year 1972 X Corporation's credit earned of $2,400 (20 percent of $12,000) was allowed under section 40 as a credit against its liability for tax. On December 15, 1973, X Corporation is liquidated under section 332 and all of its assets and liabilities are transferred to Y Corporation in a transaction to which section 334(b)(2) is not applicable. In addition, Y Corporation continues the employment of the WIN employees which were employed by X Corporation and with respect to which X Corporation was allowed the credit for its taxable year 1972.

(ii) Under subparagraph (1) of this paragraph, a termination of employment of the WIN employees shall not be deemed to occur for purposes of paragraph (a)(1) of § 1.50A–3 due to the liquidation of X Corporation on December 15, 1973. Thus, no recapture determination under paragraph (a)(3) of § 1.50A–3 shall be made with respect to X Corporation.

Example (2). (i) The facts are the same as in Example (1) and, in addition, on February 2, 1974, Y Corporation terminates the employment of the employees with respect to whom X Corporation had incurred WIN expenses. The termination is a termination for purposes of paragraph (a)(1) of § 1.50A–3. For purposes of applying the period described in paragraph (a)(1) of § 1.50A–3, the date the employees reported for work at X Corporation is deemed to be the initial date of employment of the employees wtih respect to Y Corporation.

(ii) Under subparagraph (1) of this paragraph, a termination of employment of the WIN employees shall not be deemed to occur for purposes of paragraph (a)(1) of § 1.50 A–3 due to the liquidation of X Corporation on December 15, 1973. However, a termination of employment of the WIN employees is deemed to occur for purposes of paragraph (a)(1) of § 1.50A–3 on February 2, 1974. Thus, Y Corporation shall make a recapture determination under paragraph (a) of § 1.50

Corporation with respect to the WIN employees.

(g) *Mere change in form of conducting a trade or business*—(1) *General rule.* (i) The employment relationship between the taxpayer and a WIN employee (as defined in paragraph (h) of § 1.50B–1) shall not be deemed terminated for purposes of paragraph (a) of § 1.50A–3 in the case of a mere change in the form of conducting the trade or business in which such employment occurs, provided that the conditions set forth in subdivision (ii) of this subparagraph are satisfied.

(ii) The conditions referred to in subdivision (i) of this subparagraph are as follows:

(*a*) The WIN employee described in subdivision (i) of this subparagraph is retained in the same trade or business,

(*b*) The taxpayer retains a substantial ownership interest in such trade or business,

(*c*) Substantially all the assets necessary to operate such trade or business are transferred to the tranferee who continues the employment of the WIN employee described in subdivision (i) of this subparagraph, and

(*d*) The basis of the assets described in (*c*) of this subdivision in the hands of the transferee is determined in whole or in part by reference to the basis of such assets in the hands of the transferor.

This subparagraph shall not apply if paragraph (e) of this section (relating to transactions to which section 381(a) applies) is applicable with respect to such transfer.

(2) *Substantial interest.* For purposes of this paragraph, the taxpayer shall be considered as having retained a substantial ownership interest in the trade or business only if, after the change in form, the ownership interest in such trade or business by such taxpayer—

(i) Is substantial in relation to the total ownership interests of all persons, or

(ii) Is equal to or greater than the ownership interest prior to the change in form.

Thus, where a taxpayer owns a 5-percent interest in a partnership, and, after the incorporation of that partnership, the taxpayer retains at least a 5-percent interest in the corporation, the taxpayer will be considered as having retained a substantial interest in the trade or business as of the date of the change in form because of the application of the rule contained in subdivision (ii) of this subparagraph.

(3) *Termination of employment.* (i) If employment of a WIN employee described in subparagraph (1)(i) of this paragraph is terminated by the transferee, the employment of such employee shall be deemed terminated by the taxpayer for purposes of paragraph (a) of § 1.50A–3. For purposes of determining the period described in paragraph (a)(1) of § 1.50A–3 with respect to such taxpayer employment by the transferee shall be deemed employment by the transferor.

(ii) If in any taxable year the taxpayer does not retain a substantial ownership interest in the trade or business directly or indirectly (through ownership in other entities provided that such other entities' bases in such interest are determined in whole or in part by reference to the basis of such interest in the hands of the taxpayer) then, for purposes of paragraph (a)(1) of § 1.50A–3, there shall be deemed to be a termination of employment of the WIN employees described in subparagraph (1)(i) of this paragraph on the first date on which such taxpayer does not retain a substantial interest in the trade or business. For purposes of determining the period described in paragraph (a)(1) of § 1.50A–3, employment by the transferee shall be deemed employment by the transferor. Any taxpayer who seeks to establish his interest in a trade or business under the rule of this subdivision shall maintain adequate records to demonstrate his indirect interest in such trade or business after any such transfer or transfers.

(iii) Notwithstanding subparagraph (1) of this paragraph and subdivision (ii) of this subparagraph in the case of a mere change in the form of a trade or business, if the interest of a taxpayer in the trade or business is reduced but such taxpayer has retained a substantial interest in such trade or business, paragraph (a)(2) of § 1.50A–5 (relating to electing small business corporations), paragraph (a)(2) of § 1.50A–6 (relating to estates or trusts), or paragraph (a)(2)(ii) of § 1.50A–7 (relating to partnerships) shall apply, as the case may be.

(4) *Failure to pay comparable wages.* If the transferee fails to pay comparable wages (within the meaning of paragraph (a)(2) of § 1.50A–3) to the WIN employee within the period described in paragraph (a)(1) of § 1.50A–3, then such failure shall be deemed to be a failure of the transferor (or in a case where the transferor is a partnership, estate, trust, or electing small business corporation, the partners, beneficiaries, or shareholders), and a recapture determination shall be made with respect to such WIN employee as provided in § 1.50A–3. For purposes of determining the period described in paragraph (a)(1) of § 1.50A–3 with respect to such transferor (or such partners, beneficiaries, or shareholders), employment by the transferee shall be deemed employment by such transferor. For special rules in the case of an electing small business corporation (as defined in section 1371(b)), an estate or trust, or a partnership, see respectively, § 1.50A–5, § 1.50A–6, or § 1.50A–7.

(5) *Examples.* This paragraph may be illustrated by the following examples in each of which it is assumed that the transfer satisfies the conditions of subparagraph (1)(ii) (*a*), (*c*) and (*d*) of this paragraph.

Example (1). (i) On January 1, 1972, A, an individual, employed WIN employees in his sole proprietorship. A incurred WIN expenses with respect to these employees of $12,000 for the taxable year ending December 31, 1972. For the taxable year 1972 A's credit earned of $2,400 (20 percent of $12,000) was allowed under section 40 as a credit against his liability for tax. On March 15, 1973, A transferred all of the assets used in his sole proprietorship to X Corporation, a newly formed corporation, in exchange for 45 percent of the stock of X Corporation.

(i) Under subparagraph (1)(i) of this paragraph, paragraph (a) of § 1.50A–3 does not apply to the March 15, 1973, transfer to X Corporation.

Example (2). (i) The facts are the same as in Example (1) and in addition on June 1, 1973, X Corporation terminates the employment of WIN employees with respect to whom 50 percent of the WIN expenses were incurred during A's 1972 taxable year.

(ii) Under subparagraph (1)(i) of this paragraph, paragraph (a) of § 1.50A–3 does not apply to the March 15, 1973, transfer to X Corporation. However, under subparagraph (3)(i) of this paragraph, paragraph (a) of § 1.50A–3 applies to the June 1, 1973, termination of WIN employees by X Corporation. The actual period of employment of such WIN employees is 1 year and 5 months (that is, the period beginning on January 1, 1972, and ending on June 1, 1973). For taxable year 1972, A's recomputed credit earned is $1,200 (20 percent of $6,000). The income tax imposed by Chapter 1 of the Code on A for the taxable year 1973 is increased by the $1,200 decrease in his credit earned for the taxable year 1972 (that is, $2,400 original credit earned minus $1,200 recomputed credit earned).

Example (3). (i) The facts are the same as in Example (1) and in addition on April 1, 1973, X Corporation begins paying wages to the employees referred to in Example (1) which are less than the wages paid to its other employees who perform comparable services.

(ii) Under subparagraph (1)(i) of this paragraph, paragraph (a)(1) of § 1.50A–3 does not apply to the March 15, 1973, transfer to X Corporation. However, under subparagraph (4) of this paragraph, paragraph (a) of § 1.50A–3 applies to the failure of X Corporation to pay wages to the WIN employees which are equal to the wages paid to its other employees who perform comparable services. For taxable year 1972, A's recomputed credit earned is zero. The income tax imposed by Chapter 1 of the Code on A for the taxable year 1973 is increased by the $2,400 decrease in his credit earned for the taxable year 1972.

Example (4). (i) On January 1, 1972, partnership ABC, which makes its returns on the basis of a calendar year, employed WIN employees. Partnership ABC incurred WIN expenses with respect to these employees of $20,000 for the taxable year. Partnership ABC has 10 partners who make their returns on the basis of a calendar year and share partnership profits equally. Each partner's share of the WIN expenses is 10 percent, that is, $2,000. On March 15, 1973, partnership ABC transfers all of the assets used in its trade or business to the X Corporation, a newly formed corporation, in exchange for its stock and immediately thereafter transfers 10 percent of the stock to each of the 10 partners.

(ii) Under subparagraph (1)(i) of this paragraph, paragraph (a)(1) of § 1.50A–1 does not apply to the March 15, 1973, transfer by the ABC Partnership to X Corporation.

Example (5). (i) The facts are the same as in Example (4) except that partnership ABC transfers 10 percent of the stock in X Corporation to each of eight partners, 20 percent to partner A, and cash to partner B.

(ii) Under subparagraph (1)(i) of this paragraph, with respect to all of the partners (including partner A) except partner B, paragraph (a)(1) of § 1.50A–3 does not apply to the March 15, 1973, transfer by the

ABC Partnership. Paragraph (a)(1) of § 1.50A–3 applies with respect to partner B's $2,000 share of the WIN expenses. See paragraph (a)(2) of § 1.50A–7.

Example (6). (i) X Corporation operates a manufacturing business and a separate retail sales business. During the month of January 1972, X incurred WIN expenses in its manufacturing business. On February 10, 1973, X transfers all the assets used in its manufacturing business to Partnership XY in exchange for a 50 percent interest in such partnership.

(ii) Under subparagraph (1)(i) of this paragraph, paragraph (a)(1) of § 1.50A–3 does not apply to the February 10, 1973, transfer to Partnership XY.

§ 1.50A–5 Electing small business corporations.

(a) *In general*—(1) *Termination of employment by a corporation.* If an electing small business corporation (as defined in section 1371(b)) or a former electing small business corporation terminates (in a termination subject to the provisions of paragraph (a) of § 1.50A–3) the employment of any WIN employee with respect to whom WIN expenses have been paid or incurred, a recapture determination shall be made under § 1.50A–3 with respect to each shareholder who is treated, under paragraph (a) of § 1.50B–2 as a taxpayer who paid or incurred such expenses. Each such recapture determination shall be made with respect to the pro rata share of the WIN expenses of such employee which were taken into account by such shareholder under paragraph (a) of § 1.50B–2. For purposes of each such recapture determination the period of employment of such employee or employees shall be the period beginning with the initial date of employment (as defined in paragraph (c)(1) of § 1.50A–3) with respect to the electing small business corporation and ending with the date of such employee's termination (as defined in paragraph (a)(1)(ii) of § 1.50A–3). For the definition of the term "recapture determination" see paragraph (a)(3) of § 1.50A–3.

(2) *Disposition of shareholder's interest.* (i) If—

(*a*) WIN expenses are apportioned to a shareholder of an electing small business corporation who takes such expenses into account in computing his WIN expenses, and

(*b*) After the end of the shareholder's taxable year in which such apportionment was taken into account and before the close of the period to which paragraph (a)(1) of § 1.50A–3 applies with respect to the employee to which such WIN expenses relate, such shareholder's proportionate stock interest in such corporation is reduced (for example, by a sale or redemption, or by the issuance of additional shares) below the percentage specified in subdivision (ii) of this subparagraph,

then, on the date of such reduction the employment of such employee shall be deemed terminated with respect to such shareholder to the extent of the actual reduction in such shareholder's proportionate stock interest. (For example, if $100 of WIN expenses were apportioned to a shareholder and if his proportionate stock interest is reduced from 60 percent to 30 percent (that is, 50 percent of his original interest), then the employment of the employee to which such WIN expenses relate shall be deemed terminated as to that shareholder to the extent of $50.) Accordingly, a recapture determination shall be made with respect to such shareholder. For purposes of such recapture determination the period of employment of any employee or employees with respect to whom WIN expenses were paid or incurred shall be the period beginning with the initial date of employment (as defined in paragraph (c)(1) of § 1.50A–3) with respect to the electing small business corporation and ending with the date on which such reduction occurs.

(ii) The percentage referred to in subdivision (i)(*b*) of this subparagraph is 66⅔ percent of the shareholder's proportionate stock interest in the corporation on the date of the apportionment under paragraph (a) of § 1.50B–2. However, once employment of an employee has been treated under this subparagraph as having terminated with respect to the shareholder to any extent, the percentage referred to shall be 33⅓ percent of the shareholder's proportionate stock interest in the corporation on the date of apportionment under paragraph (a) of § 1.50B–2.

(iii) In determining a shareholder's proportionate stock interest in a former electing small business corporation for purposes of this subparagraph, the shareholder shall be considered to own stock in such corporation which he owns directly or indirectly (through ownership in other entities provided such other entities' bases in such stock are determined in whole or in part by reference to the basis of such stock in the hands of the shareholder). For example, if A, who owns all of the 100 shares of the outstanding stock of corporation X, a corporation which was formerly an electing small business corporation, transfers on November 1, 1973, 70 shares of X stock to corporation Y in exchange for 90 percent of the stock of Y in a transaction to which section 351 applies, then, for purposes of subdivision (i) of this subparagraph, A shall be considered to own 93 percent of the stock of X, 30 percent directly and 63 percent indirectly (i.e., 90 percent of 70). Any taxpayer who seeks to establish his interest in the stock of a former electing small business corporation under the rule of this subdivision shall maintain adequate records to demonstrate his indirect interest in the corporation after any such transfer or transfers.

(3) *Computation of the first 12 months of employment.* The period described in paragraph (a)(1) of § 1.50A–3 shall not be affected by a change in the shareholders in such corporation and shall not be affected by a reduction in any shareholder's proportionate stock interest in such corporation (for example, by a sale or redemption or by the issuance of additional shares). Thus, the first 12 months of employment (whether or not consecutive) of any WIN employee shall be the same with respect to any shareholder who is allowed a credit under section 40 for salaries and wages paid or incurred for services rendered by such employee. Also, such first 12 months of employment and the period described in section 50B(c)(4) with respect to any WIN employee shall not be deemed to begin again in the case of a corporation making a valid election under section 1372.

(b) *Election of a small business corporation under section 1372*—(1) *General rule.* If a corporation makes a valid election under section 1372 to be an electing small business corporation (as defined in section 1371(b)), then on the last day of the first taxable year immediately preceding the taxable year for which such election is effective, the employment of any WIN employees whose initial date of employment (as defined in paragraph (c)(1) of § 1.50A–3) occurred in taxable years prior to the first taxable year for which the election is effective (and whose employment has not been terminated prior to such last day) shall be considered as having been terminated on such last day with respect to the WIN expenses paid or incurred by such corporation and § 1.50A–3 shall apply to such corporation. However, if the corporation and each of the persons who are shareholders of the corporation on the first day of the first taxable year for which the election under section 1372 is to be effective, or on the date of such election, whichever is later, execute the agreement specified in subparagraph (2) of this paragraph, § 1.50A–3 shall not apply with respect to any such WIN expenses by reason of the election by the corporation under section 1372.

(2) *Agreement of shareholders and corporation.* (i) The agreement referred to in subparagraph (1) of this paragraph shall be signed by the shareholders and by the corporation. The agreement shall recite that:

(*a*) In the event the employment of any WIN employee described in subparagraph (1) of this paragraph is later terminated (in a termination subject to the rules contained in paragraph (a) of § 1.50A–3) during a taxable year of the corporation for which the election under section 1372 is effective, each signer agrees to notify the district director or the director of the Internal Revenue service center of such termination, and agrees to be jointly and severally liable to pay to the district director or the director of the Internal Revenue service center an amount equal to the increase in tax which would have been imposed by § 1.50A–3 on the corporation but for the agreement under this paragraph.

(*b*) In the event any WIN employee described in subparagraph (1) of this paragraph is paid wages (as defined in section 50B(b) and paragraph (b) of § 1.50B–1) by such electing corporation, which are less than the wages paid to other employees of such electing corporation who perform comparable services (as defined in paragraph (a)(2)(ii) of § 1.50A–3), during a taxable year of the corporation for which the election under

section 1372 is effective, each signer agrees to notify the district director or the director of the Internal Revenue service center of such failure to pay equal wages for comparable services, and agrees to be jointly and severally liable to pay to the district director or the director of the Internal Revenue service center an amount equal to the increase in tax which would have been imposed by § 1.50A–3 on the corporation as a result of such failure but for the election under section 1372.

For purposes of computing the period described in paragraph (a)(1) of § 1.50A–3, the period of employment by the corporation before the election under section 1372 shall be added to the period of employment by the electing small business corporation after such election.

(ii) The agreement shall set forth the name, address, and taxpayer account number of each party and the internal revenue district or service center in which each such party files his or its income tax return for the taxable year which includes the last day of the corporation's taxable year immediately preceding the first taxable year for which the election under section 1372 is effective. The agreement may be signed on behalf of the corporation by any person who is duly authorized. The agreement shall be filed with the district director or the director of the Internal Revenue service center with whom the corporation files its income tax return for its taxable year immediately preceding the first taxable year for which the election under section 1372 is effective and shall be filed on or before the due date (including extensions of time) of such return. For purposes of the preceding sentence, the district director or the director of the Internal Revenue service center may, if good cause is shown, permit the agreement to be filed on a later date.

(c) *Examples.* This section may be illustrated by the following examples:

Example (1). (i) X Corporation, an electing small business corporation which makes its returns on the basis of the calendar year, hired employees under a WIN program on July 1, 1972, and incurred expenses for such employees during the following 12 months at an initial rate of $10,000 per month. For taxable year 1972, X Corporation had 20 shares of stock outstanding which were owned equally by A and B who make their returns on the basis of a calendar year. Under paragraph (a) of this section, the WIN expenses were apportioned to the shareholders of X Corporation as follows:

	Period Ending December 31, 1973
Total WIN expenses for the taxable year	$60,000
Shareholder A (10/20)	30,000
Shareholder B (10/20)	30,000

Assuming that during 1972 shareholders A and B did not directly incur any WIN expenses and that they did not own any interest in other electing small business corporations, partnerships, estates, or trusts incurring WIN expenses, the WIN expenses attributable to each shareholder is $30,000. For the taxable year 1972, each shareholder's credit earned of $6,000 (20 percent of $30,000) was allowed under section 40 as a credit against his liability for tax.

(ii) On January 1, 1973, X Corporation terminates the employment of the employees accounting for 50 percent of its WIN expenses incurred to that date, or $30,000 in salaries and wages. The actual period of employment for these WIN employees was 6 months. For taxable year 1972, each shareholder's recomputed credit is $3,000 (20 percent of $15,000). The income tax imposed by chapter 1 of the Code on each of the shareholders for the taxable year 1973 is increased by the $3,000 decrease in his credit earned for the taxable year 1972 (that is, $6,000 original credit earned minus $3,000 recomputed credit earned).

Example (2). (i) The facts are the same as in subdivision (i) of example (1), except that on January 1, 1973, shareholder A sells five of his 10 shares of stock in X Corporation to C. No other changes in stock ownership occurred during 1973. Under paragraph (a)(2) of this section, the WIN expenses of X Corporation were apportioned on December 31, 1973, to the shareholders of X Corporation as follows:

	Period Ending December 31, 1972
Total WIN expenses for the taxable year	$60,000
Shareholder A (5/20)	15,000
Shareholder B (10/20)	30,000
Shareholder C (5/20)	15,000

(ii) Under paragraph (a)(2) of this section, on January 1, 1973, the employment of these WIN employees shall be deemed terminated by shareholder A with respect to 50 percent of the WIN expenses allocated to him since immediately after the January 1, 1973, sale A's proportionate stock interest in X Corporation is reduced to 50 percent of the proportionate stock interest in X Corporation which he held for taxable year 1972. The actual period of employment of the WIN employees accounting for the 50 percent of the WIN expenses originally allocated to A is 6 months (that is, the period beginning with July 1, 1972, and ending with January 1, 1973). The income tax imposed by chapter 1 of the Code on shareholder A for the taxable year 1973 is increased by the $3,000 decrease in his credit earned for the taxable year 1972 (that is, $6,000 original credit earned minus $3,000 recomputed credit earned).

(d) *Termination or revocation of an election under section 1372.* The employment of employees with respect to whom WIN expenses were paid or incurred shall not be considered to have been terminated solely by reason of a termination or revocation of a corporation's election under section 1372.

§ 1.50A–6 Estates and trusts.

(a) *In general*—(1) *Termination of employment by an estate or trust.* If an estate or trust teminates (in a termination subject to the provisions of paragraph (a) of § 1.50A–3) the employment of any employee with respect to whom WIN expenses have been paid or incurred, a recapture determination shall be made under § 1.50A–3 with respect to the estate or trust, and each beneficiary who is treated, under paragraph (a) of § 1.50B–3 as a taxpayer who paid or incurred such expenses. For purposes of each such recapture determination the period of employment of such employees shall be the period beginning with the initial date of employment (as defined in paragraph (c)(1) of § 1.50A–3) with respect to the estate or trust and ending with the date of such employee or employees' termination (as defined in paragraph (a)(1)(ii) of § 1.50A–3). For definition of "recapture determination" see paragraph (a)(3) of § 1.50A–3.

(2) *Disposition of interest.* (i) If—

(*a*) WIN expenses are apportioned to an estate or trust, or to a beneficiary of an estate or trust who takes such expenses into account in computing his WIN expenses, and

(*b*) After the end of the estate's, trust's, or beneficiary's taxable year in which such apportionment was taken into account and before the close of the period to which paragraph (a)(1) of § 1.50A–3 applies with respect to the employees to which such WIN expenses relate, such estate's, trust's, or such beneficiary's proportionate interest in the income of the estate or trust is reduced (for example, by a sale, or by the terms of the estate or trust instrument) below the percentage specified in subdivision (ii) of this subparagraph,

then, on the date of such reduction, the employment of such employee shall be deemed terminated with respect to such estate, trust, or beneficiary to the extent of the actual reduction in such estate's, trust's, or beneficiary's proportionate interest in the income of the estate or trust. (For example, if $100 of WIN expenses were apportioned to a beneficiary and if his proportionate interest in the income of the estate or trust is reduced from 60 percent to 30 percent (that is, 50 percent of his original interest), then the employment of the employee to which such WIN expenses relates shall be deemed terminated as to that beneficiary to the extent of $50.) Accordingly, a recapture determination shall be made with respect to such estate, trust, or beneficiary. For purposes of such recapture determination the period of employment of any employee or employees with respect to whom WIN expenses were paid or incurred shall be the period beginning with the initial date of employment (as defined in paragraph (c)(1) of § 1.50A–3) with respect to the estate or trust and ending with the date on which such reduction occurs.

(ii) The percentage referred to in subdivision (i)(*b*) of this subparagraph is 66⅔ percent of the estate's, trust's, or beneficiary's proportionate interest in the income of the estate or trust for the taxable year of the apportionment under paragraph (a) of § 1.50B–3. However, once employment of an employee has been treated under this subparagraph as having terminated with respect to the estate, trust, or beneficiary to any extent, the percentage referred to shall be 33⅓ percent of the estate's, trust's, or beneficiary's proportionate interest in the income of the estate or trust for the taxable year of the apportionment under paragraph (a) of § 1.50B–3.

(iii) In determining a beneficiary's proportionate interest in the income of an estate or trust for purposes of this subparagraph, the beneficiary shall be considered to own any interest in such an estate or trust which he owns directly or indirectly (through ownership in other entities provided such other enti-

ties' bases in such interests are determined in whole or in part by reference to the basis of such interest in the hands of the beneficiary). For example, if A, whose proportionate interest in the income of trust X is 30 percent, transfers all of such interest to corporation Y in exchange for all of the stock of Y in a transaction to which section 351 applies, then, for purposes of subdivision (i) of this subparagraph, A shall be considered to own a 30-percent interest in trust X. Any taxpayer who seeks to establish his interest in an estate or trust under the rule of this subdivision shall maintain adequate records to demonstrate his indirect interest in the estate or trust after any such transfer or transfers.

(b) *Computation of the first 12 months of employment.* The period described in paragraph (a)(1) of § 1.50A–3 shall not be affected by a change in the beneficiaries of an estate or trust and shall not be affected by a reduction or a termination of a beneficiary's interest in the income of such estate or trust. Thus, the period described in paragraph (a)(1) of § 1.50A–3 for any WIN employee shall be the same with respect to a trust or estate and any beneficiary of such trust or estate which is allowed a credit under section 40 for salaries and wages paid or incurred for services rendered by such employee. Also, such period with respect to any WIN employee shall not be deemed to begin again as the result of the acquisition of the interest by another.

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

Example (1). (i) XYZ Trust, which makes its returns on the basis of the calendar year, hired employees under the WIN program on July 1, 1972, and incurred expenses for such employees during the following 12 months at an initial rate of $10,000 per month. For the taxable year 1972 the income of XYZ Trust is $60,000, which is allocated equally to XYZ Trust and beneficiary A. Beneficiary A makes his returns on the basis of a calendar year. Under paragraph (a) of this section, the WIN expenses were apportioned to XYZ Trust and to beneficiary A as follows:

	Period ending December 31, 1972
Total WIN expenses for the taxable year	$60,000
XYZ Trust ($30,000/$60,000)	30,000
Beneficiary A ($30,000/$60,000)	30,000

Assuming that during 1972 beneficiary A did not directly incur any WIN expenses and that he did not own any interest in other estates, trusts, electing small business corporations, or partnerships incurring WIN expenses, the WIN expenses incurred by XYZ Trust and by beneficiary A are $30,000 each. For the taxable year 1972, XYZ Trust and beneficiary A each had a credit earned of $6,000. Each credit earned was allowed under section 40 as a credit against the liability for tax.

(ii) On January 1, 1973, XYZ Trust terminates the employment of its employees accounting for 50 percent of its WIN expenses incurred to that date, or $30,000 in salaries and wages. The actual period of employment for these WIN employees was 6 months. For the taxable year 1972, XYZ Trust's and beneficiary A's recomputed credit is $3,000 (20 percent of $15,000). The income tax imposed by chapter 1 of the Code on XYZ Trust and on beneficiary A for the taxable year 1973 is increased by the $3,000 decrease in his credit earned for the taxable year 1972 (that is, $6,000 original credit earned minus $3,000 recomputed credit earned).

Example (2). (i) The facts are the same as in subdivision (i) of example (1), except that on January 1, 1973, beneficiary A sells 50 percent of his interest in the income of XYZ Trust to B. No other changes in income interest occurred during 1973. Under paragraph (a)(2) of § 1.50B–4, each beneficiary's share and the trust's share of the WIN expenses are apportioned as follows:

	Period ending December 31, 1973
Total WIN expenses for the taxable year	$60,000
XYZ Trust ($30,000/$60,000)	30,000
Beneficiary A ($15,000/$60,000)	15,000
Beneficiary B ($15,000/$60,000)	15,000

(ii) Under paragraph (a)(2) of this section, on January 1, 1973, the employment of these WIN employees shall be deemed terminated by beneficiary A with respect to 50 percent of the WIN expenses allocated to him since immediately after the January 1, 1973, sale A's proportionate interest in the income of XYZ Trust is reduced to 50 percent of his proportionate interest in the income of XYZ Trust for the taxable year 1972. The period of employment of the WIN employees accounting for the 50 percent of the WIN expense originally allocated to A is 6 months (that is, the period beginning with July 1, 1972, and ending with December 31, 1972). For the taxable year 1972 beneficiary A's recomputed credit earned is $3,000 (20 percent of $15,000). The income tax imposed by chapter 1 of the Code on beneficiary A for the taxable year 1973 is increased by the $3,000 decrease in his credit earned for the taxable year 1972 (that is, $6,000 original credit earned minus $3,000 recomputed credit earned).

§ 1.50A–7 Partnerships.

(a) *In general*—(1) *Termination of employment by a partnership.* If a partnership terminates (in a termination subject to the provisions of paragraph (a) of § 1.50A–3) the employment of any WIN employee with respect to whom WIN expenses have been paid or incurred, a recapture determination shall be made under § 1.50A–3 with respect to each partner who is treated, under paragraph (a) of § 1.50B–4, as a taxpayer with respect to such expenses. Each such recapture determination shall be made with respect to the share of the WIN expenses with respect to such employee which were taken into account by such partner under paragraph (a) of § 1.50B–4. For purposes of each such recapture determination the period of employment of any such employee shall be the period beginning with the initial date of employment (as defined in paragraph (c)(1) of § 1.50A–3) with respect to the partnership and ending with the date of such employee's termination (as defined in paragraph (a)(1)(ii) of § 1.50A–3). For the definition of "recapture determination" see paragraph (a)(3) of § 1.50A–3.

(2) *Disposition of partner's interest.* (i) If—

(*a*) WIN expenses are allocated to a partner of a partnership who takes such expenses into account in computing his WIN expenses, and

(*b*) After the end of the partner's taxable year in which such allocation was taken into account and before the close of the period to which paragraph (a)(1) of § 1.50A–3 applies with respect to the employee to which such WIN expenses relate, such partner's proportionate interest in the general profits of the partnership (or in the particular expenses) is reduced (for example, by a sale, by a change in the partnership agreement, or by the admission of a new partner) below the percentage specified in subdivision (ii) of this subparagraph,

then, on the date of such reduction the employment of such employee shall be deemed terminated with respect to such partner to the extent of the actual reduction in such partner's proportionate interest in the general profits (or in the particular expenses) of the partnership. (For example, if $100 of WIN expenses were taken into account by a partner and if his proportionate interest in the general profits of the partnership is reduced from 60 percent to 30 percent (that is, 50 percent of his original interest), then the employment of the employee to which such WIN expenses relate shall be deemed terminated as to that partner to the extent of $50.) Accordingly, a recapture determination shall be made with respect to such partner. For purposes of such recapture determination the period of employment of any employee or employees with respect to whom WIN expenses were paid or incurred shall be the period beginning with the initial date of employment (as defined in paragraph (c)(1) of § 1.50A–3) with respect to the partnership and ending with the date on which such reduction occurs.

(ii) The percentage referred to in subdivision (i)(*b*) of this subparagraph is 66⅔ percent of the partner's proportionate interest in the general profits (or in the WIN expenses) of the partnership for the year of the apportionment under § 1.50B–4(a). However, once employment of an employee has been treated under this subparagraph as having terminated with respect to the partner to any extent, the percentage referred to shall be 33⅓ percent of the partner's proportionate interest in the general profits (or in the WIN expenses) of the partnership for the taxable year of the apportionment under paragraph (a) of § 1.50B–4.

(iii) In determining a partner's proportionate interest in the general profits (or in the WIN expenses) of a partnership for purposes of this subparagraph, the partner shall be considered to own any interest in such a partnership which he owns directly or indirectly (through ownership in other entities provided the other entities' bases in such interests are determined in whole or in part by reference to the basis of such interest in the hands of the partner). For example, if A, whose proportionate interest in the general profits of partnership X is 20 percent, transfers all of such interest to Corporation Y in exchange for all of the stock of Y in a transaction to which section 351 applies, then, for purposes of subdivision (i) of

this subparagraph, A shall be considered to own a 20 percent interest in partnership X. Any taxpayer who seeks to establish his interest in a partnership under the rule of this subdivision shall maintain adequate records to demonstrate his indirect interest in the partnership after any such transfer or transfers.

(3) *Computation of the first 12 months of employment.* The period described in paragraph (a)(1) of § 1.50A–3 shall not be affected by a change in the partners of such partnership and shall not be affected by a change in the ratio in which the partners divide the general profits (or the WIN expenses) of the partnership. Thus, such period for any WIN employee shall be the same with respect to any partner claiming a credit under section 40 for salaries and wages paid or incurred for services rendered by such employee.

(b) *Examples.* Paragraph (a) of this section may be illustrated by the following examples:

Example (1). (i) AB partnership, which makes its returns on the basis of the calendar year, hired employees under the WIN program on July 1, 1972, and incurred expenses for such employees during the following 12 months at an initial rate of $10,000 per month. Partners A and B, who make their returns on the basis of a calendar year, share the profits and losses of AB partnership equally. Under paragraph (a)(2) of this section, each partner's share of the WIN expenses was apportioned as follows:

	Period ending December 31, 1972
Total WIN expenses for the taxable year	$60,000
Partner A's share (50 percent)	30,000
Partner B's share (50 percent)	30,000

Assuming that during 1972 A and B did not directly incur any WIN expenses and that they did not own any interest in other partnerships, electing small business corporations, estates, or trusts incurring WIN expenses, each partner's share of the WIN expenses is $30,000. For the taxable year 1972, each partner's credit earned of $6,000 (20 percent of $30,000) was allowed under section 40 as a credit against his liability for tax.

(ii) On January 1, 1973, AB partnership terminates the employment of its employees accounting for 50 percent of its WIN expenses incurred to that date, or $30,000 in salaries and wages. The actual period of employment for these WIN employees was 6 months. For the taxable year 1972, each partner's recomputed credit earned is $3,000 (20 percent of $15,000). The income tax imposed by chapter 1 of the Code on each of the partners for the taxable year 1973 is increased by the $3,000 decrease in his credit earned for the taxable year 1972 (that is, $6,000 original credit earned minus $3,000 recomputed credit earned).

Example (2). (i) The facts are the same as in subdivision (i) of example (1), except that on January 1, 1973, partner A sells one-half of his 50 percent interest in AB partnership to C, to form the ABC partnership. No other changes in the partners' proportionate interest in the general profits of the partnership occurred during 1973. Under paragraph (a)(2) of this section, each partner's share of the WIN expenses was apportioned on December 31, 1973, as follows:

	Period ending December 31, 1973
Total WIN expenses for the taxable year	$60,000
Partner A's share (25 percent)	15,000
Partner B's share (50 percent)	30,000
Partner C's share (25 percent)	15,000

(ii) Under paragraph (a)(2) of this section, on January 1, 1973, the employment of these WIN employees shall be deemed terminated by partner A with respect to 50 percent of the WIN expenses allocated to him since immediately after the January 1, 1973, sale, A's proportionate interest in the general profits of ABC partnership is reduced to 50 percent of his proportionate interest in the general profits of AB partnership for 1972. The period of employment of the WIN employees accounting for the 50 percent of the WIN expenses originally allocated to A is 6 months (that is, the period beginning with July 1, 1972, and ending with December 31, 1972). For the taxable year 1972 partner A's recomputed credit earned is $3,000 (20 percent of $15,000). The income tax imposed by chapter 1 of the Code on partner A for the taxable year 1973 is increased by the $3,000 decrease in his credit earned for the taxable year 1972 (that is, $6,000 original credit earned minus $3,000 recomputed credit earned).

§ 1.50B Statutory provisions; definitions; special rules.

SEC. 50B. *Definitions; special rules*—(a) *Work incentive program expenses.* For purposes of this subpart, the term "work incentive program expenses" means the wages paid or incurred by the taxpayer for services rendered during the first 12 months of employment (whether or not consecutive) of employees who are certified by the Secretary of Labor as—

(1) Having been placed in employment under a work incentive program established under section 432(b)(1) of the Social Security Act, and

(2) Not having displaced any individual from employment.

(b) *Wages.* For purposes of subsection (a), the term "wages" means only cash remuneration (including amounts deducted and withheld).

(c) *Limitations*—(1) *Trade or business expenses.* No item shall be taken into account under subsection (a) unless such item is incurred in a trade or business of the taxpayer.

(2) *Reimbursed expenses.* No item shall be taken into account under subsection (a) to the extent that the taxpayer is reimbursed for such item.

(3) *Geographical limitation.* No item shall be taken into account under subsection (a) with respect to any expense paid or incurred by the taxpayer with respect to employment outside the United States.

(4) *Maximum period of training or instruction.* No item with respect to any employee shall be taken into account under subsection (a) after the end of the 24-month period beginning with the date of initial employment of such employee by the taxpayer.

(5) *Ineligible individuals.* No item shall be taken into account under subsection (a) with respect to an individual who—

(A) Bears any of the relationships described in paragraphs (1) through (8) of section 152(a) to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation (determined with the application of section 267(c)),

(B) If the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) through (8) of section 152(a) to a grantor, beneficiary, or fiduciary of the estate or trust, or

(C) Is a dependant (described in section 152(a)(9)) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (A), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

(d) *Subchapter S corporations.* In case of an electing small business corporation (as defined in section 1371)—

(1) The work incentive program expenses for each taxable year shall be apportioned pro rata among the persons who are shareholders of such corporation on the last day of such taxable year, and

(2) Any person to whom any expenses have been apportioned under paragraph (1) shall be treated (for purposes of this subpart) as the taxpayer with respect to such expenses.

(e) *Estates and trusts.* In the case of an estate or trust—

(1) The work incentive program expenses for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each,

(2) Any beneficiary to whom any expenses have been apportioned under paragraph (1) shall be treated (for purposes of this subpart) as the taxpayer with respect to such expenses, and

(3) The $25,000 amount specified under subparagraphs (A) and (B) of section 50A(a)(2) applicable to such estate or trust shall be reduced to an amount which bears the same ratio to $25,000 as the amount of the expenses allocated to the trust under paragraph (1) bears to the entire amount of such expenses.

(f) *Limitations with respect to certain persons.* In the case of—

(1) An organization to which section 593 applies,

(2) A regulated investment company or a real estate investment trust subject to taxation under subchapter M (section 851 and following), and

(3) A cooperative organization described in section 1381(a),

rules similar to the rules provided in section 46(d) shall apply under regulations prescribed by the Secretary or his delegate.

(g) *Cross reference.* For application of this subpart to certain acquiring corporations, see section 381(c)(24).

[Sec. 50B as added by sec. 601(b), Rev. Act 1971 (85 Stat. 556)]

§ 1.50B–1 Definitions of WIN expenses and WIN employees.

(a) *WIN expenses*—(1) *In general.* Except as otherwise provided in paragraphs (b)–(g) of this section, for purposes of §§ 1.50A–1 through 1.50B–5, the term "work incentive program expenses" (referred to in §§ 1.50A–1 through 1.50B–5 as "WIN expenses") means the salaries and wages paid or incurred by the taxpayer for services rendered during the first 12 months of employment (whether or not consecutive) by an employee who is certified by the Secretary of Labor as—

(i) Having been placed in employment by the taxpayer (or if the taxpayer is a partner of a partnership, beneficiary of an estate or trust, or a shareholder of an electing small business corporation, by such partnership, estate, trust, or elect-

ing small business corporation) under a work incentive (WIN) program established under section 432(b)(1) of the Social Security Act (42 U.S.C. 632(b)(1)), and

(ii) Not having displaced any individual from employment.

The term "WIN expenses" includes only salaries and wages paid or incurred in taxable years beginning after December 31, 1971. See paragraph (c) of § 1.50A–3 for rules relating to the determination of the first 12 months of employment (whether or not consecutive).

(2) *Examples.* The provisions of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). X Corporation, an accrual basis taxpayer which files its return on the basis of the calendar year, hired an employee on July 1, 1971, who was certified by the Secretary of Labor under this paragraph. The first 12 months of employment were continuous. X is entitled to the credit provided by section 40 with respect to the salaries or wages incurred during its taxable year beginning January 1, 1972, for services rendered by that employee during the period beginning July 1, 1971, and ending June 30, 1972.

Example (2). Y, a cash basis taxpayer who files his return on the basis of the calendar year, employed A, an employee certified by the Secretary of Labor under this paragraph, on July 1, 1971. A's first 12 months of employment were continuous. Y paid A on the basis of a semimonthly payroll period, but paid his payroll 2 days after the close of the payroll period during which the wages were earned. Thus, Y paid A on January 2, 1972, for services rendered between December 16, 1971, and December 31, 1971. Y is entitled to the credit provided by section 40 with respect to the wages paid for services rendered by A during the period beginning December 16, 1971, and ending June 30, 1972, because those wages were paid by Y in a taxable year beginning after December 31, 1971.

(b) *Salaries and wages.* For purposes of this section, the term "salaries and wages" means only cash remuneration including a check. Amounts deducted and withheld from the employee's pay (for example, taxes and contributions to health and retirement plans) shall be deemed to be cash remuneration even though not actually paid directly to the employee.

(c) *Trade or business expenses.* The term "WIN expenses" includes only salaries and wages which are paid or incurred in a trade or business of the taxpayer and which are deductible in computing taxable income. Thus, salaries and wages paid to domestic employees in a private home are not "WIN expenses".

(d) *Reimbursed expenses*—(1) *In general.* The term "WIN expenses" does not include salaries and wages to the extent that the taxpayer is reimbursed for such salaries or wages from any source.

(2) *Example.* Subparagraph (1) of this paragraph may be illustrated by the following example:

Example. X Company, which makes its return on the basis of the calendar year, hired WIN employees on January 1, 1972. X Company has a cost-plus construction contract with the Federal Government. The fact that X has a construction contract with the Federal Government or anyone else does not change its character from a normal business transaction in which there has been a sale of materials and services. Thus, the salaries or wages paid or incurred for services rendered by these WIN employees would not be reimbursed expenses, and X would be entitled to the credit provided by section 40.

(e) *Geographical limitation*—(1) *In general.* The term "WIN expenses" does not include salaries and wages paid or incurred for services rendered outside the United States (as defined in sections 638 (relating to Continental Shelf areas) and 7701(a)(9)). However, services rendered by any WIN employee outside the United States (as defined in sections 638 (relating to Continental Shelf areas) and 7701(a)(9)) shall contribute to such employee's first 12 months of employment (whether or not consecutive) for purposes of paragraph (a) of § 1.50A–3 and paragraph (a) of this section.

(2) *Example.* Subparagraph (1) of this paragraph may be illustrated by the following example:

Example. X Corporation, which files its return on the basis of the calendar year, hired A, a WIN employee, on January 1, 1972, and continuously employed him for the following 24-month period. During January and February of 1972, X paid A's wages while he received training conducted in Puerto Rico. For the remainder of the calendar year A performed services for X within the United States. For purposes of paragraph (a) of § 1.50A–3 and paragraph (a) of this section, A's first 12 months of employment are January 1, 1972, to December 31, 1972. Under subparagraph (1) of this paragraph no wages paid to A for services rendered during the months of January and February of 1972 may be taken into account by X under paragraph (a) of this section as WIN expenses because the services were rendered outside the United States. However, X may take into account wages he has incurred with respect to A for the period March 1, 1972, to December 31, 1972.

(f) *Maximum period of training or instruction.* The term "WIN expenses" does not include salaries and wages paid or incurred for services rendered by a WIN employee after the end of the 24-month period beginning with the date of initial employment (as defined in paragraph (c)(1) of § 1.50A–3) of the WIN employee.

(g) *Ineligible individuals.* The term "WIN expenses" does not include salaries and wages paid or incurred for services rendered by a WIN employee who—

(1) Bears any of the relationships described in paragraphs (1) through (8) of section 152(a) of the Code to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation (determined with the application of section 267(c) of the Code),

(2) If the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) through (8) of section 152(a) of the Code to a grantor, beneficiary, or fiduciary of the estate or trust, or

(3) Is a dependent (described in section 152(a)(9) of the Code) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (1), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

(h) *WIN employee.* For purposes of §§ 1.50A–1—1.50B–5 the term "WIN employee" means an employee who is certified by the Secretary of Labor as meeting the requirements of paragraph (a)(1) (i) and (ii) of this section.

(i) *Special rule applicable to transactions to which section 381(a) applies and transactions involving a mere change in form of conducting a trade or business.* The first 12 months of employment (whether or not consecutive) and the period described in section 50B(c)(4) of any WIN employee, for purposes of determining the amount of WIN expenses (as defined in paragraph (a) of § 1.50B–1), shall not be affected by transactions to which the rule contained in paragraph (f) (relating to transaction to which section 381(a) (relating to certain corporate acquisitions) applies), or paragraph (g) (relating to a mere change in form of conducting a trade or business) of § 1.50A–4 applies.

§ 1.50B–2 Electing small business corporations.

(a) *General rule*—(1) *In general.* In the case of an electing small business corporation (as defined in section 1371(b)), WIN expenses (as defined in paragraph (a) of § 1.50B–1) shall be apportioned pro rata among the persons who are shareholders of such corporation on the last day of such corporation's taxable year, and shall be taken into account for the taxable years of such shareholders within which or with which the taxable year of such corporation ends. The WIN expenses for each employee shall be apportioned separately. In determining who are shareholders of an electing small business corporation on the last day of its taxable year, the rules of paragraph (d)(1) of § 1.1371–1 and of paragraph (a)(2) of § 1.1373–1 shall apply.

(2) *Shareholder as taxpayer.* A shareholder to whom WIN expenses are apportioned shall, for purposes of the credit allowed by section 40, be treated as the taxpayer who paid or incurred the expenses allocated to him. If a shareholder takes into account in determining his WIN expenses any WIN expenses with respect to an employee of an electing small business corporation, and if the employment of such employee is terminated in a termination subject to the rules contained in paragraph (a) of § 1.50A–3, or if the electing small business corporation fails to pay comparable wages and such failure is subject to the rules contained in paragraph (a)(2) and (3) of § 1.50A–3, then such shareholder shall make a recapture determination under the provisions of section 50A(c) and (d) of the Code and § 1.50A–3. See § 1.50A–5.

(3) *Computation of the first 12 months of employment.* The first 12 months of employment (whether or not consecutive) and the period described in

section 50B(c)(4) of any WIN employee for purposes of determining the amount of WIN expenses (as defined in paragraph (a) of § 1.50B–1) shall not be affected by a change in the shareholders in such corporation and shall not be affected by a reduction in any shareholder's proportionate stock interest in such corporation (for example, by a sale or redemption or by the issuance of additional shares). Thus, the first 12 months of employment (whether or not consecutive) of any WIN employee shall be the same with respect to any shareholder claiming a credit under section 40 for salaries and wages paid or incurred for services rendered by such employee. Also, such first 12 months of employment and the period described in section 50B(c)(4), with respect to any WIN employee, shall not be deemed to begin again because of the making of a valid election under section 1372.

(b) *Summary statement.* An electing small business corporation shall attach to its return a statement showing the apportionment to each shareholder of its WIN expenses with respect to each WIN employee.

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

Example (1). (i) X Corporation, an electing small business corporation which files its returns on the basis of the calendar year, hired WIN employees on July 1, 1972, whose employment was continuous for the next 24 months. A, a shareholder, has a 10 percent interest in X Corporation. X Corporation incurred $24,000 in wages with respect to these WIN employees in calendar year 1972, and $48,000 in calendar year 1973. Assuming that during 1972 shareholder A did not directly incur any other WIN expenses and did not own any other interest in other electing small business corporations, partnerships, estates, or trusts that incurred WIN expenses, for taxable year 1972 shareholder A's credit earned of $480 (10 percent (A's ownership interest) multiplied by $24,000 of WIN expenses multiplied by 20 percent) was allowed under section 40 as a credit against his liability for tax.

(ii) On March 1, 1973, shareholder A sold all of his interest to B, a new shareholder. Therefore, the employment of the WIN employees is deemed terminated for purposes of paragraph (a) of § 1.50A–3 with respect to shareholder A. For taxable year 1972, A's recomputed credit is zero because the termination occurred before the end of the period described in paragraph (a)(1) of § 1.50A–3. The income tax imposed by chapter 1 of the Code on A for the taxable year 1973 is increased by the $480 decrease in his credit earned for the taxable year 1972 (that is, $480 original credit earned minus zero recomputed credit earned). Under paragraph (a) of this section A has no credit earned for 1973.

(iii) Under paragraph (a)(1) of this section, assuming that during 1973 shareholder B did not directly incur any other WIN expenses and that he did not own any interest in other electing small business corporations, partnerships, estates, or trusts that incurred WIN expenses, shareholder B's credit earned is $480 (10 percent (B's ownership interest) multiplied by $24,000 of WIN expenses multiplied by 20 percent) and is allowable under section 40 as a credit against his liability for tax. Under paragraph (a)(3) for purposes of determining the period of employment that may be taken into account by B the initial date of employment of these WIN employees relates back to the date they were first employed, *i.e.*, July 1, 1972. Thus, the first 12 months of employment ends on June 30, 1973.

Example (2). (i) Y Corporation, an electing small business corporation which files its return on the basis of the calendar year, hires five WIN employees in 1972. The WIN expenses incurred with respect to each employee are as follows:

WIN employee number	*WIN expenses*
1	$6,000
2	5,000
3	4,000
4	4,000
5	3,000
Total	22,000

On December 31, 1972, Y Corporation has 10 shares of stock outstanding which are owned as follows: A owns 3 shares, B owns 2 shares, and C owns 5 shares.

(ii) Under this section, the WIN expenses are apportioned to the shareholders of Y Corporation as follows:

WIN employees	1	2	3	4	5	Total
Total WIN expenses	$6,000	$5,000	$4,000	$4,000	$3,000	
Shareholder A (3/10)	1,800	1,500	1,200	1,200	900	6,600
Shareholder B (2/10)	1,200	1,000	800	800	600	4,400
Shareholder C (5/10)	3,000	2,500	2,000	2,000	1,500	11,000

Assume that shareholders A, B, and C did not directly incur any other WIN expenses during their taxable year in which falls December 31, 1972 (the last day of Y Corporation's taxable year), and that such shareholders did not own any interest in other electing small business corporations, partnerships, estates or trust that incurred WIN expenses. The total WIN expenses of shareholder A are $6,600, of shareholder B are $4,400, and of shareholder C are $11,000.

§ 1.50B–3 Estates and trusts.

(a) *General rule*—(1) *In general.* In the case of an estate or trust, WIN expenses (as defined in paragraph (a) of § 1.50B–1) shall be apportioned among the estate or trust and its beneficiaries on the basis of the income of such estate or trust allocable to each. There shall be apportioned to the estate or trust for its taxable year, and to each beneficiary of such estate or trust for his taxable year in which or with which the taxable year of such estate or trust ends, his share (as determined under paragraph (b) of this section) of the total WIN expenses. The WIN expenses for each employee shall be apportioned separately.

(2) *Beneficiary as taxpayer.* A beneficiary to whom WIN expenses are apportioned shall, for purposes of the credit allowed by section 40, be treated as the taxpayer who paid or incurred such WIN expenses allocated to him. If a beneficiary takes into account in determining his WIN expenses any portion of the WIN expenses paid or incurred by an estate or trust and if the employee with respect to which the WIN expenses were paid or incurred is terminated in a termination subject to the rules in paragraph (a) of § 1.50A–3, or if there is a failure (which is subject to the rules is paragraph (a) (2) and (3) of § 1.50A–3) to pay such employee comparable wages then such beneficiary shall make a recapture determination under the provisions of section 50A (c) and (d) of the Code and § 1.50A–3. See § 1.50A–6.

(3) *Beneficiary.* For purposes of this section, the term "beneficiary" includes heir, legatee, and devisee.

(4) *Special rule for termination of interest.* If during the taxable year of an estate or trust a beneficiary's interest in the income of such estate or trust terminates, WIN expenses paid or incurred by such estate or trust after such termination shall not be apportioned to such beneficiary.

(b) *Share.* A trust's, estate's, or beneficiary's share of the WIN expenses with respect to each employee shall be:

(1) The total WIN expenses incurred in the taxable year of the estate or trust with respect to such employee, multiplied by

(2) The amount of income allocable to such estate or trust or to such beneficiary for such taxable year, divided by

(3) The sum of the amounts of income allocable to such estate or trust and all its beneficiaries taken into account under subparagraph (2) of this paragraph.

(c) *Limitation based on amount of tax.* In the case of an estate or trust, the $25,000 amount specified in section 50A(a)(2), relating to limitation based on amount of tax, shall be reduced for the taxable year to—

(1) $25,000, multiplied by

(2) The WIN expenses apportioned to such estate or trust under paragraph (a) of this section, divided by

(3) The WIN expenses apportioned among such estate or trust and its beneficiaries.

(d) *Computation of the first 12 months of employment.* The first 12 months of employment (whether or not consecutive) and the period described in section 50B(c)(4) of any WIN employee for purposes of determining the amount of WIN expenses (as defined in paragraph (a) of § 1.50B–1) shall not be affected by a change in the beneficiaries of an estate or trust and shall not be affected by a reduction or a termination of a beneficiary's interest in the income of such estate or trust. Thus, the first 12 months of employment (whether or not consecutive) of any WIN employee shall be the

same with respect to trust or estate, and any beneficiary of such trust or estate claiming a credit under section 40 for salaries and wages paid or incurred for services rendered by such employee.

(e) *Summary statement.* An estate or trust shall attach to its return a statement showing the apportionment of WIN expenses with respect to each employee to such estate or trust and to each beneficiary.

(f) *Examples.* This section may be illustrated by the following examples:

Example (1). (1) XYZ trust, which makes its return on the basis of the calendar year, hires five WIN employees in 1972. The WIN expenses incurred with respect to each employee are as follows:

WIN employee number	*WIN expenses*
1	$6,000
2	5,000
3	4,000
4	4,000
5	3,000
Total	22,000

For the taxable year 1972 the income of XYZ trust is $10,000 which is allocable as follows: $5,000 to XYZ trust, $2,000 to beneficiary A, and $3,000 to beneficiary B. Beneficiaries A and B make their returns on the basis of a calendar year.

(2) Under this section, the WIN expenses are apportioned to XYZ trust and to its beneficiaries as follows:

WIN employees	1	2	3	4	5	Total
Total WIN expenses	$6,000	$5,000	$4,000	$4,000	$3,000	
XYZ Trust: $5,000/10,000	3,000	2,500	2,000	2,000	1,500	$11,000
Beneficiary A: $2,000/10,000	1,200	1,000	800	800	600	4,400
Beneficiary B: $3,000/10,000	1,800	1,500	1,200	1,200	900	6,600

Assume that beneficiary A hired a WIN employee during his taxable year 1972 and incurred $6,000 in wages. Also, assume that beneficiary B did not hire WIN employees during his taxable year 1972 and that beneficiaries A and B did not own any interests in other trusts, estates, partnerships, or electing small business corporations that hired WIN employees. The WIN expenses of XYZ trust are $11,000, of beneficiary A are $10,400, and of beneficiary B are $6,600.

(3) In the case of XYZ trust, the $25,000 amount specified in section 50A(a)(2) is reduced to $12,500, computed as follows: (i) $25,000 multiplied by (ii) $11,000 (WIN expense apportioned to the trust), divided by (iii) $22,000 (total WIN expenses apportioned among such trust ($11,000), beneficiary A ($4,400), and beneficiary B ($6,600)).

Example (2). The facts are the same as in example (1) except that beneficiary A's interest is reduced to zero. Under paragraph (a)(2) for purposes of determining the period of employment that may be taken into account by XYZ trust and by beneficiary B, the initial date of employment of the WIN employees relates back to the date they were first employed.

§ 1.50B–1 Partnerships.

(a) *General rule*—(1) *In general.* In the case of a partnership, each partner shall take into account separately, for his taxable year with or within which the partnership taxable year ends, his share (as determined under subparagraph (3) of this paragraph) of the WIN expenses (as defined in paragraph (a) of § 1.50B–1) of employees employed by the partnership during such partnership's taxable year. The WIN expenses for each employee shall be allocated separately.

(2) *Partner as taxpayer.* Each partner shall be treated as the taxpayer who paid or incurred the share of the WIN expenses allocated to him. If a partner takes into account in determining his WIN expenses the WIN expenses of an employee of a partnership, and if the employment of such employee is terminated in a termination subject to the rules contained in paragraph (a) of § 1.50A–3, or if the partnership fails to pay comparable wages and such failure is subject to the rules contained in paragraph (a) (2) and (3) of § 1.50A–3, then such partner shall make a recapture determination under the provisions of section 50A (c) and (d) of the Code and § 1.50A–3. See § 1.50A–7.

(3) *Determination of partner's share.* (i) Each partner's share of the WIN expenses shall be determined in accordance with the ratio in which the partners divide the general profits of the partnership (that is, the taxable income of the partnership as described in section 702 (a)(9)) regardless of whether the partnership has a profit or a loss for the taxable year during which the WIN expenses are paid or incurred. However, if the ratio in which the partners divide the general profits of the partnership changes during the taxable year of the partnership, the ratio effective for the date on which the WIN expenses are paid or incurred shall apply.

(ii) Notwithstanding subdivision (i) of this subparagraph, if the deduction with respect to any WIN expenses is specially allocated and if such special allocation is recognized under section 704 (a) and (b) and paragraph (b) of § 1.704–1, then each partner's share of the WIN expenses shall be determined by reference to such special allocation effective for the date on which the WIN expenses are paid or incurred.

(4) *Computation of the first 12 months of employment.* The first 12 months of employment (whether or not consecutive) and the period described in section 50B(c)(4) with respect to any WIN employee for purposes of determining the amount of WIN expenses (as defined in paragraph (a) of § 1.50B–1) shall not be affected by a change in the partners of such partnership and shall not be affected by a change in the ratio in which the partners divide the general profits of the partnership. Thus, the first 12 months of employment (whether or not consecutive) and the 24-month period described in section 50B(c)(4) of any WIN employee shall be the same with respect to any partner claiming a credit under section 40 for salaries and wages paid or incurred for services rendered by such employee.

(b) *Summary statement.* A partnership shall attach to its return a statement showing the allocation to each partner of its WIN expenses with respect to each WIN employee.

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

Example (1). Partnership ABCD hires a WIN employee on January 1, 1972, and hires a second WIN employee on September 1, 1972. The ABCD partnership and each of its partners reports income on the basis of the calendar year. Partners A, B, C, and D share partnership profits equally. Each partner's share of the WIN expenses incurred with respect to these employees is 25 percent.

Example (2). Assume the same facts as in example (1) and the following additional facts: A dies on June 30, 1972, and B purchases A's interest as of such date. Each partner's share of the profits from January 1 to June 30 is 25 percent. From July 1 to December 31, B's share of the profits is 50 percent, and C and D's share of the profits is 25 percent each. B shall take into account 25 percent of the WIN expenses incurred during the period beginning January 1 and ending June 30 and 50 percent of the WIN expenses incurred during the remainder of the year with respect to the employee hired on January 1, 1972. Also, B shall take into account 50 percent of the WIN expenses incurred with respect to the employee hired on September 1, C and D shall each take into account 25 percent of the WIN expenses incurred with respect to the employees employed by the partnership in 1972. Under paragraph (a)(3), for purposes of determining the period of employment that may be taken into account by B, the initial date of employment of the WIN employee hired on January 1 relates back to the date he was first employed, *i.e.*, January 1, 1972.

Example (3). Partnership SH is engaged in manufacturing. Under the terms of the partnership agreements deductions attributable to the employment of WIN employees are specially allocated 70 percent to partner S and 30 percent to partner H. In all other respects S and H share profits and losses equally. If the special allocation with respect to the WIN expenses is recognized under section 704 (a) and (b) and paragraph (b) of § 1.704–1, the WIN expenses shall be taken into account, 70 percent by S and 30 percent by H.

Example (4). (i) LMN partnership, which files its return on the basis of the calendar year, hires five WIN employees in 1973. The WIN expenses incurred with respect to each employee are as follows:

WIN employee number	*WIN expenses*
1	$6,000
2	5,000
3	4,000
4	4,000
5	3,000
Total	22,000

On December 31, 1973, the ratio in which the partners divide the general profits of the LMN partnership is as follows: L receives three-tenths of the general profits, M receives two-tenths of the general profits, and N receives five-tenths of the general profits.

(ii) Under this section the WIN expenses are apportioned to the partners of LMN partnership as follows:

WIN employees	1	2	3	4	5	Total
Total WIN expenses	$6,000	$5,000	$4,000	$4,000	$3,000	$22,000
Partner L (3/10)	1,800	1,500	1,200	1,200	900	6,600
Partner M (2/10)	1,200	1,000	800	800	600	4,400
Partner N (5/10)	3,000	2,500	2,000	2,000	1,500	11,000

Assume that partners L, M, and N did not directly incur any other WIN expenses during their taxable year in which falls December 31, 1973 (the last day of LMN partnership's taxable year) and that such partners did not own any interest in other partnerships, electing small business corporations, estates, or trusts that incurred WIN expenses. The total WIN expenses of partner L are $6,600, of partner M are $4,400, and of partner N are $11,000.

§ 1.50B–5 Limitations with respect to certain persons.

(a) *Mutual savings institutions.* In the case of an organization to which section 593 applies (that is, a mutual savings bank, a cooperative bank, or a domestic building and loan association)—

(1) WIN expenses shall be 50 percent of the amount otherwise determined under paragraph (a) of § 1.50B–1, and

(2) The $25,000 amount specified in section 50A(a)(2), relating to limitation based on amount of tax, shall be reduced by 50 percent of such amount.

For example, a domestic building and loan association incurs $30,000 in WIN expenses (as determined under paragraph (a) of § 1.50B–1) during its taxable year. However, under this paragraph such amount is reduced to $15,000 (50 percent of $30,000). If an organization to which section 593 applies is a member of a controlled group (as defined in section 50A(a)(5)), the $25,000 amount specified in section 50A(a)(2) shall be reduced in accordance with the provisions of paragraph (f) of § 1.50A–1 before such amount is further reduced under this paragraph.

(b) *Regulated investment companies and real estate investment trusts.* (1) In the case of a regulated investment company or a real estate investment trust subject to taxation under subchapter M, chapter 1 of the Code—

(i) The WIN expenses determined under paragraph (a) of § 1.50B–1, and

(ii) The $25,000 amount specified in section 50A(a)(2), relating to limitation based on amount of tax,

shall be reduced to such person's ratable share of each such amount. If a regulated investment company or a real estate investment trust is a member of a controlled group (as defined in section 50A(a)(5)), the $25,000 amount specified in section 50A(a)(2) shall be reduced in accordance with the provisions of paragraph (f) of § 1.50A–1 before such amount is further reduced under this paragraph.

(2) A person's ratable share of the amount described in subparagraph (1)(i) and the amount described in subparagraph (1)(ii) of this paragraph shall be the ratio which—

(i) Taxable income for the taxable year, bears to,

(ii) Taxable income for the taxable year plus the amount of the deduction for dividends paid taken into account under section 852(b)(2)(D) in computing investment company taxable income, or under section 857(b)(2)(C) in computing real estate investment trust taxable income, as the case may be.

For purposes of the preceding sentence, the term "taxable income" means, in the case of a regulated investment company, its investment company taxable income (within the meaning of section 852(b)(2)) and, in the case of a real estate investment trust its real estate investment trust, taxable income (within the meaning of section 857(b)(2)).

(3) This paragraph may be illustrated by the following example:

Example. (i) Corporation X, a regulated investment company subject to taxation under section 852 of the Code, which makes its return on the basis of the calendar year, incurs WIN expenses of $30,000 during the year 1974. Corporation X's investment company taxable income under section 852(b)(2) is $10,000 after taking into account a deduction for dividends paid of $90,000.

(ii) Under this paragraph, Corporation X's WIN expenses for the taxable year 1974 is $3,000, computed as follows: (*a*) $30,000 (WIN expenses), multiplied by (*b*) $10,000 (taxable income), divided by (*c*) $100,000 (taxable income plus the deduction for dividends paid). For 1974, the $25,000 amount specified in section 50A(a)(2) is reduced to $2,500.

(c) *Cooperatives.* (1) In the case of a cooperative organization described in section 1381(a)—

(i) The WIN expenses determined under paragraph (a) of § 1.50B–1, and

(ii) The $25,000 amount specified in section 50A(a)(2), relating to limitation based on amount of tax,

shall be reduced to such cooperative's ratable share of each such amount (as determined under subparagraph (2) of this paragraph). If a cooperative organization described in section 1381(a) is a member of a controlled group (as defined in section 50A(a)(5)), the $25,000 amount specified in section 50A(a)(2) shall be reduced in accordance with the provisions of paragraph (f) of § 1.50A–1 before such amount is further reduced under this paragraph.

(2) A cooperative's ratable share of the amount described in subparagraph (1)(i) and the amount described in subparagraph (1)(ii) of this paragraph shall be the ratio which—

(i) Taxable income for the taxable year, bears to

(ii) Taxable income for the taxable year plus the sum of (*a*) the amount of the deductions allowed under section 1382(b), and (*b*) the amount of the deductions allowed under section 1382(c), and (*c*) amounts similar to the amounts described in (*a*) and (*b*) of this subdivision the tax treatment of which is determined without regard to subchapter T, chapter 1 of the Code and the regulations thereunder.

(3) This paragraph may be illustrated by the following example:

Example. (i) Cooperative X, an organization described in section 1381(a) which makes its return on the basis of the calendar year, incurs WIN expenses of $30,000 for the taxable year 1972. Cooperative X's taxable income is $10,000 after taking into account deductions of $30,000 allowed under section 1382(b), and deductions of $60,000 allowed under section 1382(c).

(ii) Under this paragraph, Cooperative X's WIN expenses for the taxable year 1972 are $3,000, computed as follows: (*a*) $30,000 (WIN expenses), multiplied by (*b*) $10,000 (taxable income), divided by (*c*) $100,000 (taxable income plus the sum of deductions allowed under sections 1382(b) and 1382(c)). For 1972, the $25,000 amount specified in section 50A(a)(2) is reduced to $2,500.

[FR Doc.73-4402 Filed 3-2-73;4:50 pm]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

[Amdt. 9]

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

Regional Offices

The purpose of this amendment to the regulations governing the National School Lunch Program is to update the addresses of the Food and Nutrition Service Regional Offices.

It is impracticable and unnecessary to follow the proposed rule making and public participation procedure because this is a technical amendment that is nonsubstantive in nature. Accordingly, the National School Lunch Program regulations are amended as follows:

In § 210.20, paragraphs (a) through (e) are revised to read as follows:

§ 210.20 Program information.

* * * * *

(a) In the States of Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and West Virginia: Northeast Regional Office, FNS, U.S. Department of Agriculture, 707 Alexander Road, Princeton, NJ 08540.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia, and the Virgin Islands: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street NW., Atlanta, GA 30309.

(c) In the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 536 South Clark Street, Chicago, IL 60605.

(d) In the States of Arkansas, Colorado, Kansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of

Agriculture, 1100 Commerce Street, Room 5-D-22, Dallas, TX 75202.

(e) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, CA 94108.

Effective date. This amendment shall become effective March 5, 1973.

Dated: March 1, 1973.

PHILIP C. OLSSON,
Acting Assistant Secretary.

[FR Doc.73-4341 Filed 3-6-73;8:45 am]

[Amdt. 6]

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

Regional Offices

The purpose of this amendment to the regulations governing the Special Milk Program for Children is to update the addresses of the Food and Nutrition Service Regional Offices.

It is impracticable and unnecessary to follow the proposed rule making and public participation procedure because this is a technical amendment that is nonsubstantive in nature. Accordingly, the Special Milk Program for Children regulations are amended as follows:

In § 215.16, paragraphs (a) through (e) are revised to read as follows:

§ 215.16 Program information.

* * * * *

(a) In the States of Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and West Virginia: Northeast Regional Office, FNS, U.S. Department of Agriculture, 707 Alexander Road, Princeton, NJ 08540.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street NW., Atlanta, GA 30309.

(c) In the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 536 South Clark Street, Chicago, IL 60605.

(d) In the States of Arkansas, Colorado, Kansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5-D-22, Dallas, TX 75202.

(e) In the States of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, CA 94108.

Effective date. This amendment shall become effective March 5, 1973.

Dated: March 1, 1973.

PHILIP C. OLSSON,
Acting Assistant Secretary.

[FR Doc.73-4342 Filed 3-6-73;8:45 am]

[Amdt. 12]

PART 220—SCHOOL BREAKFAST AND NONFOOD ASSISTANCE PROGRAMS AND STATE ADMINISTRATIVE EXPENSES

Regional Offices

The purpose of this amendment to the regulations governing the School Breakfast and Nonfood Assistance Programs and State Administrative Expenses is to update the addresses of the Food and Nutrition Service Regional Offices.

It is impracticable and unnecessary to follow the proposed rule making and public participation procedure because this is a technical amendment that is nonsubstantive in nature. Accordingly, the School Breakfast and Nonfood Assistance Programs and State Administrative Expenses regulations are amended as follows:

In § 220.29, paragraphs (a) through (e) are revised to read as follows:

§ 220.29 Program information.

* * * * *

(a) In the States of Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and West Virginia: Northeast Regional Office, FNS, U.S. Department of Agriculture, 707 Alexander Road, Princeton, NJ 08540.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia, and the Virgin Islands: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street NW., Atlanta, GA 30309.

(c) In the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 536 South Clark Street, Chicago, IL 60605.

(d) In the States of Arkansas, Colorado, Kansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5-D-22, Dallas, TX 75202.

(e) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, CA 94108.

Effective date. This amendment shall become effective March 5, 1973.

Dated: March 1, 1973.

PHILIP C. OLSSON,
Acting Assistant Secretary.

[FR Doc.73-4343 Filed 3-6-73;8:45 am]

[Amdt. 4]

PART 225—SPECIAL FOOD SERVICE PROGRAM FOR CHILDREN

Regional Offices

The purpose of this amendment to the regulations governing the Special Food Service Program for Children is to update the addresses of the Food and Nutrition Service Regional Offices.

It is impracticable and unnecessary to follow the proposed rule making and public participation procedure because this is a technical amendment that is nonsubstantive in nature. Accordingly, the Special Food Service Program for Children regulations are amended as follows:

In § 225.23, paragraphs (a) through (e) are revised to read as follows:

§ 225.23 Program information.

* * * * *

(a) In the States of Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and West Virginia: Northeast Regional Office, FNS, U.S. Department of Agriculture, 707 Alexander Road, Princeton, NJ 08540.

(b) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia, and the Virgin Islands: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street NW., Atlanta, GA 30309.

(c) In the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 536 South Clark Street, Chicago, IL 60605.

(d) In the States of Arkansas, Colorado, Kansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5-D-22, Dallas, TX 75202.

(e) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Trust Territory of the Pacific Islands, Utah, Washington, and Wyoming: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, CA 94108.

Effective date. This amendment shall become effective March 5, 1973.

Dated: March 1, 1973.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.73-4344 Filed 3-6-73;8:45 am]

[Amdt. 15]

PART 250—DONATION OF FOODS FOR USE IN UNITED STATES, ITS TERRITORIES AND POSSESSIONS, AND AREAS UNDER ITS JURISDICTION

Regional Offices

Section 250.11, *Where to obtain information*, of Part 250 gives the addresses of

FNS Regional Offices. Some of the addresses shown in § 250.11 are no longer applicable. Therefore, § 250.11 is amended to show the current addresses as set out below.

§ 250.11 Where to obtain information.

Interested persons desiring information concerning the program may make written request to the following Regional Offices:

Northeast Region, Food and Nutrition Service, USDA, 707 Alexander Road, Princeton, NJ 08540, for the following States and the District of Columbia: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and West Virginia.

Southeast Region, Food and Nutrition Service, USDA, 1100 Spring Street NW., Atlanta, GA 30309, for the following States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, Puerto Rico, and the Virgin Islands.

Midwest Region, Food and Nutrition Service, USDA, 536 South Clark Street, Chicago, IL 60605, for the following States: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

Southwest Region, Food and Nutrition Service, USDA, 1100 Commerce Street, Room 5-D-22, Dallas, TX 75202, for the following States: Arkansas, Colorado, Kansas, Louisiana, New Mexico, Oklahoma, and Texas.

Western Region, Food and Nutrition Service, USDA, 550 Kearny Street, Room 400, San Francisco, CA 94108, for the following States: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming, American Samoa, Guam, and the Trust Territories of the Pacific.

The foregoing amendment shall become effective on March 5, 1973. This amendment is of an organizational nature and does not substantially affect the rights or obligations of any member of the public. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found that notice and public procedure concerning this amendment are impractical and unnecessary, and the amendment is made effective in less than 30 days after publication in the FEDERAL REGISTER.

CLAYTON YEUTTER,
Assistant Secretary.

MARCH 1, 1973.

[FR Doc.73-4345 Filed 3-6-73;8:45 am]

[Amdt. 1]

PART 265—PILOT FOOD CERTIFICATE PROGRAM REGULATIONS

Paragraph (g) of § 265.12, *Miscellaneous provisions*, provides for forwarding plans, applications, notices, and documents to FNS Regional or Field Offices. Some of the addresses shown in subparagraphs (1) through (5) are no longer applicable. Therefore, paragraph (g) of § 265.12 is amended to show the current addresses as set out below.

§ 265.12 Miscellaneous provisions.

* * * * *

(g) All plans, applications, notices, and other documents required by this part to be forwarded to FNS, shall be sent to the local FNS Field Office or to the appropriate FNS Regional Office for the pilot area, as indicated below:

(1) For pilot areas in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, West Virginia: Food and Nutrition Service, U.S. Department of Agriculture, Northeast Region, 707 Alexander Road, Princeton, NJ 08540;

(2) For pilot areas in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia: Food and Nutrition Service, U.S. Department of Agriculture, Southeast Region, 1100 Spring Street NW., Atlanta, GA 30309;

(3) For pilot areas in Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin: Food and Nutrition Service, U.S. Department of Agriculture, Midwest Region, 536 South Clark Street, Chicago, IL 60605;

(4) For pilot areas in Arkansas, Colorado, Kansas, Louisiana, New Mexico, Oklahoma, Texas: Food and Nutrition Service, U.S. Department of Agriculture, Southwest Region, 1100 Commerce Street, Room 5-D-22, Dallas, TX 75202;

(5) For pilot areas in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming: Food and Nutrition Service, U.S. Department of Agriculture, Western Region, 550 Kearny Street, Room 400, San Francisco, CA 94108.

* * * * *

The foregoing amendment shall become effective on March 5, 1973. This amendment is of an organizational nature and does not substantially affect the rights or obligations of any member of the public. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found that notice and public procedure concerning this amendment are impractical and unnecessary, and the amendment is made effective in less than 30 days after publication in the FEDERAL REGISTER.

CLAYTON YEUTTER,
Assistant Secretary.

MARCH 1, 1973.

[FR Doc.73-4346 Filed 3-6-73;8:45 am]

SUBCHAPTER C—FOOD STAMP PROGRAM

PART 270—GENERAL INFORMATION AND DEFINITIONS

Changes of Address, Regional Offices

Pursuant to the authority contained in the Food Stamp Act of 1964, as amended (78 Stat. 703, as amended; 7 U.S.C. 2011-2025), Part 270 of the regulations governing the operation of the Food Stamp Program is hereby amended.

The addresses of the Food and Nutrition Service Regional Offices for the Northeast and Western Regions have changed. Therefore, to reflect the current addresses of these offices, it is necessary to revise subparagraphs (1) and (5) of § 270.5(b).

Because this amendment is nonsubstantive in nature, it is hereby determined to be impracticable and unnecessary to follow the proposed rule making procedure.

Subparagraphs (1) and (5) of § 270.5 (b) are amended to read as follows:

§ 270.5 Miscellaneous provisions.

* * * * *

(b) * * *

(1) For project areas in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Islnad, Vermont, and West Virginia: U.S. Department of Agriculture, Food and Nutrition Service, Northeast Region, 707 Alexander Road, Princeton, NJ 08540.

* * * * *

(5) For project areas in Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming: U.S. Department of Agriculture, Food and Nutrition Service, Western Region, 550 Kearny Street, San Francisco, CA 94108.

* * * * *

Effective date. This amendment shall become effective March 5, 1973.

(78 Stat. 703, as amended; 7 U.S.C. 2011-2025)

CLAYTON YEUTTER,
Assistant Secretary.

MARCH 1, 1973.

[FR Doc.73-4347 Filed 3-6-73;8:45 am]

PART 295—AVAILABILITY OF INFORMATION TO THE PUBLIC

Addresses of Offices

These amendments to the regulations issued pursuant to title 5, United States Code, sections 552(a)(2), 552(a)(3), and 552(b) are promulgated in order

(1) To give the current title of Regional Administrators.

(2) To update the addresses of the five Regional Offices of the Food and Nutrition Service.

1. References to the Regional Director are hereby deleted, and Regional Administrator is hereby substituted therefor.

2. Section 295.10 is revised to read as follows:

§ 295.10 Addresses of offices.

(a) Requests made to FNS in Washington shall be addressed to the Director of the appropriate Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250.

(b) Requests made to Regional Offices should be addressed to the Regional Administrator of the appropriate Office, as follows:

Northeast Region, Food and Nutrition Service, USDA, 707 Alexander Road, Princeton, NJ 08540, for the following States and the District of Columbia: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and West Virginia.

Southeast Region, Food and Nutrition Service, USDA, 1100 Spring Street NW., Room 200, Atlanta, GA 30309, for the following States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, Puerto Rico, and the Virgin Islands.

Midwest Region, Food and Nutrition Service, USDA, 536 South Clark Street, Chicago, IL 60605, for the following States: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

Southwest Region, Food and Nutrition Service, USDA, 1100 Commerce Street, Room 5-D-22, Dallas, TX 75202, for the following States: Arkansas, Colorado, Kansas, Louisiana, New Mexico, Oklahoma, and Texas.

Western Region, Food and Nutrition Service, USDA, 550 Kearny Street, Room 400, San Francisco, CA 94108, for the following States: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming, American Samoa, Guam, and the Trust Territories of the Pacific.

Effective date. This revision shall become effective March 5, 1973.

It is impracticable and unnecessary to follow the proposed rule making and public participation procedure because this is a technical amendment that is nonsubstantive in nature.

Dated: February 26, 1973.

EDWARD J. HEKMAN,
Administrator.

[FR Doc.73-4348 Filed 3-6-73;8:45 am]

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

[Lemon Reg. 574, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

This regulation increases the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period February 25–March 3, 1973. The quantity that may be shipped is increased due to improved market conditions for California-Arizona lemons. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, 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 Lemon 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 lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of lemons available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Lemon Regulation 574 (38 FR 4941). The marketing picture now indicates that there is a greater demand for lemons than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of lemons to fill the current market demand thereby making a greater quantity of lemons 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 hereof 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 lemons grown in California and Arizona.

(b) *Order, as amended.* The provision in paragraph (b)(1) of § 910.874 (Lemon Regulation 574 (38 FR 4941)) is hereby amended to read as follows:

§ 910.874 Lemon Regulation 574.

* * * * *

(b) *Order.* (1) * * * 225,000 cartons.

* * * * *

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

Dated: March 1, 1973.

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

[FR Doc.73-4338 Filed 3-6-73;8:45 am]

Title 9—Animals and Animal Products

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

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

[Docket No. 73-515]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Release of Areas Quarantined

These amendments exclude a portion of Tippecanoe County in Indiana and a portion of Berks County in Pennsylvania from the areas quarantined because of hog cholera. Therefore, the restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas contained in 9 CFR Part 76, as amended, do not apply to the excluded areas, but will continue to apply to the quarantined areas described in § 76.2(e). Further, the restrictions pertaining to the interstate movement of swine and swine products from nonquarantined areas contained in said Part 76 apply to the excluded areas. No areas in Indiana and Pennsylvania remain under quarantine.

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

In § 76.2, paragraphs (e)(1) relating to Indiana and (e)(4) relating to Pennsylvania are deleted.

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

Effective date. The foregoing amendments shall become effective March 2, 1973.

The amendments relieve restrictions presently imposed but no longer deemed necessary to prevent the spread of hog cholera and must be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rule making proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 2d day of March 1973.

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

[FR Doc.73-4393 Filed 3-6-73;8:45 am]

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

Areas Released From Quarantine

The amendments exclude portions of Ventura and San Bernardino Counties in California from the areas quarantined

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

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

In § 82.3, in paragraph (a)(1) relating to the State of California, subdivisions (i) relating to Ventura County and (vii) relating to San Bernardino County are deleted.

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

Effective date. The foregoing amendments shall become effective March 1, 1973.

The amendments relieve certain restrictions presently imposed but no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rule making proceeding would make additional relevant information available to the Department. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable and unnecessary, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 1st day of March 1973.

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

[FR Doc.73-4340 Filed 3-6-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airworthiness Docket No. 73-NW-3-AD; Amdt. 39-1603]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Model 727 Series Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring certain leading edge slat actuators be modified in accordance with Boeing Service Bulletin 27-129, or replaced with actuators of improved design, on all Boeing Model 727 airplanes listed in Boeing Service Bulletin 27-129 was published in 37 FR 25529.

Interested persons have been afforded an opportunity to participate in the making of the amendment. One operator requested an extension for compliance to 4,500 landings from the effective date of the airworthiness directive. Since three airplanes have experienced slat separation after publication of the notice of proposed rule making, the Agency does not feel an extension to 4,500 landings for compliance is justified. The manufacturer of the slat actuator pointed out an error in the part numbers published in the N.P.R.M. The part numbers have been corrected.

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

BOEING Applies to all Model 727 series airplanes listed in Boeing Service Bulletin 27-129 dated October 3, 1969, or later FAA approved revisions.

Compliance required as indicated.

To prevent failures of the leading edge slat actuators, accomplish the following:

(a) Within 3,000 landings from the effective date of this AD,

(1) Rework actuators (Ronson Part No. 1U1095) on leading edge slats numbered 1, 2, 7, and 8 in accordance with rework instructions in Boeing Service Bulletin 27-129, dated October 3, 1969, or later FAA approved revisions, or rework in a manner approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region, or

(2) Replace actuators (Ronson Part No. 1U1095) on slats numbered 1, 2, 7, and 8 with redesigned actuators, Ronson Parts Nos. 1U1095-5 or 1U1095-9-2, or replace with actuators, Decoto Parts Nos. 2-690029-1, 2-690029-2, or 2-690029-3.

(b) Rework of the actuators, Ronson Part No. 1U1095, in accordance with (a)(1) above or replacement of the actuators in accordance with (a)(2) above constitutes terminating action under the provisions of this AD.

This amendment becomes effective March 13, 1973.

(Secs. 313(a) 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 135(a), 1421, 1423)

Issued in Seattle, Wash., on February 27, 1973.

C. B. WALK, JR.,
Director, FAA Northwest Region.

[FR Doc.73-4302 Filed 3-6-73;8:45 am]

[Airspace Docket No. 73-SO-10]

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

Redesignation of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to redesignate the Eglin AF Aux No. 3 (Duke Field), Fla., control zone.

The Eglin AF Aux No. 3 (Duke Field) control zone is described in § 71.171 (38 FR 351). In the description, the effective time of the control zone on Mondays is cited as "from 0730 to 1530 hours, local time." Since the hours of operation on Mondays are being changed to "from 0930 to 1730 hours, local time," it is necessary to amend the description to reflect this change. Since this amendment is minor in nature, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., March 5, 1973, as hereinafter set forth.

In § 71.171 (38 FR 351), the Eglin AF Aux 3 (Duke Field), Fla., control zone is amended as follows:

"* * * 0730 to 1530 hours, local time, Monday * * *" is deleted and "* * * 0930 to 1730 hours, local time, Monday * * *" is substituted therefor.

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

Issued in East Point, Ga., on February 23, 1973.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.73-4306 Filed 3-6-73;8:45 am]

[Airspace Docket No. 72-EA-116]

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

Alteration of Control Zone and Transition Area

On page 26533 of the FEDERAL REGISTER for December 13, 1972, the Federal Aviation Administration published a proposed rule so as to alter the Reading, Pa., control zone (38 FR 414) and transition area (38 FR 564).

Interested parties were given 30 days after publication in which to submit written data or views. Mr. Alexis I. du Pont, an operator and pilot from Toughkenamon, Pa., objected to the extension of the control zone and transition area beyond the centerline of V143. However, a review of this extension indicates that it cannot be shortened since to do so would derogate the ILS instrument approach procedure to Reading Municipal Airport.

In view of the foregoing the proposed regulations are hereby adopted, effective 0901 G.m.t. April 26, 1973.

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

Issued in Jamaica, N.Y., on February 15, 1973.

ROBERT H. STANTON,
Acting Director, Eastern Region.

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Reading, Pa., control zone and insert the following in lieu thereof:

Within a 5-mile radius of the center, 40°22'39" N., 75°57'57" W., of Reading Municipal-General Carl A. Spaatz Field, Reading,

Pa., extending clockwise from a 160° bearing to a 030° bearing from the airport; within a 5.5-mile radius of the center of the airport, extending clockwise from a 030° bearing to a 160° bearing from the airport; within 4.5 miles each side of the Reading Municipal-General Carl A. Spaatz Field ILS localizer south course, extending from the 5-mile-radius zone and 5.5-mile-radius zone to 8.5 miles south of the OM; within 4 miles each side of a 161° bearing from a point 40°22'32" N., 75°57'57" W., extending from said point to 8.5 miles south.

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

That airspace extending upward from 700 feet above the surface within an 11-mile radius of the center; 40°22'39" N., 75°57'57" W., of Reading Municipal-General Carl A. Spaatz Field, Reading Pa., extending clockwise from a 050° bearing to a 100° bearing from the airport; within an 8-mile radius of the center of the airport, extending clockwise from a 100° bearing to a 140° bearing from the airport; within an 11-mile radius of the center of the airport, extending clockwise from a 140° bearing to a 280° bearing from the airport; within an 8-mile radius of the center of the airport, extending clockwise from a 280° bearing to a 050° bearing from the airport; within 5 miles each side of the Reading Municipal-General Carl A. Spaatz Field ILS localizer south course extending from the OM to 9.5 miles south of the OM; within 9.5 miles east and 4.5 miles west of the Reading Municipal-General Carl A. Spaatz Field ILS localizer south course, extending from the OM to 18.5 miles south of the OM; within 6.5 miles north and 4.5 miles south of the East Texas, Pa. VORTAC 252° radial, extending from 12 miles west of the VORTAC to 29 miles west of the VORTAC.

[FR Doc.73-4304 Filed 3-6-73;8:45 am]

[Airspace Docket No. 73-EA-7]

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

Alteration of Transition Area

The Federal Aviation Administration is amending § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the Gaithersburg, Md., transition area (38 FR 490).

With the development of a new NDB instrument approach procedure for Montgomery County Airport, Gaithersburg, Md., an alteration of the transition area will be required to add a nominal amount of controlled airspace. Since the alteration is minor in nature, notice and public procedure hereon are unnecessary.

In view of the foregoing, the proposed regulation is hereby adopted, effective 0901 G.m.t. April 26, 1973, as follows:

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations by deleting the description of the Gaithersburg, Md., transition area and by substituting the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the center (39°09'54" N., 77°10'00" W.) of Montgomery County Airpark, Gaithersburg, Md., within 3 miles each side of the 007° bearing from the Gaithersburg, Md., RBN (39°10'06" N., 77°09'42" W.), extending from the 8.5-mile-radius area to 8.5 miles north of the RBN; within 3 miles each side of the 292° bearing from the Gaithersburg, Md., RBN, extending from the 8.5-mile-radius area to 8.5 miles west of the RBN.

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

Issued in Jamaica, N.Y., on February 15, 1973.

ROBERT H. STANTON,
Acting Director, Eastern Region.

[FR Doc.73-4303 Filed 3-6-73;8:45 am]

[Airspace Docket No. 72-NW-23]

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

Alteration of Transition Area

On December 9, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 FR 2634) 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 Mountain Home, Idaho, transition area.

Interested persons were given 30 days in which to submit written comments. No objections to the proposed amendment were received.

In consideration of the foregoing, 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 Seattle, Washington, on February 26, 1973.

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

MOUNTAIN HOME, IDAHO

That airspace extending upward from 700 feet above the surface within 10 miles northeast and 9 miles southwest of the Mountain Home AFB TACAN (latitude 43°02'26" N., longitude 115°52'22" W.) 135° and 315° radials, extending from 18 miles southeast to 18 miles northwest of the TACAN; that airspace extending upward from 1,200 feet above the surface bounded on the north and northeast by the southwest edge of V-253 on southeast, south, and west by the arc of a 46-mile-radius circle centered on Mountain Home AFB (latitude 43°02'35" N., longitude 115°52'05" W.), on the northwest by the southeast edge of V-113; that airspace southeast of Mountain Home AFB extending upward from 6,500 feet MSL, bounded on the northwest by the 46-mile arc, on the northeast by the southwest edge of V-253, on the south by latitude 42°24'00" N. to the 46-mile arc.

[FR Doc.73-4305 Filed 3-6-73;8:45 am]

CHAPTER III—NATIONAL TRANSPORTATION SAFETY BOARD

[NTSB Reg. OR-2, Amdt. 4]

PART 400—STATEMENT OF ORGANIZATION AND FUNCTIONS OF THE BOARD AND DELEGATIONS OF AUTHORITY

Miscellaneous Amendments

The purpose of this amendment is to change the title of Hearing Examiner to Administrative Law Judge, pursuant to Part 930 of Title 5 of the Code of Federal Regulations (Subpart B) issued by the Civil Service Commission, and to conform the title of Office of Hearing Examiners in accordance therewith; to change the title of Executive Director to General Manager to conform to changes already effectuated, and to conform the title of the Office of Executive Director in accordance therewith; to correct the principal and mailing address of the Board; and to change various citations of the United States Code and parts of the Code of Federal Regulations to reflect correct current references.

This amendment relates to minor corrective matters and editorial changes. Consequently, the National Transportation Safety Board has found that notice of proposed rule making and public procedure thereon are unnecessary, and good cause exists for making the amendments effective on March 7, 1973.

Accordingly, the National Transportation Safety Board hereby amends the following provisions of Part 400, Statement of Organization and Functions of the Board and Delegations of Authority, as follows:

1. Part 400 is amended to provide that wherever the terms "Hearing Examiner" and "Office of Hearing Examiners" appear, they shall be changed to read "Administrative Law Judge" and "Office of Administrative Law Judges" respectively, to wit, in the following sections: Subpart B, Table of Contents, § 400.23, and § 400.2(d).

2. Part 400 is amended to provide that whatever the terms "Executive Director" and "Office of Executive Director" appear, they shall be changed to read "General Manager" and "Office of General Manager" respectively, to wit, in the following sections: Subpart B, Table of Contents, § 400.22; §§ 400.2(a) (appears twice), 400.6(b), 400.8(d) (appears three times) and (e), and 400.22 (appears twice).

3. Section 400.3 is amended to read:

§ 400.3 Functions.

* * * * *

(c) Upon the request of the aggrieved parties, the Board reviews in quasi-judicial proceedings, conducted pursuant to the provisions concerning Administrative Procedure, 5 U.S.C. 551 et seq., denials by the Administrator of the Federal Aviation Administration of applications for airman certificates and orders of the Administrator modifying, amending, suspending, or revoking any airman certificates. The Board also reviews, upon request, decisions of the Commandant,

U.S. Coast Guard, on appeals from orders of Administrative Law Judges revoking licenses, certificates, or documents under 46 U.S.C. 239 and 216b.

* * * * *

4. Section 400.6 is amended to read:

§ 400.6 Formal and informal submissions.

(a) All formal submissions required or permitted to be made in air safety proceedings should be addressed to the Office of the General Manager, National Transportation Safety Board, 800 Independence Avenue SW., Washington, DC 20591, unless specifically provided otherwise in the provision requiring or permitting such submission. Requirements as to the form and content of such submissions are set forth in the Board's Procedural Regulations.

* * * * *

5. Section 400.7 is amended to read:

§ 400.7 Offices.

The principal offices of the National Transportation Safety Board are located at 800 Independence Avenue SW., Washington, DC. Its mailing address is National Transportation Safety Board, 800 Independence Avenue SW., Washington, DC 20591. The Board's Bureau of Aviation Safety maintains field offices in selected cities throughout the United States, including Alaska. The cities are listed in the Board's Procedural Regulations.

6. Section 400.23 is amended to read:

§ 400.23 Delegation to the Administrative Law Judges, Office of Administrative Law Judges.

The Board has delegated to the Administrative Law Judges the authority generally detailed in Procedural Regulation, Part 421, of this title.

7. Section 400.24 is amended to read:

§ 400.24 Delegation to the General Counsel.

* * * * *

(a) In accordance with the provisions of Procedural Regulation, Part 435, of this title, approve, disapprove, or request further information concerning requests for testimony of Board employees with respect to their participation in the investigation of aircraft accidents, and upon receipt of notice than an employee has been subpenaed, to make arrangements with the court to have the employee excused from testifying or give the employee permission to testify.

(b) In safety enforcement proceedings: Approve or disapprove for good cause shown requests for changes in procedural requirements subsequent to the initial decision; grant or deny requests to file additional briefs pursuant to § 421.46 of this title of the Procedural Regulations, raise on appeal any issue, the resolution of which he deems important to the proper disposition of proceedings under § 421.46 of this chapter of the Procedural Regulations.

* * * * *

8. Section 400.25 is amended to read:

§ 400.25 Delegation to the Director, Bureau of Aviation Safety.

* * * * *

(d) Disclose factual information pertinent to an aircraft accident or incident as provided for in Part 435 of this chapter of the Procedural Regulations.

Issued under delegated authority (14 CFR 400.24) by the National Transportation Safety Board.

Dated: March 1, 1973.

[SEAL] FRITZ L. PULS,
General Counsel.

[FR Doc.73-4316 Filed 3-6-73;8:45 am]

[NTSB Reg. OR-1, Amdt. 3 and NTSB Reg. PR-5, Amdt. 2]

PART 401—PUBLIC AVAILABILITY OF INFORMATION

PART 435—DISCLOSURE OF AIRCRAFT ACCIDENT INVESTIGATION INFORMATION

Change in Titles

The purpose of these amendments is to change the title of Executive Director to General Manager to conform to a change in title already effectuated, and to change the title of Examiner to Administrative Law Judge, pursuant to Part 930 of Title 5 of the Code of Federal Regulations (Subpart B) issued by the Civil Service Commission.

Since these amendments pertain to such corrective matters only, the National Transportation Safety Board has found that notice of proposed rule making and public procedure thereon are unnecessary, and good cause exists for making the amendments effective on March 7, 1973.

Accordingly, the National Transportation Safety Board hereby amends Part 401, Public Availability of Information, as follows:

1. Part 401 is amended to provide that wherever the term "Executive Director" appears, it shall be changed to read "General Manager," to wit, in the following sections: §§ 401.3 (appears three times), 401.5(a), 401.6(a), 401.14, amendatory text and paragraph (a), 401.15(a) and (b)(5), 401.25(a) (appears twice) and (b), and 401.25(d).

2. Part 401 is amended to provide that wherever the term "Examiner" appears, it shall be changed to read "Administrative Law Judge," to wit, in § 401.16 Appendix—Schedule of subscription rates for publications.

3. Part 435 is amended to provide that wherever the term "Executive Director" appears, it shall be changed to read "General Manager", to wit, in the following sections: §§ 435.2, 435.3(a) and (b).

Issued under delegated authority (14 CFR 400.24) by the National Transportation Safety Board.

Dated: March 1, 1973.

[SEAL] FRITZ L. PULS,
General Counsel.

[FR Doc.73-4318 Filed 3-6-73;8:45 am]

[NTSB Reg. PR-4, Amdt. 1]

PART 425—RULES OF PROCEDURE FOR MERCHANT MARINE APPEALS FROM DECISIONS OF THE COMMANDANT, U.S. COAST GUARD

Miscellaneous Amendments

The purpose of this amendment is to simplify the title of this part; to change the title of Hearing Examiner to Administrative Law Judge, pursuant to Part 930 of Title 5 of the Code of Federal Regulations (Subpart B) issued by the U.S. Civil Service Commission; to correct the Commandant's mailing address for receipt of copies of notices of appeal; and to clarify reference to the record on appeal in briefs and memoranda in support of appeals to conform to custom and practice.

Since this amendment relates to minor corrective matters, the National Transportation Safety Board has found that notice of proposed rule making and public procedure thereon are unnecessary, and good cause exists for making the amendment effective on March 7, 1973.

Accordingly, the National Transportation Safety Board hereby amends the following provisions of Part 425, as follows:

1. The title of Part 425 is changed to read "Part 425—Rules of Procedure for Merchant Marine Appeals from Decisions of the Commandant, U.S. Coast Guard", as set forth in the headings.

2. Section 425.5 is amended to read:

§ 425.5 Notice of appeal.

* * * * *

(b) Notice of appeal shall be addressed to the Docket Clerk, National Transportation Safety Board, Washington, D.C. 20591. At the same time, a copy shall be served on the Commandant (GL), U.S. Coast Guard, Washington, D.C. 20590.

* * * * *

3. Section 425.20 is amended to read:

§ 425.20 Briefs or memoranda in support of appeal.

* * * * *

(c) Objection based upon evidence of record need not be considered unless the appeal contains specific record citation to the pertinent evidence.

4. Section 425.30 is amended to read:

§ 425.30 Action by the Board.

* * * * *

(d) When a matter has been remanded to the Commandant under paragraph (c) of this section, he himself may act in accordance with the terms of the order of remand, or he may, as appropriate, further remand the matter to the Administrative Law Judge of the Coast Guard who heard the case, or to another Administrative Law Judge of the Coast Guard, with appropriate directions.

Issued under delegated authority (14 CFR 400.24) by the National Transportation Safety Board.

Dated: March 1, 1973.

[SEAL] FRITZ L. PULS,
General Counsel.

[FR Doc.73-4317 Filed 3-6-73;8:45 am]

Title 20—Employees' Benefits

CHAPTER II—RAILROAD RETIREMENT BOARD

PART 238—RESIDUAL LUMP-SUM PAYMENTS

Miscellaneous Amendments

Correction

In FR Doc. 73-2419 appearing on page 3596 of the issue for Thursday, February 8, 1973, in the second line of § 238.2 (a)(2)(ii), "§ 38.8" should read "§ 238.8".

CHAPTER VII—BENEFITS REVIEW BOARD, DEPARTMENT OF LABOR

PART 801—ESTABLISHMENT AND OPERATION OF THE BOARD

PART 802—RULES OF PRACTICE AND PROCEDURE

By Public Law 92-576, 86 Stat. 1251, in an amendment made to section 21 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 921), there was established the Benefits Review Board, an administrative review authority in the Department of Labor. The function of this Board is to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions with respect to claims for compensation or benefits under that Act and its extensions, including pneumoconiosis disability and death claims under the provisions of title IV of the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 795, as amended, 86 Stat. 150, which are administered by the Secretary of Labor. Prior to amendment by Public Law 92-576, section 21 of the Longshoremen's and Harbor Workers' Compensation Act provided for such appeals to be taken to the U.S. district courts.

By Secretary of Labor's Order No. 38-72, 38 FR 90, the amendment was implemented by placing the Benefits Review Board, for organizational purposes, in the Office of the Under Secretary. This was deemed necessary because the Board's functions are quasi-judicial in character and involve review of decisions made in the course of the administration of the several Acts by the Employment Standards Administration which is headed by an Assistant Secretary. For the same reason, it is inappropriate to place regulations governing the operation of the Board or rules of procedure of the Board within Chapter VI of Title 20, Code of Federal Regulations. That chapter contains the administrative regulations of the Employment Standards Administration governing the processing and determination of claims filed under the several Acts, from decisions on which appeals may be taken to the Board. Accordingly, a separate chapter is required for the placement of the regulations governing the operation of the Board, and of the rules of procedure of the Board, and Chapter VII of Title 20, CFR, designated Benefits Review Board, Department of Labor, is hereby reserved for such purpose, and for such other purposes as the Secretary of Labor may deem appropriate.

Such amendment and Secretary's Order No. 38-72 are hereby further implemented by the adoption and publication herein of a new Part 801 of such Chapter VII, containing general regulations governing the establishment and operation of the Board, and of a new Part 802 of such chapter, setting forth the Board's rules of practice and procedure. The Board has adopted as its rules of practice and procedure the provisions of Part 802 and I hereby approve them.

The provisions of 5 U.S.C. 553 for notice, public participation, and delayed effective date are not applicable to rules of agency organization, procedure, and practice set forth below in the new Parts 801 and 802 of Title 20, CFR. Further, in view of the November 26, 1972, effective date of the amendments made by Public Law 92-576, of which this is only one aspect (see 38 FR 2650), it is essential that these regulations and rules of procedure become effective as expeditiously as possible so that the Board may act upon the several appeals that have already been filed. Accordingly, I find that notice of proposed rule making and opportunity for public comments thereon would be impracticable and contrary to the public interest. I further find that delay in the effective date, for those same reasons, is impracticable and contrary to the public interest. Accordingly, these regulations and rules of procedures shall become effective March 1, 1973.

Title 20, CFR, is hereby revised by the addition of a new Chapter VII, entitled Benefits Review Board, Department of Labor, and the addition thereto of a new Part 801, entitled Establishment and Operation of the Board and a new Part 802, entitled rules of practice and procedure, as set forth below.

The new Part 801 of Chapter VII of Title 20, CFR, reads as follows:

INTRODUCTORY

Sec.

AUTHORITY: The provisions of this Part 801 issued under sec. 15, 86 Stat. 1261 (33 U.S.C. 921(b)); 5 U.S.C. 301; sec. 39, 44 Stat. 1442, as amended (33 U.S.C. 939); title IV, Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 742, 30 U.S.C. 901 et seq., as amended by Public Law 92-303, 86 Stat. 156; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1268, 5 U.S.C. App.; Secretary of Labor's Order No. 38-72, 38 FR 90; unless otherwise noted.

INTRODUCTORY

§ 801.1 Purpose and scope of this part.

This Part 801 describes the establishment and the organizational structure of the Benefits Review Board of the Department of Labor, sets forth the general rules applicable to operation of the Board, and defines terms used in this chapter.

§ 801.2 Definitions and use of terms.

(a) For purposes of this chapter, except where the content clearly indicates otherwise, the following definitions apply:

(1) "Acts" means the several Acts listed in §§ 801.102 and 802.101 of this chapter, as amended and extended, unless otherwise specified.

(2) "Board" means the Benefits Review Board established by section 21 of the LHWCA (33 U.S.C. 921) as described in § 801.101, and as provided in this part and Secretary of Labor's Order No. 38-72 (38 FR 90).

(3) "Chairman" or "Chairman of the Board" means Chairman of the Benefits Review Board.

(4) "Secretary" means the Secretary of Labor.

(5) "Department" means the Department of Labor.

(6) "Judge" means an administrative law judge appointed as provided in 5 U.S.C. 3105 and Subpart B of 5 CFR Part 930 (see 37 FR 16787), who is qualified to preside at hearings under 5 U.S.C. 557 and is empowered by the Secretary to conduct formal hearings whenever necessary in respect of any claim for benefits or compensation arising under the Acts.

(7) "Chief Administrative Law Judge" means the Chief Administrative Law Judge of the Department of Labor.

(8) "Director" means the Director of the Office of Workmen's Compensation Programs of the Department of Labor (hereinafter OWCP).

(9) "Deputy commissioner" means a person appointed as provided in sections 39 and 40 of the LHWCA or his designee, authorized by the Director to make decisions and orders in respect to claims arising under the Acts.

(10) "Party" or "Party in interest" means the Secretary or his designee and any person or business entity aggrieved or directly affected by the decision or order from which an appeal to the Board is taken.

(11) "Day" means calendar day.

(b) Masculine gender includes the feminine, and the singular includes the plural.

(c) The definitions contained in this part shall not be considered to derogate from the definitions of terms in the respective Acts.

(d) The definitions pertaining to the Acts contained in the several parts of

Chapter VI of this Title 20 shall be applicable to this chapter as is appropriate.

§ 801.3 Applicability of this part to 20 CFR Part 802.

Part 802 of Title 20, Code of Federal Regulations, contains the rules of practice and procedure of the Board. This Part 801, including the definitions and usages contained in § 801.2, is applicable to Part 802 of this chapter as appropriate.

ESTABLISHMENT AND AUTHORITY OF THE BOARD

§ 801.101 Establishment.

By Public Law 92-576, 86 Stat. 1251, in an amendment made to section 21 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 921), there was established effective November 26, 1972, a Benefits Review Board, which is composed of members appointed by the Secretary of Labor.

§ 801.102 Review authority.

The Board is authorized, as provided in 33 U.S.C. 921(b), as amended, to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions or orders with respect to claims for compensation or benefits arising under the following Acts, as amended and extended:

(1) The Longshoremen's and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 et seq.;

(2) The Defense Base Act (DBA), 42 U.S.C. 1651 et seq.;

(3) The District of Columbia Workmen's Compensation Act (DCWCA), 36 D.C. Code 501 et seq.;

(4) The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331;

(5) The Nonappropriated Fund Instrumentalities Act (NFIA), 5 U.S.C. 8171 et seq.;

(6) Title IV, section 415 and Part C, of the Federal Coal Mine Health and Safety Act (FCMHSA), 83 Stat. 742, as amended by the Black Lung Benefits Act of 1972, 86 Stat. 150 (30 U.S.C. 901 et seq.).

§ 801.103 Organizational placement.

As prescribed by the statute, the functions of the Benefits Review Board are quasi-judicial in nature and involve review of decisions made in the course of the administration of the above statutes by the Employment Standards Administration in the Department of Labor. It is accordingly found appropriate for organizational purposes to place the Board in the Office of the Under Secretary and it is hereby established in that Office, which shall be responsible for providing necessary funds, personnel, supplies, equipment, and records services for the Board.

§ 801.104 Operational rules.

The Under Secretary may promulgate such rules and regulations as may be necessary or appropriate for effective operation of the Benefits Review Board as an independent quasi-judicial body in accordance with the provisions of the statute.

MEMBERS OF THE BOARD

§ 801.201 Composition of the Board.

(a) The Board is composed of three members appointed by the Secretary from among individuals who are especially qualified to serve thereon.

(b) The member designated by the Secretary as Chairman of the Board shall serve as chief administrative officer of the Board.

(c) The two remaining members shall be the associate members of the Board.

(d) All members of the Board shall serve indefinite terms to be determined in the discretion of the Secretary.

§ 801.202 Interim appointments.

(a) *Acting Chairman.* In the event that the Chairman of the Board is temporarily unavailable to perform his duties as prescribed in this Chapter VII, he or the Board shall designate one associate member to serve as Acting Chairman for the duration of the Chairman's absence.

(b) *Temporary members.* In the event that a member of the Board is temporarily unable to carry out his responsibilities because of disqualification, illness, or for any other reason, the Under Secretary of Labor may, in his discretion, appoint a qualified individual to serve in the place of such member for the duration of that member's inability to serve.

§ 801.203 Disqualification of Board members.

(a) During the period in which the Chairman or the other members serve on the Board, they shall not consider any matter in which they were involved prior to such period nor shall they be involved, other than as Board members, in any matter being considered by the Board. After completion of their service on the Board, they shall not become involved in any matter which had been considered by them as Board members.

(b) No Board member shall conduct or participate in any proceeding in a case in which he is prejudiced or partial with respect to any party, or where he has any interest in the matter pending for decision before him. Notice of any objection which a party may have to any Board member who will participate in the proceeding, shall be made by such party at his earliest opportunity. The Board member shall consider such objection and shall, in his discretion, either proceed with the case or withdraw.

ACTION BY THE BOARD

§ 801.301 Quorum; votes.

For the purpose of carrying out its functions under the Acts, two members of the Board shall constitute a quorum, and official action can be taken only on the concurring vote of at least two members.

§ 801.302 Procedural rules.

Procedural rules for performance by the Board of its review functions and for insuring an adequate record for any judicial review of its orders, and such amendments to the rules as may be necessary from time to time, shall be promulgated by the Benefits Review Board with the approval of the Under Secretary. Such rules shall incorporate and implement the procedural requirements of section 21(b) of the Longshoremen's and Harbor Workers' Compensation Act, as amended by section 15 of Public Law 92-576.

§ 801.303 Location of Board's proceedings.

The Board shall hold its proceedings in Washington, D.C., unless for good cause the Board orders that proceedings in a particular matter be held in another location.

REPRESENTATION

§ 801.401 Representation before the Board.

On any issues requiring representation of the Secretary, the Director, Office of Workmen's Compensation Programs, a deputy commissioner, or an administrative law judge before the Board, such representation shall be provided by attorneys designated by the Solicitor of Labor. Representation of all other persons before the Board shall be as provided for by statute or by the rules of practice and procedure promulgated under § 801.302 (see Part 802 of this chapter).

§ 801.402 Representation of Board in court proceedings.

Except in proceedings in the Supreme Court of the United States, any representation of the Benefits Review Board in court proceedings shall be by attorneys provided by the Solicitor of Labor.

The new Part 802 of Chapter VII of Title 20, CFR, reads as follows:

Subpart A—General Provisions

INTRODUCTORY

Subpart B—Prereview Procedures

COMMENCING APPEAL: PARTIES

NOTICE OF APPEAL

INITIAL PROCESSING

AUTHORITY: The provisions of this Part 801 issued under sec. 15, 86 Stat. 1261 (33 U.S.C. 921); 5 U.S.C. 301; sec. 39, 44 Stat. 1442, as amended (33 U.S.C. 939); title IV, Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 742, 30 U.S.C. 901 et seq., as amended by Public Law 92-303, 86 Stat. 156; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1268, 5 U.S.C. App.; Secretary of Labor's Order No. 38-72, 38 FR 90; unless otherwise noted.

Subpart A—General Provisions

INTRODUCTORY

§ 802.101 Purpose and scope of this part.

(a) The purpose of this Part 802 is to establish the rules of practice and procedure governing the operation of the Benefits Review Board.

(b) The rules promulgated in this part apply to all appeals taken by any party in interest from decisions or orders with respect to claims for compensation or benefits under the following Acts:

(1) The Longshoremen's and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 et seq.;

(2) The Defense Base Act (DBA), 42 U.S.C. 1651 et seq.;

(3) The District of Columbia Workmen's Compensation Act (DCCA), 36 D.C. Code 501 et seq.;

(4) The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331;

(5) The Nonappropriated Fund Instrumentalities Act (NFIA), 5 U.S.C. 8171 et seq.; and

(6) Title IV, section 415 and Part C, of the Federal Coal Mine Health and Safety Act (FCMHSA), 83 Stat. 742, as amended by the Black Lung Benefits Act of 1972, 86 Stat. 150.

§ 802.102 Applicability of Part 801 of this chapter.

Part 801 of this Chapter VII sets forth rules of general applicability covering the composition, authority, and operation of the Benefits Review Board and definitions applicable to this chapter. The provisions of Part 801 of this chapter are fully applicable to this Part 802.

§ 802.103 Powers of the Board.

(a) *Conduct of proceedings.* Pursuant to section 27(a) of the LHWCA, the Board shall have power to preserve and enforce order during any proceedings for determination or adjudication of entitlement to compensation or benefits or liability for payments thereof, and to do all things conformable to law which may be necessary to enable the Board to effectively discharge its duties.

(b) *Contumacy.* Pursuant to section 27(b) of the LHWCA, if any person in proceedings before the Board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, the Board shall certify the facts to the Federal district court having jurisdiction in the place in which it is sitting (or to the U.S. District Court for the District of Columbia if it is sitting in the District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process or in the presence of the court.

(Sec. 27, 44 Stat. 1438, as amended (33 U.S.C. 927))

§ 802.104 Consolidation; severance.

(a) Cases may be consolidated for purposes of an appeal upon the motion of any proper party or upon the Board's own motion where there exist common parties, common questions of law or fact or both, or in such other circumstances as justice and the administration of the Acts require.

(b) Upon its own motion, or upon motion of any proper party, the Board may, for good cause, order any proceeding severed with respect to some or all issues or parties.

§ 802.105 Stay of payment pending appeal.

As provided in section 14(f) of the LHWCA and sections 415 and 422 of the FCMHSA, the payment of the amounts required by an award of compensation or benefits shall not be stayed or in any way delayed pending final decision in any proceeding before the Board unless so ordered by the Board. No stay shall be issued unless irreparable injury would otherwise ensue to the employer, coal mine operator, or insurance carrier as the case may be. Any order of the Board permitting any stay shall contain a specific finding, based upon evidence submitted to the Board and identified by reference thereto, that irreparable injury would result to such employer, operator, or carrier and specifying the nature and extent of the injury.

(Sec. 14, 44 Stat. 1432, as amended (33 U.S.C. 914); sec. 15, 86 Stat. 1261 (33 U.S.C. 921 (b)(3)))

Subpart B—Prereview Procedures

COMMENCING APPEAL: PARTIES

§ 802.201 Who may file an appeal.

(a) *Party in interest.* Any party in interest adversely affected or aggrieved by a decision or order issued pursuant to one of the Acts may appeal such decision or order to the Board by filing a notice of appeal pursuant to this subpart. Such party shall be deemed the petitioner. The Board shall not adjudicate appeals in respect of claims filed prior to July 1, 1973, under the FCMHSA.

(b) *Representative parties.* In the event that a party in interest has not attained the age of 18, is not mentally competent, or is physically unable to file and pursue or defend an appeal, the Board may permit any legally appointed guardian, committee, or other appropriate representative to file and pursue or defend the appeal, or it may in its discretion appoint such representative for purposes of the appeal. The Board may require any legally appointed representative to submit evidence of such appointment, or other evidence of a person's authority to represent the party in interest.

§ 802.202 Appearances, attorneys; legal counsel.

(a) Any party or intervenor or duly authorized representative pursuant to § 802.201(b) may appear before and/or submit written argument to the Board by attorney or any other duly authorized person, including any representative of an employee organization. For each instance in which appearance before the Board is made by some person other than the party or his legal guardian, committee, or representative, there shall be filed with the Chairman of the Board a statement in writing, signed by the party to be represented, authorizing such assistance or representation.

(b) Any individual petitioner or respondent or his duly authorized representative pursuant to § 802.201(b) or an officer of any corporate party or a member of any partnership or joint venture which is a party may participate in the appeal on his own behalf, or on behalf of such business entity.

§ 802.203 Fees for services.

(a) No fee for services rendered on behalf of a claimant in the pursuit of an appeal shall be valid unless approved pursuant to 33 U.S.C. 928 as amended and the regulations promulgated pursuant to the respective Acts (see §§ 702.132–702.135 and 725.404 of this title).

(b) All fees for services rendered in the pursuit of an appeal shall be subject to the provisions and prohibitions contained in section 28 of the LHWCA as amended (33 U.S.C. 928).

(Sec. 13, 86 Stat. 1259 (33 U.S.C. 928))

NOTICE OF APPEAL

§ 802.204 Place for filing notice of appeal.

Any notice of appeal shall be mailed to, or otherwise presented at the office of the deputy commissioner for the compensation district in which the decision or order appealed from was filed.

§ 802.205 Time for filing.

(a) Any notice of appeal must be filed within 30 days from the date upon which a decision or order has been filed in the office of the deputy commissioner pursuant to section 19(e) of the LHWCA.

(b) Failure to file within the period specified in paragraph (a) of this section shall constitute a waiver of all rights to review by the Board with respect to the case or matter in question.

§ 802.206 When a notice of appeal is considered to have been filed in the office of the deputy commissioner.

(a) *Date of receipt.* (1) Except as otherwise provided in this section, a notice of appeal is considered to have been filed only as of the date it is received in the office of the appropriate deputy commissioner or by an employee of such office who is authorized to receive notices of appeal.

(2) Notices of appeal submitted to any other agency or subdivision of the Department of Labor or of the U.S. Government or any State government shall be promptly forwarded to any office of the Office of Workmen's Compensation Programs of the Department of Labor for appropriate routing to a deputy commissioner. Such notice shall be deemed filed with the deputy commissioner as of the date it was received by the other governmental unit if the Board finds that such determination is in the interest of justice.

(b) *Date of mailing.* If the notice is deposited in and transmitted by mail and the fixing of the date of delivery as the date of filing would result in a loss or impairment of appeal rights, it will be considered to have been filed as of the date of mailing. The date appearing on the postmark (when available and legible) shall be prima facie evidence of the date of mailing. If there is no postmark or it is not legible, other evidence may be used to establish the mailing date.

§ 802.207 Contents of notice of appeal.

(a) A notice of appeal should contain the following information:

(1) The full name and address of the petitioner;

(2) The full name of the injured, disabled, or deceased employee;

(3) The full names and addresses of all other parties in interest including, among others, beneficiaries, employers, coal mine operators, and insurance carriers where appropriate;

(4) The case file number;

(5) The date of filing the decision or order being appealed; and

(6) If the petitioner is being represented by another person in the proceeding, the name and address of such representative should be stated.

(b) Paragraph (a) of this section notwithstanding, any written communication which reasonably permits identification of the decision from which an appeal is sought and the parties affected or aggrieved thereby, shall be sufficient notice for purposes of § 802.205.

(c) In the event that identification of the case is not possible from the information submitted, the deputy commissioner shall so notify the petitioner and shall give such person a reasonable time to produce sufficient information to permit identification of the case. For purposes of § 802.205, the notice shall be deemed to have been filed as of the date the insufficient information was received.

§ 802.208 Transmittal to the Board.

Upon receipt of a notice of appeal, the deputy commissioner shall, within no more than 5 days, forward the notice together with the official record of the case, including the transcript or transcripts of all prior formal proceedings in the case, all decisions and orders rendered in respect of the case, all stipulations made by any party or parties, and any other pertinent records or documents to the Clerk of the Board, U.S. Department of Labor in Washington, D.C.

INITIAL PROCESSING

§ 802.209 Acknowledgment of notice of appeal.

Upon receipt by the Board of a notice of appeal and accompanying documents pursuant to § 802.208, the Board shall as expeditiously as possible notify the petitioner and the Office of the Solicitor of Labor in writing that such notice has been filed.

§ 802.210 Petition for review.

(a) Within 30 days after the receipt of an acknowledgement of a notice of appeal issued pursuant to § 802.209, the petitioner shall submit a petition for review to the Board and shall serve copies of such petition together with accompanying documents by certified mail on all parties in interest and the Solicitor of Labor. A petition for review shall contain a statement indicating the specific contentions of the petitioner and describing with particularity the substantial questions of law or fact to be raised by the appeal. Failure to submit a petition for review within the 30-day period described in this section may in the discretion of the Board cause the appeal to be deemed abandoned (see § 802.402).

(b) Each petition for review shall be accompanied by a brief, memorandum of law, or other statement in support thereof.

§ 802.211 Response to petition for review.

Within 30 days after the receipt of a petition for review, each party upon whom such petition has been served shall submit to the Board a brief, memorandum, or other statement in response thereto.

§ 802.212 Reply briefs.

Within 20 days after the receipt of a brief, memorandum, or statement submitted in response to the petition for review pursuant to § 802.211, any party upon whom such brief, memorandum, or statement has been served may file a reply brief, memorandum, or statement in reply thereto.

§ 802.213 Intervention.

The Board may permit any person or legal entity whose rights may be affected by any proceeding before the Board to intervene therein whenever such person shows in a written petition to intervene that such rights are so affected. The petition should state with precision and particularity (a) the rights, affected; and (b) the nature of any argument he intends to make. The extent to which any such person or legal entity may participate in proceedings before the Board shall be determined by the Board in its discretion.

§ 802.214 Additional briefs.

Additional cross pleadings and reply briefs may be filed or ordered in the discretion of the Board and must be submitted within time limits specified by the Board.

§ 802.215 Service and form of papers, notices, and briefs.

(a) Copies of all briefs or other statements submitted to the Board shall be served on each party in interest and the Solicitor of Labor by the party submitting such brief or other statement.

(b) Any notice, order, brief, or pleading required to be given or served to or by the Board or to or by any party shall be prepared in a form acceptable to the Board and shall be given or served by certified or registered mail or by personal service. Proof of service shall be submitted to the Board and filed as part of the appeal record.

(c) Whenever a paper or document is served on the Board or on any party by mail, 3 days shall be added to the specified period within which the reply to such paper or document is required to be submitted.

§ 802.216 Waiver of time limitations for filing.

(a) The time periods specified for submitting papers or documents described in this subpart, except that for submitting notice of appeal, may be extended for a reasonable period when, in the judgment of the Chairman, such extension is warranted.

(b) Any request for an extension of time pursuant to this section shall be directed to the Chairman and must be received by him on or prior to the date on which the pleading is due.

§ 802.217 Failure to file papers or documents.

Failure to file any paper or document when due pursuant to this subpart, may, in the discretion of the Board, constitute a waiver of the right to further participation in the proceedings.

Subpart C—Procedure for Review

Action by the Board

§ 802.301 Scope of review.

The Benefits Review Board is not empowered to engage in a de novo proceeding or unrestricted review of a case brought before it. The Board is authorized to review the findings of fact and conclusions of law upon which the decision or order appealed from was based. Such findings of fact and conclusions of law may be set aside only if they are not, in the judgment of the Board, supported by substantial evidence contained in the record considered as a whole.

§ 802.302 Docketing of appeals.

(a) *Maintenance of dockets.* A docket of all proceedings shall be maintained by the Board. Each proceeding shall be assigned a number in chronological order upon the date on which a notice of appeal is received. Each proceeding shall be generally considered in the order in which it is docketed, although for good cause shown the Board may advance the order in which a particular case is to be considered. Correspondence or further applications in connection with any pending case shall refer to the docket number of that case.

(b) *Inspection of docket; publication of decision.* The docket of the Board shall be open to public inspection. The Board shall publish its decisions in such form as to be readily available for inspection, and shall allow the public inspection thereof at the permanent location of the Board.

§ 802.303 Decision; no oral argument.

In the event that no oral argument is ordered pursuant to § 802.305, the Board shall proceed to review the record of the case as expeditiously as possible after all briefs, stipulations, supporting statements, and other pertinent documents have been received. Thereafter, the Board shall render a decision in respect of the case pursuant to Subpart D of this part.

Oral Argument Before the Board

§ 802.304 Purpose of oral argument.

Oral argument may be held by the Board in any case in which such argument might serve:

(a) To clarify the issue or issues on appeal; or

(b) To narrow questions of law or fact upon which the Board must render a decision; or

(c) To expedite the final resolution of the case; or

(d) When in the interest of justice such an argument will serve to assist the Board in carrying out the intent of any of the Acts.

§ 802.305 Request for oral argument.

At any time prior to the issuance of a decision by the Board, any party or intervenor or the Secretary may request an oral argument, or the Board, on its own motion, order an oral argument. Requests shall be directed to the Chairman of the Board in Washington, D.C.

§ 802.306 Action on request for oral argument.

Within 10 days from the date upon which a request for oral argument is received by the Chairman, the Board shall determine whether the request shall be approved or denied.

§ 802.307 Notice of oral argument.

In cases where a request for an oral argument has been approved or where an oral hearing has been ordered by the Board, all parties and intervenors shall be given a minimum of 10 days' notice, in writing, by certified mail, of the time and place of the argument.

§ 802.308 Conduct of oral argument.

(a) Oral argument shall be held in Washington, D.C., unless the Board orders otherwise, and shall be conducted at a time reasonably convenient to the parties. For good cause shown, the Chairman or Acting Chairman may, in his discretion, postpone an oral argument to a more convenient time.

(b) The proceedings shall be conducted under the supervision of the Chairman or Acting Chairman, who shall regulate all procedural matters arising during the course of the argument.

(c) Within the discretion of the Board, oral argument may be presented by any party, intervenor, representative, or duly authorized attorney, and shall be open to the public.

(d) The Board shall determine the scope of any oral argument presented.

§ 802.309 Absence of parties.

The unexcused absence of a party or his authorized representative at the time and place set for argument shall not be the occasion for delay of the proceeding. In such event, argument on behalf of other parties may be heard and the case shall be regarded as submitted on the record by the absent party. The Chairman or Acting Chairman may, with the consent of the party present, cancel the oral argument and treat the appeal as submitted on the written record.

Subpart D—Completion of Board Review

Dismissals

§ 802.401 Dismissal by application of party.

(a) At any time prior to the issuance of a decision by the Board, the petitioner may move that the appeal be dismissed. Such motion for dismissal shall be granted with prejudice to the petitioner.

(b) At any time prior to the issuance of a decision by the Board, any party may move that the appeal be dismissed for cause.

§ 802.402 Dismissal by abandonment.

(a) Upon motion by any party or representative or upon the Board's own motion, an appeal may be dismissed upon its abandonment by the party or parties who filed such appeal. Within the discretion of the Board, a party shall be deemed to have abandoned an appeal if neither the party nor his representative participates significantly in the review proceedings.

(b) Review proceedings may be dismissed upon the death of a party only if the record affirmatively shows that there is no individual who wishes to continue the action whose rights may be prejudiced by such dismissal.

Decision of the Board

§ 802.403 Issuance of decisions; service.

(a) The Board shall issue written decisions as expeditiously as possible after the completion of review proceedings before the Board. The transmittal of the decision of the Board shall indicate the availability of judicial review of such decisions under section 21(c) of the LHWCA.

(b) The original of the decision shall be filed with the Clerk of the Board. A copy of the Board's decision shall be sent by certified mail or served personally on all parties to the appeal and the Director. The record on appeal, together with a transcript of any oral proceedings, any briefs or documents filed with the Board, and a copy of the decision shall be returned to the appropriate deputy commissioner for filing.

(c) Proof of service of Board decisions shall be certified by the Clerk of the Board.

§ 802.404 Scope and content of Board decisions.

In its decision the Board shall affirm, modify, or set aside the decision or order appealed from, and may remand the case for action or proceedings not inconsistent with the decision of the Board. The consent of the parties shall not be a prerequisite to a remand ordered by the Board.

§ 802.405 Remand.

(a) *By the Board.* Where a case is remanded such additional proceedings shall be initiated and such other action shall be taken as is directed by the Board. Upon completion of all action deemed appropriate, a decision in writing shall be issued by the deputy commissioner or judge to whom the case was remanded as expeditiously as possible which contains findings of fact and conclusions of law, or when so directed by the Board, the case shall be returned to the Board by such deputy commissioner or judge with a recommended decision. A copy of the recommended decision shall be mailed to each party at his last known address. When a recommended decision is issued, each party shall be notified of his right to file with the Board within 20 days from the date of mailing of the recommended decision, briefs, or other

written statements of exceptions and allegations as to applicable fact and law. Upon request of any party made within such 20-day period, a reasonable extension of time for filing such briefs or statements may be granted and upon a showing of good cause such period may be extended, as appropriate.

(b) *By a court.* Where a case has been remanded by a court, the Board may proceed in accordance with the court's mandate to issue a decision or it may in turn remand the case to a deputy commissioner or judge with instructions to take such action as is ordered by the court and any additional necessary action and upon completion thereof to return the case with a recommended decision to the Board for its action.

§ 802.406 Finality of Board decisions.

A decision rendered by the Board pursuant to this subpart shall become final 60 days after the issuance of such decision unless an appeal pursuant to section 21(c) of the LHWCA is filed prior to the expiration of the 60-day period herein described, or unless a timely request for reconsideration by the Board has been filed as provided in § 802.407.

RECONSIDERATION

§ 802.407 Reconsideration of Board decisions—generally.

(a) Any party in interest may, within no more than 10 days from the filing of a decision pursuant to § 802.403(b) request a reconsideration of such decision.

(b) Failure to file a request for reconsideration shall not be deemed a failure to exhaust administrative remedies.

§ 802.408 Notice of request for reconsideration.

(a) In the event that a party in interest requests reconsideration of a final decision and order, he shall do so in writing, stating the supporting rationale for the request and include any material pertinent to the request.

(b) The request shall be sent or delivered in person to the Clerk of the Board, and copies shall be served upon the parties.

§ 802.409 Grant or denial of request.

All requests for reconsideration shall be reviewed by the Board and shall be granted or denied in the discretion of the Board.

JUDICIAL REVIEW

§ 802.410 Judicial review of Board decisions.

Within 60 days after a decision by the Board has been filed pursuant to § 802.403(b), any party adversely affected or aggrieved by such decision may take an appeal to the U.S. Court of Appeals pursuant to section 21(c) of the LHWCA.

§ 802.411 Certification of record for judicial review.

The record of a case including the record of proceedings before the Board shall be transmitted to the appropriate court pursuant to the rules of such court.

Signed at Washington, D.C., this 1st day of March 1973.

PETER J. BRENNAN,
Secretary of Labor.

[FR Doc.73-4262 Filed 3-6-73;8:45 am]

Title 29—Labor

CHAPTER I—NATIONAL LABOR RELATIONS BOARD

PART 103—OTHER RULES

Jurisdictional Standards Applicable to Symphony Orchestras

By virtue of the authority vested in it by the National Labor Relations Act, approved July 5, 1935,[1] the National Labor Relations Board hereby issues the following rule which it finds necessary to carry out the provisions of said Act.

This rule is issued following proceedings conforming to the requirements of 5 U.S.C. 553 in which notice was given that any rule adopted would be immediately applicable. On August 19, 1972, the Board published notice of proposed rule making requesting responses from interested parties with respect to the assertion of jurisdiction over symphony orchestras and the establishment of jurisdictional standards therefor. The Board having considered the responses and its discretion under sections 9 and 10 of the Act has decided to adopt a rule asserting jurisdiction over any symphony orchestra having a gross annual revenue of not less than $1 million. The National Labor Relations Board finds for good cause that this rule shall be effective on March 7, 1973, and shall apply to all proceedings affected thereby which are pending at the time of such publication or which may arise thereafter.

Dated at Washington, D.C., March 2, 1973.

By direction of the Board.

[SEAL] JOHN C. TRUESDALE,
Executive Secretary.

On August 19, 1972, the Board published in the FEDERAL REGISTER, a notice of proposed rule making which invited interested parties to submit to it (1) data relevant to defining the extent to which symphony orchestras are in commerce, as defined in section 2(6) of the National Labor Relations Act, and to assessing the effect upon commerce of a labor dispute in those enterprises, (2) statements of views or arguments as to the desirability of the Board exercising jurisdiction, and (3) data and views concerning the appropriate jurisdictional standards which should be established in the event the Board decides to promulgate a rule exercising jurisdiction over those enterprises. The Board received 26 responses to the notice. After careful consideration of all the responses, the Board has concluded that it will best effectuate the purposes of the Act to assert jurisdiction over symphony orchestras and apply a $1 million annual gross revenue standard, in addition to statutory jurisdiction. A rule establishing that standard has been issued concurrently with the publication of this notice.

It is well settled that the National Labor Relations Act gives to the Board a jurisdictional authority coextensive with the full reach of the commerce clause.[1] It is equally well settled that the Board in its discretion may set boundaries on the exercise of that authority.[2] In exercising that discretion, the Board has consistently taken the position that it would better effectuate the purposes of the Act, and promote the prompt handling of major cases, not to exercise its jurisdiction to the fullest extent possible under the authority delegated to it by Congress, but to limit that exercise to enterprises whose operations have, or at which labor disputes would have, a pronounced impact upon the flow of interstate commerce.[3] The standard announced above, in our opinion, accommodates this position.

The Board, in arriving at a $1 million gross figure,[4] has considered, inter alia, the impact of symphony orchestras on commerce and the aspects of orchestra operations as criteria for the exercise of jurisdiction. Symphony orchestras in the United States are classified in four categories: college, community, metropolitan, and major.[5] Community orchestras constitute the largest group with over 1,000 in number and, for the most part, are composed of amateur players. The metropolitan orchestras are almost exclusively professional and it is estimated that there are between 75 and 80 orchestras classified as metropolitan. The annual budget for this category ranges approximately from $250,000 to $1 million. The major orchestras are the largest and usually the oldest established musical organizations. All of them are completely professional, and a substantial number

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[1] 49 Stat. 449; 29 U.S.C. 151-166, as amended by act of June 23, 1947 (61 Stat. 136; 29 U.S.C. Supp. 151-167), act of Oct. 22, 1951 (65 Stat. 601; 29 U.S.C. 158, 159, 168), and act of Sept. 14, 1959 (73 Stat. 519; 29 U.S.C. 141-168).

[1] See N.L.R.B. v. Fainblatt, 306 U.S. 601.

[2] Office Employees International Union, Local No. 11 [Oregon Teamsters] v. N.L.R.B., 353 U.S. 313; sec. 14(c)(1) of the Act.

[3] Siemons Mailing Service, 122 NLRB 81; Hollow Tree Lumber Company, 91 NLRB 635, 635. See also, e.g., Floridan Hotel of Tampa, Inc., 124 NLRB 261, 264; Butte Medical Properties, d.b.a. Medical Center Hospital, 168 NLRB 266, 268.

[4] As reflected in the rule, this figure includes revenues from all sources, excepting only contributions which, because of limitations placed thereon by the grantor, are not available for operating expenses. These contributions encompassing, for example, contributions to an endowment fund or building fund, are excluded because of their generally nonrecurring nature. (Cf. Magic Mountain, Inc., 123 NLRB 1170.) Income derived from investment of such funds will, however, be counted in determining whether the standard has been satisfied.

[5] The latter three categories are defined by the American Symphony Orchestra League principally on the basis of their annual budgets.

operates on a year-round basis. For this category the minimum annual budget is approximately $1 million. Presently, there are approximately 28 major symphony orchestras in the United States. Thus, statistical projections based on data submitted by responding parties, as well as data compiled by the Board, disclose that adoption of such a standard would bring approximately 2 percent of all symphony orchestras, except college, or approximately 28 percent of the professional metropolitan and major orchestras, within reach of the Act. The Board is satisfied that symphony orchestras with gross revenues of $1 million have a substantial impact on commerce and that the figure selected will not result in an unmanageable increase on the Board's workload. The adoption of a $1 million standard, however, does not foreclose the Board from reevaluating and revising that standard should future circumstances deem it appropriate.

In view of the foregoing, the Board is satisfied that the $1 million annual gross revenue standard announced today will result in attaining uniform and effective regulation of labor disputes involving employees in the symphony orchestra industry whose operations have a substantial impact on interstate commerce.

§ 103.2 **Symphony Orchestras.**

The Board will assert its jurisdiction in any proceeding arising under sections 8, 9, and 10 of the Act involving any symphony orchestra which has a gross annual revenue from all sources (excluding only contributions which are because of limitation by the grantor not available for use for operating expenses) of not less than $1 million.

[FR Doc.73-4374 Filed 3-6-73;8:45 am]

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

New Jersey Plan; Plan Description; Amendment

In a document issued by this office on January 22, 1973, and published in the FEDERAL REGISTER on January 26, 1973 (37 FR 2426), the New Jersey developmental plan to assume responsibility for the development and enforcement of State occupational safety and health standards in accordance with Part 1902 of Title 29 of the Code of Federal Regulations and section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) was approved.

Provisions of that plan require that owners of any structures to be erected and used as places of employment submit plans for approval and comply with specific provisions of special State building codes. However, the decision did not indicate that the pertinent safety and health codes (N.J.A.C. 12:115—Building Code and N.J.A.C. 12:110—Plan Filing) have as their stated and clear purpose the protection of employees even though the codes may afford some incidental protection to others. Codes that more directly concern other matters such as the protection of the environment and the public at large are properly not incorporated in the plan, and are dealt with elsewhere by the State of New Jersey and its political subdivisions.

The description of the plan in § 1952.140(b) is accordingly amended to indicate these features of the codes involved by adding a new subparagraph (3) to read as follows:

§ 1952.140 **Description of the plan.**

* * * * *

(b) * * *

(3) Safety and health codes which are established by the State of New Jersey to protect employees and which incidentally protect others are considered occupational safety and health standards for the purposes of this subpart.

* * * * *

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C., this 1st day of March 1973.

CHAIN ROBBINS,
Acting Assistant Secretary of Labor.

[FR Doc.73-4355 Filed 3-6-73;8:45 am]

Title 32—National Defense

CHAPTER XVII—OFFICE OF EMERGENCY PREPAREDNESS

PART 1709—REIMBURSEMENT OF OTHER FEDERAL AGENCIES UNDER PUBLIC LAW 91-606.

Eligibility of Certain Expenditures for Reimbursement

1. Section 1709.2 is amended by deleting paragraphs (d), (e), and (f).

Effective date. This amendment shall be effective as of March 1, 1973.

Dated: March 1, 1973.

DARRELL M. TRENT,
Acting Director,
Office of Emergency Preparedness.

[FR Doc.73-4380 Filed 3-6-73;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 3—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 3-16—PROCUREMENT FORMS

Subpart 3-16.8—Miscellaneous Forms

Chapter 3, Title 41, Code of Federal Regulations is amended as set forth below. The purpose of this amendment is to inform the public of HEW's use of miscellaneous procurement forms.

It is the general policy of the Department of Health, Education, and Welfare to allow time for interested parties to take part in the rule making process. However, since the amendment herein involves minor technical matters, the public rule making process is deemed unnecessary in this instance.

1. The table of contents of Part 3-16 is amended to add Subpart 3-16.8 as follows:

Subpart 3-16.8—Miscellaneous Forms

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3-16.8—Miscellaneous Forms

2. Subpart 3-16.8 is added to read as follows:

§ 3-16.804 **Report on procurement.**

§ 3-16.804-2 **Agencies required to report.**

Each operating agency, the Office of Regional and Community Development, and the Office of Administrative Services, OS-OASAM, shall report its procurement to the Office of Procurement and Materiel Management, OS-OASAM, for the organization as a whole.

§ 3-16.804-3 **Standard Form 37, Report on Procurement by Civilian Agencies.**

(a)-(e) [Reserved]

(f) *Frequency and due date for submission of Standard Form 37.* Each report shall be submitted in the original and three copies to arrive at OPMM not later than 30 calendar days after the close of each reporting period.

§ 3-16.852 **Equal Opportunity Clause (HEW-386).**

Use Form HEW-386, Equal Opportunity Clause, if it is prescribed.

§ 3-16.853 **Request for Equal Opportunity Clearance of Contract Award.**

Form HEW-511, Request for Equal Opportunity Clearance of Contract Award, is prescribed for use in communicating and transmitting information between the contracting officer and the Office of Civil Rights.

§ 3-16.854 **Notice to Prospective Bidders (HEW-512).**

Form HEW-512, Notice to Prospective Bidders, is prescribed for use with invitation for bids when bids are estimated to exceed $10,000.

§ 3-16.855 **Transmittal Letter (HEW-513).**

Form HEW-513, Transmittal Letter, is prescribed for transmitting awards which are subject to the Equal Opportunity clause.

§ 3-16.856 **Procurement Activity Report.**

(a) *General.* The Procurement Activity Report is designed to provide the Department with essential procurement records and statistics necessary for procurement management purposes and to

serve as a basis for special reports required by the Congress, the General Accounting Office, the Small Business Administration, and other Federal Agencies.

(b) *Activities required to report.* Each operating agency, the Office of Regional and Community Development, and the Office of Administrative Services, OS–OASAM, shall report procurements for their organization as a whole.

(c) *Form prescribed.* Form HEW–522, Procurement Activity Report, is prescribed for use when reporting procurement in accordance with this section.

(d) *Frequency and due date.* Reports shall be submitted on a fiscal year basis (original and three copies) within 30 calendar days after the close of each reporting period to the Office of Procurement and Materiel Management, OS–OASAM, Room 3340, HEW North Building, Washington, D.C.

Effective date. This amendment shall be effective on March 7, 1973.

Dated: March 1, 1973.

N. B. HOUSTON,
Deputy Assistant Secretary for Administration.

[FR Doc.73-4377 Filed 3-6-73;8:45 am]

PART 3–50—ADMINISTRATIVE MATTERS

Subpart 3–50.5—Closing Completed Contracts

On December 23, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 FR 28428) stating that the Department of Health, Education, and Welfare was considering an amendment to 41 CFR Chapter 3, by adding a new Subpart 3–50.5, Closing Completed Contracts. The purpose of the amendment is to prescribe policy relative to closing completed contract files.

Interested persons were invited to submit written data, views, or comments, within 30 days after publication. Written comments were received, and after due consideration of the views presented, the regulation is revised and adopted subject to minor changes as set forth below:

1. Paragraph (a) of § 3–50.502–1, is changed by inserting after the word "determine" the words ", as applicable,".

2. Subparagraph (6) of § 3–50.502–4 (a), is changed by deleting after the word "property" the word "and".

3. Subparagraph (7) of § 3–50.502–4 (a), is changed by adding after the word "appropriate" the word "; and".

4. Paragraph (a) of § 3–50.502–4, is changed by adding subparagraph (8). A copy of the letter requesting an audit when required by § 1–8.207.

Effective date. These regulations shall be effective on March 7, 1973.

Dated: February 27, 1973.

N. B. HOUSTON,
Deputy Assistant Secretary for Administration.

Subpart 3–50.5—Closing Completed Contracts

Sec.
3–50.500 Scope of subpart.
3–50.501 Definition.
3–50.502 Policy.
3–50.502–1 Closing review.
3–50.502–2 Contract closing memorandum.
3–50.502–3 Audit.
3–50.502–4 Termination.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3–50.5—Closing Completed Contracts

§ 3–50.500 Scope of subpart.

This subpart establishes policy for closing HEW contract files when all contract performance is completed or terminated.

§ 3–50.501 Definition.

A completed contract is one which is both physically and administratively complete and in which all aspects of contractual performance have been accomplished or formally waived. A contract is physically completed when all services called for under the contract have been rendered and all articles, materiel, reports, data, exhibits, etc., have been delivered and accepted by the Government. A contract is administratively complete when all administrative actions have been accomplished, all releases executed, and final payment made. Contract performance is terminated when a notice of termination is issued under the "Termination Article" incorporated into the contract.

§ 3–50.502 Policy.

§ 3–50.502–1 Closing review.

(a) Upon physical completion, the contract and contract file shall be reviewed to determine, as applicable, that:

(1) All services (i.e., tasks, work effort, etc.) have been rendered;

(2) All articles (i.e., contract and items, reports, data, exhibits, etc.) have been delivered and accepted;

(3) All payments and collections have been accomplished;

(4) Release from liabilities, obligations, and claims have been obtained from the contractor;

(5) Assignment of refunds, rebates, credits, etc., have been executed by the contractor;

(6) All administrative actions have been accomplished, including the settlement of disputes, protests, litigation; determination of final overhead rates; release of funds; disposal of property, etc.; and

(7) The file is documented as prescribed in § 3–1.313.

(b) As a minimum, the closing review will insure that the contract file contains, or that action is initiated to obtain copies of:

(1) *Inspection and acceptance documents.* Inspection and acceptance documents or a statement from program personnel that all services and deliveries required by the contract have been performed or delivered in accordance with the terms of the contract and are acceptable to the Government. All discrepancies in actual performance or delivery with contract requirements must be reconciled before the contract file is closed.

(2) *Public vouchers and contractor invoices which support advance, partial, progress, and final payments.* No contract file may be closed or final payment made until (i) all questions of disallowed or suspended costs are settled; (ii) the "completion voucher" and the cumulative claim and reconciliation statement is verified; (iii) all discrepancies are resolved between payments and deliveries or performance, and between billings and payments; (iv) final overhead rates are established and set forth in a contract modification; (v) assignments of refunds, rebates, credits, and other amounts are executed; (vi) final release of claims is received from the contractor; and (vii) partial or complete termination settlements are set forth in a supplemental agreement and payment or collection made.

(3) *Subcontract approvals.* A copy of each subcontract approved or ratified by the contracting officer, together with the letter or document of approval and the subcontract review memorandum, must be retained in the contract file. If approval of individual subcontracts is waived by approval of the contractor's purchasing system, a copy of or a specific reference to the purchasing system approval must be included in the contract file. Unresolved disputes between prime and subcontractors must be resolved before the prime contract file can be closed; unless the prime contractor releases the Government from any obligation relating to the subcontractor claim.

(4) *Contract modifications.* Before a contract can be closed, all additions or changes to the terms, conditions, or administrative recitals must be formalized by an appropriate supplemental agreement or unilateral change order. Timely action must be taken to formalize adjustment of price, estimated cost, or fee when required by special contract provisions, e.g., price determination, incentive clauses, escalation, partial, or complete termination settlements, etc. Contracting officers must be aware that they have no authority and shall not give, make, or execute any kind of release of claim or obligation to the contractor except by formal modification of the contract.

(5) *Inventory and disposition of Government-owned property.* All Government-owned property, real or personal, either furnished by the Government or acquired by the contractor for the account of the Government, must be accounted for and disposed of at physical completion of the contract. The contract file shall not be closed until the inventory of all such Government-owned property is verified and a complete record of the disposition of all property is placed in the file.

(6) *Approval of contractor systems (policies and procedures) and agreements.* Individual copies of the following must be placed in the contract file prior to closing: (i) System approvals (i.e., accounting, estimating, purchasing, property management, quality assurance, maintenance, etc.); (ii) advance understanding on particular items of cost identified in § 1–15.107 (i.e., IR&D, employee compensation, travel, insurance plans, precontract costs, etc.); and (iii) other agreements relating to contract performance.

(7) *Clearance and reports.* Copies of appropriate clearances and reports relating to inventories, patents, royalties,

copyright, publications, tax exemptions, etc., must be included in the official contract file. Also the file must contain copies of inquiries and answers and reports to and from sources such as the Congress, the General Accounting Office, audit activities, etc.

(8) *Delegations of authority.* Copies of letters delegating contract administration (i.e., technical directions, quality control, inspection and acceptance, property management, subcontract approval, etc.) must be included in the official contract file together with the delegation file or a statement that all delegated actions were completed satisfactorily.

§ 3–50.502–2 Contract closing memorandum.

Verification that all contract performance is completed and that all contract actions have been fully documented shall be set forth in a closing memorandum. The memorandum may take the form of a checklist of contract actions applicable to the type of contract involved (see §§ 3–1.313 and 3–50.502–1). Operating agencies will design and prescribe the form and contents of such closing checklists. Sample copies of closing checklists and any agency implementing instructions (and subsequent changes thereto) shall be furnished to the Director, Office of Procurement and Materiel Management, OASAM.

§ 3–50.502–3 Audit.

Before final payment is made under a cost-reimbursable type contract, there must be assurance as to the allowability of all costs incurred under the contract.

(a) Contracts under $50,000:

(1) Prior to final payment of each cost-type contract under $50,000 the contracting officer shall determine or cause to be determined the allowability of costs claimed through the conduct of a desk audit (but see § 3–50.502–3(c)). The file will be documented to show that a desk audit has been performed. Unless there are cost questions which cannot be resolved by the contracting officer, final payment will be made subject to audit provided all other actions necessary to complete the contract have been accomplished and fully documented (see § 3–50.502–2). The release to be executed by the contractor should provide as follows:

> The contractor agrees, pursuant to the clause in this contract entitled Allowable Cost (for cost reimbursement contracts) or Allowable Cost and Fixed Fee (for CPFF contracts), that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the Government.

(2) The "desk audit" may include but need not be limited to:

(i) A review of the contract provisions, e.g., negotiated overhead rates clause, advance understandings on particular items of cost identified in § 1–15.107.

(ii) A review of vouchers to determine, if possible, that some types of labor claimed may not be necessary in the performance of the contract and the reasonableness of material, travel and per diem costs.

(iii) A determination that overtime was approved.

(iv) A review of previous available audit reports to determine what adjustments, if any, were made and may be applicable to the contract under review and discussions with the cognizant government auditor when considered appropriate.

(3) The above procedure shall be followed unless the contracting officer determines that a desk audit is not appropriate and states in writing his decision as to the need for an audit of the contractor's books and records.

(b) Contracts of $50,000 and above: Prior to final payment of each cost type contract of $50,000 and above, the Audit Agency will notify the contracting officer that an audit has been completed. Notification may take one of the following forms:

(1) In the case of universities and other entities awarded numerous grants and contracts, a single audit report will usually be issued on grantee/contractor operations for the specified fiscal period(s) covered by the audit. All grant and contract activity, including contracts completed during this period, will be covered by the single audit report. The audit report contains statements describing the purpose of the audit, audit scope, period covered, and problems disclosed by the audit, including recommended adjustments to costs claimed for individual contracts or grants. Often there will be contracts completed during the period covered by the audit which are not singled out in the audit report for financial adjustment. In such cases, the audit report represents a basis for closing those contracts physically completed during the period, provided all other actions necessary to complete the contract have been accomplished and fully documented (see § 3–50.502–2).

(2) In the case of other entities holding few contracts or grants (and in some cases because of special problems with an individual contract or grant) the audit report(s) will usually cover the period of individual grants and contracts, based on an audit of these contracts and grants. These audit reports represent a basis, after decisions on any financial adjustments recommended by the audit, for closing the contracts physically completed during the period covered by the report, provided all other actions necessary to complete the contract have been accomplished and fully documented (see § 3–50.502–2).

(c) Verification of actual costs must be made by the Audit Agency for cost type contracts with incentive provisions and fixed price contracts when cost incentive or price redetermination is involved. Termination settlement proposals shall be submitted for review by the cognizant Audit Agency as prescribed in § 1–8.207.

§ 3–50.502–4 Termination.

(a) All material relating to the terminated portion of a contract shall be maintained in a "termination file," separate from the contract file. After final settlement and payment or collection of all termination claims, the "termination file" shall be reviewed to ensure that the file contains documentation to support all actions relating to the settlement and to the disposition of Government-owned property. Documentation of the file shall include:

(1) Request for termination action or a statement of reasons for the termination;

(2) Notice of termination and instructions to contractor, and notice to General Accounting Office as prescribed by § 1–8.403;

(3) Correspondence with contractor and records of all discussions, meetings, and negotiations;

(4) Copies of all settlement proposals and accounting reviews and analysis thereof;

(5) Records and approvals of subcontractor settlements;

(6) Inventory schedules and records of disposal of Government-owned property;

(7) Settlement agreements, records of exceptions, and contracting officer determinations, as appropriate; and

(8) A copy of the letter requesting an audit when required by § 1–8.207.

(b) After all termination actions are completed and the "termination file" is closed, it shall be filed as a component of the contract file.

[FR Doc.73–4375 Filed 3–6–73;8:45 am]

CHAPTER 5A—FEDERAL SUPPLY SERVICE, GENERAL SERVICES ADMINISTRATION

PART 5A–1—GENERAL

Subpart 5A–1.12—Responsible Prospective Contractors

INFORMATION REGARDING RESPONSIBILITY OF BIDDERS AND CONTRACTORS

This change outlines procedures for requesting or reporting information on bidders and contractors suspected or known to be affiliated or involved with organized crime.

Section 5A–1.1205–3(c) is revised to read as follows:

§ 5A–1.1205–3 Information regarding responsibility.

* * * * *

(c) The following procedures shall be used for requesting or reporting information on bidders or contractors suspected or known to be affiliated or involved with organized crime:

(1) Where there is a doubt in the mind of the contracting officer as to whether a firm is involved with organized crime, additional information shall be requested from the Office of Investigations (BI). Requests for such information shall be processed on GSA Form 2713, Records Check and Inquiry on Bidders and Contractors, in accordance with the instructions on the form. (See § 5A–16.950–2713.) Concurrently, a copy of the GSA Form 2713 shall be furnished to the Assistant Commissioner for Procurement (FP). Buying activities shall insure compliance with instructions regarding disclosure or reproduction of the information furnished. Requests initiated in the Central Office, FSS, shall be submitted to the Director of Investigations (BI), Office of Administration. Requests initiated in the regions shall be submitted to the cognizant Director, Field Investigations Office. Where appropriate, the Office of Investigations will consult with the Depart-

ment of Justice incidental to providing the contracting officer with information to be used as a basis for determining a suspected firm's responsibility.

(2) Incidental to determining bidder or offeror responsibility prior to award, contracting officers shall:

(i) Determine a suspected firm to be nonresponsible if the information received from BI indicates the firm or members of the firm have been indicted or convicted under the Organized Crime Control Act of 1970 or indicted or convicted of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a Government contractor. In the event that an appeal taken from any convention results in a reversal of the conviction, contracting officers may not consider the conviction in determining responsibility. (See also § 1-1.6.)

(ii) Submit to the Assistant Commissioner for Procurement (FP) all cases where information provided by BI does not contain evidence of convictions or indictments of offenses mentioned in (i), above, but does contain other convincing evidence which seriously impugn the integrity and business ethics of a firm otherwise eligible for contract award. FP will review such information and provide guidance with respect to determination of contractor responsibility.

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

Effective date. This regulation is effective on February 26, 1973.

Dated: February 26, 1973.

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

[FR Doc.73-4367 Filed 3-6-73;8:45 am]

Title 45—Public Welfare

CHAPTER VII—COMMISSION ON CIVIL RIGHTS

PART 704—INFORMATION DISCLOSURE AND COMMUNICATIONS

Administrative Appeal From Denial of Requests

Part 704 is amended by revising § 704.1(g) to read as set forth below. These amendments require the General Counsel to specify the exemption or exemptions which constitute the basis for withholding information requested under the Freedom of Information Act.

§ 704.1 Material available pursuant to 5 U.S.C. 552.

* * * * *

(g) *Administrative appeal from denial of requests.* If a request conforming with the requirements of paragraph (d)(1) of this section is denied by the General Counsel, the General Counsel's response to the requesting party shall cite the specific exemption or exemptions under paragraph (f) of this section which is the basis for the denial, and inform the requesting party that the denial is subject to review by the Staff Director of the Commission, provided such review is requested by the person submitting a request for information in accordance with this paragraph (g) within 30 days after the date of the General Counsel's decision. The filing of such a request for review may be accomplished by mailing to the Staff Director, U.S. Commission on Civil Rights, Washington, D.C. 20425, by certified mail, a copy of the written denial issued under this paragraph, and a statement of the circumstances, reasons or arguments advanced in support of disclosure. Review will be made by the Staff Director on the basis of the written record described above. The decision on review will be in writing, will be promptly communicated to the person requesting review, and will constitute the final action of the Commission subject to judicial review, as provided in 5 U.S.C. 552(a)(3).

* * * * *

Effective date. This amendment shall become effective on March 7, 1973.

STEPHEN HORN,
Vice Chairman.

[FR Doc.73-4356 Filed 3-6-73;8:45 am]

Title 49—Transportation

CHAPTER I—DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A—HAZARDOUS MATERIALS REGULATIONS BOARD

[Docket No. HM-8; Amdts. 172-19, 173-70, 174-17, 175-10, 176-177-24]

PART 173—SHIPPERS

Labeling of Hazardous Materials

Correction

In FR Doc. 73-3317 appearing at page 5292 of the issue for Tuesday, February 27, 1973, the following changes should be made:

1. In the amendatory language to § 173.94 the reference to "paragraph (b)" should read "paragraph (d)"; and in § 173.94 the material now designated as "(b)" should be designated as "(d)".

2. In § 173.402(a)(4), the word "solid" in the second line should read "liquid".

3. In § 173.417(a) the accompanying figure should appear as shown below:

SUBCHAPTER A—HAZARDOUS MATERIALS REGULATIONS BOARD

[Docket No. HM-8; Amdt. No. 173-70]

PART 173—SHIPPERS

Labeling of Hazardous Materials; Correction

On February 27, 1973, the Hazardous Materials Regulations Board published Docket No. HM-8; Amendment No. 173-70 (38 FR 5292), which amended the Hazardous Materials Regulations to prescribe new labels to conform to the United Nations recommendations. The Board inadvertently published an incorrect label for flammable solids in § 173.410(a). It contained nine vertical red stripes when there should have been seven. Therefore, the Board has corrected Amendment No. 173-70 to show the correct label for flammable solids and § 173.410 of that amendment, in its entirety, is as follows:

Section 173.410 is amended to read as follows:

§ 173.410 Flammable solid label.

(a) Each "Flammable solid" label except for size and color must be as shown:

(1) In addition to the requirements of § 173.404, each label must be white with vertical red stripes as depicted by the shaded area, with the inscription, border, and symbol black. The words "Flammable solid" must not contact any red stripe.

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

Issued in Washington, D.C., on February 27, 1973.

ALAN I. ROBERTS,
Secretary.

[FR Doc.73-4049 Filed 3-6-73;8:45 am]

Title 47—Telecommunications

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 73-140]

PART 0—COMMISSION ORGANIZATION
PART 97—AMATEUR RADIO SERVICE

Radio Operator Examination Points

Correction

In FR Doc. 73-3106 appearing at page 4577 in the issue for Friday, February 16, 1973, the following should be inserted immediately after the 7th line of the amendatory language for § 0.485: "Appendix 1, Examination Points, to Part 97 is amended as follows."

Proposed Rule Making

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 134]

CAST IRON PIPE AND FITTINGS

Proposed Revocation of Exception from Country of Origin Marking Requirements

Notice is hereby given that the Department of the Treasury and the Bureau of Customs have received a request from the American Pipe Fittings Association to revoke the exception from country of origin marking for malleable and nonmalleable cast iron pipe fittings presently authorized pursuant to 19 U.S.C. 1304(a)(3)(J). These articles are encompassed within the description, "Pipes, iron or steel, and pipe fittings of cast or malleable iron (except cast iron soil pipe and fittings)" listed in T.D. 49896 (1939) (4 FR 2509), as modified by T.D. 71–89 (1971) (36 FR 5465). Articles of that description were among the articles found to have been imported in substantial quantities during the 5-year period immediately preceding January 1, 1937, and not required during such period to be marked to indicate the country of origin. Those articles are now excepted from the marking requirements pursuant to § 134.33 of the Customs Regulations (19 CFR 134.33). The articles are classified under item 610.62–610.74, Tariff Schedules of the United States.

The American Pipe Fittings Association has submitted information and affidavits indicating that malleable and non-malleable cast iron pipe fittings were not imported in substantial quantities in the 5-year period preceding January 1, 1937, and, accordingly, should not have been included in the list of articles excepted from marking under 19 U.S.C. 1304(a)(3)(J). The association also contends that cast and malleable iron pipe fittings are commonly maintained in wholesalers' bins, which results in the commingling of domestic and imported fittings, leading to the possibility of deception to ultimate purchasers with respect to the country of origin of the pipe fittings.

With regard to the cost of marking the pipe fittings in question, the association states that Stockhalm Valves & Fittings, Birmingham, Ala., in 1960, marked its complete line of some 7,000 items with ⅛-inch raised letters reading "USA", at a nominal cost. The Bureau of Customs has received a letter from Stockhalm Valves & Fittings stating that it would cost foreign producers very little initially to mark their fittings by raised letters, and the raised letters would consume an almost unmeasurable amount of additional metal per fitting. The Bureau has tentatively concluded from the information available that malleable and nonmalleable cast iron pipe fittings are not entitled to continued exemption from the country of origin marking requirements under 19 U.S.C. 1304(a)(3)(J).

Consideration will be given to all data, views, or arguments respecting this matter which are submitted in writing to the Commissioner of Customs, Washington, D.C. 20226, on or before April 6, 1973.

Written material or suggestions submitted will be available for public inspection in accordance with § 103.3(b) of the Customs Regulations (19 CFR 103.3(b)), at the Bureau of Customs, Washington, D.C., during regular business hours.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: February 28, 1973.

EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[FR Doc.73-4314 Filed 3-6-73;8:45 am]

Internal Revenue Service

[26 CFR Part 45]

MISCELLANEOUS STAMP TAXES

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by April 4, 1973. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by April 4, 1973. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register.

The proposed regulations are to be issued under the authority contained in sections 4464(c) and 7805 of the Internal Revenue Code of 1954 (85 Stat. 535 and 68A Stat. 917; 26 U.S.C. 4464(c) and 7805).

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

This document contains proposed amendments to the Miscellaneous Stamp Tax Regulations (26 CFR Part 45) in order to conform such regulations to the provisions of title II of Public Law 88–36 (77 Stat. 54) (repealing the tax on transfers of silver bullion); sections 402 through 405 of the Excise Tax Reduction Act of 1965 (79 Stat. 148) (repealing the excise tax on playing cards, coin-operated amusement devices, certain vending machines dispensing prizes, bowling alleys, and billiard and pool tables); and section 402 of the Revenue Act of 1971 (85 Stat. 534) (allowing a credit against the Federal tax on coin-operated gaming devices for State taxes imposed on such devices).

The excise tax on silver bullion, which imposed a 50-percent tax on profits on transfers of silver bullion, was enacted as a part of the Government's silver purchase program to prevent speculative sales of silver in connection with such program. The tax was repealed effective June 4, 1963, by the Act terminating the silver purchase program.

The excise taxes on playing cards, coin-operated amusement devices, certain vending machines dispensing prizes, bowling alleys, and billiard and pool tables were repealed, effective June 22, 1965, for playing cards and July 1, 1965, for the others, to simplify administration of the tax laws, remove discriminatory tax burdens on consumers and producers, and eliminate arbitrary and undesirable distortions in the allocation of resources in competitive markets.

The credit for State taxes against the Federal tax on coin-operated gaming devices is effective on and after July 1, 1972. It allows persons maintaining or allowing the operation of coin-operated gaming devices on premises they occupy a credit against the Federal tax on the devices for certain State tax paid on the devices. No credit is allowed unless the State tax is similar to the Federal tax and maintenance or operation of the devices is legal under State law. No credit is allowed for State personal property tax. The maximum credit allowed in any year is 80 percent of the Federal tax for that year. The amendment is designed to make the Federal tax treatment of

coin-operated gaming devices more uniform with the Federal tax treatment of parimutuel wagering licensed under State law and State conducted sweepstakes. The Federal tax on wagering is not applied to parimutuel wagering licensed under the State law or State controlled sweepstakes.

PROPOSED AMENDMENTS TO THE REGULATIONS

In order to conform the Miscellaneous Stamp Tax Regulations (26 CFR Part 45) to the provisions of title II of Public Law 88-36 (77 Stat. 54), and to sections 402 through 405 of the Excise Tax Reduction Act of 1965 (79 Stat. 148), and to reflect the addition of section 4464 to the Internal Revenue Code of 1954 by section 402 of the Revenue Act of 1971 (85 Stat. 534), such regulations are amended as follows:

PARAGRAPH 1. Section 45.0-1 is amended by revising the second sentence of paragraph (a), by revising paragraph (b), and by revising the first sentence of paragraph (c). The revised provisions read as follows:

§ 45.0-1 Introduction.

(a) *In general.* * * * The regulations relate to the taxes imposed by Subchapter B of Chapter 36, Subchapter F of Chapter 38, Subchapters B, C, and D of Chapter 39 of the Internal Revenue Code of 1954, as amended, and to certain general provisions relating to occupational taxes contained in Chapter 40 of such Code and to certain related administrative provisions of Subtitle F of the Code. * * *

(b) *Division of regulations.* The regulations in this part are divided into 12 subparts. Subpart A contains provisions relating to the arrangement and numbering of the sections of the regulations in this part, general definitions and use of terms, scope of regulations, and extent to which the regulations in this part supersede prior regulations relating to the taxes imposed by Subchapter B of Chapter 36, Subchapter F of Chapter 38, and Subchapters B, C, and D of Chapter 39 of the Internal Revenue Code. The other subparts of the regulations in this part and the subject matter to which they relate are as follows:

Subpart B—[Deleted]
Subpart C—Occupational tax on coin-operated devices.
Subpart D—[Deleted]
Subpart E—Oleomargarine.
Subpart F—White phosphorus matches.
Subpart G—Adulterated and process or renovated butter.
Subpart H—Filled cheese.
Subpart I—Cotton futures.
Subpart J—[Deleted]
Subpart K—General provisions relating to occupational taxes.
Subpart L—Administrative provisions.

(c) *Arrangement and numbering.* In general, each section of the regulations in Subparts C through L is preceded by the section, subsection, or paragraph of the Internal Revenue Code which it interprets. * * *

PAR. 2. The introductory paragraph and pargaraphs (a), (b), (c), and (i) of § 45.0-3 are amended to read as set forth below:

§ 45.0-3 Scope of regulations.

The regulations in this part relate to the taxes imposed by Subchapter B of Chapter 36, Subchapter F of Chapter 38, and Subchapters B, C, and D of Chapter 39 of the Code and, except where otherwise specifically provided, have application as provided in the following paragraphs:

(a) *Subpart B.* [Deleted]

(b) *Subpart C.* The regulations in Subpart C of this part relate to coin-operated gaming devices maintained for use by any person on or after July 1, 1965.

(c) *Subpart D.* [Deleted]

* * * * *

(i) *Subpart J.* [Deleted]

* * * * *

PAR. 3. Section 45.0-4 is amended to read as follows:

§ 45.0-4 Extent to which the regulations in this part supersede prior regulations.

The regulations in this part, with respect to the subject matter within the scope thereof, supersede the following regulations and such regulations as prescribed and made applicable to the Internal Revenue Code by Treasury Decision 6091, signed August 16, 1954 (19 FR 5167, August 17, 1954):

Special taxes with respect to coin-operated gaming devices.	Regulations 59 (1941 edition), 26 CFR (1939), Part 323.
Tax on white phosphorus matches.	Regulations 32, 26 CFR (1939), Part 300.
Taxes on oleomargarine, adulterated butter, and process or renovated butter.	Regulations 9, (Revised April 1936), 26 CFR (1939), Part 310.
Tax on filled cheese	Regulations 22, (Revised August 1926), 26 CFR (1939), Part 301.
Tax on contracts of sale of cotton for future delivery.	Regulations 36 (1916 edition), 26 CFR (1939), Part 110.
Withdrawal of filled cheese from factories, free of tax, for use of the United States.	Regulations 34, 26 CFR (1939), Part 450.
Exportation without payment of tax on tobacco manufacturers, oleomargarine, and adulterated butter; shipments to possessions of the United States, and drawback on tobacco manufacturers and stills exported, or shipped to Puerto Rico or Philippine Islands.	Regulations 73, 26 CFR (1939), Part 451.
Removals of alcoholic liquors, tobacco products, and other articles of domestic manufacturer to foreign-trade zones.	Regulations 31, 26 CFR (1939), Part 199 §§ 199.425 to 199.436, incl.

Subpart B [Deleted]

PAR. 4. Subpart B is deleted.

PAR. 5. Section 45.4461 is amended by revising section 4461 and the historical note to read as follows:

§ 45.4461 Statutory provisions; imposition of tax.

Sec. 4461. *Imposition of tax*—(a) *In general.* There shall be imposed a special tax to be paid by every person who maintains for use or permits the use of, on any place or premises occupied by him, a coin-operated gaming device (as defined in section 4462) at the following rates:

(1) $250 a year; and

(2) $250 a year for each additional device so maintained or the use of which is so permitted. If one such device is replaced by another, such other device shall not be considered an additional device.

(b) *Exception.* No tax shall be imposed on a device which is commonly known as a claw, crane, or digger machine if—

(1) The charge for each operation of such device is not more than 10 cents,

(2) Such device never dispenses a prize other than merchandise of a maximum retail value of $1, and with respect to such device there is never a display or offer of any prize or merchandise other than merchandise dipensed by such machine,

(3) Such device is actuated by a crank and operates solely by means of a nonelectrical mechanism, and

(4) Such device is not operated other than in connection with and as part of carnivals or county or State fairs.

[Sec. 4461 as amended and in effect, July 1, 1965]

PAR. 6. Section 45.4461-1 is amended as follows:

1. Paragraph (a) is amended by deleting "amusement or" from the first and third sentences, and by deleting "liable to" and inserting in lieu thereof "liable for" in the second sentence.

2. Paragraph (b) is amended by deleting "amusement" and inserting in lieu thereof "gaming" in each of the two places it appears in the second sentence, and by deleting the last sentence.

3. A new paragraph (c) is added, to read as set forth below:

§ 45.4461-1 Imposition of tax.

* * * * *

(c) *Exception.* No tax is imposed on a device commonly known as a claw, crane, or digger machine if (1) the charge for each operation of such device is not more than 10 cents, (2) such device never dispenses a prize other than merchandise of a maximum retail value of $1, and with respect to such device there is never a display or offer of any prize or merchandise other than the merchandise dispensed by such machine, (3) such device is actuated by a crank and operates solely by means of a nonelectrical mechanism, and (4) such device is not operated other than in connection with and as part of carnivals or county or State fairs.

PAR. 7. Section 45.4461-2 is amended to read as follows:

§ 45.4461-2 Rate of tax.

The special tax under section 4461 is imposed at the rate of $250 per year per coin-operated gaming device.

PAR. 8. Section 45.4462 is amended by revising section 4462 and the historical note to read as follows:

§ 45.4462 Statutory provisions; definition of coin-operated gaming device.

Sec. 4462. *Definition of coin-operated gaming device*—(a) *In general.* For purposes of this subchapter, the term "coin-operated gaming device" means any machine which is—

(1) A so-called "slot" machine which operates by means of the insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens, or

(2) A machine which is similar to machines described in paragraph (1) and is operated without the insertion of a coin, token, or similar object.

(b) *Exclusions.* The term "coin-operated gaming device" does not include—

(1) A bona fide vending or amusement machine in which gaming features are not incorporated; or

(2) A vending machine operated by means of the insertion of a 1-cent coin, which, when it dispenses a prize, never dispenses a prize of a retail value of, or entitles a person to receive a prize of a retail value of, more than 5 cents, and if the only prize dispensed is merchandise and not cash or tokens.

[Sec. 4462 as amended and in effect July 1, 1965]

PAR. 9. Section 45.4462–1 is amended to read as follows:

§ 45.4462–1 Definition of coin-operated gaming device.

(a) *Devices within scope of section 4462(a)*—(1) *In general.* Section 4462(a) includes within its scope any machine which is—

(i) A so-called "slot" machine which operates by means of the insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens, or

(ii) A machine which is similar to machines described in subdivision (i) of this subparagraph and is operated without the insertion of a coin, token, or similar object.

(2) *Examples.* The following devices and machines illustrate the type of machines or devices within the scope of section 4462(a):

(i) A machine which is operated by means of the insertion of a coin, token, or similar object and which, even though it does not dispense cash or tokens, has the features and characteristics of a gaming device whether or not evidence exists as to actual payoffs.

(ii) A so-called crane machine, claw, digger, or rotary merchandising type device which is operated by the insertion of a coin and adjustment of a control lever for the purpose of removing from the machine, by gripping, pushing, or other manipulation articles such as figurines, lighters, etc., in the machine. See, however, § 45.4461–1(c) for exemption of certain devices from the tax imposed by section 4461(a).

(iii) A pinball machine equipped with a pushbutton for releasing free plays and a meter for recording the plays so released, or equipped with provisions for multiple coin insertion for increasing the odds.

(iv) Pinball machines in connection with which free plays are redeemed in cash, tokens, or merchandise, or prizes are offered to any person for the attainment of designated scores.

(v) A coin-operated machine that displays a poker hand or delivers a ticket with a poker hand symbolized on it that entitles the player to a prize if the poker hand displayed by the machine or symbolized on the ticket constitutes a winning hand.

(b) *Exclusions*—(1) *Bona fide vending or amusement machines.* Section 4462(b)(1) specifically excludes from the term "coin-operated gaming device" a bona fide vending or amusement machine in which gaming features are not incorporated. An example of a device in which gaming features are not incorporated is a recording machine which, upon insertion of a coin, records a person's voice, plays the record back, and then delivers the record to the purchaser.

(2) *Certain vending machines.* Section 4462(b)(2) specifically excludes from the term "coin-operated gaming device" a vending machine operated by means of the insertion of a 1-cent coin, which, when it dispenses a prize, never dispenses a prize of a retail value of, or entitles a person to receive a prize of a retail value of, more than 5 cents, and if the only prize dispensed is merchandise and not cash or tokens.

PAR. 10. Immediately after § 45.4463–1, §§ 45.4464 and 45.4464–1 are added, to read as follows:

§ 45.4464 Statutory provisions; credit for State-imposed taxes.

Sec. 4464. *Credit for State-imposed taxes*—(a) *In general.* There shall be allowed as a credit against the tax imposed by section 4461 with respect to any coin-operated gaming device for any year an amount equal to the amount of State tax paid for such year with respect to such device by the person liable for the tax imposed by section 4461, if such State tax (1) is paid under a law of the State in which the place or premises on which such device is maintained or used is located, and (2) is similar to the tax imposed by section 4461 (including a tax, other than a general personal property tax, imposed on such device).

(b) *Limitations*—(1) *Devices must be legal under State law.* Credit shall be allowed under subsection (a) for a tax imposed by a State only if the maintenance of the coin-operated gaming device by the person liable for the tax imposed by section 4461 on the place or premises occupied by him does not violate any law of such State.

(2) *Credit not to exceed 80 percent of tax.* The credit under subsection (a) with respect to any coin-operated gaming device shall not exceed 80 percent of the tax imposed by section 4461 with respect to such device.

(c) *Special provisions for payment of tax.* Under regulations prescribed by the Secretary or his delegate, a person who believes he will be entitled to a credit under subsection (a) with respect to any coin-operated gaming device for any year shall, for purposes of this subtitle and Subtitle F, satisfy his liability for the tax imposed by section 4461 with respect to such device for such year if—

(1) On or before the date prescribed by law for payment of the tax imposed by section 4461 with respect to such device for such year, he has paid the amount of such tax reduced by the amount of the credit which he estimates will be allowable under subsection (a) with respect to such device for such year, and

(2) On or before the last day of such year, pays the amount (if any) by which the credit for such year is less than the credit estimated under paragraph (1).

[Sec. 4464 as originally enacted and in effect July 1, 1972]

§ 45.4464–1 Credit for State-imposed taxes.

(a) *In general.* A person liable for the tax imposed by section 4461 with respect to any coin-operated gaming device for any year is allowed as a credit against such tax an amount equal to the State tax he has paid for such year with respect to such device, if such State tax (1) is paid under a law of the State in which the place or premises on which such device is maintained or used is located, and (2) is similar to the tax imposed by section 4461 (including a tax, other than a general personal property tax, imposed on such device).

(b) *Limitations*—(1) *Device must be legal under State law.* A credit is allowed under paragraph (a) of this section for a tax imposed by a State only if the maintenance of the coin-operated gaming device by the person liable for the tax imposed by section 4461 does not violate any law of such State.

(2) *Credit not to exceed 80 percent of tax.* The credit allowed under paragraph (a) of this section with respect to any coin-operated gaming device may not exceed 80 percent of the tax imposed by section 4461 with respect to such device.

(c) *Special provisions for payment.* A person who believes he will be entitled to the credit described in paragraph (a) of this section with respect to any gaming device for any year may satisfy his liability for the tax imposed by section 4461 upon such device for such year by paying, on or before the date prescribed for payment of such tax, the amount of such tax reduced by the amount of the credit which he estimates in good faith and on the basis of reasonable cause will be allowable under paragraph (a) of this section, and by paying, on or before the last day of such year, the amount (if any) by which the credit based on the estimated State tax for such year exceeds the credit based on the State tax actually paid for such year. Any such excess shall be paid to the Director of the Internal Revenue Service Center where the original Form 11–B was filed. This payment shall be accompanied by a corrected Form 11–B (with the words "Amended Return" written clearly across the top of the return). No interest shall be due on such amount if paid before the end of such taxable year provided that the estimate was made in good faith and on the basis of reasonable cause. However, if not paid before the end of such

year, such amount shall be accompanied by interest, as determined under section 6601, computed from the date prescribed for payment of the tax imposed by section 4461.

(d) *Proof of payment of State tax.* Persons claiming the credit allowed under paragraph (a) of this section shall retain documentary evidence of payment of the State tax upon which the credit is based for at least 3 years after the due date of the tax imposed by section 4461 (with respect to which the credit is claimed) or the date the tax imposed by section 4461 is paid (with respect to which the credit is claimed), whichever is later.

(e) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). On July 1, 1972, X placed in operation one coin-operated gaming device on premises that he occupied in a State where operation of such a device is legal. X is liable for a tax of $250 under section 4461 for the fiscal year beginning July 1, 1972, and ending June 30, 1973. Under the law of the State X is also liable for a tax on such device of $125 for the last 6 months of 1972. In addition, X estimates that he will be liable for State tax of $250 for calendar 1973, of which $125 will be attributable to the first 6 months of 1973. X may reduce his payment for the tax imposed by section 4461, due on or before July 1, 1972, from $250 to $50 by claiming under section 4464 an estimated State tax credit of $200 (i.e., State tax liability of $125 for the last 6 months of 1972 plus $125 for the first 6 months of 1973, but not to exceed 80 percent of the tax imposed by section 4461 for such period).

Example (2). Assume the same facts as in example (1) except that X removed the coin-operated gaming device from his premises on December 31, 1972. Removal of the device eliminates X's liability under State law for 1973. Thus, X is entitled to a credit of only $125 (the amount attributable to the last 6 months of 1972) with respect to such device. Accordingly, in order to satisfy his liability under section 4461 with respect to such device for the period beginning July 1, 1972, and ending June 30, 1973, X must file, on or before June 30, 1973, an amended Form 11-B accompanied by a payment of $75 (i.e., liability under section 4461 of $250 reduced by the sum of the credit of $125 allowable under section 4464 plus the payment of $50 made on or before July 1, 1972). If X fails to pay this $75 on or before June 30, 1973, he will become liable for interest on such amount, computed under section 6601 for the period running from July 1, 1972, until the date of payment.

Subpart D [Deleted]

PAR. 11. Subpart D is deleted.

PAR. 12. Section 45.4816-1 is amended by deleting paragraph (d), by redesignating paragraph (e) as paragraph (d), and by adding the following new paragraphs (e) through (l):

§ 45.4816-1 Exemption in case of exportation of adulterated butter.

* * * * *

(e) *Definition of exportation.* Exportation to a foreign country means the severance of an article from the mass of things belonging within the United States with the intention of uniting it with the mass of things belonging within some foreign country.

(f) *Responsibility for exportation of adulterated butter.* Responsibility for compliance with the provisions of this section with respect to the removal of adulterated butter, without payment of tax, for export to a foreign country, and for the proper exportation of such adulterated butter shall rest upon the manufacturer thereof.

(g) *Liability for tax on adulterated butter.* The manufacturer of adulterated butter shall be liable for the tax imposed thereon by section 4811 if the provisions of this section are not complied with.

(h) *Removal for export.* (1) To exempt from tax a removal of adulterated butter from the place of manufacture for export to a foreign country both of the following conditions must me met: (i) The adulterated butter so removed must be identified as having been removed from the place of manufacture by the manufacturer for export to a foreign country, and (ii) the adulterated butter so removed must be exported to a foreign country in due course.

(2) Adulterated butter will be regarded as having been removed from the place of manufacture by the manufacturer for export to a foreign country if the manufacturer has in his possession at the time of removal from the place of manufacture a written order or contract of sale showing that the manufacturer is to ship the adulterated butter to a foreign destination.

(3) The written order or contract of sale referred to in subparagraph (2) of this paragraph suspends liability for payment of the tax by the manufacturer for such removal from the place of manufacture for export to a foreign country for a period of 6 months from the date of removal of such adulterated butter.

(i) *Proof of exportation to a foreign country*—(1) *Other than by parcel post.* Exportation to a foreign country may be evidenced by (i) a copy of the export bill of lading issued by the delivering carrier, or (ii) a certificate by the agent or representative of the export carrier showing actual exportation of the adulterated butter, or (iii) a certificate of landing signed by a customs officer of a foreign country to which the adulterated butter is exported, or (iv) where such foreign country has no customs administration, a statement of the foreign consignee showing receipt of the adulterated butter. If, within a period of 6 months from the date of removal of such adulterated butter, the manufacturer has not received and attached to the order or contract proper "proof of exportation," then the temporary suspension of the liability for the payment of the tax ceases and such liability shall become immediately due and payable. Such tax shall be paid to the district director for the district in which is located the place of manufacture from which the shipment is made, with sufficient information to identify the taxpayer and the nature and purpose of the payment. However, if proof of exportation later becomes available, a claim for refund of any tax paid may be filed on Form 843, but such action must be taken within the 3-year period prescribed by section 6511.

(2) *Exportation by parcel post.* If adulterated butter is exported to a foreign country by parcel post, the manufacturer thereof shall have a statement prepared for use with each package so exported on which shall be shown such information as the destination, order or invoice number, the contents of the package, the name of the vendee, etc. Upon mailing the package described in the statement, the manufacturer shall have the statement stamped by the local postmaster as evidence of said package having been received by him for exportation by parcel post. A waiver of the manufacturer's right to withdraw such package from the mails shall be stamped or written on each package and such waiver shall be signed by the manufacturer making the shipment.

(j) *Bond.* If the district director deems it necessary in order to protect the revenue, a bond may be required of any manufacturer removing adulterated butter from the place of manufacture for export to a foreign country. The penal sum of such bond shall be in an amount specified by the district director in a notice mailed to the manufacturer. For other provisions relating to bonds, see §§ 301.7101 and 301.7101-1 of this chapter (Regulations on Procedure and Administration).

(k) *Miscellaneous*—(1) *Diversion of shipment to another export consignee.* After removal of a shipment of adulterated butter from the place of manufacture for export to a foreign country in accordance with the provisions of paragraph (h)(2) of this section, the manufacturer of such adulterated butter may divert the shipment to another consignee for export to a foreign country provided he has in his possession a written order or contract of sale as provided in paragraph (h)(2) of this section from such other consignee.

(2) *Return of shipment to factory.* In case a consignee, for whom a manufacturer removes adulterated butter from his place of manufacture in accordance with a written order or contract of sale for export to a foreign country, modifies or cancels his written order or contract of sale for export, the manufacturer may return the shipment of such adulterated butter to his place of manufacture provided he maintains adequate records relating to such return.

(l) *Removal to foreign-trade zones*—(1) *In general.* Adulterated butter may be removed from the place of manufacture without having stamps affixed thereto for delivery to a foreign-trade zone for exportation. Such removal and delivery thereof to a foreign-trade zone is considered an exportation.

(2) *Definition of foreign-trade zone.* "Foreign-trade zone" or "zone," as used in this section, means a foreign-trade zone established and operated pursuant to section 81 of title 19 of the United States Code.

(3) *Proof of delivery to a foreign-trade zone.* A manufacturer of adulterated butter who removes such adulterated butter from the place of manufacture for delivery to a foreign-trade zone without affixing stamps thereto shall maintain adequate records of all such removals and shall keep sufficient written proof of such removals and deliveries as may be necessary to substantiate actual delivery of the adulterated butter to the foreign-trade zone. The records referred to in the preceding sentence shall be retained by the manufacturer and made available for inspection by any revenue officer upon his request.

Subpart J [Deleted]

PAR. 13. Subpart J is deleted.

§ 45.4901 [Amended]

PAR. 14. Section 45.4901 is amended by deleting "4461(2) [4461(a)(2)] (coin-operated gaming devices), * * *" in section 4901(a) and inserting in lieu thereof "4461(a)(1) (coin-operated gaming devices)" and by amending the historical note to read "[Sec. 4901 as amended and in effect May 1, 1971]".

PAR. 15. Section 45.4901–1 is amended as follows:

1. Paragraph (a) is amended by revising the first and last sentences to read as set forth below.

2. Paragraph (b) is amended by deleting "amusement and" from the second sentence.

3. Paragraph (c)(1) is amended by deleting "district director" and inserting in lieu thereof "director of the service center".

4. Paragraph (c) (2) and (3) is amended by deleting "District directors" and inserting in lieu thereof "Directors of service centers".

§ 45.4901–1 Payment of special tax.

(a) *Conditions precedent to carrying on certain business.* No person shall maintain for use or permit the use of, on any place or premises occupied by him, a coin-operated gaming device defined in section 4462(a) (see paragraphs (a) and (b) of § 45.4462–1) until he has filed a return on Form 11–B and paid the special tax imposed by section 4461 (a)(1). * * * For registration requirements relating to special taxes imposed by sections 4461, 4821, and 4841, see §§ 45.7011 and 45.7011–1.

* * * * *

PAR. 16. Section 45.4905 is amended by revising section 4905(b)(1) and the historical note to read as follows:

§ 45.4905 Statutory provisions; liability in case of death or change of location.

Sec. 4905. *Liability in case of death or change of location.* * * *

(b) *Registration.* (1) For registration in case of * * * white phosphorus matches, see sections * * * 4804(d) * * *.

[Sec. 4905 as amended and in effect May 1, 1971]

§ 45.4905–1 [Amended]

PAR. 17. Section 45.4905–1 is amended as follows:

1. Paragraph (a) is amended by deleting "4471," in the first sentence and by deleting "district director" and inserting in lieu thereof "director of the service center" in the last sentence.

2. Paragraph (b) is amended by deleting "district director" and inserting in lieu thereof "director of the service center" in the last sentence.

3. Paragraph (c) is amended by deleting "4471," in the fourth sentence.

4. Paragraph (d) is amended by deleting "district director" and inserting in lieu thereof "director of the service center" in the first sentence.

PAR. 18. Section 45.4905–2 is amended as follows:

1. Paragraph (a) is amended by deleting "district director" and inserting in lieu thereof "director of the service center" in the first and second sentences.

2. Paragraph (b) is amended to read as follows:

§ 45.4905–2 Change of address.

* * * * *

(b) *Procedure by director of service center—(1) Removal within area served by service center.* When registration of a change of address within the same area served by the service center is made by a taxpayer in the manner specified in paragraph (a) of this section, the director of the service center will enter on his records the new address and the date of change. If the information disclosed on the supplemental return is such as to require a change on the face of the special tax stamp, the director of the service center will make the necessary change and return the stamp to the taxpayer for posting as provided in § 45.6806.

(2) *Removal to an area served by another service center.* In case of removal of the taxpayer's place of business to an area served by another service center, the director of the service center after noting the transfer on his records, shall transmit the special tax stamp to the director of the service center for the area to which such business was removed. The latter will make proper entry on his records, as in the case of an original registration in his area, correct the address on the stamp, and also note thereon his name, title, date, and area, and then forward the stamp to the taxpayer for posting as provided in § 45.6806.

§ 45.6001–5 [Amended]

PAR. 19. Paragraph (c) of § 45.6001–5 is deleted.

§ 45.6001–6 [Amended]

PAR. 20. Section 45.6001–6 is amended by deleting "4451, 4461, 4471, 4591, 4801, 4811, 4821, 4831, 4841, 4851, or 4891" and inserting in lieu thereof "4461, 4591, 4801, 4811, 4821, 4831, 4841, or 4851" in paragraph (a) and by inserting "or directors of service centers" after "district directors" in the first sentence of paragraph (b).

§ 45.6001–8 [Deleted]

PAR. 21. Section 45.6001–8 is deleted.

§ 45.6001–11 [Amended]

PAR. 22. Section 45.6001–11 is amended by deleting "or 4471" in the first sentence of paragraph (a) and by deleting "4432 (a)(2)" and inserting in lieu thereof "4462(a)" in the last sentence of paragraph (c).

§ 45.6001–12 [Amended]

PAR. 23. Section 45.6001–12 is amended by deleting paragraph (c).

§ 45.6071–1 [Amended]

PAR. 24. Section 45.6071–1 is amended by deleting "§§ 45.6001–8 to 45.6001–10, inclusive," and inserting in lieu thereof "§ 45.6001–9 or § 45.6001–10" in the first sentence of paragraph (a) and by deleting paragraph (b)(2).

§ 45.6071–2 [Amended]

PAR. 25. Section 45.6071–2 is amended as follows:

1. Paragraph (a) is amended by deleting "4462(a)(2)" and inserting in lieu thereof "4462(a)" and by deleting "4461 (a)(2)" and inserting in lieu thereof "4461(a)" in the first sentence and by deleting "4461(a)(2)" and inserting in lieu thereof "4461(a)" in the fourth sentence.

2. Paragraph (b) is amended by deleting "4461(a)(1) (relating to coin-operated amusement devices), 4471 (relating to bowling alleys, billiard and pool tables", and the comma after "butter," in the first sentence and by deleting "or Form 11–B, as the case may be," from the first and last sentences.

§ 45.6091–2 [Deleted]

PAR. 26. Section 45.6091–2 is deleted.

§ 45.6101–1 [Amended]

PAR. 27. Section 45.6101–1 is amended by deleting "paragraphs (b) and (c)" and inserting in lieu thereof "paragraph (b)" from paragraph (a), by deleting paragraph (b), and by redesignating paragraph (c) as paragraph (b).

§ 45.6109–1 [Amended]

PAR. 28. Section 45.6109–1 is amended by deleting "4471," from the first sentence of paragraph (a)(1), from paragraph (a)(2) and from paragraph (b).

§ 45.6151 [Amended]

PAR. 29. Section 45.6151 is amended by deleting "principal internal revenue officer for the internal revenue district in which the return is required to be" and inserting in lieu thereof "internal revenue officer with whom the return is" in section 6151(a) and by revising the historical note to read "[Sec. 6151 as amended and in effect November 2, 1966]".

§ 45.7011–1 [Amended]

PAR. 30. Section 45.7011–1 is amended by deleting "taxes imposed by sections 4461 and 4471" and inserting in lieu thereof "tax imposed by section 4461" in the first sentence and by deleting "4461 (a)(2)" and inserting in lieu thereof "4461(a)" in the last sentence.

PAR. 31. Section 45.7011–3 is amended to read as follows:

§ 45.7011–3 Registration; other requirements.

For requirements for registration by manufacturers of white phosphorus matches, see § 45.4804–8.

§ 45.7272 [Amended]

PAR. 32. Section 45.7272 is amended by deleting "4455, * * *" in section 7272(b) and by revising the historical note to read "[Sec. 7272 as amended and in effect June 22, 1965]".

§ 45.7326 [Amended]

PAR. 33. Section 45.7326(a) is amended by deleting "disposals" in the heading and inserting in lieu thereof "disposal," by deleting "4462(a)(2)" and inserting in lieu thereof "4462" in section 7326(a), and by revising the historical note to read "[Sec. 7326(a) as amended and in effect May 1, 1971]".

§ 45.7510–1 [Amended]

PAR. 34. Section 45.7510–1 is amended by deleting "and playing cards" from the section heading and the first sentence.

§ 45.7510–2 [Amended]

PAR. 35. Section 45.7510–2 is amended as follows:

1. Paragraph (a) is amended by deleting "or playing cards".

2. Paragraph (c) is amended by deleting "or playing cards" from the sentence enclosed by parentheses at the beginning of the exemption certificate form.

§ 45.7510–3 [Amended]

PAR. 36. Paragraph (a) of § 45.7510–3 is deleted.

§ 45.7641 [Amended]

PAR. 37. Section 45.7641 is amended by deleting "* * *" from section 7641 and by revising the historical note to read "[Sec. 7641 as amended and in effect May 1, 1971]".

PAR. 38. Section 45.7701 is amended by revising section 7701(a)(12) and the historical note to read as follows:

§ 45.7701 Statutory provisions; definitions.

Sec. 7701. *Definitions.* (a) * * *

(12) *Delegate*—(A) *In general.* The term "Secretary or his delegate" means the Secretary of the Treasury, or any officer, employee, or agency of the Treasury Department duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform the function mentioned or described in the context, and the term "or his delegate" when used in connection with any other official of the United States shall be similarly construed.

(B) * * *

* * * * *

(Sec. 7701 as amended and in effect Sept. 13, 1960)

[FR Doc.73-4403 Filed 3-6-73;8:45 am]

DEPARTMENT OF DEFENSE

Office of the Secretary

[32 CFR Part 216]

USE OF OFF-ROAD VEHICLES

Notice of Proposed Rule Making

Executive Order 11644, "Use of Off-Road Vehicles on the Public Lands," (37 FR 2877, February 9, 1972) requires that the Secretary of Defense shall develop and issue regulations and administrative instructions to: (a) Provide for administrative designation of the specific areas and trails on which use of off-road vehicles may be permitted, and areas on which the use of off-road vehicles may not be permitted, and set a date by which such designation of all defense lands shall be completed; and (b) develop and publish regulations prescribing operating conditions for off-road vehicles on defense lands. The following proposed Department of Defense regulation complies with the requirements of the Executive Order.

Interested persons are invited to submit such written comments and suggestions concerning the proposed regulation as they may desire. Communications should identify the subject matter by the above title and should be submitted to the Assistant Secretary of Defense (Health and Environment), Room 3D–171, Pentagon, Washington, D.C. 20301. All communications received on or before April 6, 1973, will be considered before issuing the regulation. The proposed Department of Defense regulation contained in this notice may be changed in light of the comments received. A copy of each submittal will be available for public inspection during business hours, both before and after the closing date set forth above, at the above address.

PART 216—USE OF OFF-ROAD VEHICLES

Sec.

AUTHORITY: Executive Order 11644 (37 FR 2877, Feb. 9, 1972) and the general authority of 5 U.S.C. sec. 301.

§ 216.1 Purpose and scope.

(a) This part establishes uniform policies, procedures and criteria for (1) the designation of Department of Defense lands where use of off-road vehicles will and will not be permitted and (2) appropriate operating conditions for such vehicles.

(b) Its objective is to establish conditions for control of off-road vehicles, including possible access for use of such vehicles by the public to ensure that (1) the national security requirements related to the Department of Defense lands are not impaired, (2) the natural resources and environmental values are protected, (3) safety and accident prevention is given a paramount consideration, and (4) conflicts of use are minimized.

§ 216.2 Applicability.

The provisions of this part apply to the Department of Defense components with land management responsibilities.

§ 216.3 Policy.

The Department of Defense has a primary mission of national defense and security and must utilize its total resources toward achieving this mission. The Department of Defense is an important occupier of Federal lands and has an obligation to the American people to act responsibly and effectively in the management of lands and waters under military control. While this management includes programs for conservation of the renewable natural resources, protection and enhancement of environmental quality, protection from accidental injury, loss or damage to resources, and opportunities for outdoor recreation, it must be recognized that national defense and security requirements will be fully considered in developing comprehensive management plans for Department of Defense lands and waters. All Department of Defense lands and waters will be closed to off-road vehicle use, except those areas and trails specifically designated for such use in accordance with this part. The environmental impacts of off-road vehicle use will be assessed and when such use will create significant environmental impacts, an environmental statement will be prepared and processed in accordance with Part 214 of this chapter and agency regulations.

§ 216.4 Definitions.

(a) For the purpose of this part, the following terms, respectively, shall mean:

(1) *Off-road vehicle.* Any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; except that such term excludes (i) any registered motorboat, (ii) any military, fire, ambulance, or law enforcement vehicle when used for emergency purposes and (iii) any vehicle whose use is authorized by the Secretary of Defense, or his properly designated representative, under a permit, lease, license, or contract.

(2) *Official use.* Use by an employee, agent, or designated representative of the Federal Government or one of its

contractors in the course of his employment, agency, or representation.

§ 216.5 Responsibilities.

(a) The Secretaries of the Military Departments shall:

(1) Establish procedures for evaluating, assessing, and designating areas and trails where off-road use will and will not be permitted, utilizing but not limited to the guidelines and criteria contained in § 216.7.

(i) Such designations shall be a part of the natural resources management planning and incorporated in the final installation management plan. Where appropriate, these designations may be included as part of the installation master development plan.

(ii) All lands where off-road vehicle use will and will not be permitted will be designated prior to June 30, 1974.

(iii) Where Department of Defense lands will accommodate off-road vehicle use by the public, installation commanders shall insure that adequate opportunity for participation by the general public, user groups, and conservation organizations is afforded in the process of selection and designation of the specific areas and trails and uses to be permitted on those areas and trails.

(iv) The limitations of off-road vehicle use imposed under this part shall not apply to official use.

(2) Establish regulations, prior to August 31, 1973, prescribing the operating conditions for off-road vehicles. These regulations shall be directed at protecting resource values, preserving public health, safety, and welfare, accident prevention, and minimizing use conflicts and will include provisions for registration, permits, fees for use of properties, and liability insurance requirements for users.

(3) Insure adequate notification to potential users, including distribution of information maps, indicating areas and trails where off-road vehicle use is and is not permitted. Appropriate signs designating areas and operating conditions off-road vehicle use is prohibited will trails designating such use. Areas where off-road vehicle use is prohibited will also be adequately posted.

(4) Provide proper administration, enforcement, and policing of trails and areas to insure that conditions of use are met on a continuing basis.

(5) Establish appropriate procedures to monitor the effects of the use of off-road vehicles. This monitoring may be the basis for changes to agency regulations to ensure adequate control of off-road vehicle use and amendment of area and trail designations to protect the environment, ensure the public safety, and minimize conflicts among users.

§ 216.6 Enforcement.

Persons abusing the privilege of using designated areas and trails under these regulations shall, with their vehicles, be barred from further access to the installation for this purpose. Such further action in a particular case as the circumstances may require will be taken (see, e.g., 18 U.S.C. Sec. 1382). Cooperative agreements with State or local governments for the enforcement of laws and regulations relating to off-road vehicle use will be entered into where appropriate.

§ 216.7 Guidelines and criteria for evaluation of Department of Defense lands for off-road vehicle use.

(a) *Designation.* (1) Department of Defense lands which satisfy the following characteristics may be designated for off-road vehicle use providing there exists a clear and demonstrated need and that other lands more suitable are not available.

(i) Areas which are not restricted for security, safety or accident prevention purposes.

(ii) Areas which do not contain soil conditions, flora or fauna or other natural characteristics of a fragile or unique nature which would be subject to excessive damage by use of off-road vehicles.

(iii) Areas which are not managed for wildlife habitat purposes.

(iv) Areas which do not contain archeological, historical, or paleontological resources; or which constitute de facto wilderness or scenic areas; or in which noise would adversely affect other users and wildlife resources.

(2) Lands which are found to satisfy the requirements for off-road vehicle use will be zoned for areas and trails.

(i) *Areas.* The very nature of off-road vehicles dictates that the majority of use will occur over areas which have not been developed for specific vehicular use. Off-road vehicles are manufactured, advertised, sold, and purchased within the concept that the purpose and sport of operating these vehicles lies in operation over rugged, undeveloped terrain. To invite users of off-road vehicles to areas which are designated for that purpose rather than areas restricted from such use, the designated area must contain topography suitable to the vehicles that will be used and have ready access by the public.

(ii) *Trails.* Where it is practicable to designate existing or proposed trails for use by off-road vehicles without conflict with other public uses or without loss of natural characteristics of the areas resulting in environmental despoilment, degrading local safety or accident prevention programs, such designation should be accomplished.

(iii) Areas for off-road vehicles use shall be categorized as follows: (*a*) Generally open with controlled public access within manageable quotas; (*b*) installation personnel and guests; (*c*) installation personnel; (*d*) closed.

(b) *Zones of use.* The designation of such areas will be in accordance with the following:

(1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to insure the compatibility of such uses with existing conditions in populated areas, taking into account noise, safety, accident prevention, and other factors.

(c) *Environmental considerations.* Prior to designation of areas or trails for use by off-road vehicles, consideration will be given by competent, responsible individuals to possible traumatic effects on the environment of the area. Such considerations shall not be limited to the proposed designated area or trail, but shall also encompass adjacent areas which may be affected.

(1) *Air.* Air quality which could be affected by dust from the use of off-road vehicles and internal combustion engines will be considered.

(2) *Water.* Siltation and water quality of streams or other bodies of water due to soil erosion created by off-road vehicles will be considered.

(3) *Soils.* Soil erodability and compaction as well as desirability for proposed use by off-road vehicles will be considered.

(4) *Vegetation.* The protection of native and desirable species of plants and grasses will be considered.

(5) *Wildlife.* Breeding grounds, drumming grounds, winter feeding, and yarding grounds, migration routes, and nesting areas will be considered. Spawning, migration, and feeding habits of fish and other aquatic organisms will be considered where off-road vehicles will be used in streams or other bodies of water. Particular attention will be given to off-road vehicle use which could have adverse effects on rare or endangered species of plants and animals in the immediate area or in adjacent areas.

(6) *Noise, Safety, and Accident Prevention.* Excessive noise as it affects humans and wildlife (and accidental injury, damage, or loss to DoD resources) will be considered.

(7) *Esthetics.* Potential despoilment of visual characteristics will be considered.

(d) *Operating criteria.* (1) Off-road vehicles shall not be operated in a reckless, careless, or negligent manner; in excess of established speed limits; and in a manner likely to cause excessive damage or disturbance of the land, wildlife, or vegetative resources.

(2) All off-road vehicles must conform to applicable State laws and registration requirements established for such vehicles; shall be equipped with proper muffler and spark arrestor and proper brakes, and utilize working headlights and taillights between dusk and dawn; and off-road vehicles which produce unusual or excessive noise shall not be permitted.

§ 216.8 References.

(a) National Environmental Policy Act of 1969 (Public Law 91-190; 42 U.S.C. 4321).

(b) Executive Order 11644, "Use of Off-Road Vehicles on the Public Lands," February 8, 1972 (37 FR 2877, February 9, 1972).

(c) 32 CFR Part 214, "Environmental Considerations in Department of Defense Actions," August 18, 1971. (DoD Directive 6050.1).

(d) 32 CFR Part 263, "Natural Resources—Conservation and Management," May 24, 1965. (DoD Directive 5500.5).

(e) 5 U.S.C. section 301.

MAURICE W. ROCHE,
Director, Correspondence and Directives Division, OASD (Comptroller).

[FR Doc.73-4372 Filed 3-6-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 3110]

SIMULTANEOUS OFFERS

Noncompetitive Leases; Oil and Gas Leasing; Time Extension for Comments

The time within which written comments on the proposed rule making to (a) clarify the regulations by specifying that an applicant may file only one lease application on any parcel offered under the simultaneous oil and gas leasing procedures and (b) eliminate the requirement that advance rental must be submitted with simultaneous lease offers, which was published in the FEDERAL REGISTER, Vol. 38, No. 7, January 11, 1973 (38 FR 1281), as modified January 18, 1973 (38 FR 1746), is hereby extended from February 9, 1973, to May 1, 1973.

At the request of interested parties, the time period for submission of comments on these proposed regulations has been extended to give the general public an extended opportunity for review. Accordingly, interested parties may submit written comments, suggestions, or objections with respect to the proposed regulations to the Director (210), Bureau of Land Management, Washington, D.C. 20240 until May 15, 1973.

JOHN C. WHITAKER,
Acting Secretary of the Interior.

FEBRUARY 28, 1973.

[FR Doc.73-4298 Filed 3-6-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 52]

APPLE BUTTER [1]

Proposed Standards for Grades

Notice is hereby given that the United States Department of Agriculture is considering the revision of the United States Standards for Grades of Apple Butter pursuant to the authority contained in the Agricultural Marketing Act of 1946 (Sec. 205, 60 Stat. 1090; as amended; 7 U.S.C. 1624). This revision, if made effective, will be the third issue by the Department of grade standards for this product. The cited section of the Agricultural Marketing Act of 1946 provides for the issuance of official United States grades to designate different quality levels for the voluntary use of producers, buyers, and consumers. Official grading services are also provided for under this Act upon request and upon payment of the fee to cover the cost of such services.

Interested persons desiring to submit written data, views, or arguments for consideration in connection with the proposal should file the same, in duplicate, not later than April 15, 1973, with the Hearing Clerk, U.S. Department of Agriculture, Room 112 Administration Building, Washington, D.C. 20250. All written submissions made pursuant to this notice will be made available for public review at the office of the Hearing Clerk during regular business hours (7 CFR, 1.27(b)).

STATEMENT OF CONSIDERATION LEADING TO THE PROPOSED REVISION

The currently effective USDA Color Standards for Apple Butter no longer depict the color product most in demand by consumers. A recent study of market samples from some 30 locations across the United States showed colors ranging from a very light brown product to a very dark brown product.

The proposed revisions to the standard would establish new color standards for fancy color falling within the three general classifications—light, medium, and dark.

In accord with established Department policy the proposed revision also would change the nomenclature of the present U.S. Grade C to U.S. Grade B.

The point spread in each grade would be 10 points instead of 15 points and the points allowed for each scoring factor would be adjusted accordingly.

Interested persons are invited to view the proposed USDA Color Standards (L.1, L.2, 12328, M.1, M.2, 12329, D.1, and D.2) mentioned in § 52.2806 by phone appointment at the following Processed Products Inspection Offices between 10 a.m. and 4 p.m. during the periods listed:

Office	*Dates*
Washington, D.C.; 14th and Independence Avenue, South Agriculture Building, room 0713 or 0718 (202) 447-6193 or (202) 447-3825.	Feb. 1, 1973, to Apr. 1, 1973.
Baltimore, Md.; 103 South Gay Street, room 534 Appraisers Stores Building, (301) 962-2474.	Feb. 1, 1973, to Apr. 1, 1973.
Richmond, Va.; Division of Markets, 1 North 14th Street, room 332 (703) 770-2422.	Feb. 1, 1973, to Apr. 1, 1973.
Albert Lea, Minn.; Post Office Building, room 3 (507) 373-2188.	Feb. 1, 1973, to Apr. 1, 1973.
Fayetteville, Ark.; 440 Mission Boulevard (501) 443-2301, ext. 573.	Feb. 1, 1973, to Apr. 1, 1973.
Van Wert, Ohio; 105 Fisher Avenue (419) 238-4105.	Feb. 1, 1973, to Apr. 1, 1973.
San Jose, Calif.; 1438 South First Street (408) 275-7468.	Feb. 1, 1973, to Apr. 1, 1973.
Seattle, Wash.; 1917 First Avenue, room 207 (206) 442-7525.	Feb. 1, 1973, to Apr. 1, 1973.

The proposed revision is as follows:

IDENTITY AND GRADES

Sec.
52.2801 Identity.
52.2802 Grades of apple butter.

FILL OF CONTAINER

52.2803 Recommended fill of container.

FACTORS OF QUALITY

52.2804 Determining the grade of a sample unit.
52.2805 Determining the rating for the factors which are scored.
52.2806 Color.
52.2807 Consistency.
52.2808 Finish.
52.2809 Defects.
52.2810 Flavor.

LOT COMPLIANCE

52.2811 Determining the grade of a lot.

SCORE SHEET

52.2812 Score sheet for apple butter.

AUTHORITY: Sec. 205, 60 Stat. 1090, as amended; 7 U.S.C. 1624.

IDENTITY AND GRADES

§ 52.2801 Identity.

Apple butter is a fruit butter prepared from clean, sound, wholesome, mature apples (either fresh, frozen, canned and/or dried), and other ingredients as defined in the amended Standards of Identity for Fruit Butter (21 CFR 29.1) issued pursuant to the Federal Food, Drug, and Cosmetic Act. The apples are prepared by cooking, with or without added water, and the skins, seeds, and cores are screened out. The soluble solids are not less than 43 percent.

§ 52.2802 Grades of apple butter.

(a) U.S. Grade A (or U.S. Fancy) is the quality of apple butter that has a good color; that has a good consistency; that has a good finish; that is practically free from defects; that has a good flavor, and that scores not less than 90 points when scored in accordance with the scoring system outlined in this subpart.

(b) U.S. Grade B (or U.S. Choice) is the quality of apple butter that has a reasonably good color; that has a reasonably good consistency; that has a reasonably good finish; that is reasonably free from defects; that has a reasonably good flavor, and that scores not less than 80 points when scored in accordance with the scoring system outlined in this subpart.

(c) Substandard is the quality of apple butter that fails to meet the requirements of U.S. Grade B.

FILL OF CONTAINER

§ 52.2803 Recommended fill of container.

The recommended fill of container is not incorporated in the grades of the finished product since fill of container

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

as such, is not a factor of quality for the purposes of these grades. It is recommended that each container of apple butter be filled as full as practicable without impairment of quality and that the product occupy not less than 90 percent of the capacity of the container.

FACTORS OF QUALITY

§ 52.2804 Determining the grade of a sample unit.

(a) The grade of a sample unit of apple butter is determined by considering the factors of quality which are scored. The relative importance of each such factor is expressed numerically on the scale of 100. The maximum number of points that may be given such factors are:

Factors	*Points*
Color	20
Consistency	20
Finish	20
Defects	20
Flavor	20
Total score	100

§ 52.2805 Determining the rating for the factors which are scored.

The essential variations within each factor which is scored are so described that the value may be determined for each factor and expressed numerically. The numerical range within each factor which is scored is inclusive. (For example, "18 to 20 points" means 18, 19, or 20 points.)

§ 52.2806 Color.

(a) *General.* The color of apple butter refers to the color hue and color intensity of the overall mass regardless of the texture of the product.

(b) The proposed revised U.S. Department of Agriculture Color Standards for Apple Butter (hereinafter referred to as "USDA Colors") shall be viewed under standard lighting conditions as follows: Compare the color of the color standard with a representative sample of apple butter having an area and depth approximately equal to the color standard. A suitable light source of approximately 250-foot candle intensity and having a spectral quality approximating that of daylight under a moderately overcast sky and a color temperature of 7,500° Kelvin ±200° is preferable. With the light source directly over the color standard and product, observation is made at an angle of 45° and at a distance of about 24 inches from the product.

(c) The USDA Color Standards will be available only from the licensed supplier: (Name to be supplied at a later date.)

(d) (*A*) *classification.* Apple butter that has a good color may be given a score of 18 to 20 points. "Good color" means that the color of the finished product is bright, lustrous, and is characteristic of properly prepared and processed apple butter. In addition, "good color" has the following meanings with respect to the following color types:

(1) *Light.* The color shall be no lighter than USDA Color L.1, nor darker than USDA Color M.1. The color need not match, but must be equal to or better than, the referenced USDA colors. The color may be more red, brighter, or somewhat more translucent. USDA Color L.2 is an intermediate reference in the light range.

(2) *Medium.* The color shall be no lighter than USDA Color M.1, nor darker than USDA Color D.1. The color need not match, but must be equal to, or better than, the referenced USDA colors. The color may be more red, brighter, or somewhat more translucent. USDA Colors M.2 and 12328 are intermediate references in the medium range.

(3) *Dark.* The color shall be no lighter than USDA Color D.1, nor darker than USDA Color D.2. The color need not match, but must be equal to, or better than, the referenced USDA colors. The color may be more red, brighter, or somewhat more translucent. USDA Color 12329 is an intermediate reference in the dark range.

(e) (*B*) *Classification.* Apple butter that has a reasonably good color may be given a score of 16 or 17 points. Apple butter that falls into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably good color" means that the color of the finished product may be dull, is reasonably uniform, and in addition has the following meanings with respect to the following color types:

(1) *Light.* The color may be lighter than USDA Color L.1 or may be less red than these USDA colors, but is not off-color.

(2) *Medium.* The color may be less red than USDA Colors M.1 or D.1, but is not off-color.

(3) *Dark.* The color may be darker or may be less red than USDA Color D.2, but is not off-color.

(f) (*SStd*) *classification.* Apple butter that fails to meet the requirements for U.S. Grade B may be given a score of 0 to 15 points. Apple butter that falls into this classification shall not be graded above Substandard regardless of the total score for the product (this is a limiting rule).

§ 52.2807 Consistency.

"Consistency" refers to the firmness of the apple butter and the tendency to resist flow characteristics and separation of free liquor.

Consistency is evaluated by first stirring, then emptying the contents of the container onto a flat dry surface.

(a) (*A*) *classification.* Apple butter that has a good consistency may be given a score of 18 to 20 points. "Good consistency" means that the apple butter forms a moderately mounded mass and that at the end of 2 minutes there is practically no separation of free liquor.

(b) (*B*) *classification.* Apple butter that has a reasonably good consistency may be given a score of 16 or 17 points. Apple butter that falls into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably good consistency" means that the apple butter may be thick so that it does not pour readily from the container; or, after emptying from the container to a dry flat surface, may form only a slightly mounded mass and at the end of 2 minutes there is no more than a slight separation of free liquor.

(d) (*SStd*) *classification.* Apple butter that fails to meet the requirements for U.S. Grade B may be given a score of 0 to 15 points and shall not be graded above Substandard regardless of the total score for the product (this is a limiting rule).

§ 52.2808 Finish.

(a) *General.* The factor of finish refers to the size and texture of the apple particles.

(b) (*A*) *classification.* Apple butter that has a good finish may be given a score of 18 to 20 points. "Good finish" means that the product is fine grained, smooth, and practically free from gummy pectinous granules.

(c) (*B*) *classification.* Apple butter that has a reasonably good finish may be given a score of 16 or 17 points. Apple butter that falls into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably good finish" means that the product may be slightly coarse; the apple particles are neither hard nor excessively grainy; and is reasonably free from gummy pectinous granules.

(d) (*SStd*) *classification.* Apple butter that fails to meet the requirements for U.S. Grade B may be given a score of 0 to 15 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.2809 Defects.

(a) *General.* The factor of defects refers to the degree of freedom from such defects as black specks (except those attributable to ground spices) dark scale-like particles, particles of carpel tissue, peel, stem, seed-coat, and blossom-end material. This factor is evaluated by observing a layer of the product on a smooth white surface. Such a layer is prepared by drawing a scraper, with an indentation 3/32-inch high by 7 inches long for clearance, rapidly through the product in two horizontal planes so as to form an approximate square.

(b) (*A*) *classification.* Apple butter that is practically free from defects may be given a score of 18 to 20 points. "Practically free from defects" means that any defects present do not more than slightly affect the appearance or edibility of the product.

(c) (*B*) *classification.* Apple butter that is reasonably free from defects may be given a score of 16 or 17 points. Apple butter that falls into this classification shall not be graded above U.S. Grade B regardless of the total score for the product (this is a limiting rule). "Reasonably free from defects" means that any defects present may be noticeable but are not so large, so numerous, or of such contrasting color as to seriously affect the appearance or edibility of the product.

(d) (*SStd*) *classification.* Apple butter that fails to meet the requirements for U.S. Grade B may be given a score of 0 to 15 points and shall not be graded above Substandard regardless of the total score for the product (this is a limiting rule).

§ 52.2810 Flavor.

(a) *General.* The score for the factor of flavor of apple butter is determined by considering the flavor and aroma of the apple butter with particular consideration given to the flavor balance of the ingredients.

(b) *(A) classification.* Apple butter that has a good flavor may be given a score of 18 to 20 points. "Good flavor" means a good and distinct flavor and aroma characteristic of properly prepared and properly processed apple butter prepared from good quality ingredients.

(c) *(B) classification.* Apple butter that has a reasonably good flavor may be given a score of 16 or 17 points. Apple butter that falls into this classification shall not be graded above U.S. Grade B regardless of the total score for the product (this is a limiting rule). "Reasonably good flavor" means a characteristic apple butter flavor and odor that may be excessively sweet or excessively tart, may be excessively spiced or lacking in proper spicing, or may be excessively caramelized but is not seriously objectionable for any reason.

(d) *(SStd) classification.* Apple butter that fails to meet the requirements for U.S. Grade B may be given a score of 0 to 15 points and shall not be graded above Substandard regardless of the total score for the product (this is a limiting rule).

LOT COMPLIANCE

§ 52.2811 Determining the grade of a lot.

The grade of a lot of apple butter covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (§§ 52.1 to 52.87).

SCORE SHEET

§ 52.2812 Score sheet for apple butter.

Size and kind of container ....
Label ....
Container mark or identification ....
Net weight (ounces) ....
Soluble solids (percent by refractometer) ....
Color type (light, medium, dark) ....

Factors		Score Points	
Color	20	(A)	18-20
		(B)	[1] 16-17
		(SStd)	[1] 0-15
Consistency	20	(A)	18-20
		(B)	[1] 16-70
		(SStd)	[1] 0-15
Finish	20	(A)	18-20
		(B)	[1] 16-17
		(SStd)	[1] 0-15
Defects	20	(A)	18-20
		(B)	[1] 16-17
		(SStd)	[1] 0-15
Flavor	20	(A)	18-20
		(B)	[1] 16-17
		(SStd)	[1] 0-15
Total score	100		

Grade ....

[1] Indicates limiting rule.

Dated: February 28, 1973.

E. L. PETERSON,
Administrator,
Agricultural Marketing Service.

[FR Doc.73-4339 Filed 3-6-73;8:45 am]

Commodity Exchange Authority

[17 CFR Part 1]

TRADING IN "PUTS" AND "CALLS" IN NONREGULATED COMMODITIES

General Regulations Under the Commodity Exchange Act

Notice is hereby given in accordance with administrative procedure provisions of 5 U.S.C. section 553 that the Secretary of Agriculture, pursuant to the authority of sections 3, 4f, and 8a of the Commodity Exchange Act (7 U.S.C. 5, 6f and 12a), is considering adding a new § 1.19 to Part 1 of the regulations under the Commodity Exchange Act (17 CFR Part 1) to read as set forth below. The purpose of the proposed regulation is to protect regulated commodity markets and the funds of persons trading in regulated commodities through registered futures commission merchants. A growing list of firms is reportedly selling "puts" and "calls", commonly referred to as commodity options, on a large and expanding scale. It appears that the vast majority of the option business is being done in the so-called naked options in which the option firm takes the opposite side of its customers' "puts" and "calls." In a situation of this type, the potential liability of the option firm, as a result of adverse price movements, is virtually unlimited.

Trading in "puts" and "calls" has been a concern of the Federal and State governments and of the exchanges for many years. As early as 1874, the State of Illinois prohibited trading in options. Later, the Illinois law was changed to permit such trading. In 1921, the directors of the Chicago Board of Trade recommended that trading in "puts" and "calls" be prohibited, stating that its advantages were outweighed by its disadvantages. That same year, the U.S. Congress passed the Futures Trading Act which, by levying a 20-cent per bushel tax, effectively prohibited options in grains. This Act was declared unconstitutional in 1926 and trading was resumed.

Following a sensational price collapse in the grain futures markets on July 19 and 20, 1933, the Chicago Board of Trade suspended all trading in "puts" and "calls." At that time, exchange representatives asserted that the elimination of such trading "has removed one of the prime causes of excessive price movements." The permanent elimination of trading in "puts" and "calls" was one of the "reforms" which a committte representing the grain exchanges pledged to recommend to the respective exchanges. In 1936, the Commodity Exchange Act was amended to make illegal all trading in "puts" and "calls" in regulated commodities. Such trading has been outlawed continuously since that time.

Option trading could become a threat to the financial stability of registered futures commission merchants. If such firms should underwrite, issue, or otherwise assume financial responsibility for the fulfillment of commodity options and suffer major financial reverses, the possibility of which is inherent in the present option system, the firm's customers trading in regulated commodities could suffer. With a sudden demand for funds to pay option holders or to secure the futures contracts called for by the options, a futures commission merchant might become insolvent and be sorely tempted to dip into the funds of customers dealing in regulated commodities to meet its obligations to option holders.

In addition, a collapse of the option business with substantial losses to option holders would seriously damage public confidence in the entire brokerage industry and the whole system of futures trading which is so essential in the orderly production and marketing of commodities.

§ 1.19 Prohibited trading in "puts" and "calls" in nonregulated commodities.

No futures commission merchant shall make, underwrite, issue, or otherwise assume any financial responsibility for the fulfillment of, any transaction which is, is of the character of, or is commonly known to the trade as, a "privilege," "indemnity," "bid," "offer," "put," "call," "advanced guarantee," or "decline guarantee" in any commodity regardless of whether such commodity is included in the term "commodity" as such term is defined in § 1.3(e).

If any interested person desires a hearing with reference to this proposed regulation, he should make a request to that effect stating the reasons therefor, addressed to the Administrator, Commodity Exchange Authority, U.S. Department of Agriculture, Washington, D.C. 20250, on or before April 9, 1973.

Written statements with reference to the subject matter of this proposal may be submitted by any interested person. Such statements should be mailed to the Administrator of the Commodity Exchange Authority prior to April 9, 1973.

The transcript of the proceedings at any hearing which may be held and all written submissions made pursuant to this notice will be made available for public inspection in the Office of the Administrator, Commodity Exchange Authority, during regular business hours.

Issued March 2, 1973.

ALEX C. CALDWELL,
Administrator,
Commodity Exchange Authority.

[FR Doc.73-4394 Filed 3-6-73;8:45 am]

FEDERAL MARITIME COMMISSION

[46 CFR Part 506]

[Docket No. 72-62]

FOREIGN DISCRIMINATION AFFECTING U.S. SHIPS

Regulations To Adjust or Meet Conditions Unfavorable To Shipping in the Foreign Trade; Enlargement of Time To File Reply

Upon request of Hearing Counsel, and good cause appearing, time within which Hearing Counsel shall file replies to comments in this proceeding [1] is enlarged to and including March 19, 1973. Answers to Hearing Counsel's replies shall be filed on or before March 30, 1973.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.73-4368 Filed 3-6-73;8:45 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 255]

ENDORSEMENTS AND TESTIMONIALS IN ADVERTISING

Proposed Guides Concerning Use; Notice of Additional Opportunity to Present Views.

On December 1, 1972, there was published in the FEDERAL REGISTER (37 FR 25548) a notice of proposed guides concerning use of endorsements and testimonials in advertising. Interested parties were afforded the opportunity to present to the Commission their written views concerning the guides, including such pertinent information, suggestions, or objections as they may desire to submit. Such views were to be submitted not later than March 1, 1973, to the Assistant Director for National Advertising, Bureau of Consumer Protection, Federal Trade Commission, Indiana Building, 633 Indiana Avenue NW., Washington, DC 20580.

The Commission has determined that additional opportunity for the presentation of written views is warranted. Accordingly, the Commission extends the time during which such views may be submitted, as provided, to not later than March 30, 1973.

Issued: March 1, 1973.

By direction of the Commission.

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

[FR Doc.73-4296 Filed 3-6-73;8:45 am]

[1] Notice of proposed rule making in this matter was published at 37 FR 27638, December 19, 1972, extension of time for comments was published at 38 FR 2468, January 26, 1973.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 1, 131, 176]

AEROSOLIZED FOOD, DRUG, AND COSMETIC PRODUCTS

Proposal Regarding Warning Statements

For several years adolescents have been deliberately inhaling fumes of various household products to produce intoxication. The Food and Drug Administration has received numerous reports of cardiotoxicity and sudden death associated with deliberate misuse by inhalation of food, drug, and cosmetic aerosol products containing halocarbons, and to a lesser extent, hydrocarbons. Death may follow such inhalation suddenly without relation to the number of times the vapors are inhaled. The mechanism of death is unknown at this time, and research on this matter is continuing.

Aerosol propellants currently used in food, drug, and cosmetic products do not appear to present a significant problem of safety resulting from proper usage of these products. Toxicity and possible death result solely from intentional misuse.

On the basis of the above information and after discussion with and concurrence by the Environmental Protection Agency, the Commissioner of Food and Drugs has concluded that the labels of aerosolized food, drug, and cosmetic products should bear a warning against intentional inhalation. It is recognized that any such warning could lead those persons who might wish to inhale intoxicating substances directly to products that could be abused, but the Commissioner is of the opinion that a warning of the drastic consequences that can result from misuse will at least deter the unknowledgeable experimenter from risking his life for a momentary thrill. No warning can protect from harm those who intentionally indulge in practices that they know to be harmful.

21 CFR 191.61(a) provides that label warnings established under the Federal Hazardous Substances Act and which are also applicable to foods, drugs, and cosmetics, are required to appear on food, drug, and cosmetic labels pursuant to the Federal Food, Drug, and Cosmetic Act even though such products are exempt from the Federal Hazardous Substances Act. Although the standard aerosol warning under 21 CFR 191.110 against incineration or puncture is clearly applicable to aerosolized food, drug, and cosmetic products, the Commissioner is aware that it is not included on some of these products. Accordingly, the Commissioner is also proposing that this warning be included on such products through a specific regulation on this matter.

Part 131 already contains warnings for use on drug products as required by section 502(f)(2) of the Federal Food, Drug, and Cosmetic Act. The Commissioner proposes to establish a new § 1.13 for food warnings, and a new Part 176 for cosmetic warnings. Comment is requested on two alternative forms of a deliberate inhalation warning, one proposed by the Food and Drug Administration and the other suggested by an industry trade association.

Section 402(a)(1) of the act states that a food is adulterated if it bears or contains any poisonous or deleterious substance which may render it injurious to health. Section 403(a) states that a food is misbranded if its labeling is false or misleading in any particular, and section 201(n) further defines misbranding to include the failure to reveal material facts with respect to consequences which may result from use of the article. The cosmetic provisions of the law (sections 601(a) and 602(a)) contain similar provisions. The Commissioner is of the opinion that these provisions contain adequate statutory authority to require label warnings for food and cosmetic products where there is a potential health hazard that may be prevented or alleviated by use of a warning.

The extent and seriousness of consumer injury resulting from cosmetic products has been difficult to assess because of the lack of reliable data. At the request of the cosmetic industry, the Commissioner has recently published a proposed system under which consumer product experience will voluntarily be

submitted to the Food and Drug Administration, as a result of which decisions with respect to the safety of cosmetics and the appropriateness of label warnings will become far more reliable (37 FR 23344).

Further, with respect to the safety of cosmetics, although the act does not require approval by FDA prior to marketing a cosmetic product, it necessarily contemplates that the manufacturer or distributor has obtained all data and information necessary and appropriate to substantiate the product's safety before marketing. Any cosmetic product whose safety is not adequately substantiated prior to marketing may be adulterated and would in any event be misbranded unless it candidly and prominently warns that the safety of the product has not been adequately determined.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201, 402, 403, 501, 502, 601, 602, 701, 52 Stat. 1040–1042, 1046–1048, 1050–1051, 1054, 1055–1056; 21 U.S.C. 321, 342, 343, 351, 352, 361, 362, 371) and under authority delegated to the Commissioner (21 CFR 2.120), it is proposed that Parts 1 and 131 be amended and a new Part 176 be added as follows:

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

1. By adding the following new section:

§ 1.13 Food; labeling; warning statements.

(a) The label of a food packaged in an aerosol container in which the propellant consists in whole or in part of a halocarbon or a hydrocarbon shall bear the following warning:

Warning—Do not inhale directly; deliberate inhalation of contents can cause death.

or

Warning—Use only as directed; intentional misuse by deliberately concentrating and inhaling the contents can be harmful or fatal.

(b) The label of a food packaged in an aerosol container shall bear the following warning:

Warning—Contents under pressure. Do not puncture or incinerate container. Do not expose to heat or store at temperatures above 120° F. Keep out of reach of children.

PART 131—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

§ 131.15 [Amended]

2. In § 131.15 the listing "Dispensers Pressurized by Gaseous Propellants for Drugs for External Use" and all warnings under that listing are revoked.

In § 131.16 the following provisions are added:

§ 131.16 Drugs for human use; warning and caution statements required by regulations.

* * * * *

DRUGS IN DISPENSERS PRESSURIZED BY GASEOUS PROPELLANTS (See also § 130.102(a) (11) and (18) of this chapter.)

Warning—Avoid inhaling. Keep away from eyes or other mucous membranes.

The statement "Avoid inhaling" is not necessary for preparations specifically designed for use by inhalation.

The phrase "or other mucous membranes" is not necessary for preparation specifically designed for use on mucous membranes.

Where indicated, in order to prevent chilling the skin, a caution should be included against holding the dispenser too close to the body.

Warning—Contents under pressure. Do not puncture or incinerate container. Do not expose to heat or store at temperatures above 120° F. Keep out of reach of children.

In addition to the above warnings, the label of a drug packaged in an aerosol container in which the propellant consists in whole or in part of a halocarbon or hydrocarbon shall bear the following warning:

Warning—Do not inhale directly, deliberate inhalation of contents can cause death.

or

Warning—Use only as directed; intentional misuse by deliberately concentrating and inhaling the contents can be harmful or fatal.

* * * * *

PART 176—COSMETIC PRODUCT WARNING STATEMENTS

3. By adding the following new Part 176 to this chapter:

Subpart A—General

Subpart B—Warning Statements

Subpart A—General

§ 176.1 Definitions.

(a) The term "act" means the Federal Food, Drug, and Cosmetic Act.

(b) The term "cosmetic" is defined in section 201(i) of the act.

§ 176.2 Establishment of warning statements.

(a) The label of a cosmetic product shall bear a warning or caution whenever necessary or appropriate to prevent or alleviate a health hazard that may be associated with the product.

(b) Regulations under Subpart B of this Part may be proposed or amended by the Commissioner of Food and Drugs on his own initiative or on behalf of any interested person who has submitted a petition. Any such petition shall include a proposed regulation to establish a warning together with an adequate factual basis to support the petition in the form set forth in § 2.65 of this chapter and will be published for comment if it contains reasonable grounds for the proposed regulation.

§ 176.3 Conspicuousness of warning statements.

A warning statement shall appear in the labeling prominently and conspicuously as compared to other words, statements, designs, or devices, and in bold type on clear contrasting background, in order to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Subpart B—Warning Statements

§ 176.10 Labeling of cosmetic products for which adequate substantiation of safety has not been obtained.

Ingredients used in cosmetic products, and the finished product containing these ingredients, shall be adequately substantiated for safety prior to marketing. Any such ingredient or product whose safety is not adequately substantiated prior to marketing may be deemed to be adulterated and in any event will be deemed to be misbranded unless it contains the following conspicuous front panel statement:

Warning—The safety of this product has not been determined.

§ 176.11 Aerosolized cosmetics.

(a) The label of a cosmetic packaged in an aerosol container in which the propellant consists in whole or in part of a halocarbon or a hydrocarbon shall bear the following warning:

Warning—Do not inhale directly; deliberate inhalation of contents can cause death.

or

Warning—Use only as directed; intentional misuse by deliberately concentrating and inhaling the contents can be harmful or fatal.

(b) The label of a cosmetic packaged in an aerosol container shall bear the following warning:

Warning—Contents under pressure. Do not puncture or incinerate container. Do not expose to heat or store at temperatures above 120° F. Keep out of the reach of children.

Interested persons may, on or before May 7, 1973, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–88, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Comments received will be available for public inspection at the

above office during regular business hours, Monday through Friday.

Dated: February 23, 1973.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc.73-4325 Filed 3-6-73;8:45 am]

Office of Child Development

[45 CFR Part 1301]

FEE SCHEDULE FOR HEAD START PROGRAM

Proposed Fees To Be Charged Nonpoor Families

Notice is hereby given that the Secretary of Health, Education, and Welfare proposes to establish a fee schedule for nonpoor families participating in Head Start programs whose children enroll after April 1, 1973, as required and authorized by section 8, 86 Stat. 690, 42 U.S.C. 2809(a)(1). The charges imposed by the schedule, in accordance with the statute, apply only to families whose income exceeds $4,320 (with appropriate upward adjustments for families having more than two children). As provided by the statute, if payment will be made by a third party on behalf of a family whose income is lower than $4,320, as adjusted, the charge will be accepted to the extent of such payment. The proposed fee schedule follows the formula set forth in the statute for family incomes between $4,320, as adjusted, and the lower living standard budget. It takes account of the ability of the family to pay.

It is proposed to amend Title 45 CFR, Subtitle B, by adding a new Chapter XIII, Office of Child Development. With the adoption of this proposal, the chapter, for the time being, will consist only of Part 1301, Fee Schedule for Head Start Program, which, it is proposed, will read as set forth hereinafter.

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 Acting Director, Office of Child Development, Department of Health, Education, and Welfare, 400 Sixth Street SW., Washington, DC 20201 on or before April 6, 1973. Comments received will be available for public inspection in Room 2030 of the Office of Child Development at the above address on Monday through Friday of each week from 8:30 to 5 p.m. (area code 202—755-7782).

Dated: March 2, 1973.

FRANK C. CARLUCCI,
Acting Secretary.

The proposed Chapter XIII, Part 1301, reads as follows:

CHAPTER XIII—OFFICE OF CHILD DEVELOPMENT, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 1301—FEE SCHEDULE FOR HEAD START PROGRAM

§ 1301.1 Fees to be charged non-poor families.

The fees which shall be charged nonpoor families whose children enroll in Head Start programs after April 1, 1973, are set forth in the Monthly Fee Schedule in this section. Nonpoor families are those whose incomes exceed $4,320 as adjusted for families with more than two children. No charges shall be imposed where the family income is equal to or less than $4,320, as adjusted, except to the extent that payment will be made by a third party.

HEAD START FEE SCHEDULE, MONTHLY CHARGE

Gross annual family income	Number of children in family							
	1	2	3	4	5	6	7	8
0-$4,320	0	0	...					
$4,321- 4,575	X	X	...					
4,576- 4,900	$2.50	$2.50	0	...				
4,901- 5,225	5.00	5.00	X	...				
5,226- 5,550	7.50	7.50	$2.50	0	...			
5,551- 5,875	10.00	10.00	5.00	X	...			
5,876- 6,200	12.50	12.50	7.50	$2.50	0	...		
6,201- 6,525	15.00	15.00	10.00	5.00	X	...		
6,526- 6,850	19.00	19.00	12.50	7.50	$2.50	0	...	
6,851- 7,175	23.00	23.00	15.00	10.00	5.00	X	...	
7,176- 7,500	27.00	27.00	19.00	12.50	7.50	$2.50	0	...
7,501- 7,825	31.00	31.00	23.00	15.00	10.00	5.00	X	...
7,826- 8,150	41.00	41.00	27.00	19.00	12.50	7.50	$2.50	0
8,151- 8,475	51.00	51.00	31.00	23.00	15.00	10.00	5.00	X
8,476- 8,800	61.00	61.00	41.00	27.00	19.00	12.50	7.50	$2.50
8,801- 9,125	71.00	71.00	51.00	31.00	23.00	15.00	10.00	5.00
9,126- 9,450	87.00	87.00	61.00	41.00	27.00	19.00	12.50	7.50
9,451- 9,775	103.00	103.00	71.00	51.00	31.00	23.00	15.00	10.00
9,776-10,100	119.00	119.00	87.00	61.00	41.00	27.00	19.00	12.50
10,101-10,425	135.00	135.00	103.00	71.00	51.00	31.00	23.00	15.00
10,426-10,750	...	...	119.00	87.00	61.00	41.00	27.00	19.00
10,751-11,075	...	...	135.00	103.00	71.00	51.00	31.00	23.00
11,076-11,400	...	...	...	119.00	87.00	61.00	41.00	27.00
11,401-11,725	...	...	...	135.00	103.00	71.00	51.00	31.00
11,726-12,050	...	...	...	...	119.00	87.00	61.00	41.00
12,051-12,375	...	...	...	...	135.00	103.00	71.00	51.00
12,376-12,700	...	...	...	...	...	119.00	87.00	61.00
12,701-13,025	...	...	...	...	...	135.00	103.00	71.00
13,026-13,350	...	...	...	...	...	...	119.00	87.00
13,351-13,675	...	...	...	...	...	...	135.00	103.00
13,676-14,000	...	...	...	...	...	...	...	119.00
14,001-14,325	...	...	...	...	...	...	...	135.00

X—Statutory maximum allowable fee charge is marginal. No fee will be assessed.

NOTE.—To allow for higher costs of living in Alaska and Hawaii, multiply family income by 0.8 and 0.87, respectively, and correlate the lowered income figure with the fee. This variation complies with the statutory language mandating that the fee schedule must be based upon the ability of the family to pay. A family with 2 or more children enrolled shall pay one full fee for the first 2 children, and 25 percent of that full fee for each additional child. The above fee schedule applies to both farm and nonfarm families. A family whose ability to pay has been impaired because of unusual medical and dental expenses or unusual casualty or theft loss(es) shall be eligible for a reduction on fee charge if the amount of unusual expenses exceeds 10 percent of the annual gross family income.

(Sec. 8, 86 Stat. 690 (42 U.S.C. 2809(a)(1)); sec. 602(n), 78 Stat. 530 (42 U.S.C. 2942(n)); Delegation of Authorities to Secretary of Health, Education, and Welfare, 34 FR 11398)

[FR Doc.73-4418 Filed 3-6-73;8:45 am]

Social and Rehabilitation Service

[45 CFR Part 204]

SOCIAL AND REHABILITATION SERVICE GRANT PROGRAMS

State Plans; Format

Notice is hereby given that the regulation set forth in tentative form below is proposed by the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare. The proposed regulation would specify that any State plan submitted for Social and Rehabilitation Service approval must be prepared in the format prescribed by the Service. The intention is to convert State plans into preprinted format to the extent possible, in keeping with plan simplification efforts. The medical assistance plan under title XIX of the Social Security Act will be issued in preprinted form for completion by States during the next few months (changes resulting from the Social Security Amendments of 1972, Public Law 92-603, will be issued as regulations are published). Plans for other programs will be converted at an appropriate time in light of State needs, pending legislation, and similar considerations. However, financial assistance plans for the adult categories will not be included in the effort since the programs will become Federal on January 1, 1974.

Prior to the adoption of the proposed regulation, 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 6, 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).

The proposed regulation is to be issued under section 1102, 49 Stat. 647, 42 U.S.C. 1302.

Dated: January 5, 1973.

PHILIP J. RUTLEDGE,
Acting Administrator, Social and Rehabilitation Service.

Approved: March 1, 1973.

CASPAR W. WEINBERGER,
Secretary.

Part 204 of Chapter II, Title 45 of the Code of Federal Regulations is amended by adding a new § 204.2 to read as follows:

§ 204.2 State plans—format.

State plans for federally-assisted programs for which the Social and Rehabilitation Service has responsibility must be

submitted to the service in the format and containing the information prescribed by the service, and within time limits set in implementing instructions issued by the service.

[FR Doc.73-4376 Filed 3-6-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 73-EA-8]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the Indiana, Pa., transition area (38 FR 506).

A new LOC Runway 28 instrument approach procedure has been developed for Indiana County—Jimmy Stewart Field, Indiana, Pa., and will require alteration of the transition area to provide controlled airspace for aircraft executing the new procedure.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received on or before April 6, 1973, will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views 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 parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Indiana, Pa., proposes the airspace action hereinafter set forth:

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to amend the description of the Indiana, Pa., transition area by inserting after "Indiana County—Jimmy Stewart Field, Indiana, Pa." the following: "within 3.5 miles each side of the Indiana County—Jimmy Stewart Field ILS localizer east course, extending from the 7-mile radius area to 12 miles east of the OM (40°-37'19" N., 78°58'43" W.)."

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on February 21, 1973.

ROBERT H. STANTON,
Acting Director, Eastern Region.

[FR Doc.73-4308 Filed 3-6-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-GL-9]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Lockport, Ill.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Divisions, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018. All communications received on or before April 6, 1973, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

A new instrument approach procedure to the Lewis Lockport Airport, Lockport, Ill., has been developed. Consequently, it is necessary to provide controlled airspace protection for aircraft executing this new approach procedure by designating a transition area at Lockport, Ill. The new procedure will become effective concurrently with the designation of the transition area.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

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

LOCKPORT, ILL.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Lewis-Lockport Airport (latitude 41°36'25" N.; longitude 88°05'10" W.).

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Des Plaines, Ill., on February 12, 1973.

R. O. ZIEGLER,
Acting Director, Great Lakes Region.

[FR Doc.73-4307 Filed 3-6-73;8:45 am]

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Dockets Nos. 70-7, 71-3a, Notices 4, 3]

MOTOR VEHICLE SAFETY STANDARDS

Further Notice on Visibility Standards

Notices of proposed motor vehicle safety standards have been issued on the subjects of Fields of Direct View (Docket No. 70-7, 37 FR 7210, Apr. 12, 1972) and Indirect Visibility (Docket No. 71-3a, 36 FR 1156, Jan. 23, 1971). The NHTSA has decided, on the basis of comments received and other available information, to conduct further research and standards development before issuing a rule on these subjects. Accordingly, no such rule will be issued without another notice of proposed rulemaking and opportunity for public comment.

(Secs. 103, 119, Public Law 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1407; delegations of authority at 49 CFR 1.51 and 49 CFR 501.8)

Issued on March 2, 1973.

ROBERT L. CARTER,
Associate Administrator, Motor Vehicle Programs.

[FR Doc.73-4401 Filed 3-6-73;8:45 am]

[49 CFR Part 575]

[Docket No. 25; Notice 4]

UNIFORM TIRE QUALITY GRADING

Consumer Information Regulations

This notice proposes a new consumer information regulation, Uniform Tire Quality Grading, designed to provide consumers with information to help them make an informed choice in the purchase of passenger car tires. A previous notice proposing a tire grading system was published September 21, 1971 (36 FR 18751). This notice supersedes the September 21, 1971, notice.

The regulation would require manufacturers and brand name owners to grade the performance of all passenger car tires having nominal rim diameters of 13, 14, and 15 inches in the areas of treadwear, traction, and high speed performance. Grading in areas of road hazard resistance, endurance, and uniformity and balance, proposed in the notice of September 21, 1971, has been omitted from this proposal. The NHTSA has found, on the basis of the comments received in response to that notice, that consumers are most interested in evaluations of tire tread life, traction, and high speed performance, and that it is desirable, in terms of public understanding, to limit grading information to the

performance factors the public considers important. It appeared from the comments that grading in many additional areas could cause confusion.

Consumers would be informed of the grade for each tire, in each of the three performance areas, by a symbol permanently molded into or onto the tire sidewall, and by a label attached to the tire tread which indicates both the grades for the particular tire, and an explanation of the various symbols. The label would also state that the tire meets Federal standards for safety. In addition, tire grading information would be required to be furnished to prospective purchasers of tires at each location where they are offered for sale. Finally, tire grading information for the tires on new passenger cars would also be required to be furnished to purchasers and prospective purchasers of these vehicles.

The grade a tire is given for treadwear would be based upon its performance when compared to a control tire, when both tires are placed on identical vehicles and driven over a 16,000 mile test course. The control tire proposed in the notice is a 2-ply rayon tire, the specifications for which are contained in the proposed rule. These specifications are tentative only, and the NHTSA requests specifically that comments be submitted regarding them. The NHTSA presently intends that the actual control tires used for testing purposes by manufacturers will be obtained from a source specified by NHTSA. The NHTSA plans to sample test control tires to determine uniformity, and to make available to maufacturers tires from uniform batches for use by them in their grading tests. Control tires which NHTSA uses for compliance testing will likewise be taken from these batches. This procedure, which is optional with the manufacturer, is being proposed by NHTSA as a method of keeping to a minimum variations in the control tire (the test device), which can occur due to the nature of tire construction despite precise specifications. The NHTSA is of the opinion that this method will preserve necessary objectivity in the regulation, as manufacturers will have cognizance of full specifications for the test device, yet will eliminate as much as possible disparities in results between NHTSA and manufacturer tests which may still occur due to variations in control tires. Manufacturers who utilize tires obtained from the NHTSA source would be entitled to rely fully on the performance of these tires.

The proposed grades for treadwear, which would be molded into or onto the the tire sidewall, are less than 60, representing a tire whose treadwear performance is less than 60 percent of that of the control tire, and the numbers 60, 85, 100, 150, or 200, representing that the tire can produce at least that percentage of the treadwear performance of the control tire. The NHTSA has decided that it is impractical to provide actual mileage figures for treadwear ratings because mileage figures vary widely depending upon such factors as geographic location, environmental effects, and individual driving habits.

The grades for traction would also reflect a tire's performance compared to the performance of the control tire. In this case, the grades molded into or onto the tire sidewall would be either a dash (—), or one, two, or three asterisks (*) or five-pointed stars. The dash would represent a level of performance less than 90 percent of the performance of the control tire. One asterisk or star would represent a performance level of at least 90 percent of that of the control tire, two asterisks or stars would represent at least 100 percent, and three, at least 110 percent. The test for traction grading would utilize a two-wheel trailer built essentially to specifications in American Society and Materials Method E–274–70, Skid Resistance of Paved Surfaces Using a Full-Scale Tire. Traction tests would consist of equipping the trailer with a manufacturer's tires, and computing the average coefficient of friction obtained when the trailer's wheels are locked at 20, 40, and 60 m.p.h. on a surface having a wet skid number of 30, and then again, at each speed, on a surface having a wet skid number of 50. Grades would be obtained by comparing these results with results obtained when the control tire is tested similarly.

In grading high speed performance, the regulation would require an A, B, or C to be molded into or onto the tire sidewall, based on the tire's performance on the laboratory test wheel specified in the high speed performance test of Motor Vehicle Safety Standard No. 109, New Pneumatic Tires (49 CFR 571.109). The Standard No. 109 test specified in this proposal is that previously proposed in a notice of September 20, 1972 (37 FR 19381) that would amend the high speed and endurance test requirements of Standard No. 109. The requirements ultimately specified as a result of that notice will be incorporated into the final Uniform Tire Quality Grading regulation. A grade of C would be applied to tires which only pass the requirements of Standard No. 109. A grade of B would be applied to tires that, in addition to passing the Standard No. 109 tests, withstand two 1-hour tests on the test wheel at 90 and 95 m.p.h. Tires eligible for a grade of A would be required further to withstand two 1-hour tests at 100 and 105 m.p.h. An explanation in lay terms of what each high speed grade means, in terms of suitable use, would be included on the label attached to the tire.

Proposed effective date: September 1, 1974.

Interested persons are invited to submit comments on the proposal. Comments are requested specifically on methods and procedures for testing tires designed for use on other than 13-inch, 14-inch, and 15-inch rims. Comments should refer to the docket and notice numbers (Docket No. 25; Notice 4), and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5221, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on June 4, 1973, will be considered, and will be available for examination in the docket at the above address both before and after the closing date. To the extent possible, comments filed after the above date will also be considered. However, the rule making action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rule making. Relevant material will continue to be filed, as it becomes available, in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

In light of the above, it is proposed that Part 575, Title 49, Code of Federal Regulations, be amended as set forth below.

(Secs. 103, 112, 119, 201, 203, Public Law 89–563, 80 Stat. 718; 15 U.S.C. 1392, 1401, 1407, 1421, 1423; delegations of authority at 49 CFR 1.51; 49 CFR 501.8)

Issued on February 28, 1973.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

1. Sections 575.4 and 575.6 would be revised to read as follows:

§ 575.4 Application.

(a) *General.* Except as provided in paragraphs (b) through (d) of this section, each section set forth in Subpart B of this part applies according to its terms to motor vehicles and tires manufactured after the effective date indicated.

(b) *Military vehicles.* This part does not apply to motor vehicles or tires sold directly to the Armed Forces of the United States in conformity with contractual specifications.

(c) *Export.* This part does not apply to motor vehicles or tires intended solely for export and so labeled or tagged.

(d) *Import.* This part does not apply to motor vehicles or tires imported for purposes other than resale.

§ 575.6 Requirements.

(a) At the time a motor vehicle is delivered to the first purchaser for purposes other than resale, the manufacturer of that vehicle shall provide to that purchaser, in writing and in the English language, the information specified in Subpart B of this part that is applicable to that vehicle and its tires. The document provided with a vehicle may contain more than one table, but the document must clearly and unconditionally indicate which of the tables applies to the vehicle and its tires.

Example 1. Manufacturer X furnishes a document containing several tables, which apply to various groups of vehicles that it produces. The document contains the following notation on its front page: "The information that applies to this vehicle is contained in Table 5." The notation satisfies the requirement.

Example 2. Manufacturer Y furnishes a document containing several tables as in Example 1, with the following notation on its front page:
Information applies as follows:
Model P, 6-cylinder engine—Table 1.
Model P, 8-cylinder engine—Table 2.
Model Q—Table 3.

This notation does not satisfy the requirement, since it is conditioned on the model or the equipment of the vehicle with which the document is furnished, and therefore additional information is required to select the proper table.

(b) At the time a motor vehicle tire is delivered to the first purchaser for a purpose other than resale, the manufacturer of that tire, or in the case of a tire marketed under a brand name, the brand name owner, shall provide to that purchaser the information specified in Subpart B of this part that is applicable to that tire, in the manner specified in § 571.104 of this chapter.

(c) Each manufacturer of motor vehicles, each brand name owner of tires, and each manufacturer of tires for which there is no brand name owner shall provide for examination by prospective purchasers, at each location where its vehicles or tires are offered for sale by a person with whom the manufacturer or brand name owner has a contractual, proprietary, or other legal relationship, or by a person who has such a relationship with a distributor of the manufacturer or brand name owner concerning the vehicle or tire in question, the information specified in Subpart B of this part that is applicable to each of the vehicles or tires offered for sale at that location. With respect to newly introduced vehicles or tires, the information shall be provided for examination by prospective purchasers not later than the day on which the manufacturer or brand name owner first authorizes those vehicles or tires to be put on general public display and sold to consumers.

(d) Each manufacturer of motor vehicles, each brand name owner of tires, and each manufacturer of tires for which there is no brand name owner shall submit to the Administrator 10 copies of the information specified in Subpart B of this part that is applicable to the vehicles or tires offered for sale, at least 30 days before that information is first provided for examination by prospective purchasers pursuant to paragraph (c) of this section.

2. A new § 575.104 would be added to read as follows:

§ 575.104 Uniform tire quality grading.

(a) *Scope.* This section requires tire manufacturers and brand name owners to provide information indicating the relative performance of passenger car tires in the areas of treadwear, traction, and high speed performance.

(b) *Purpose.* The purpose of this section is to aid the consumer in making an informed choice in the purchase of passenger car tires.

(c) *Application.* This section applies to new pneumatic tires for use on passenger cars manufactured after 1948. However, this section does not apply to deep tread, winter-type snow tires or to tires having rim sizes other than 13, 14, or 15 inches.

(d) *Requirements.* Each manufacturer of tires, or in the case of tires marketed under a brand name, each brand name owner, shall furnish the information specified in paragraph (d) (1) through (4) of this section, in the form illustrated in Figure 1, in letters not less than three thirty-seconds of an inch high, on a label affixed to the tread surface of each tire in a manner such that it is not easily removable. In addition, letters, figures, and symbols indicating the quality grades assigned to the tire shall be permanently molded into or onto one sidewall of the tire between the maximum section width and the bead as illustrated in Figure 2. No symbols other than those specified shall be used to indicate performance grades. Each such tire shall be capable, under the conditions and procedures specified in this section, of performing at least as well in each area as the grade placed on the tire indicates.

(1) The statement: This tire conforms to Federal safety requirements.

(2) The phrase, "less than 60," or the number 60, 85, 100, 125, 150, or 200, representing the tire's grade for treadwear, when the tire is tested in accordance with the general conditions specified in paragraph (e) of this section and the treadwear grading conditions and procedure specified in paragraph (f) of this section.

(i) The tire shall be graded "less than 60" if the value obtained pursuant to paragraph (f) (2) (ix) of this section is less than 60 percent.

(ii) The tire may be graded 60 only if the value obtained pursuant to paragraph (f) (2) (ix) of this section is 60 percent or more.

(iii) The tire may be graded 85 only if the value obtained pursuant to paragraph (f) (2) (ix) of this section is 85 percent or more.

(iv) The tire may be graded 100 only if the value obtained pursuant to paragraph (f) (2) (ix) of this section is 100 percent or more.

(v) The tire may be graded 125 only if the value obtained pursuant to paragraph (f) (2) (ix) of this section is 125 percent or more.

(vi) The tire may be graded 150 only if the value obtained pursuant to paragraph (f) (2) (ix) of this section is 150 percent or more.

(vii) The tire may be graded 200 only if the value obtained pursuant to paragraph (f) (2) (ix) of this section is 200 percent or more.

(3) The symbol—, *, **, or *** (either asterisks or five-pointed stars may be used) representing th etire's grade for traction, when the tire is tested in accordance with the general conditions specified in paragraph (e) of this section and the traction grading conditions and procedure specified in paragraph (g) of this section.

(i) The tire shall be graded — if the value obtained pursuant to paragraph (g) (2) (xi) of this section is less than 90 percent.

(ii) The tire may be graded * only if the value obtained pursuant to paragraph (g) (2) (xi) of this section is 90 percent or more.

(iii) The tire may be graded ** only if the value obtained pursuant to paragraph (g) (2) (xi) of this section is 100 percent or more.

(iv) The tire may be graded *** only if the value obtained pursuant to paragraph (g) (2) (xi) of this section is 110 percent or more.

(4) The letter A, B, or C, representing the tire's grade for high speed performance, when the tire is tested in accordance with the general conditions specified in paragraph (e) of this section, and the high speed performance grading procedure specified in paragraph (h) of this section. A tire shall be considered to have completed a test stage if, at the end of the stage, the tire pressure is not less than 95 percent of the pressure specified in paragraph (h) (1) of this section, and the tire exhibits no displacement of any portion of the tire from its design position, including partial or complete separation of any portion or component of the tire from any other portion or component. It may exhibit exposed chafer fabric and surface cracking that does not expose ply cord or belt cord, but no crack in a tread groove may exceed three-sixteenths of an inch in length.

(i) The tire shall be graded C if it fails to complete the 425 r.p.m. test stage specified in paragraph (h) (9) of this section.

(ii) The tire may be graded B only if it completes the 475 r.p.m. test stage specified in paragraph (h) (9) of this section.

(iii) The tire may be graded A only if it completes the 525 r.p.m. test stage speccified in paragraph (h) (9) of this section.

(e) *General conditions.* (1) Each tire shall be able to achieve the level of performance indicated by the grade it is given for each area of performance. An individual tire need not, however, meet further requirements after having been subjected to any one of the following:

(i) The test for grading treadwear (paragraph (f) of this section);

(ii) The test for grading traction (paragraph (g) of this section); or

(iii) The test for grading high speed performance (paragraph (h) of this section).

(2) In the case of the high speed performance test specified in paragraph (h) of this section, each tire shall meet the performance level indicated by the grade it is given when tested on any "test rim" as defined in S3 of § 571.109 of this chapter (Motor Vehicle Safety Standard No. 109).

(f) *Treadwear grading.* (1) *Conditions.* (i) The control tires are the 2-ply rayon tires specified in paragraph (i) of this section in sizes 6.50–13, 7.75–14, and 8.55–15.

(ii) The test roadway is any route of 16,000 miles on which, at completion of the procedure specified in paragraph (f) (2) of this section, the tread of the

control tire, measured as specified in paragraph (f)(2)(i) of this section is worn between 65 percent and 90 percent of its original depth.

(ii) A test convoy consists of no more than four identical passenger cars. Each vehicle maintains its position relative to the other vehicles during the test, and except for the lead vehicle, is throughout the test within human eye range of the vehicle immediately preceding it.

(iv) Wheel alinement is that specified by the vehicle manufacturer, and is maintained throughout the test.

(2) *Procedures.* (i) Obtain the average original tread depth of each control tire and each candidate tire to be used in the test by measuring the depth of each continuous rib at six equidistant points around the tire, avoiding tread wear indicators. Average all values obtained. In the case of control tires, obtain the average tread depth of all four tires placed on the test vehicle pursuant to paragraph (f)(2)(ii)(A) of this section. In tires having lug-tread designs, obtain the average tread depth by measuring the tread depth at six equidistant points around the tire at a distance from both sides of the tire center line equal to one-third of the width of the tire tread, and averaging all values obtained.

(ii) Equip a test convoy with the control and candidate tires, as follows:

(A) One vehicle with four control tires of identical size, and

(B) Each other vehicle with four candidate tires of the same type, trade name or line, and size designation, and having the same rim size as the control tire.

(iii) Inflate each control tire to a cold inflation pressure of 24 p.s.i. Inflate each candidate tire to a cold inflation pressure 8 pounds less than its maximum permissible inflation pressure.

(iv) Load the vehicle equipped with control tires so that the load on each tire is the maximum load specified for the tire at 24 p.s.i. in the 1972 Tire and Rim Association, Inc., Yearbook. Load each vehicle equipped with candidate tires so that the load on each tire is that specified in Appendix A of § 571.109 of this chapter (Motor Vehicle Safety Standard No. 109) for the inflation pressure at which the tire is inflated.

(v) Drive the convoy on the test roadway described in paragraph (f)(1)(ii) of this section for 1,000 miles.

(vi) Stop the convoy, and rotate each vehicle's tires clockwise on that vehicle one wheel position. However, rotate radial tires only by interchanging the right front tire with the right rear tire, and the left front tire with the left rear tire. Repeat this procedure every subsequent 1,000 miles.

(vii) In addition to the procedure specified in paragraph (F)(2)(vi) of this section, at 4,000 miles and every 4,000-mile interval thereafter, advance each set of tires to the next forward vehicle, placing the tires of the lead vehicle on the rearmost vehicle.

(viii) At the end of 16,000 miles, or whenever a candidate tire is worn to a tread depth of zero at any of the measuring points established pursuant to paragraph (f)(2)(i) of this section, stop the vehicle, remove its tires, allow them to cool to ambient temperature, and measure the average tread depth of each tire in the manner specified and at the measuring points established in paragraph (f)(2)(i) of this section.

(ix) Compute the percentage (P) of control tire wear experienced by each candidate tire, using the following formula:

$$P=\frac{A_s(C_s-C_w)}{C_s(A_s-A_w)}\times 100$$

where:

A_s = candidate tire's average original tread depth.
A_w = candidate tire's average worn tread depth.
C_s = control tire's average original tread depth.
C_w = control tire's average worn tread depth.

(g) *Traction grading.* (1) *Conditions.* (i) The control tires are the two-ply-rayon tires specified in paragraph (i) of this section in sizes 6.50–13, 7.75–14, and 8.55–15.

(ii) A control tire is discarded when its non-skid depth is worn 0.100 inches at any point.

(iii) Before testing, protuberances (except for treadwear indicators) that are not part of the tread design are removed from candidate and control tires.

(iv) Ambient temperatures are any temperatures between 40° F. and 80° F.

(2) *Procedures.* (i) Mount two identical control tires on a test trailer built in conformity with the specifications in Paragraph 3, "Apparatus," of American Society for Testing and Materials Method E–274–70, except that

(*a*) "Wheel load" in paragraph 3.2.2 of that method shall be as specified in paragraph (g)(2)(iii) of this section and

(*b*) Tire and rim specifications in paragraph 3.2.3 of that method shall be candidate and control tires, as appropriate, and rims for the size of tire graded.

(ii) Inflate the tires to a cold inflation pressure of 24 p.s.i.

(iii) Load the trailer so that the load on each tire equals the tire's maximum design load at 24 p.s.i. as specified in the 1972 Tire and Rim Association, Inc. Yearbook.

(iv) Tow the trailer at 20 m.p.h.

(v) On a surface having a wet skid number of 30, determined pursuant to American Society for Testing and Materials Method E–274–70, "Skid Resistance of Paved Surfaces Using a Full-Scale Tire," except that the control tire specified in paragraph (i) of this section rather than the ASTM tire shall be used to determine skid number, lock the trailer's brakes for 2 seconds while maintaining its forward speed.

(vi) Record the retarding force on the tire at the tire-ground interface continuously from 0.2 to 1.2 seconds after wheel lockup, and compute the average retarding force over that interval.

(vii) Compute the average coefficient of friction, at the tire-ground interface ("20), in the manner specified for calculating skid number (SN) in paragraphs 8.1 and 8.2 of American Society for Testing and Materials Method E–274–70.

(viii) Repeat the procedures specified in subdivisions (i) through (vii) of this subpargraph except with the trailer towed at 40 m.p.h., and again at 60 m.p.h.

(ix) Repeat the procedures specified in paragraph (g)(2)(i) through (viii) of this section on a surface with a wet skid number of 50, determined pursuant to American Society for Testing and Materials Method E–274–70, "Skid Resistance of Paved Surfaces Using a Full-Scale Tire," except with a control tire specified in paragraph (i) of this section rather than the ASTM tire used to determine skid number.

(x) Equip the trailer with 2 candidate tires, of the same type, trade name or line, and size designation, and having the same rim size as the control tire, inflated to a cold inflation pressure 8 pounds less than their maximum permissible inflation pressure, loaded to the weight specified for the tire at that inflation pressure in Appendix A of § 571.109 of this chapter (Motor Vehicle Safety Standard No. 109), and repeat the procedures specified in paragraph (g)(2)(iv) through (ix) of this subparagraph.

(xi) Compute the candidate tire's traction grade, as the ratio of its average friction coefficient to that of the control tire, expressed as a percentage (Q), as follows:

$$Q=\frac{{}^{s}20+{}^{s}40+{}^{s}60+{}^{s'}20+{}^{s'}40+{}^{s'}60}{{}^{c}20+{}^{c}40+{}^{c}60+{}^{c'}20+{}^{c'}40+{}^{c'}60}\times 100$$

where ^{s} and ^{c} refer to the average, measured friction coefficient for a test of candidate and control time respectively, on a surface with wet skid number of 30, $^{s'}$ and $^{c'}$ the same for a surface with wet skid number of 50, and the subscripts refer to the test speeds in m.p.h.

(h) *High speed performance grading.* (1) Mount the tire on a test rim and inflate it to 2 pounds less than its maximum permissible inflation pressure.

(2) Condition the tire-rim assembly at an ambient temperature of 100° F. for 3 hours.

(3) Adjust the pressure again to 2 pounds less than its maximum permissible inflation pressure.

(4) Mount the tire-rim assembly on an axle, and press the tire tread against the surface of a flat-faced steel test wheel that is 67.23 inches in diameter and at least as wide as the section width of the tire.

(5) During the test, including the pressure measurements specified in paragraphs (h)(1) and (3) of this section, maintain the temperature of the ambient air, as measured 12 inches from the edge of the rim flange at any point on the circumference on either side of the tire, at 100° F. Locate the temperature sensor so that its readings are not affected by heat radiation, drafts, variations in the temperature of the surrounding air, or guards or other devices.

(6) Press the tire against the test wheel at the load specified in Appendix A of § 571.109 of this chapter (Motor Vehicle Safety Standard No. 109) for the tire's

size designation and type, at the inflation pressure that is 8 pounds less than the tire's maximum permissible inflation pressure.

(7) Rotate the test wheel at 250 r.p.m. for 2 hours.

(8) Remove the load, allow the tire to cool to 100° F. or for 2 hours, whichever occurs last, and readjust the inflation pressure to 2 pounds less than the tire's maximum permissible inflation pressure.

(9) Reapply the load and without interruption or readjustment of inflation pressure, rotate the test wheel at 375 r.p.m. for 30 minutes, then at 400 r.p.m. for 30 minutes, and then for 1 hour each at 425 r.p.m., 450 r.p.m., 475 r.p.m., 500 r.p.m., and 525 r.p.m. respectively, or to failure, whichever occurs first.

(i) *Control tire.* The control tires used in grading treadwear and traction performance of passenger car tires shall conform to the specifications of this paragraph.

(1) *Rubber compound—formula.* The formula for rubber compound for use in both the tread and sidewall of the tire is set forth in Table I.

RUBBER FORMULA

	Parts
SBR-1714	97.5
Polybutadiene (approximately 95 percent CIS)	35.0
N-242 (ISAF-HS) carbon black	75.0
Hi aromatic petroleum oil	14.0
Zinc oxide	3.0
Stearic acid	2.0
Wax—fully refined paraffin	2.0
Antioxidant-Antiozonant (Santoflex 77 or equivalent	1.4
Antioxidant-Antiozonant (Santoflex 13 or equivalent	1.4
CBS (Santocure)	1.1
DPG	.1
Sulfur	1.8
Total	234.3

TABLE I

(2) *Rubber compound—physical characteristics.* The rubber compound used in the tread and sidewall has the physical characteristics set forth in Table II.

TABLE II

PHYSICAL CHARACTERISTICS

Tensile sheet cures @ 287° F.[1]	60 minutes.
300 percent modulus[2]	1,250–1,650 p.s.i.
Tensile sheet durometer (Shore)[3]	64±2.
Rebound or resilience[4]	46.9% to 51.0%.
Specific gravity[5]	1.14±0.01.
Tensile strength (min.)[6]	2,500 p.s.i.
Elongation (min.)[7]	440%.
Tire Tread Durometer (Shore)[8]	60±1.

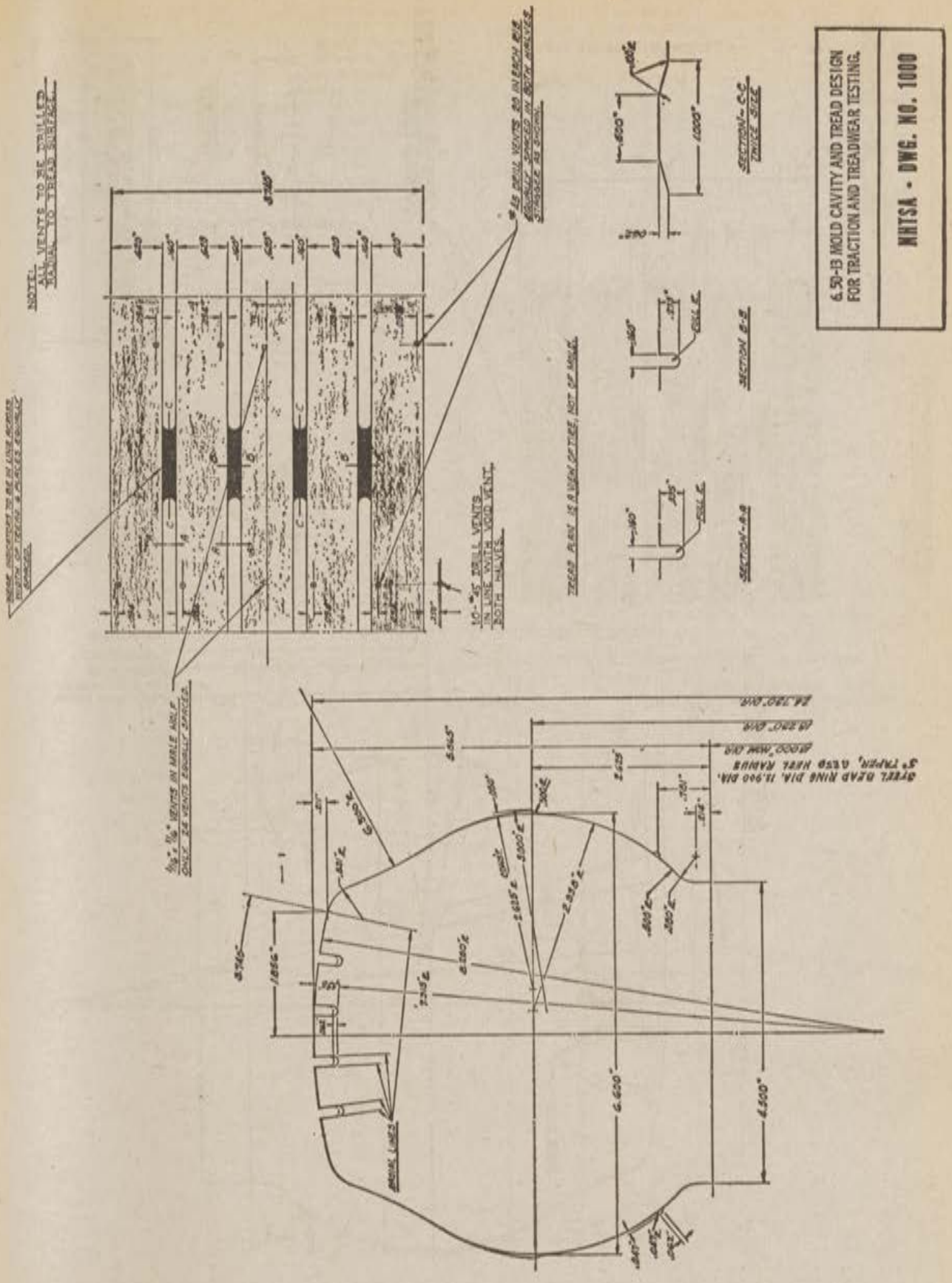
[1] ASTM Method D 15.
[2] ASTM Method D 412.
[3] ASTM Method D 2240, using a Type A Shore durometer.
[4] ASTM Method D 1054.
[5] ASTM Method D 297.
[6] ASTM Method D 412.
[7] ASTM Method D 412.
[8] ASTM Method D 2240.

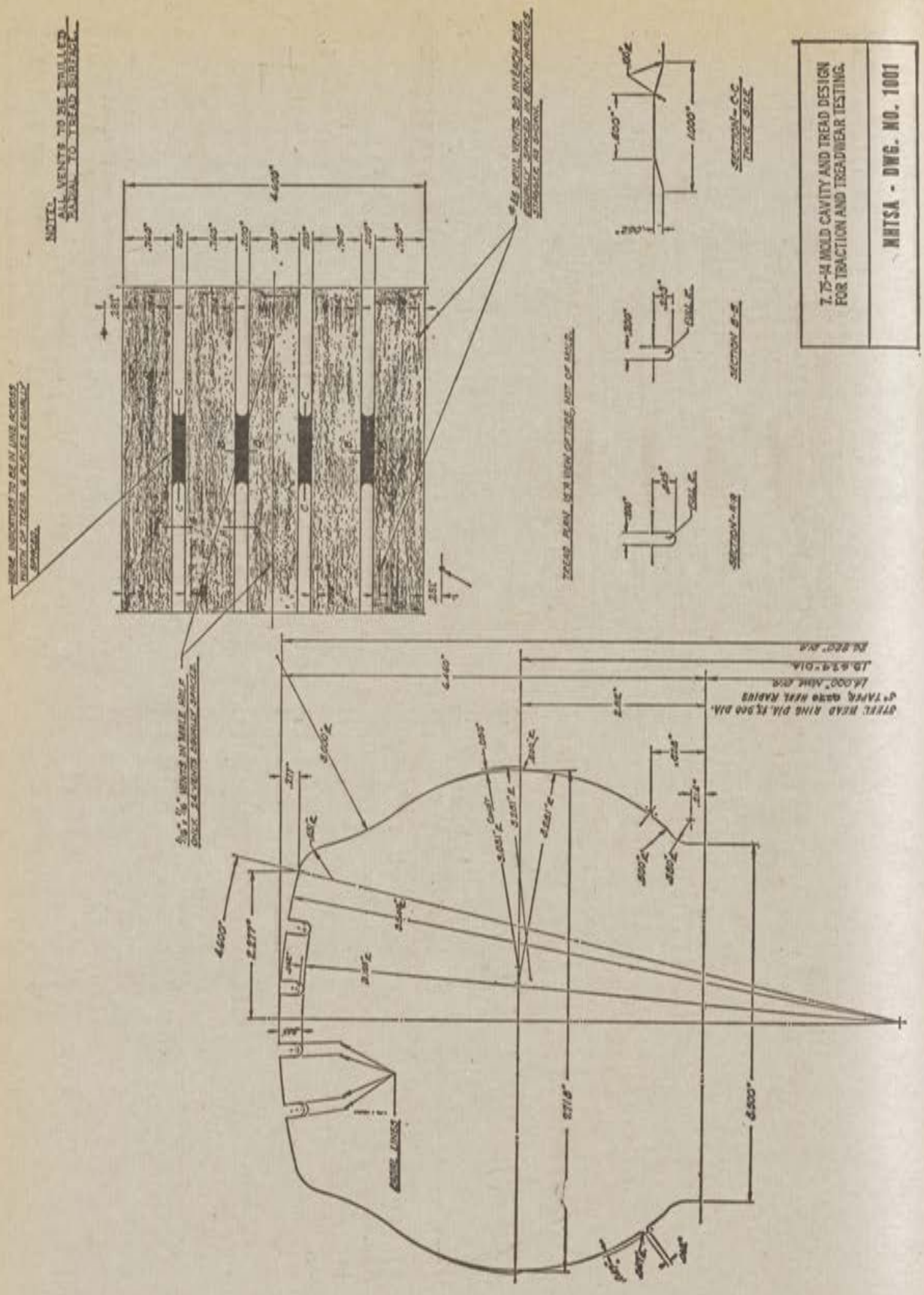
(3) *Mold dimensions.* The dimensions for control tire molds are set forth in Table III and NHTSA Drawings Nos. 1000, 1001, and 1002.

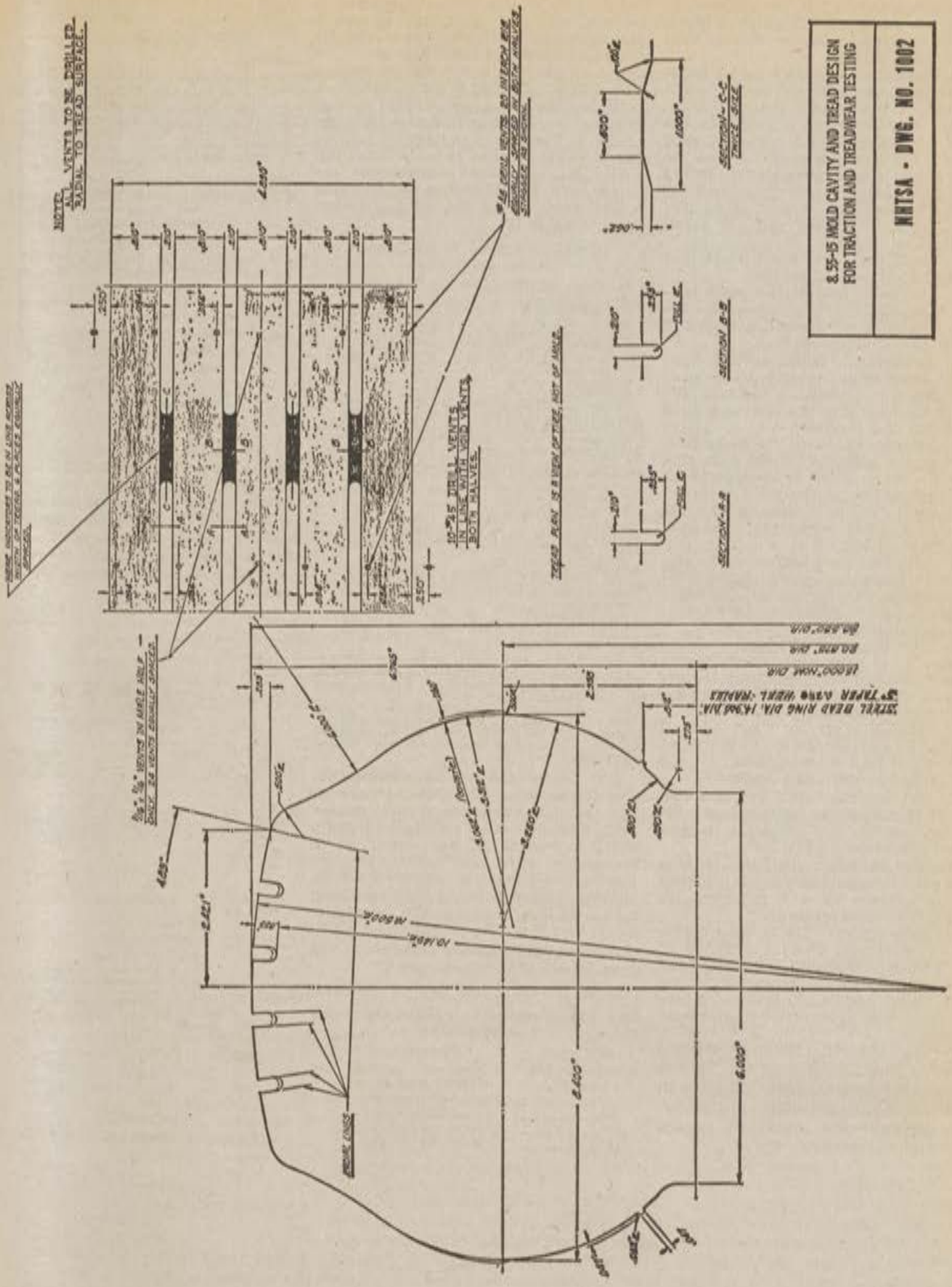
TABLE III.—MOLD DIMENSIONS[1]

	NHTSA Dwg. No. 1000	NHTSA Dwg. No. 1001	NHTSA Dwg. No. 1002
Tire size	6.50-13	7.75-14	8.55-15
Nominal bead dia. (ref.)	13.00	14.00	15.00
Mold cavity outside dia	24.730	26.920	28.330
Cavity cross section	6.600	7.718	8.400
Cavity bead width	4.500	5.500	6.000
Sect. ht. from nominal bead dia. (ref.)	5.865	6.460	6.765
Horizontal c/l major dia	18.250	19.624	20.875
Ht. of rim centering rib	0.781	0.828	0.812
Distance from horizontal c/l to nominal bead diameter (ref.)	2.625	2.812	2.938
Cavity radius above horiz. c/l	2.625R	3.031R	3.062R
Cavity radius below horiz. c/l	2.938R	3.281R	3.250R
Floating radius between lower and upper sidewall cavity radii	0.500R	0.500R	0.500R
Distance from nominal bead dia. (ref.) to bead ring cavity radius	0.214	0.214	0.275
Bead ring cavity radius	0.380	0.380	0.350
Nonskid depth	0.335	0.345	0.355
Cavity radius on c/l: Top of nonskid	8.250R	9.500R	10.500R
Bottom of nonskid	7.915R	9.115R	10.145R
Cavity tread arc measured horizontally from c/l	1.856	2.277	2.421
Shoulder drop	0.211	0.277	0.283
Cavity tread arc shoulder radius	0.531R	0.531R	0.500R
Floating radius between cavity shoulder radius and radius of cavity upper sidewall	6.500R	3.000R	6.000R
Developed tread width	3.740	4.600	4.890
Tread groove width	0.160	0.200	0.210
Tread rib width	0.620	0.760	0.810
Bead rings (steel); dia. at heel	12.900	13.900	14.900
Radius at heel	0.250R	0.250R	0.250R

[1] All mold dimensions are in inches and are based on nominal rim diameter. Mold manufacturers' tolerances: ±0.005 inch.


6.50-13 MOLD CAVITY AND TREAD DESIGN FOR TRACTION AND TREADWEAR TESTING.
NHTSA - DWG. NO. 1000
NOTE: ALL VENTS TO BE DRILLED FLUSH TO TREAD SURFACE.
10-.05" DRILL VENTS IN LINE WITH VOID VENT, BOTH HALVES.
SECTION C-C TAPER SIZE
SECTION E-E
SECTION A-A
TREAD PLAN IS A MIRROR IMAGE, NOT OF MOLD.
STEEL BEAD RING DIA. 11.900 DIA. 5° TAPER, 0.570 HEEL RADIUS
24.780" DIA.
24.280" DIA.
23.000" MIN DIA.


7.75-14 MOLD CAVITY AND TREAD DESIGN
FOR TRACTION AND TREADWEAR TESTING.
NHTSA - DWG. NO. 1001
NOTE:
ALL VENTS TO BE DRILLED
RADIAL TO TREAD SURFACE.
SECTION C-C
TWICE SIZE
SECTION B-B
SECTION A-A
TREAD PLAN, SEE VIEW OF TREAD, NOT OF MOLD.


8.55-15 MOLD CAVITY AND TREAD DESIGN
FOR TRACTION AND TREADWEAR TESTING
NHTSA - DWG. NO. 1002

(4) *Rim centering rib.* The rim centering rib has a width of 0.062 inch, a depth of 0.047 inch, and a radius of 0.047 inch at the mold surface.

(5) *Treadwear indicators.* Treadwear indicators having a height of 0.062 inch, a length at the bottom (base of tread groove) of 1.000 inch, a length at the top of 0.500 inch, and a radius at each end of 0.100 inch, are placed across the width of the tread at 6 equidistant points around the circumference of the mold.

(6) *Grooves.* Each groove is parallel to the tread arc radius and has a full radius at the bottom.

(7) *Tread vents.* (i) Each tread vent is radial to the tread surface.

(ii) The male half of the mold contains 24 equidistant void vents, each having a height of one-sixteenth inch and a width of one-sixteenth inch.

(iii) Each tread rib contains 20 equidistant vents each having a diameter of 0.082 inch (No. 45 drill), staggered 0.094 inch from each groove edge, and 0.250 inch from the shoulder.

(8) *Shoulder vents.* (i) Each shoulder vent has a diameter of 0.052 inch (No. 55 drill). Each vent is chamfered at 0.040 inch radius at the mold surface.

(ii) Each mold half contains 10 vents placed in line with void vents, 0.250 inch from the shoulder.

(iii) The top mold half contains one row of 16 equidistant vents placed midway between the horizontal centerline and the junction of the shoulder radius and the shoulder.

(iv) The bottom mold half contains one row of 16 equidistant vents placed midway between the horizontal centerline and the junction of the shoulder radius and the shoulder.

(9) *Sidewall vents.* (i) Each sidewall vent has a diameter of 0.052 inch (No. 55 drill). Each vent is chamfered at 0.040 inch radius at the mold surface.

(ii) The top mold half contains two rows of 16 equidistant vents placed midway between the rim centering rib and the horizontal centerline.

(iii) The bottom mold half contains three rows of 16 equidistant vents placed midway between the rim centering rib and the horizontal centerline.

(10) *Branding.* (i) The labeling specified in paragraph S4.3 of § 571.109 of this chapter (Motor Vehicle Safety Standard No. 109) (omitting paragraphs S4.3.1, S4.3.2, and S4.3.3) is branded into each mold half in accordance with that paragraph.

(ii) The legend, NHTSA Control Tire—Do Not Use Except for Testing Purposes is branded into each mold half, in letters 0.5000-inch high, 0.020-inch deep, between the maximum section width and rim centering rib.

(iii) One of the following legends is branded into each mold half, in letters one-sixteenth-inch high, one-eighth-inch above the rim centering rib:

(A) In the case of the 6.50–13 control tire: 6.50–13—Test at 24 p.s.i.—980 lbs.

(B) In the case of the 7.75–14 control tire: 7.75–14—Test at 24 p.s.i.—1,270 lbs.

(C) In the case of the 8.55–15 control tire: 8.55–15—Test at 24 p.s.i.—1,510 lbs.

(11) *Miscellaneous construction requirements.* Miscellaneous construction requirements for the control tires are set forth in Table IV.

TABLE IV.—TIRE CONSTRUCTION [1] [2]

Tire size	6.50-13	7.75-14	8.55-15.
Number of plies	2	2	2.
Unit tread and sidewall	Yes	Yes	Yes.
Under tread thickness	0.10	0.10	0.10.
Cured angle	36°±2°	36°±2°	36°±2°.
Fabric, rayon	1650/3	2200/3	2200/3.
Ends per inch at calendar.	24	22	22.
Calendar gauge:			
1st ply	0.051	0.056	0.056.
2nd ply	0.049	0.054	0.054.
Moisture in fabric at calendar.	1 percent or less.	1 percent or less.	1 percent. or less.
Bead (0.037 dia. wire)	4 layers 4 strands.	5 layers 4 strands.	5 layers. 5 strands.
Bead filler (Apex)	Optional.	Optional.	Optional.
Bead wrap (cotton, 7 oz./sq. yd.):			
Width	1¼	1¼	1¼.
Gauge	0.024	0.024	0.024.
Bead wire winding dia.	13.15	14.15	15.15.
Innerliner (chlorobutyl) Gauge.	0.055	0.055	0.055.
Rim width	4.50	5.50	6.00.
Section width [3]	6.60	7.75	8.45.
Overall diameter [4]	24.58	25.96	28.52.
Chafer (nylon monofilament):			
Gauge	0.045	0.045	0.045.
Width	2	2	2.

[1] Dimensions are in inches unless otherwise specified.
[2] Turn-up heights and "step offs" to follow tire manufacturers' standard practice.
[3] Overall width may exceed section width by 7 percent.
[4] May be exceeded by 7 percent, computed as follows: OD'=1.07 (OD-ND)+ND, where OD=stated overall diameter, ND=nominal diameter, and OD'=adjusted overall diameter.

(12) *Skid number.* A control tire suitable for purposes of grading treadwear and traction pursuant to this section shall, when tested on a surface having a wet skid number of 30, determined in accordance with American Society for Testing and Materials (ASTM) E274–70, Skid Resistance of Paved Surfaces Using a Full-Scale Tire except with a control tire rather than the ASTM tire used to determine skid number, produce a wet skid number of 30±10 percent.

FIGURE 1.—DOT TIRE QUALITY GRADES

THIS TIRE CONFORMS TO FEDERAL SAFETY REQUIREMENTS

Tire grade	*Performance*
Treadwear, less than 60.	Below 60 percent of NHTSA control tire.[1]
60	At least 60 percent.
85	At least 85 percent.
100	At least 100 percent.
125	At least 125 percent.
150	At least 150 percent.
200	At least 200 percent.

This tire is graded _____

Traction:

—	Below 90 percent of NHTSA control tire.[1]
*	At least 90 percent.
**	At least 100 percent.
***	At least 110 percent.

This tire is graded _____

High speed performance:

A	Meets 105 m.p.h. laboratory wheel test. Suitable for frequent and prolonged driving on roads with no speed limitations.
B	Meets 95 m.p.h. laboratory wheel test. Suitable for frequent and prolonged driving on roads with speed limitations up to 85 m.p.h.
C	Meets 85 m.p.h. laboratory wheel test. Suitable for driving at speed up to 70 m.p.h., but infrequent driving at higher speeds.

This tire is graded _____

[1] The NHTSA control tires are not available to the general public and are designed and constructed to give consistent test results. Comparative results, and not actual values, are indicated in the treadwear and traction grading scales as these aspects of tire performance are affected by geographic location, environmental effects, and driving habits.

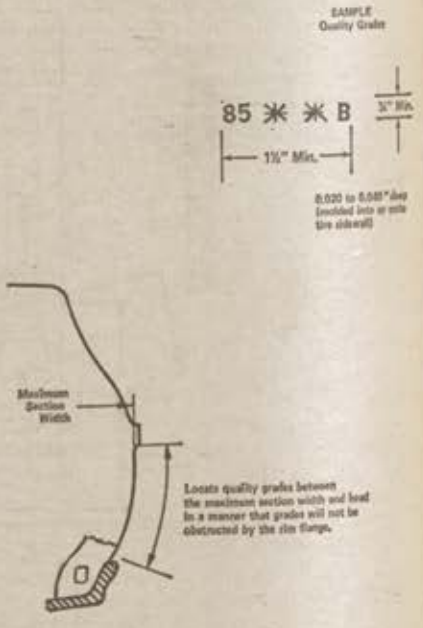


FIGURE 2.

[FR Doc.73-4256 Filed 3-6-73;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T.D. 73-63]

FOREIGN CURRENCIES

Rates of Exchange

FEBRUARY 26, 1973.

The appended table shows the rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), which are applicable to the currencies of the countries listed in § 16.4(d), Customs regulations (19 CFR 16.4(d)), for the period from February 9 through February 16, 1973. This table is published for the information and use of Customs officers and others concerned to show the amount of variation in these exchange rates following the devaluation of the U.S. dollar which took effect on February 13, 1973.

[SEAL] R. N. MARRA,
Director, Appraisement and Collections Division.

Country	Currency	Feb. 9	Feb. 10	Feb. 11	Feb. 12	Feb. 13	Feb. 14	Feb. 15	Feb. 16
Australia	Dollar	Q	(1)	(1)	(1)	(2)	1.4150	1.4170	1.4170
Austria	Schilling	Q	(1)	(1)	(1)	0.0463	.0467	.0465	.046850
Belgium	Franc	Q	(1)	(1)	(1)	.024172	.024425	.024450	.024490
Canada	Dollar	Q	(1)	(1)	(1)	Q	Q	Q	Q
Ceylon	Rupee	Q	(1)	(1)	(1)	(2)	(2)	.1579	.1580
Denmark	Krone	Q	(1)	(1)	(1)	.1540	.1562	.1588	.1584
Finland	Markka	Q	(1)	(1)	(1)	(2)	(2)	.2525	Q
France	Franc	Q	(1)	(1)	(1)	.2121	.215275	.2150	.2148
Germany	Deutsche Mark.	Q	(1)	(1)	(1)	.3378	.3405	.3386	.33765
India	Rupee	Q	(1)	(1)	(1)	(2)	(2)	.1320	.1320
Ireland	Pound	Q	(1)	(1)	(1)	Q	2.4700	Q	Q
Italy	Lira	Q	(1)	(1)	(1)	Q	Q	Q	Q
Japan	Yen	Q	(1)	(1)	(1)	.003750	.003760	.003802	.003790
Malaysia	Dollar	Q	(1)	(1)	(1)	(2)	.3900	.3900	.3900
Mexico	Peso	Q	(1)	(1)	(1)	(2)	Q	Q	Q
Netherlands	Guilder	Q	(1)	(1)	(1)	.3334	.3375	.3368	.3360
New Zealand	Dollar	Q	(1)	(1)	(1)	(2)	1.3200	1.3200	1.3200
Norway	Krone	Q	(1)	(1)	(1)	.1600	.1587	.1657	.1658
Portugal	Escudo	Q	(1)	(1)	(1)	(2)	(2)	.0390	.0392
Republic of South Africa	Rand	Q	(1)	(1)	(1)	(2)	1.4000	1.4000	1.4000
Spain	Peseta	Q	(1)	(1)	(1)	Q	Q	Q	.016598
Sweden	Krona	Q	(1)	(1)	(1)	Q	.2220	.2215	.2238
Switzerland	Franc	0.2805	(1)	(1)	(1)	.2801	.2952	.2978	.2970
United Kingdom	Pound	Q	(1)	(1)	(1)	Q	2.4700	Q	Q

Q—Use quarterly rate published in T.D. 73-16; daily rate did not vary by 5 per centum or more.
[1]—Banks closed in New York; use last preceding rate shown.
[2]—Rate certified as "Not Available"; use next following rate shown.

[FR Doc.73-4204 Filed 3-6-73;8:45 am]

Internal Revenue Service

[Order 128]

ASSISTANT COMMISSIONER (STABILIZATION), ET AL.

Delegation of Authority Regarding Implementation of Stabilization of Certain Prices, Wages and Salaries

1. Pursuant to the authority delegated to the Commissioner of Internal Revenue by Cost of Living Council Order No. 15 in connection with the administration of the Economic Stabilization Act of 1970, as amended, the following authority is hereby redelegated to:

Assistant Commissioner (Stablization)
Regional Commissioners
Assistant Regional Commissioners (Stabilization)
District Directors

2. The authority hereby being redelegated, subject to the policy guidance and direction of the Director of the Cost of Living Council (the Director CLC), consists of authority to perform the following functions:

(a) Operation and maintenance of local service and compliance centers established in support of the Economic Stabilization Program in Standard Metropolitan Statistical Areas and such other places as the Commissioner may determine;

(b) Dissemination of information and informal guidance in response to inquiries from the public, except that inquiries received with respect to firms with annual sales or revenues of $50 million or more or pay units of 1,000 employees or more shall be forwarded to the Director CLC for response;

(c) All functions previously delegated to the Secretary of the Treasury, the Commissioner or District Directors of the Internal Revenue Service applicable to the food industry or the health services industry by the Pay Board or the Price Commission, except that matters involving firms with annual sales or revenue of $50 million or more or pay units of 1,000 employees or more shall be forwarded to the Director CLC for response;

(d) Conducting investigations as directed by the Director CLC;

(e) Receiving, investigating, and resolving by obtaining compliance, where possible, complaints received with respect to program violations in the food industry and the health services industry and recommending enforcement action to the Director CLC, where necessary; and

(f) Maintaining adequate records and the making of periodic reports to the Director CLC.

3. The authority delegated herein may be redelegated only by the officials specified in this order and may not be redelegated by those officials to whom the specified officials redelegate.

4. Internal Revenue Service Delegation Orders 121, 123, 124, and 126 are hereby superseded, except that actions in process relating to Phase II matters shall be expeditiously completed.

This delegation shall be effective as of January 11, 1973.

Issued: February 28, 1973.

[SEAL] JOHNNIE M. WALTERS,
Commissioner.

[FR Doc.73-4315 Filed 3-6-73;8:45 am]

Office of the Secretary

PIG IRON FROM BRAZIL

Determination of Sales at Not Less Than Fair Value

MARCH 2, 1973.

On November 21, 1972, there was published in the FEDERAL REGISTER a notice of tentative negative determination (37 FR 24771) that pig iron from Brazil is not being, nor is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as "the Act").

The statement of reasons for the tentative determination was published in the above-mentioned notice and interested parties were afforded an opportunity to make written submissions and to present oral views in connection with the tentative determination.

No written submissions or requests to present oral views having been received, I hereby determine that, for the reasons stated in the tentative determination, pig iron from Brazil is not being, nor is likely to be, sold at less than fair value

(section 201(a) of the Act; 19 U.S.C. 160(a)).

This determination is published pursuant to section 201(c) of the Act (19 U.S.C. 160(c)) and section 153.33(b), Customs Regulations (19 CFR 153.33 (b)).

[SEAL] MATTHEW J. MARKS,
Acting Assistant Secretary of the Treasury.

[FR Doc.73-4479 Filed 3-6-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA

Notice of Filing of California State Protraction Diagram

FEBRUARY 27, 1973.

Notice is hereby given that effective April 5, 1973, the following protraction diagram, approved March 16, 1970, is officially filed and of record in the California State Office, Bureau of Land Management, Sacramento, Calif. In accordance with Title 43, Code of Federal Regulations, this protraction will become the basic record for describing the land for all authorized purposes at and after 10 a.m. of the above date. Until this date and time, the diagram has been placed in the open files and is available to the public for information only.

CALIFORNIA PROTRACTION DIAGRAM 80

SAN BERNARDINO MERIDIAN, CALIFORNIA

T. 24 N., R. 1 E.,
Secs. 1 to 36 inclusive.
T. 25 N., R. 1 E.,
Secs. 1 to 36 inclusive.
T. 25½ N., R. 1 E.,
Secs. 25 to 36 inclusive.
T. 24 N., R. 2 E.,
Secs. 1 to 36 inclusive.
T. 25 N., R. 2 E.,
Secs. 1 to 36 inclusive.
T. 25½ N., R. 2 E.,
Secs. 25 to 36 inclusive.

Copies of this diagram are for sale at two dollars ($2) each by the Survey Records Office, Bureau of Land Management, Room E-2807, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

[SEAL] ELEANOR K. WILKINSON,
Chief, Branch of Records and Data Management.

[FR Doc.73-4351 Filed 3-6-73;8:45 am]

Office of Hearings and Appeals

[Docket No. M 73-29]

PITTSBURG & MIDWAY COAL MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), the Pittsburg & Midway Coal Mining Co. has filed a petition to modify the application of 30 CFR 77.1303 (e) and (g) to its Mine No. 19 in Cherokee County, Kans., and Empire Mine in Barton County, Mo.:

30 CFR 77.1303 (e) and (g) read as follows:

(e) Where electric blasting is to be performed, electric circuits to equipment in the immediate area to be blasted shall be deenergized before explosives or detonators are brought into the area; the power shall not be turned on again until after the shots are fired.

(g) Areas in which charged holes are awaiting firing shall be guarded, or barricaded and posted, or flagged against unauthorized entry.

Petitioner requests that the standard be modified to allow normal mining activities to be conducted nearby or in the vicinity of loaded horizontal drill holes, each drill hole being properly loaded with explosives, primers, a primer cord and properly tamped inert material, and effectively insulated from the outside by a wood plug. The wood plug will be of such shape and design as to fit tightly within and completely seal the opening to the drill hole and provide absolute protection against premature detonation.

Petitioner contends that the proposed alternate method will at all times guarantee no less than the same measure of protection afforded the miners at the affected mine by 30 CFR 77.1303 (e) and (g) and will not result in a diminution of safety in any respect. Petitioner further alleges that the alternate method will in fact improve the safety and efficiency of the mining operation because it will eliminate the problems and risks attendant to loading drill holes which have become partially blocked or closed, as well as the hazards of secondary shooting often resulting from partially blocked or closed drill holes.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before April 6, 1973. Such request or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 6432 Federal Building, Salt Lake City, Utah 84111. Copies of the petition are available for inspection at that address.

JAMES M. DAY,
Director, Office of Hearings and Appeals.

FEBRUARY 27, 1973.

[FR Doc.73-4297 Filed 3-6-73;8:45 am]

Office of the Secretary

WILLIAM P. HENNE

Report of Appointment and Statement of Financial Interests

JANUARY 11, 1973.

Pursuant to section 302(a) of Executive Order 10647, the following information on a WOC appointee in the Department of the Interior is furnished for publication in the FEDERAL REGISTER:

Name of appointee: William P. Henne.

Name of employing agency: Department of the Interior, Defense Electric Power Administration.

The title of the appointee's position: Deputy Director, DEPA Area 8.

The name of the appointee's private employer or employers: Union Electric Co.

The statement of "financial interests" for the above appointee is enclosed.

ROGERS C. B. MORTON,
Secretary of the Interior.

APPOINTEE'S STATEMENT OF FINANCIAL INTERESTS

In accordance with the requirements of section 302(b) of Executive Order 10647, I am filing the following statement for publication in the FEDERAL REGISTER:

(1) Names of any corporations of which I am, or had been within 60 days preceding my appointment, on January 11, 1973, as Deputy Director, Area 8, Defense Electric Power Administration, an officer or director:

None.

(2) Names of any corporations in which I own, or did own within 60 days preceding my appointment, any stocks, bonds, or other financial interests:

Union Electric Co.

(3) Names of any partnerships in which I am associated, or had been associated within 60 days preceding my appointment:

None.

(4) Names of any other businesses which I own, or owned within 60 days preceding my appointment:

None.

WILLIAM P. HENNE.

Dated: January 24, 1973.

[FR Doc.73-4300 Filed 3-6-73;8:45 am]

[INT FES 73-10]

SAN JUAN GENERATING STATION, COAL MINE, AND TRANSMISSION LINES

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the San Juan Generating Station, Coal Mine, and Transmission Lines. The first 345-MW unit of this generating station is under construction by Public Service Company of New Mexico and Tucson Gas & Electric Co. in San Juan County, N. Mex. Transmission lines of 345-KV are planned from the station to points near Tucson, Ariz., approximately 400 miles; Espanola, N. Mex., approximately 160 miles; and two lines to the Four Corners Generating Station area, about 9 miles distant. Coal for the station will initially be supplied from a strip mine adjacent to the station site to be operated by Utah International, Inc.

Copies are available for inspection at the following locations:

Office of Communications, Room 7220, Department of the Interior, Washington, D.C. 20240, Telephone 202—343-9247.

Office of Ecology, Room 7620, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, Telephone 202—343-4991.

Division of Engineering Support, Technical Services Branch, E&R Center, Denver Federal Center, Denver, Colo., 80225, Telephone 303—234–3007.

Office of the Regional Director, Bureau of Reclamation, Department of the Interior, Post Office Box 11568, Salt Lake City, UT 84111, Telephone 801—524–5540.

Bureau of Reclamation, Department of the Interior, 1000 Municipal Drive, Farmington, NM 87401, Telephone 505—325–1794.

Bureau of Land Management, Department of the Interior, South Federal Place, Post Office Box 1449, Santa Fe, NM 87501, Telephone 505—982–3217.

Forest Service, Department of Agriculture, Region 3, 517 Gold Avenue SW., Albuquerque, NM 87101, Telephone 505—982–3327.

Single copies of the final statement may be obtained on request to the Commissioner of Reclamation or the Regional Director. In addition, copies may be purchased from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151. Please refer to the statement number above.

WILLIAM W. LYONS,
Deputy Assistant Secretary of the Interior.

MARCH 1, 1973.

[FR Doc.73–4363 Filed 3–6–73;8:45 am]

TINICUM NATIONAL ENVIRONMENTAL CENTER, PENNSYLVANIA

Notice of Establishment

Whereas, the act of June 30, 1972 (86 Stat. 391), authorizes the Secretary of the Interior to establish the Tinicum National Environmental Center, Pennsylvania, for administration as a unit of the National Wildlife Refuge System, and

Whereas, section 2 of that act provides that the Secretary shall acquire by donation, purchase with donated or appropriated funds, by exchange of federally owned lands in the vicinity, not to exceed 1,200 acres of land in the Counties of Delaware and Philadelphia, Commonwealth of Pennsylvania, and

Whereas, section 2 of the act further provides that a description by metes and bounds of the proposed Tinicum National Environmental Center shall be published in the FEDERAL REGISTER, and that a scale drawing thereof shall be available in the Office of the Secretary, and such other place and places in the vicinity of the proposed center as will afford interested parties easy access to information respecting the proposed center.

Now, therefore, notice is given that the Tinicum National Environmental Center is established on Federal lands and lands or interests in lands hereafter acquired within the boundary described as follows:

Beginning on the easterly edge of Wanamarker Avenue at the centerline of Darby Creek; thence easterly, along the centerline of Darby Creek, 1,720 feet, more or less; thence northerly, along the centerline of an inlet, 600 feet, more or less; thence northeasterly, along the upland edge of the marsh, 1,150 feet, more or less; thence southeasterly, 1,020 feet, more or less, to the centerline of Darby Creek; thence northeasterly, along the centerline of said creek, 3,600 feet, more or less, to the intersection of the centerline of said creek with the northwesterly sideline of the Philadelphia Electric Co. right-of-way; thence northeasterly, along the northwesterly sideline of said right-of-way, 1,000 feet, more or less; thence northeasterly, along the northwesterly sideline of said right-of-way, 1,900 feet, more or less; thence southeasterly, along the northeasterly sideline of said right-of-way, 25 feet, more or less; thence northeasterly, along the northwesterly sideline of said right-of-way, 1,610 feet, more or less; thence southeasterly, along the northeasterly sideline of said right-of-way, 510 feet, more or less, to the centerline of Hermesprota Creek; thence southwesterly, along the centerline of Hermesprota Creek, 1,250 feet, more or less; thence south and easterly, along the land fill area, the eleven (11) following courses, S. 07°54′ W., 215 feet, more or less; thence S. 04°52′ E., 132.20 feet; thence S. 31°26′ E., 159.16 feet; thence S. 60°14′ E., 173.81 feet; thence S. 20°17′ E., 199.53 feet; thence S. 25°56′ E., 91.50 feet; thence S. 20°27′ E., 108.65 feet; thence S. 42°54′ E., 185.88 feet; thence S. 71°26′ E., 145.18 feet; thence N. 88°08′ E., 168.92 feet; thence N. 69°19′ E., 145.56 feet; thence N. 69°19′ E., 63.0 feet, more or less; thence southeasterly, 50 feet more or less to the centerline of Thoroughfare Creek; thence northeasterly, along the centerline of Thoroughfare Creek, 1,330 feet, more or less to the centerline intersection of said creek with Darby Creek; thence northeasterly, along the centerline of Darby Creek, 3,680 feet, more or less; thence southeasterly, 3,700 feet, more or less; thence southeasterly, 250 feet, more or less; thence southwesterly, 1,320 feet, more or less; thence southwesterly, 380 feet, more or less; thence southeasterly, 300 feet, more or less; thence southwesterly, along the northerly sideline of the Reading Railroad, 2,100 feet, more or less; thence westerly, along the northerly sideline of Interstate Highway I–95, 11,750 feet, more or less, to Wanamaker Avenue; thence northwesterly, along the easterly sideline of said avenue, 1,650 feet, more or less to the place of beginning, containing 890 acres, more or less.

A map showing the proposed boundary of the Tinicum National Environmental Center is available from the Director, Bureau of Sport Fisheries and Wildlife, Washington, D.C. 20240, from the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Mass. 02109, or from the Regional Solicitor, U.S. Department of the Interior, 123 South Third Street, Philadelphia, PA 19106.

Dated: February 27, 1973.

JOHN C. WHITAKER,
Acting Secretary of the Interior.

[FR Doc.73–4299 Filed 3–6–73;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[NTIS Order No. EIS–73–0293–F]

PROPOSED COMMITMENT OF ACREAGE TO NEW BEET SUGAR PRODUCING AREA—WAHPETON, N. DAK.

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Agricultural Stabilization and Conservation Service, Department of Agriculture, has prepared a final environmental statement for the Proposed Commitment of Acreage to a New Beet Sugar Producing Area in the vicinity of Wahpeton, N. Dak., USDA–ASCS–ES (Adm.) 73–3. The 1971 amendments to the Sugar Act of 1948, in order to make acreage available for the growth and expansion of the beet sugar industry, provides that the Secretary of Agriculture shall allocate as needed the acreage required to yield not more than a total of 100,000 tons, raw value, of sugar for localities to be served by new or substantially enlarged existing sugar beet processing facilities. Allocations are to be for a period of 3 years and limited for any one processing facility to the acreage required to yield a maximum of 50,000 short tons, raw value, of sugar and a minimum of 25,000 short tons, raw value.

The environmental statement applies to the growing of approximately 30,000 acres of sugar beets in the Red River Valley of North Dakota and Minnesota near Wahpeton, N. Dak., in Dwight Township. The sugar beets will be planted on mostly dryland farming acreage used in rotation with other crops (primarily wheat, corn and soybeans), the acreage having previously been devoted to such crops.

A draft environmental statement was filed with the Council on Environmental Quality on December 15, 1972. Comments on the draft statement were received from the Environmental Protection Agency; Minnesota Pollution Control Agency; North Dakota State Department of Health; North Dakota State Planning Division; and Economic Research Service, USDA. Questions raised with respect to the draft statement were considered in preparing the final statement. This final environmental statement was filed with the Council on Environmental Quality on February 22, 1973.

Copies are available for inspection at USDA, Agricultural Stabilization and Conservation Service, Room 3758, 14th and Independence Avenue SW., Washington, DC 20250.

Copies may be obtained from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151. Please refer to the name and number of the statement above when ordering.

Any comments concerning the final environmental statement should be addressed to the Director, Sugar Division, Agricultural Stabilization and Conservation Service, Room 3752, 14th and Independence Avenue SW., Washington, DC 20250. Comments should be received by March 20, 1973.

Signed at Washington, D.C. on March 2, 1973.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.73–4395 Filed 3–6–73;8:45 am]

[NTIS Order No. EIS-73-0294-F]

PROPOSED COMMITMENT OF ACREAGE TO NEW BEET SUGAR PRODUCING AREA—HILLSBORO, N. DAK.

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Agricultural Stabilization and Conservation Service, Department of Agriculture, has prepared a final environmental statement for the Proposed Commitment of Acreage to a New Beet Sugar Producing Area in the vicinity of Hillsboro, N. Dak., USDA-ASCS-ES (Adm.) 73-2. The 1971 amendments to the Sugar Act of 1948, in order to make acreage available for the growth and expansion of the beet sugar industry, provides that the Secretary of Agriculture shall allocate as needed the acreage required to yield not more than a total of 100,000 tons, raw value, of sugar for localities to be served by new or substantially enlarged existing sugarbeet processing facilities. Allocations are to be for a period of 3 years and limited for any one processing facility to the acreage required to yield a maximum of 50,000 short tons, raw value, of sugar and a minimum of 25,000 short tons, raw value.

The environmental statement applies to the growing of approximately 30,000 acres of sugarbeets in the Red River Valley of North Dakota and Minnesota near Hillsboro, N. Dak., in Traill County. The sugarbeets will be planted on mostly dryland farming acreage used in rotation with other crops (primarily wheat, corn and soybeans), the acreage having previously been devoted to such crops.

A draft environmental statement was filed with the Council on Environmental Quality on December 15, 1972. Comments on the draft statement were received from the Environmental Protection Agency; Minnesota Pollution Control Agency, North Dakota State Department of Health; North Dakota State Planning Division; and Economic Research Service, USDA. Questions raised with respect to the draft statement were considered in preparing the final statement. This final environmental statement was filed with the Council on Environmental Quality on February 22, 1973.

Copies are available for inspection at USDA, Agricultural Stabilization and Conservation Service, Room 3758, 14th and Independence Avenue SW., Washington, D.C. 20250.

Copies may be obtained from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151. Please refer to the name and number of the statement above when ordering.

Any comments concerning the final environmental statement should be addressed to the Director, Sugar Division, Agricultural Stabilization and Conservation Service, Room 3752, 14th and Independence Avenue SW., Washington, D.C. 20250. Comments should be received by March 20, 1973.

Signed at Washington, D.C. on March 20, 1973.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.73-4396 Filed 3-6-73;8:45 am]

Soil Conservation Service

CANEY CREEK WATERSHED PROJECT, KY.

Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Soil Conservation Service, U.S. Department of Agriculture, has prepared a draft environmental statement for Caney Creek Watershed Project, Ohio, Butler and Grayson Counties, Ky., USDA-SCS-ES-WS-(ADM)-73-47-(D).

The environmental statement concerns a plan for watershed protection and flood prevention. The planned works of improvement include conservation land treatment, supplemented by nine floodwater retarding structures, one multiple-purpose structure, and 20 miles of channel modification.

This draft environmental statement was transmitted to CEQ on February 20, 1973.

Copies are available during regular working hours at the following locations:

Soil Conservation Service, USDA, South Agriculture Building, Room 5227, 14th and Independence Avenue SW., Washington, DC 20250

Soil Conservation Service, USDA, 333 Waller Avenue, Lexington, KY 50404

Copies are also available from the National Technical Information Service U.S. Department of Commerce, Springfield, Va. 22151. Please use name and number of statement above when ordering. The estimated cost is $3.25.

Copies of the draft environmental statement have been sent for comment to various Federal, State, and local agencies as outlined in the Council on Environmental Quality guidelines. Comments are also invited from others having knowledge of or special expertise on environmental impacts.

Comments concerning the proposed action or requests for additional information should be addressed to Glen E. Murray, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504.

Comments must be received within 60 days of the date the statement was transmitted to CEQ in order to be considered in the preparation of the final environmental statement.

WILLIAM B. DAVEY,
Deputy Administrator for Watersheds, Soil Conservation Service.

FEBRUARY 28, 1973.

[FR Doc.73-4350 Filed 3-6-73;8:45 am]

STEVENS-RUGG WATERSHED PROJECT, FRANKLIN COUNTY, VT.

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Soil Conservation Service, Department of Agriculture, has prepared a final environmental statement for the Stevens-Rugg Watershed Project, USDA-SCS-ES-WS-(ADM)-73-10 (F).

The environmental statement concerns a plan for watershed protection, and flood prevention. The planned works of improvement include conservation land treatment supplemented by a floodwater diversion system and 0.89 mile of channel clearing and snagging on Stevens Brook.

The final environmental statement was transmitted to the Council on Environmental Quality on February 23, 1973.

Copies are available for inspection during regular working hours at the following locations:

Soil Conservation Service, USDA, South Agriculture Building, Room 5227, 14th and Independence Avenue SW., Washington, DC 20250

Soil Conservation Service, USDA, 96 College Street, Burlington, VT 05401

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151. Please order by name and number of statement. The estimated cost is $3.75.

Copies of the environmental statement have been sent to various Federal, State and local agencies as outlined in the Council on Environmental Quality Guidelines.

WILLIAM B. DAVEY,
Deputy Administrator for Watersheds, Soil Conservation Service.

FEBRUARY 28, 1973.

[FR Doc.73-4349 Filed 3-6-73;8:45 am]

DEPARTMENT OF COMMERCE

Maritime Administration

ECONOMIC VIABILITY ANALYSIS

Revised Notice of Announcement of Publication

Revised notice is hereby given that the Maritime Subsidy Board/Maritime Administration announces on March 2, 1973, publication, prior to final adoption, of an Economic Viability Analysis (EVA) pursuant to the terms of the stipulation agreement in "Environmental Defense Fund, Inc. et al v. Peter G. Peterson, et al.," Civil Action No. 2164-72 in the U.S. District Court for the District of Columbia.

Copies of the EVA may be obtained by interested persons from the Secretary, Maritime Subsidy Board, Maritime Administration, Department of Commerce, 14th and E Streets NW., Washington,

D.C. 20235. Comments on the EVA by any interested persons must be received by the Secretary, Maritime Subsidy Board, by close of business on March 19, 1973.

Dated: March 2, 1973.

By order of the Maritime Subsidy Board, Maritime Administration.

AARON SILVERMAN,
Assistant Secretary.

[FR Doc.73-4398 Filed 3-6-73;8:45 am]

[Docket No. S-332]

PACIFIC FAR EAST LINE, INC.

Notice of Application

Notice is hereby given that Pacific Far East Line, Inc., has requested amendment of its Trade Route 29 Transpacific Freight Service as set forth in its Operating-Differential Subsidy Agreement, Contract No. FMB-81 so as to permit its subsidized vessels to call at Guam with its subsidized transpacific freight vessels. The applicant also proposes to withdraw the two C-4's from its unsubsidized Guam service and to place them in layup. Subsidized ships calling at Guam with U.S. cargo would be subject to the reduction-in-subsidy formula set forth in sections 605(a) and 506 of the Merchant Marine Act, 1936, as amended.

Interested parties may inspect this application in the Office of the Secretary, Maritime Administration, Department of Commerce Building, 14th and E Streets NW., Washington, D.C.

Commerce between continental U.S. ports and Guam has been determined to be not "domestic intercoastal or coastwise service" within the meaning of section 805(a) of the Act. Also it is not foreign commerce, and therefore does not fall within the provisions of section 605(c) of the Act. However, the Board in Dockets No. S-33 and No. S-17 (Sub 1) (4 F.M.B. ____ M.A. 499) expressed its judgment that operators trading to Guam are entitled to some protection. Therefore, any person, firm, or corporation having any interest in the above-mentioned application should by the close of business on March 16, 1973, submit such views as may be pertinent to such application in writing in triplicate. Such views should be directed to the issue as to whether the effect of the amendment sought by PFEL would be to give undue advantage or be unduly prejudicial as between PFEL and other operators serving Guam.

In accordance with provisions in the rules of practice and procedure of the Maritime Subsidy Board, a full evidentiary hearing on the California/Guam phase of the application may not be held. Written comments from interested parties should state in full their position on the above-mentioned application, whereupon the Maritime Subsidy Board in its discretion may call an informal public hearing prior to making a final decision.

Pacific Far East Line, Inc.'s application would permit its subsidized Trade Route 29 Transpacific Freight Service as set forth in its Operating-Differential Subsidy Agreement, Contract No. FMB-81 to carry cargo between Guam and foreign ports on the above-mentioned service.

Any person, firm or corporation having any interest in the foreign service aspect of such application and desiring a hearing on issues pertinent to section 605(c) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1175), should by the close of business on March 16, 1973, notify the Secretary, Maritime Subsidy Board in writing in triplicate, and file petition for leave to intervene in accordance with the rules of practice and procedure of the Maritime Subsidy Board.

In the event a section 605(c) hearing is ordered to be held on the foreign service aspect, the purpose thereof will be to receive evidence relevant to (1) whether the application is one with respect to a vessel to be operated in an essential service, served by citizens of the United States which would be in addition to the existing service, or services, and if so, whether the service already provided by vessels of U.S. registry in such essential service is inadequate, and (2) whether in the accomplishment of the purpose and policy of the Act additional vessels should be operated therein.

If no request for hearing and petition for leave to intervene is received within the specific time, or if the Maritime Subsidy Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Maritime Subsidy Board will take such action as may be deemed appropriate.

Date: March 2, 1973.

By order of the Maritime Subsidy Board/Maritime Administration.

AARON SILVERMAN,
Assistant Secretary.

[FR Doc.73-4397 Filed 3-6-73;8:45 am]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Notice of Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for licensing in accordance with the GSA Patent Licensing Regulations.

Copies of patent applications, either paper copy (PC) or microfiche (MF), can be purchased from the National Technical Information Service (NTIS), Springfield, Va. 22151, at the prices cited. Requests for copies of patent applications must include the PAT-APPL number and the title. Inquiries and requests for licensing information should be directed to the address cited on the first page of each copy of the patent application.

Paper copies of patents cannot be purchased from NTIS but are available from the Commissioner of Patents, Washington, D.C. 20231, at $0.50 each. Inquiries and requests for licensing information should be directed to the "Assignee" as indicated on the copy of the patent.

DOUGLAS J. CAMPION,
Patent Program Coordinator.

U.S. DEPARTMENT OF THE INTERIOR

Patent 3,675,310. Soldering Method. Filed April 20, 1971, patented July 11, 1972. Not available NTIS.

Patent 3,710,925. Centrifugal Stower. Filed May 6, 1971, patented January 16, 1973. Not available NTIS.

Patent application 302,960. Measuring Apparatus for Spatially Modulated Reflected Beams. Filed November 1, 1972. PC $3.00/MF $0.95.

Patent application 302,959. Angular Deviation Measuring Device and Its Method of Use. Filed November 1, 1972. PC $3.00/MF $0.95.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Patent application 308,362. Dielectric Loaded Aperture Antenna. Filed November 21, 1972. PC $3.00/MF $0.95.

[FR Doc.73-4189 Filed 3-6-73;8:45 am]

Office of the Secretary

SMALL CARPETS AND RUGS

Flammability Standard; Proposed Sampling Plan

On June 2, 1972, there was published in the FEDERAL REGISTER (37 FR 11079) a notice of finding that amendments to provide for sampling plans may be needed to two standards; namely, the Standard for the Surface Flammability of Carpets and Rugs, DOC FF 1-70 (35 FR 6211, Apr. 16, 1970) and the Standard for the Surface Flammability of Small Carpets and Rugs (Pill Test), DOC FF 2-70 (35 FR 19702, Dec. 29, 1970). The FEDERAL REGISTER notice of June 2, 1972, announced a preliminary finding that such amendments to provide for sampling plans might be needed to detect noncomplying carpet and rugs before they are placed on the market in order to provide increased protection to the public against unreasonable risk of the occurrence of fire leading to death or personal injury or significant property damage, and that confirmation of the need would require appropriate amendment of those standards.

PROPOSED SAMPLING PLANS FOR STANDARD FOR THE SURFACE FLAMMABILITY OF SMALL CARPETS AND RUGS (PILL TEST) DOC FF 2-70

After review and analysis of the comments received, and analysis developed through further research, it is hereby found that an amendment of the Standard for the Surface Flammability of Small Carpets and Rugs (Pill Test) DOC FF 2-70 (35 FR 19702, Dec. 29, 1970) is needed to provide for a sampling plan under the standard. It is preliminarily found that the plan which is set out in full below is:

(a) Needed for small carpet and rugs to protect the public against unreasonable risk of the occurrence of fire leading to death, personal injury, or significant property damage;

(b) Reasonable, technologically practicable, and appropriate, and is stated in objective terms; and

(c) Limited to small carpet and rugs which currently present the unreasonable risks specified in (a) above.

AMENDMENT OF THE STANDARD FOR THE SURFACE FLAMMABILITY OF CARPETS AND RUGS (DOC FF 1–70)

The finding as to whether there is the need to amend the Standard for the Surface Flammability of Carpets and Rugs, DOC FF 1–70 (35 FR 6211, Apr. 16, 1970), to provide for a sampling plan is the subject of a separate FEDERAL REGISTER notice.

BASIS FOR PROPOSED STATISTICAL SAMPLING PLAN

The finding of need to amend the Standard for the Surface Flammability of Small Carpets and Rugs (Pill Test) (DOC FF 2–70) to include a statistical sampling plan is based on the objective of giving maximum practicable assurance that the product which reaches the marketplace meets established flammability requirements. The test method which has been developed for this standard involves a destructive test, thus precluding the testing of all items covered under the standard. It is, therefore, essential to have some type of statistical sampling procedure. By providing a statistically based sampling plan, as part of the testing procedure in the standard, the consumer would be given increased protection. This proposed sampling plan would also provide a framework for premarket testing, and thus assist greatly in detecting noncomplying carpet and rugs before they are placed on the market. The proposed plan, which is appended hereto, is based on well recognized sampling procedures.

APPLICABILITY OF PROPOSED SAMPLING PLAN

As is the case with all flammability standards issued under the Flammable Fabrics Act, the proposed sampling plan contemplated herein would apply to all domestic and imported carpet and rugs as defined in the standard (DOC FF 2–70). Pursuant to section 4(b) of the Flammable Fabrics Act, as amended (15 U.S.C. 1193(b)), the amendment exempts carpet and rugs in inventory or with the trade as of the date on which the amendment becomes effective.

EFFECTIVE DATE OF PROPOSED AMENDMENT

The present Standard for the Surface Flammability of Small Carpets and Rugs (Pill Test) (DOC FF2–70) became effective December 29, 1971. All small carpet and rugs as defined under the standard and manufactured subsequent to December 29, 1971, are required to comply. An amendment to a flammability standard normally becomes effective 12 months from the date on which such amendment is promulgated unless the Secretary of Commerce finds for good cause shown that an earlier or later date is in the public interest and publishes the reason for such finding. Since information received by this Department indicates that compliance with the small carpet and rug standard (DOC FF 2–70) will be substantially accelerated by the sampling plan, the Secretary proposes to make this amendment effective 90 days following publication of the final sampling plan in the FEDERAL REGISTER.

REISSUANCE OF THE STANDARD

The sampling plan is expected to be included in the small carpet and rug standard (DOC FF 2–70) under a section .4, titled "Sampling and Acceptance Procedures." Inclusion of the sampling plan in the standard requires that certain portions of the standard be revised, deleted, and/or renumbered. The definitions under the present section .1 of the standard would be renumbered and would contain new proposed sections (g), (h), (i), (j), and (k). The term "acceptance criterion" would be deleted. Changes would be made to present sections .3(a) and .4(a)(4). Present sections .4 (e) and (f) would be deleted. Also amendments will be made to present sections .1(g), .4(a), .4(b), .4(c), and .4(d).

In the light of the foregoing, reissuance of the standard to include all changes is considered appropriate. Set forth below is the proposed standard to be reissued as the Standard for the Surface Flammability of Small Carpets and Rugs (Pill Test) (DOC FF 2–70; as amended).

EFFECT ON REQUIREMENT TO COMPLY WITH THE PRESENT STANDARD

This notice and the proposed sampling plan issued below do not affect the existing requirement to comply with the Standard for the Surface Flammability of Small Carpets and Rugs (Pill Test) (DOC FF 2–7) which is presently in effect.

Issued: March 1, 1973.

RICHARD O. SIMPSON,
Acting Assistant Secretary for Science and Technology.

SMALL CARPET AND RUGS

[DOC FF 2–70]

PROPOSED AMENDMENT TO THE STANDARD FOR THE SURFACE FLAMMABILITY OF SMALL CARPET AND RUGS (PILL TEST)

.1 *Definitions.* In addition to the definitions given in section 2 of the Flammable Fabrics Act, as amended (sec. 1, 81 Stat. 568; 15 U.S.C. 1191), and section 7.2 of the Procedures (33 FR 14642, Oct. 1, 1968), the following definitions apply for the purposes of this standard:

(a) "Small Carpet" means any type of finished product made in whole or in part of fabric or related material and intended for use or which may reasonably be expected to be used as a floor covering which is exposed to traffic in homes, offices, or other places of assembly or accommodation, and which may or may not be fastened to the floor by mechanical means such as nails, tacks, barbs, staples, adhesives, and which has no dimension greater than 1.83 m. (6 ft.) or an area not greater than 2.23 sq. m. (24 sq. ft.). Products such as "Carpet Squares" with dimensions smaller than these but intended to be assembled, upon installation, into assemblies which may have dimensions greater than these, are excluded from this definition. They are, however, included in Standard DOC FF 1–70. Mats, hides with natural or synthetic fibers, and other similar products are included in this definition if they are within the defined dimensions, but resilient floor coverings such as linoleum, asphalt title, and vinyl tile are not.

(b) "Small rug" means, for the purposes of this standard, the same as small carpet and shall be accepted as interchangeable with small carpet.

(c) "Traffic surface" means a surface of a small carpet or rug which is intended to be walked upon.

(d) "Test criterion" means the basis for judging whether or not a single specimen of a small carpet or rug has passed the test; i.e., the charred portion of a tested specimen shall not extend to within 2.54 cm. (1.0 in.) of the edge of the hole in the flattening frame at any point.

(e) "Timed burning tablet" (pill) means the methenamine tablet, weighing approximately 0.149 grams (2.30 grains), sold as Product No. 1588 in Catalog No. 79, December 1, 1969, by the Eli Lilly Co. of Indianapolis, Ind. 46206, or an equal tablet.

(f) "Fire-retardant treatment" means any process to which a small carpet or rug has been exposed at any time during manufacture, or in any event prior to delivery to the consumer which significantly decreases the flammability of that small carpet or rug and enables it to meet this standard.

(g) "Production unit" (unit) means a quantity of carpet or rugs of one quality. This quantity is predetermined, before sampling, by the manufacturer, seller, or other person responsible for performing tests and maintaining records, within the limitations described in .4 *Sampling and Acceptance Procedures.*

(h) "Quality" means a particular style or design of carpet or rug, manufactured in essentially the same process and identical except for color or print pattern as specified in .4 *Sampling and Acceptance Procedures.*

(i) "Item" means an individual carpet or rug.

(j) "Production unit sample" (sample) means eight specimens from a production unit.

(k) "Specimen" means a 22.86±0.64 x 22.86±0.64 cm. (9±¼ x 9±¼ in.) section of carpet or rug.

.2 *Scope and application.* This standard provides a test method to determine the surface flammability of small carpet and rugs when exposed to a standard small source of ignition under carefully prescribed draft-protected conditions. It is applicable to all types of small carpet or rugs used as floor covering materials regardless of their method of fabrication or whether they are made of natural or synthetic fibers or films, or combinations of, or substitutes for these.

One of a kind small carpet or rug, such as an antique, an Oriental or a hide, may be excluded from testing under this standard pursuant to conditions established by the Federal Trade Commission.

.3 *General requirements*—(a) *Summary of test method.* This method involves the exposure of conditioned specimens of a small carpet or rug to a standard igniting source in a draft-protected environment and measurement of the proximity of the charred portion to the edge of the hole in the prescribed flattening frame.

(b) *Test criterion.* A specimen passes the test if the charred portion does not extend to within 2.54 cm. (1.0 in.) of the edge of

the hole in the flattening frame at any point.

A Sampling and acceptance procedures—(a) *General.* The test criterion of .3(b) shall be used in conjunction with the following sampling plan, or any other approved by the Department of Commerce that provides at least the equivalent level of fire safety to the consumer. Alternate sampling plans submitted for approval shall have operating characteristics such that the probability of unit acceptance at any percentage defective does not exceed the corresponding probability of unit acceptance of the following sampling plan in the region of the latter's operating characteristic curves that lies between 5 and 95 percent acceptance probability.

The production unit size shall not exceed 25,000 individual small carpet or rugs of a single quality.

All carpet or rugs of the same quality whose manufacture is completed during production of a production unit shall be deemed to be members of that unit. Different colors and different print patterns of the same quality may be included in a single production unit, provided such colors and print patterns demonstrate flammability characteristics that are not significantly different from each other as determined by previous testing of three samples of eight specimens each taken from at least three individual carpets or rugs of each color and print pattern to be included in the unit.

(b) *Sampling*—(1) *Sampling plan.* A production unit is either accepted or rejected in accordance with the following plan:

From each production unit, select at random at least four carpets or rugs. From the selected items, cut sufficient material to provide 32 specimens (not more than eight per item) for test. Assign not more than two specimens from each item to each of four production unit samples. Test one production unit sample (eight specimens) in accordance with .5 *Test procedure.* If all eight specimens pass the test criterion of .3(b), accept the unit. If three or more individual specimens fail the test criterion of .3(b), reject the unit. If one or two individual specimens fail the test criterion of .3(b), test a second production unit sample of eight specimens as follows:

Test the second production unit sample in accordance with .5 *Test procedure.* If the total number of individual specimens (from both the first and second samples) failing the test criterion is one, accept the unit. If the total number of individual specimens (from both samples) failing the criterion is four or more, reject the unit. If the total number of individual specimens (from both samples) failing the test criterion is two or three, test a third production unit sample of eight specimens as follows:

Test the third production unit sample in accordance with .5 *Test procedure.* If the total number of specimens (from the three samples) failing the test criterion is two, accept the unit. If the total number of specimens (from the three samples) failing the test criterion is four or more, reject the unit. If the total number of specimens (from the three samples) failing the test criterion is three, test a fourth production unit sample of eight specimens as follows:

Test the fourth production unit sample in accordance with .5 *Test procedure.* If the total number of specimens (from the four samples) failing the test criterion is three, accept the unit. If the total number of specimens (from the four samples) failing the test criterion is four or more, reject the unit.

(2) *Disposition of rejected units.* Carpet and rugs contained in rejected production units must be labeled, prior to their introduction into commerce, according to .6 *Labeling requirements* unless accepted as a result of retesting without reworking and/or reworking and retesting as prescribed below.

(a) *Reworking and retesting.* A rejected production unit may be retested after all carpet and rugs contained therein are subjected to reprocessing or additional processing to improve the flammability characteristics. From the unit, select four carpet or rugs as follows:

Select items from the immediate vicinity (with respect to time sequence of production) of all items that contributed failing specimens to the sample(s) employed in reaching the decision to reject the unit originally and that are present in the reworked unit;

Select additional items as required from the immediate vicinity of items that contributed failing specimens to the sets of specimens employed in reaching decisions to reject subunits or items in retesting (without reworking) and that are present in the reworked unit;

Select at random additional items as required from among remaining items that are present in the reworked unit.

From the selected items, cut sufficient material to provide 24 specimens (not more than six specimens from each selected item) for test. Test 16 specimens (four from each selected item) in accordance with .5 *Test Procedure.* If all 16 specimens pass the test criterion of .3(b), accept the unit. If two or more individual specimens fail the test criterion of .3(b), reject the unit. If one individual specimen fails the test criterion of .3(b), test the remaining eight specimens in accordance with .5 *Test Procedure.* If all of the eight remaining specimens pass the test criterion of .3(b), accept the unit. If one or more of the eight remaining specimens fail the test criterion of .3(b), reject the unit.

A production unit rejected as a result of retesting following reworking shall not be subjected to further reworking and testing, but may be subjected to retesting in accordance with the provisions of .4(b)(2)(b) if such testing has not previously been performed on the rejected production unit from which the items contained in the reworked unit were obtained. Carpet and rugs contained in a production unit rejected as a result of retesting following reworking shall not be eligible for further attempts at acceptance under this Standard by any other means or procedures except as specified in .6 *Labeling requirements.*

(b) *Retesting (without reworking).* A rejected production unit may be subdivided into two or more subunits consisting of three or more items each. Such subdivision shall correspond to the time sequence of production of finished items or to differences in materials or process steps, such as dye lots, fiber sources, tufting machines, or rinsing operations, determined by the manufacturer's tests or analyses to constitute the probable cause of differences in flammability characteristics.

If the subdivision corresponds to the time sequence of production of finished items, each item from which one or more failing specimens were obtained in sampling shall constitute a boundary of a subunit. Subunits of a rejected production unit may be tested and their constituent items accepted or rejected according to the following plan:

From each subunit, select at least two items near the boundaries of the subunit if the subdivision corresponds to the time sequence of production of finished items or select one item at random if the subdivision was made on any other basis. From the selected item(s), cut sufficient material to provide a total of 16 specimens from the subunit, an equal number of specimens being obtained from each item when two items have been selected. Test all specimens in accordance with .5 *Test procedure.* If all 16 specimens pass the test criterion of .3(b), accept the subunit. If one specimen fails the test criterion of .3(b), select an additional item at random and cut sufficient material to provide a total of 16 additional specimens. Test all 16 additional specimens in accordance with .5 *Test procedure.* If all 16 additional specimens pass the test criterion of .3(b), accept the subunit. If one or more specimens fail the test criterion of .3(b), reject the subunit.

Rejected subunits from the same production unit that have not been reworked previously may be construed to comprise a rejected production unit for reworking and retesting in accordance with .4(b)(2)(a). Rejected subunits that have been reworked previously or that are not reworked shall not be eligible for further attempts at acceptance under this Standard except as specified in .6 *Labeling requirements.*

(3) *Records.* Records of all unit sizes, test results, and the disposition of rejected units must be maintained by the manufacturer upon the effective date of this standard. Rules and regulations may be established by the Federal Trade Commission.

(4) *Compliance market sampling plan by FTC.* The FTC may submit, for approval by the Secretary of Commerce sampling plans for use in market testing of items covered by this standard. For approval, such plans shall define noncompliance of a production unit to exist only when it is shown, with a high level of statistical confidence, those production units represented by tested items which fail such FTC plans will, in fact, fail this standard. Production units found to be noncomplying under these provisions shall be deemed not to conform to this standard.

.5 *Test procedure*—(a) *Apparatus*—(1) *Test chamber.* The test chamber shall consist of an open top hollow cube made of noncombustible material[1] with inside dimensions 30.48±0.13×30.48±0.13×30.48±0.13 cm. (12±⅛×12±⅛×12±⅛ in.) and minimum 6.35 mm. (¼ in.) wall thickness. The flat bottom of the box shall be made of the same material as the sides and shall be easily removable. The sides shall be fastened together with screws or brackets and taped or otherwise suitably sealed to prevent air leakage into the box during use.

NOTE: A minimum of two chambers and two extra bottoms is suggested for efficient operation.

(2) *Flattening frame.* A steel plate, 22.86±0.64 × 22.86±0.64 cm. (9±¼ × 9±¼ in.), 6.35 mm. (¼ in.) thick (Commercial tolerances) with a 20.32±0.02 cm. (8±1/64 in.) diameter hole in its center is required to hold the specimen flat during the course of the test. It is recommended that one be provided for each test chamber.

(3) *Standard igniting source.* No. 1588 methenamine timed burning tablet or an equal tablet. These tablets shall be stored in a desiccator over a desiccant for 24 hours prior to use. (Small quantities of sorbed water may cause the tablets to fracture when first ignited. If major fracture occurs, any results from that test shall be ignored, and it shall be repeated.)

(4) *Test specimens.* Each test specimen shall be a 22.86±0.64 × 22.86±0.64 cm. (9±¼ × 9±¼ in.) section of the small carpet or rug to be tested.

(5) *Circulating air oven.* A vented forced circulation drying oven capable of removing

[1] Cement asbestos board is a suitable material.

the moisture from the specimens when maintained at 105±2.8° C. (221±5° F.) for 2 hours.[3]

(6) *Desiccating cabinet.* An airtight and moisture-tight cabinet capable of holding the floor covering specimens horizontally or vertically without contacting each other during the cooling period following drying, and containing silica gel desiccant with an indicator. Replace or reactivate the desiccant when it becomes inactive.

(7) *Gloves.* Nonhygroscopic gloves (such as rubber or polyethylene) for handling the sample after drying and raising the pile on specimens prior to testing.

(8) *Hood.* A hood capable of being closed and having its draft turned off during each test and capable of rapidly removing the products of combustion following each test. The front or sides of the hood should be transparent to permit observation of the tests in progress.

(9) *Mirror.* A small mirror may be mounted above each test chamber at an angle to permit observation of the specimen from outside the hood.

(10) *Vacuum cleaner.* A vacuum cleaner to remove all loose material from each specimen prior to conditioning. All surfaces of the vacuum cleaner contacting the specimen shall be flat and smooth.

(b) *Specimens*—(1) *Selection of specimens.* After selection of the test items as specified in .4 *Sampling and acceptance procedures,* select a sample of each item large enough to cut the required specimens free from creases, fold marks, delaminations, or other distortions. The test specimens should contain the most flammable parts of the traffic surface at their centers. The most flammable area may be determined on the basis of experience or through pretesting.

(2) *Cutting.* Cut 22.86±0.64 cm. (9±¼ in.) square specimens of each carpet or rug to be tested to comply with .4 *Sampling and acceptance procedures.*

(c) *Conditioning.* Clean each specimen with the vacuum cleaner until it is free of all loose ends left during the manufacturing process and from any material that may have been worked into the pile during handling.[3] Care must be exercised to avoid "fuzzing" of the pile yarn.

Place the specimens in the drying oven in a manner that will permit free circulation of the air at 105±2.8° C. (221±5° F.) around them for 2 hours.[4] Remove the specimens from the oven with gloved hand and place them horizontally in the desiccator with traffic surface up or vertically and free from contact with each other until cooled to room temperature, but in no instance less than 1 hour. No more than 16 specimens shall be in the desiccator at one time.

(d) *Testing.* Place the test chamber in the draft-protected environment (hood with draft off) with its bottom in place. Wearing gloves, remove a test specimen from the desiccator and brush its traffic surface with a gloved hand in such a manner as to raise its pile. Place the specimen on the center of the floor of the test chamber, traffic surface up, exercising care that the specimen is horizontal and flat. Place the flattening frame on the specimen and position a methenamine tablet on one of its flat sides in the center of the 20.32±0.02 cm. (8±1/64 in.) hole.

Ignite the tablet by touching a lighted match or an equivalent igniting source carefully to its top. Close the hood door.[5] If more than 2 minutes elapse between the removal of the specimen from the desiccator and the ignition of the tablet, the conditioning must be repeated.

Continue each test until one of the following conditions occurs:

(1) The last vestige of flame or glow disappears. (This is frequently accompanied by a final puff of smoke.)

(2) The flaming or smoldering has approached within 2.54 cm. (1.0 in.) of the edge of the hole in the flattening frame at any point.

When all combustion has ceased, ventilate the hood and measure the shortest distance between the edge of the hole in the flattening frame and the charred area. Record the distance measured for each specimen.

Remove the specimen from the chamber and remove any burn residue from the floor of the chamber. Before proceeding to the next test, the floor must be cooled to normal room temperature or replaced with one that is at normal room temperature.

(e) *Laundering.* If the small carpet or rug has had a fire-retardant treatment, or is made of fibers which have had a fire-retardant treatment, the selected sample or oversized specimens thereof shall be washed, prior to cutting of test specimens, either 10 times under the washing and drying procedure prescribed in Method 124–1967 of the American Association of Textile Chemists and Colorists [washing procedure 6.2 (III) with a water temperature of 60±2.8° C (140± 5° F), drying procedure 6.3.2(B), maximum load 3.64 kg. (8 pounds)][6] or such number of times under such other washing and drying procedures as shall previously have been found to be equivalent by the Federal Trade Commission. Alternatively, the selected sample or oversized specimens thereof may be washed, dry-cleaned, or shampooed 10 times, prior to cutting of test specimens, in such manner as the manufacturer or other interested party shall previously have established to the satisfaction of the Federal Trade Commission is normally used for that type of small carpet or rug in service. Under the rules and regulations which may be established by the Federal Trade Commission, the laundering requirement may be modified or waived by FTC where it is shown that laundering does not affect the flame-retardant treatment.

.6 *Labeling requirements.* (a) If a small carpet or rug is not accepted under any of the provisions of .4 *Sampling and acceptance procedures,* it shall, prior to its introduction into commerce, be permanently labeled, pursuant to rules and regulations established by the Federal Trade Commission, with the following statement: Flammable (Fails U.S. Department of Commerce Standard FF 2–70); Should not be used near sources of ignition.

(b) If a small carpet or rug has had a fire-retardant treatment or is made of fibers which have had a fire-retardant treatment, it shall be labeled with the letter "T" pursuant to rules and regulations established by the Federal Trade Commission.

[FR Doc.73-4270 Filed 3-2-73;10:41 am]

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[3] Option 1 of ASTM D 2654–67T, "Methods of Test for Amount of Moisture in Textile Materials," describes a satisfactory oven. ("1969 Book of ASTM Standards," Part 24, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.)

[3] The vacuum cleaning described is not intended to simulate the effects of repeated vacuum cleaning in service.

[4] If the specimens are moist when received, permit them to air-dry at laboratory conditions prior to placement in the oven. A satisfactory preconditioning procedure may be found in ASTM D 1776–67, "Conditioning Textiles and Textile Products for Testing." ("1969 Book of ASTM Standards," Part 24, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103).

[5] To provide a draft-protected environment while avoiding the possibility of oxygen starvation, presence of an adequate oxygen supply during the test must be ensured. Small hoods should be louvered to permit entry of air during the test, or alternatively the hood may be left open not in excess of 6 inches. In the event the hood door is left open, precautions must also be taken to ensure that other sources of air movement in the laboratory which might create drafts in the test chamber are minimized.

[6] Technical Manual of the American Association of Textile Chemists and Colorists, Vol. 45, 1969, published by AATCC, Post Office Box 12215, Research Triangle Park, NC 27709.

CARPET AND RUGS

Notice of Proposed Sampling Plan

On June 2, 1972, there was published in the FEDERAL REGISTER (37 FR 11079) a notice of finding that amendments to provide for sampling plans may be needed to two standards; namely, the Standard for the Surface Flammability of Carpets and Rugs, DOC FF 1–70 (35 FR 6211, Apr. 16, 1970) and the Standard for the Surface Flammability of Small Carpets and Rugs (Pill Test), DOC FF 2–70 (35 FR 19702, Dec. 29, 1970). The FEDERAL REGISTER notice of June 2, 1972, announced a preliminary finding that such amendments to provide for sampling plans might be needed to detect noncomplying carpet and rugs before they are placed on the market in order to provide increased protection to the public against unreasonable risk of the occurrence of fire leading to death or personal injury or significant property damage, and that confirmation of the need would require appropriate amendment of those standards.

PROPOSED SAMPLING PLAN FOR STANDARD FOR THE SURFACE FLAMMABILITY OF CARPETS AND RUGS (DOC FF 1–70)

After review and analysis of the comments received, and analysis developed through further research, it is hereby found that an amendment of the standard for the Surface Flammability of Carpets and Rugs, DOC FF 1–70 (35 FR 6211, Apr. 16, 1970) is needed to provide for a sampling plan under the standard.

It is preliminarily found that the plan which is set out in full at the end hereof is:

(a) Needed for large carpet and rugs to protect the public against unreasonable risk of the occurrence of fire leading to death, personal injury, or significant property damage;

(b) Reasonable, technologically practicable, and appropriate, and is stated in objective terms; and

(c) Limited to large carpet and rugs which currently present the unreasonable risks specified in (a) above.

AMENDMENT OF THE STANDARD FOR THE SURFACE FLAMMABILITY OF SMALL CARPETS AND RUGS (PILL TEST) (DOC FF 2–70)

The finding as to whether there is the need to amend the Standard for the Surface Flammability of Small Carpets and Rugs (Pill Test), DOC FF 2–70 (35 FR 19702, Dec. 29, 1970), to provide for a

sampling plan is the subject of a separate FEDERAL REGISTER notice.

BASIS FOR PROPOSED STATISTICAL SAMPLING PLAN

The finding of need to amend the Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1–70) to include a statistical sampling plan is based on the objective of giving maximum practicable assurance that the product which reaches the marketplace meets established flammability requirements. The test method which has been developed for this standard involves a destructive test, thus precluding the testing of all items covered under the standard. It is, therefore, essential to have some type of statistical sampling procedure. By providing a statistically based sampling plan as part of the testing procedure in the standard the consumer would be given increased protection. This proposed sampling plan would also provide a framework for premarket testing, and thus assist greatly in detecting noncomplying carpet and rugs before they are placed on the market. The proposed plan, which is appended hereto, is based on well recognized sampling procedures.

APPLICABILITY OF PROPOSED SAMPLING PLAN

As is the case with all flammability standards issued under the Flammable Fabrics Act, the proposed sampling plan contemplated herein would apply to all domestic and imported carpet and rugs as defined in the standard (DOC FF 1–70). Pursuant to section 4(b) of the Flammable Fabrics Act, as amended (15 U.S.C. 1193(b)), the amendment exempts carpet and rugs in inventory or with the trade as of the date on which the amendment becomes effective.

EFFECTIVE DATE OF PROPOSED AMENDMENT

The present Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1–70) became effective April 16, 1971. All carpet and rugs as defined under the standard and manufactured subsequent to April 16, 1971, are required to comply. An amendment to a flammability standard normally becomes effective 12 months from the date on which such amendment is promulgated unless the Secretary of Commerce finds for good cause shown that an earlier or later date is in the public interest and publishes the reason for such finding. Since information received by this Department indicates that compliance with the carpet and rug standard (DOC FF 1–70) will be substantially accelerated by the sampling plan, the Secretary proposes to make this amendment effective 90 days following publication of the final sampling plan in the FEDERAL REGISTER.

REISSUANCE OF THE STANDARD

The sampling plan is expected to be included in the carpet and rug standard (DOC FF 1–70) under a section .4, titled "Sampling and Acceptance Procedures." Inclusion of the sampling plan in the standard requires that certain portions of the standard be revised, deleted, and/or renumbered. The definitions under the present section .1 of the standard would be renumbered and would contain new proposed sections (g), (h), (i), (j), and (k). The term "acceptance criterion" would be deleted. Changes would be made to present sections .3(a) and .4(a)(4). Present sections .4(e) and (f) would be deleted. Also, amendments will be made to present sections .1(b), .1(g), .4(a), .4(b), .4(c), and .4(d).

In the light of the foregoing, reissuance of the standard to include all changes is considered appropriate. Appended hereto, is the proposed standard to be reissued as the Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1–70; as amended).

EFFECT ON REQUIREMENT TO COMPLY WITH THE PRESENT STANDARD

This notice and the proposed sampling plan issued, hereunder, do not affect the existing requirement to comply with the Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1–70) which is presently in effect.

Issued: March 1, 1973.

RICHARD O. SIMPSON,
Acting Assistant Secretary
For Science and Technology.

CARPET AND RUGS

PROPOSED AMENDMENT TO THE STANDARD FOR THE SURFACE FLAMMABILITY OF CARPET AND RUGS (PILL TEST)

(DOC FF 1–70)

.1 Definitions.
.2 Scope and application.
.3 General requirements.
.4 Sampling and acceptance procedures.
.5 Test procedure.
.6 Labeling requirements.

.1 *Definitions.* In addition to the definitions given in section 2 of the Flammable Fabrics Act, as amended (sec. 1, 81 Stat. 568; 15 U.S.C. 1191), and § 7.2 of the Procedures (33 FR 14642, Oct. 1, 1968), the following definitions apply for the purpose of this standard:

(a) "Carpet" means any type of finished product made in whole or in part of fabric or related material and intended for use or which may reasonably be expected to be used as a floor covering, which is exposed to traffic in homes, offices, or other places of assembly or accommodation, and which may or may not be fastened to the floor by mechanical means, such as nails, tacks, barbs, staples, adhesives, and which has one dimension greater than 1.83 m. (6 ft.) and a surface area greater than 2.23 sq. m. (24 sq. ft.). Products such as "carpet squares", with one dimension less than 1.83 m. (6 ft.) and a surface area less than 2.23 sq. m. (24 sq. ft.), but intended to be assembled upon installation into assemblies which may have one dimension greater than 1.83 m. (6 ft.) and a surface area greater than 2.23 sq. m. (24 sq. ft.) are included in this definition. Mats, hides with natural or synthetic fibers, and other similar products in the above defined dimensions are included in this definition, but resilient floor coverings such as linoleum, asphalt tile, and vinyl tile are not.

(b) "Rug" means, for the purpose of this standard, the same as carpet and shall be accepted as interchangeable with carpet.

(c) "Traffic Surface" means a surface of a carpet or rug which is intended to be walked upon.

(d) "Test Criterion" means the basis for judging whether or not a single specimen of carpet or rug has passed the test; i.e., the charred portion of a tested specimen shall not extend to within 2.54 cm. (1.0 in.) of the edge of the hole in the flattening frame at any point.

(e) "Timed Burning Tablet" (pill) means the methenamine tablet, weighing approximately 0.149 gram (2.30 grains), sold as product No. 1588 in Catalog No. 79, December 1, 1969, by the Eli Lilly Co. of Indianapolis, Ind. 46206, or an equal tablet.

(f) "Fire-Retardant Treatment" means any process to which a carpet or rug has been exposed at any time during manufacture or in any event prior to delivery to the consumer which significantly decreases the flammability of that carpet or rug and enables it to meet this standard.

(g) "Production Unit" (Unit) means a quantity of carpet or rugs of one quality. This quantity is determined, before sampling, by the manufacturer, seller, or other person responsible for performing tests and maintaining records, within the limitations described in *.4 Sampling and Acceptance Procedures.*

(h) "Quality" means a particular style or design of carpet or rug, manufactured in essentially the same process and identical except for color or print pattern as specified in *.4 Sampling and Acceptance Procedures.*

(i) "Item" means a piece, roll, individual carpet, or rug, or other natural aggregate of product from which test specimens are cut.

(j) "Production Unit Sample" (Sample) means eight specimens from a production unit.

(k) "Specimen" means a 22.86±0.64 x 22.86±0.64 cm. (9±¼ x 9±¼ in.) section of carpet or rug.

.2 Scope and application. This standard provides a test method to determine the surface flammability of carpet and rugs when exposed to a standard small source of ignition under carefully prescribed draft-protected conditions. It is applicable to all types of carpet and rugs used as floor covering materials regardless of their method of fabrication or whether they are made of natural or synthetic fibers or films, or combinations of, or substitutes for these.

One of a kind carpet or rug, such as an antique, an Oriental, or a hide, may be excluded from testing under this standard pursuant to conditions established by the Federal Trade Commission.

.3 General requirements—(a) *Summary of test method.* This method involves the exposure of conditioned specimens of a given carpet or rug production unit to a standard igniting source in a draft-protected environment, and measurement of the proximity of the charred portion to the edge of the hole in the prescribed flattening frame.

(b) *Test criterion.* A specimen passes the test if the charred portion does not extend to within 2.54 cm. (1.0 in.) of the edge of the hole in the flattening frame at any point.

.4 Sampling and acceptance procedures—(a) *General.* The test criterion of .3(b) shall be used in conjunction with the following sampling plan, or any other approved by the Department of Commerce that provides at least the equivalent level of fire safety to the consumer. Alternate sampling plans submitted for approval shall have operating characteristics such that the probability of unit acceptance at any percentage defective does not exceed the corresponding probability of unit acceptance of the following sampling plan in the region of the latter's operating characteristic curves that lies between 5 and 95 percent acceptance probability.

The size of a production unit of machine-made carpet or rugs shall not exceed 22,936 linear meters (25,000 linear yards) or 84,175

square meters (100,000 square yards), whichever is greater, and in any event shall not exceed the quantity produced in 45 consecutive calendar days. The size of a production unit of handmade or hide carpet or rugs shall not exceed 8,418 square meters (10,000 square yards).

All carpet or rugs of the same quality whose manufacture is completed during production of a production unit shall be deemed to be members of that unit. Different colors and different print patterns of the same quality may be included in a single production unit, provided such colors and print patterns demonstrate flammability characteristics that are not significantly different from each other as determined by previous testing of three samples of eight specimens each taken from at least three pieces, rolls, individual carpet or rugs, or other natural aggregates of product, of each color and print pattern to be included in the unit.

Initial, normal, reduced, and tightened sampling shall be followed, as described in the following sections, for all machine-made carpet and rugs. For all handmade or hide carpet or rugs, all sampling shall be according to Initial Sampling only.

(b) *Sampling.* A unit is either accepted or rejected in accordance with the following plan:

(1) *Initial sampling.* From each production unit, select at random four items (pieces, rolls, individual carpet or rugs, or other natural aggregates of product). From the four selected items, cut sufficient material to provide 32 specimens (eight per item) for test. Assign two specimens from each item to each of four production unit samples. Test one production unit sample (eight specimens) in accordance with .5 Test procedure. If all eight specimens pass the test criterion of .3(b), accept the unit. If three or more individual specimens fail the test criterion of .3(b), reject the unit. If one or two individual specimens fail the test criterion of .3(b), test a second production unit sample of eight specimens as follows:

Test the second production unit sample in accordance with .5 Test procedure. If the total number of individual specimens (from both the first and second samples) failing the test criterion is one, accept the unit. If the total number of individual specimens (from both samples) failing the test criterion is four or more, reject the unit. If the total number of individual specimens (from both samples) failing the test criterion is two or three, test a third production unit sample of eight specimens as follows:

Test the third production unit sample in accordance with .5 Test procedure. If the total number of specimens (from the three samples) failing the test criterion is two, accept the unit. If the total number of specimens (from the three samples) failing the test criterion is four or more, reject the unit. If the total number of specimens (from the three samples) failing the test criterion is three, test a fourth production unit sample of eight specimens as follows:

Test the fourth production unit sample in accordance with .5 Test procedure. If the total number of specimens (from the four samples) failing the test criterion is three, accept the unit. If the total number of specimens (from the four samples) failing the test criterion is four or more, reject the unit.

(2) *Normal sampling.* Normal sampling may be initiated or resumed when five successive production units of the same quality have all been accepted under either initial or tightened sampling.

Normal sampling shall be the same as initial sampling except that:

(a) The quantity of carpet or rug under test may be increased to two production units of the same quality,

(b) Sixteen specimens shall be taken from each of two items selected at random,

(c) If more than one production unit is represented in the quantity under test, an equal number of specimens (16 each) shall be selected from each unit and each sample shall contain four specimens from each unit.

(d) If more than one production unit is represented in the quantity under test, the acceptance or rejection decision reached as a result of testing shall apply to both units, and

(e) Normal sampling shall be discontinued and tightened sampling commenced when a rejection occurs.

(3) *Reduced sampling.* Reduced sampling may be initiated or resumed when 10 successive production units of the same quality have all been accepted under normal sampling. Reduced sampling may be conducted in accordance with Option 1 or Option 2 below.

(a) *Reduced Sampling Option 1.* Reduced sampling under Option 1 shall be the same as initial sampling except that:

The quantity of carpet or rug under test may be increased to four production units of the same quality,

Sixteen specimens shall be taken from each of two items selected at random,

If more than one production unit is represented in the quantity under test, the first item shall be selected at random from these production units and the second item shall be selected at random from the units not containing the first item,

If more than one production unit is represented in the quantity under test, the acceptance or rejection decision reached as a result of testing shall apply to all units, and

Reduced sampling shall be discontinued and tightened sampling commenced when a rejection occurs.

(b) *Reduced Sampling Option 2.* Reduced sampling under Option 2 shall be the same as initial sampling except that:

The quantity of carpet or rug under test may be increased to two production units of the same quality.

Sixteen specimens shall be taken from each of two items selected from initial production of the first production unit represented in the quantity under test, the items being of different colors or print patterns if the quantity under test contains more than one color or print pattern.

If more than one production unit is represented in the quantity under test, the acceptance or rejection decision reached as a result of testing shall apply to both units, and

Reduced sampling shall be discontinued and tightened sampling commenced when a rejection occurs.

(4) *Tightened sampling.* Tightened sampling shall be the same as initial sampling. If tightened sampling remains in effect for 15 consecutive production units of a quality, production of that quality must be discontinued until that part of the process or component which is causing failure has been identified and the flammability characteristics of the end product have been improved.

(5) *Disposition of rejected units.* Carpet and rugs contained in production units that have been rejected, under sections (1), (2), (3), and (4) of this sampling plan, may be subjected to retesting without reworking in accordance with one of the options provided hereunder and/or reworking and retesting as prescribed below. The item definition used for purposes of sampling (piece, roll, individual carpet or rug, or other natural aggregates of product) shall be retained for these purposes.

(a) *Reworking and retesting.* A rejected production unit may be retested after all carpet and rugs contained therein are subjected to reprocessing or additional processing to improve the flammability characteristics. From the unit, select four items as follows:

Select all items that contributed failing specimens to the sample(s) employed in reaching the decision to reject the unit originally and that are present in the reworked unit;

Select additional items as required from among those items that contributed failing specimens to the sets of specimens employed in reaching decisions to reject subunits or items in retesting (without reworking) and that are present in the reworked unit;

Select at random additional items as required from among remaining items that are present in the reworked unit.

If the unit contains fewer than four items, select all items in the unit.

From the selected items, cut sufficient material to provide 24 specimens (equal numbers of specimens from all selected items) for test. Test 16 specimens (at least four from each selected item) in accordance with .5 Test procedure. If all 16 specimens pass the test criterion of .3(b), accept the unit. If two or more individual specimens fail the test criterion of .3(b), reject the unit. If one individual specimen fails the test criterion of .3(b), test the remaining eight specimens in accordance with .5 Test procedure. If all of the eight remaining specimens pass the test criterion of .3(b), accept the unit. If one or more of the eight remaining specimens fail the test criterion of .3(b), reject the unit.

A production unit rejected as a result of retesting following reworking shall not be subject to further reworking and retesting, but may be subjected to retesting in accordance with one of the options provided hereunder, provided that neither option has been previously exercised with respect to the rejected production unit from which the items contained in the reworked unit were obtained.

Carpet and rugs contained in a production unit rejected as a result of retesting following reworking shall not be eligible for further attempts at acceptance under this standard other than by means of one of the retesting options provided.

(b) *Retesting (without reworking) Option 1.* This option is not available when the item for sampling purposes has been defined as an individual carpet or rug. Items contained in a rejected production unit may be tested and accepted or rejected on an item-by-item basis according to the following plan:

From each item, cut sufficient material to provide 16 specimens. All specimens shall be obtained from the vicinity of the item boundary nearest to a specimen that failed in sampling, or eight specimens shall be obtained from the vicinity of each item boundary. Test all specimens in accordance with .5 Test procedure. If all 16 specimens pass the test criterion of .3(b), accept the item. If two or more specimens fail the test criterion of .3(b), reject the item. If one specimen fails the test criterion of .3(b), cut sufficient material to provide 16 additional specimens from any desired single location in the item. Test all additional specimens in accordance with .5 Test procedure. If all 16 additional specimens pass the test criterion of .3(b), accept that portion of the item that is not contained between the locations from which the failing (original) specimen and the additional specimens were obtained. If one or more specimens fail the test criterion of .3(b), reject the item. Rejected items and rejected portions of items shall not be eligible for further attempts at acceptance under this standard. If retesting under this option is initiated and is abandoned before all items in a production unit have been retested,

those items in that production unit that have not been retested and have not been reworked previously may be construed to comprise a rejected production unit for reworking and retesting in accordance with .4(b)(5)(a).

(c) *Retesting (without reworking) Option 2.* A rejected production unit may be subdivided into two or more subunits consisting of one or more items each. Such subdivision shall correspond to the time sequence of production of finished items or to differences in materials or process steps, such as dye lots, fiber sources, tufting machines, or rinsing operations, determined by the manufacturer's tests or analyses to constitute the probable cause of differences in flammability characteristics.

If the subdivision corresponds to the time sequence of production of finished items, each item from which one or more failing specimens were obtained in sampling shall constitute a boundary of a subunit. Subunits of a rejected production unit may be tested and their constituent items accepted or rejected according to the following plan:

From each subunit, select the two items at the boundaries of the subunit if the subdivision corresponds to the time sequence of production of finished items or select one item at random if the subdivision was made on any other basis. From the selected item(s), cut sufficient material to provide a total of 16 specimens from the subunit, an equal number of specimens being obtained from each item when two items have been selected. Test all specimens in accordance with .5 Test procedure. If all 16 specimens pass the test criterion of .3(b), accept the subunit. If two or more specimens fail the test criterion of .3(b), reject the subunit. If one specimen fails the test criterion of .3(b), individual items of the subunit may be accepted or rejected on an item-by-item basis as follows. From each item, cut sufficient material to provide a total of 16 specimens. Test all specimens in accordance with .5 Test procedure. If all 16 specimens pass the test criterion of .3(b), accept the item. If one or more specimens fail the test criterion of .3(b), reject the item.

Rejected items and rejected subunits from the same production unit that have not been reworked previously may be construed to comprise a rejected production unit for reworking and retesting in accordance with .4(b)(5)(a). Rejected items and rejected subunits that have been reworked previously or that are not reworked shall not be eligible for further attempts at acceptance under this standard.

(6) *Records.* Records of all unit sizes, test results, and the disposition of rejected units must be maintained by the manufacturer upon the effective date of this standard. Rules and regulations may be established by the Federal Trade Commission.

(7) *Compliance market sampling plan by FTC.* The FTC may submit, for approval by the Secretary of Commerce, sampling plans for use in market testing of items covered by this standard. For approval, such plans shall define noncompliance of a production unit to exist only when it is shown, with a high level of statistical confidence, those production units represented by tested items which fail such FTC plans will, in fact, fail this standard.

Production units found to be noncomplying under these provisions shall be deemed not to conform to this standard.

.5 *Test procedure*—(a) *Apparatus*—(1) *Test chamber.* The test chamber shall consist of an open top, hollow cube made of noncombustible material[1] with inside dimensions of 30.48±0.13×30.48±0.13×30.48±0.13 cm. (12±⅛×12±⅛×12+⅛ in.) and a minimum of 6.35 mm. (¼ in.) wall thickness. The flat bottom of the box shall be made of the same material as the sides and shall be easily removable. The sides shall be fastened together with screws or brackets and taped or otherwise suitably sealed to prevent air leakage into the box during use.

NOTE: A minimum of two chambers and two extra bottoms is suggested for efficient operation.

(2) *Flattening frame.* A steel plate, 22.86±0.64×22.86±0.64 cm. (9±¼×9±¼ in.), 6.35 mm. (¼ in.) thick (Commercial tolerances) with a 20.32±0.02 cm. (8±1/64 in.) diameter hole in its center is required to hold the carpet or rug flat during the course of the test. It is recommended that one be provided for each test chamber.

(3) *Standard igniting source.* No. 1588 methenamine timed burning tablet or an equal tablet. These tablets shall be stored in a desiccator over a desiccant for 24 hours prior to use. (Small quantities of sorbed water may cause the tablets to fracture when first ignited. If a major fracture occurs, any results from that test shall be ignored, and it shall be repeated.)

(4) *Test specimens.* Each test specimen shall be a 22.86±0.64×22.86±0.64 cm. (9±¼×9±¼ in.) section of the carpet or rug to be tested.

(5) *Circulating air oven.* A vented forced circulation drying oven capable of removing the moisture from the specimens when maintained at 105±2.8° C. (221±5° F.) for 2 hours.[2]

(6) *Desiccating cabinet.* An airtight and moisture-tight cabinet capable of holding the floor covering specimens horizontally or vertically without contacting each other during the cooling period after drying, and containing silica gel desiccant with an indicator. Replace or reactivate the desiccant when it becomes inactive.

(7) *Gloves.* Nonhygroscopic gloves (such as rubber or polyethylene) for handling the sample after drying, and raising the pile on specimens prior to testing.

(8) *Hood.* A hood capable of being closed and having its draft turned off during each test and capable of rapidly removing the products of combustion following each test. The front or sides of the hood should be transparent to permit observation of the tests in progress.

(9) *Mirror.* A small mirror may be mounted above each test chamber at an angle to permit observation of the specimen from outside the hood.

(10) *Vacuum cleaner.* A vacuum cleaner to remove all loose material from each specimen prior to conditioning. All surfaces of the vacuum cleaner contacting the specimen shall be flat and smooth.

(b) *Specimens*—(1) *Selection of specimens.* After selection of the test items as specified in .4 *Sampling and acceptance procedures*, select a sample of each item large enough to cut the required specimens, free from creases, fold marks, delaminations, or other distortions. The test specimens should contain the most flammable parts of the traffic surface at their centers. The most flammable area may be determined on the basis of experience or through pretesting.

(2) *Cutting.* Cut 22.86±0.64 cm. (9±¼ in.) square specimens of each carpet or rug to be tested to comply with .4 *Sampling and acceptance procedures.*

(c) *Conditioning.* Clean each specimen with the vacuum cleaner until it is free of all loose ends left during the manufacturing process and from any material that may have been worked into the pile during handling.[3] Care must be exercised to avoid "fuzzing" of the pile yarn.

Place the specimens in the drying oven in a manner that will permit free circulation of the air at 105±2.8° C. (221±5° F.) aroupd them for 2 hours.[4] Remove the specimens from the oven with gloved hands and place them horizontally in the desiccator with traffic surface up or vertically and free from contact with each other until cooled to room temperature, but in no instance less than 1 hour.

No more than 16 specimens shall be in the desiccator at one time.

(d) *Testing.* Place the test chamber in the draft-protected environment (hood with draft off) with its bottom in place. Wearing gloves, remove a test specimen from the desiccator and brush its surface with a gloved hand in such a manner as to raise its pile. Place the specimen on the center of the floor of the test chamber, traffic surface up, exercising care that the specimen is horizontal and flat. Place the flattening frame on the specimen and position a methenamine tablet on one of its flat sides in the center of the 20.32±0.02 cm. (8±1/64 in.) hole.

Ignite the tablet by touching a lighted match or an equivalent igniting source carefully to its top. Close the hood door.[5] If more than 2 minutes elapse between the removal of the specimen from the desiccator and the ignition of the tablet, the conditioning must be repeated.

Continue each test until one of the following conditions occurs:

(1) The last vestige of flame or glow disappears. (This is frequently accompanied by a final puff of smoke.)

(2) The flaming or smoldering has approached within 2.54 cm. (1 in.) of the edge of the hole in the flattening frame at any point.

When all combustion has ceased, ventilate the hood and measure the shortest distance between the edge of the hole in the flattening frame and the charred area. Record the distance measured for each specimen.

Remove the specimen from the chamber and remove any burn residue from the floor of the chamber. Before proceeding to the next test, the floor must be cooled to normal

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[1] Cement asbestos board is a suitable material.

[2] Option 1 of ASTM D 2654–67T, "Methods of Test for Amount of Moisture in Textile Materials," describes a satisfactory oven. ("1969 Book of ASTM Standards," Part 24, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.)

[3] The vacuum cleaning described is not intended to simulate the effects of repeated vacuum cleaning in service.

[4] If the specimens are moist when received, permit them to air-dry at laboratory conditions prior to placement in the oven. A satisfactory preconditioning procedure may be found in ASTM D 1776–67, "Conditioning Textiles and Textile Products for Testing." ("1969 Book of ASTM Standards", Part 24, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.)

[5] To provide a draft-protected environment while avoiding the possibility of oxygen starvation, presence of an adequate oxygen supply during the test must be insured. Small hoods should be louvered to permit entry of air during the test, or alternatively the hood door may be left open not in excess of 6 inches. In the event the hood door is left open, precautions must also be taken to insure that other sources of air movement in the laboratory which might create drafts in the test chamber are minimized.

room temperature or replaced with one that is at normal room temperature.

(e) *Laundering.* If the carpet or rug has had a fire-retardant treatment, or is made of fibers which have a fire-retardant treatment, the selected sample or oversized specimens thereof shall be washed, prior to cutting of test specimens, either 10 times under the washing and drying procedure prescribed in Method 124–1967 of the American Association of Textile Chemists and Colorists [washing procedure 6.2 (III) with a water temperature of 60±2.8° C. (140±5° F.) drying procedure 6.3.2(B), maximum load 3.64 kg. (8 pounds)][3], or such number of times under such other washing and drying procedure as shall previously have been found to be equivalent by the Federal Trade Commission. Alternatively, the selected sample or oversized specimens thereof may be washed, dry cleaned, or shampooed 10 times, prior to cutting of test specimens, in such manner as the manufacturer or other interested party shall previously have established to the satisfaction of the Federal Trade Commission is normally used for that type of carpet or rug in service. Under the rules and regulations which may be established by the Federal Trade Commission, the laundry requirement may be modified or waived by FTC where it is shown that laundering does not affect the flame-retardant treatment.

.6 *Labeling requirements.* If the carpet or rug has had a fire-retardant treatment or is made of fibers which have had a fire-retardant treatment, it shall be labeled with the letter "T" pursuant to conditions established by the Federal Trade Commission.

[FR Doc.73–4269 Filed 3–2–73;10:40 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[FAP 1B2682]

ALLIED COLLOIDS, INC.

Withdrawal of Petition for Food Additives

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b), 72 Stat. 1786); 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), Allied Colloids, Inc., 1 Robinson Lane, Ridgewood, NJ 07450, has withdrawn its petition (FAP 1B2682), notice of which was published in the FEDERAL REGISTER of June 29, 1971 (36 FR 12246), proposing that § 121.2526 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 121.2526) be amended to provide for the safe use of sodium polyacrylate as a dispersant of pigments used in the manufacture of paper and paperboard for contact with aqueous and fatty foods.

Dated: February 26, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73–4332 Filed 3–6–73;8:45 am]

[3] Technical Manual of the American Association of Textile Chemists and Colorists, Vol. 45, 1969, published by AATCC, Post Office Box 12215, Research Triangle Park, NC 27709.

[Docket No. FDC–D–589; NADA No. 30–704V]

BEECHAM-MASSENGILL PHARMACEUTICALS

Daribiotic Improved; Notice of Withdrawal of Approval of New Animal Drug Application

Beecham-Massengill Pharmaceuticals, Division of Beecham, Inc., Bristol, Tenn. 37620 was informed that the Commissioner of Food and Drugs proposed to issue an order under the provisions of section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(3)) withdrawing approval of NADA (new animal drug application) No. 30–704V with respect to the use of Daribiotic Improved. The drug is administered by intramammary infusion to cows for the treatment and prevention of acute or chronic mastitis; each 25 cc. dose contains 200 milligrams of neomycin sulfate (equivalent to 140 milligrams of standard neomycin base) and 50,000 units of polymyxin B sulfate in an aqueous milk-miscible base. Labeling includes a statement that milk taken from animals during treatment and within 72 hours (6 milkings) after treatment not be used for food.

The Commissioner, on the basis of new information before him with respect to such drug evaluated together with the evidence available to him when the application was approved, concludes that the drug is not shown to be safe under the conditions of use upon the basis of which the application was approved.

Information available to the Commissioner has established that residues of neomycin exceeding the tolerance of 0.15 part per million (negligible residue provided by 21 CFR 135g.25) are present in milk taken from animals in which the drug has been used as directed in the labeling. Available evidence also established that residues of neomycin are present 120 hours following treatment. Section 135.103 (21 CFR 135.103), which provides for label requirements for new animal drugs intended for intramammary use in milk-producing animals, limits the maximum milk discard period to 96 hours. Accordingly, there cannot be approved for the subject drug labeling which would ensure the absence of neomycin residues in milk when the drug is labeled for use in lactating animals.

Beecham-Massengill Pharmaceuticals upon being informed of the Commissioner's intent to issue a notice of opportunity for a hearing proposing issuance of an order to withdraw approval of the subject new animal drug application waived the right to such a hearing and requested that the application be withdrawn.

Based on the firm's request and the findings set forth above, the Commissioner concludes that approval of new animal drug application No. 30–704V should be withdrawn. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–47; 21 U.S.C. 360b(e)) and under the authority delegated to the Commissioner (21 CFR 2.120), approval of new animal drug application No. 30–704V including all amendments and supplements thereto is hereby withdrawn effective on February 26, 1973.

Dated: February 26, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.73–4326 Filed 3–6–73;8:45 am]

[GRASP 2G0005]

FISHER, CHRISTEN, AND SABOL

Notice of Filing of Petition for Affirmation of GRAS Status

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1786; 21 U.S.C. 321(s), 348, 371(a)) and the regulations for affirmation of GRAS status (21 CFR 121.40), published in the FEDERAL REGISTER of December 2, 1972 (37 FR 25705), notice is given that a petition (GRASP 2G0005) has been filed by Fisher, Christen, and Sabol, Suite 507–511, 1000 Connecticut Avenue NW., Washington, DC 20036, and placed on public display at the office of the Hearing Clerk, Food and Drug Administration, proposing affirmation that magnesium acetate (350 mg. magnesium per 40 fluid ounces) and zinc acetate (10 mg. zinc per 40 fluid ounces) used in a vitamin—mineral food supplement, are generally recognized as safe (GRAS).

Interested persons may, on or before May 7, 1973, review the petition and/or file comments (preferably in quintuplicate) with the Hearing Clerk, Department of Health, Education, and Welfare, Food and Drug Administration, Room 6–88, 5600 Fishers Lane, Rockville, MD 20852. Comments should include any available information that would be helpful in determining whether the substance is, or is not, generally recognized as safe. A copy of the petition and received comments may be seen in the office of the Hearing Clerk, address given above, during working hours, Monday through Friday.

Dated: February 25, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73–4327 Filed 3–6–73;8:45 am]

[GRASP 3G0010]

FOREMOST-McKESSON, INC.

Notice of Filing of Petition for Affirmation of GRAS Status

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1786; 21 U.S.C. 321(s), 348, 371(a)) and the regulations for affirmation of GRAS status (21 CFR 121.40), published in the FEDERAL REGISTER of December 2, 1972 (37 FR 25705), notice is given that a petition (GRASP 3G0010) has been filed by Foremost-McKesson, Inc., Crocker Plaza, One Post Street, San Francisco, CA 94104, and placed on public display at the office of the Hearing Clerk, Food and Drug Administration, proposing affirmation that addition of l-cysteine to yeast-leavened bakery

products at a level not to exceed 0.009 part for each 100 parts flour for reducing fermentation time and improving the dough is generally recognized as safe (GRAS) for use in food.

Interested persons may, on or before May 7, 1973, review the petition and/or file comments (preferably in quintuplicate) with the Hearing Clerk, Department of Health, Education, and Welfare, Food and Drug Administration, Room 6-88, 5600 Fishers Lane, Rockville, MD 20852. Comments should include any available information that would be helpful in determining whether the substance is, or is not, generally recognized as safe. A copy of the petition and received comments may be seen in the office of the Hearing Clerk, address given above, during working hours, Monday through Friday.

Dated: February 25, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73-4328 Filed 3-6-73;8:45 am]

[GRASP 3G0011]

FOREMOST-McKESSON, INC.

Filing of Petition for Affirmation of GRAS Status

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201 (s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1786; 21 U.S.C. 321(s), 348, 371(a)) and the regulations for affirmation of GRAS status (21 CFR 121.40), published in the FEDERAL REGISTER of December 2, 1972 (37 FR 25705), notice is given that a petition (GRASP 3G0011) has been filed by Foremost-McKesson, Inc., Crocker Plaza, One Post Street, San Francisco, CA 94104, and placed on public display at the office of the Hearing Clerk, Food and Drug Administration, proposing affirmation that whey fractions consisting of demineralized whey, delactosed whey, and demineralized-delactosed whey used in food products are generally recognized as safe (GRAS) for use in food.

Interested persons may, on or before May 7, 1973, review the petition and/or file comments (preferably in quintuplicate) with the Hearing Clerk, Department of Health, Education, and Welfare, Food and Drug Administration, Room 6-88, 5600 Fishers Lane, Rockville, MD 20852. Comments should include any available information that would be helpful in determining whether the substance is, or is not, generally recognized as safe. A copy of the petition and received comments may be seen in the office of the Hearing Clerk, address given above, during working hours, Monday through Friday.

Dated: February 25, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73-4329 Filed 3-6-73;8:45 am]

[FAP 3B2878]

HAZLETON LABORATORIES, INC.

Filing of Petition for Food Additive

Pursuant to the 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 3B2878) has been filed by Hazleton Laboratories, Inc., 9200 Leesburg Turnpike, Vienna, VA 22180, proposing that § 121.2520 *Adhesives* (21 CFR 121.2520) be amended to provide for the safe use of trisnonyl phenyl phosphite/formal dehyde polymer as a stabilizer in food-packaging adhesives.

Dated: February 26, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73-4333 Filed 3-6-73;8:45 am]

[GRASP 2G0004]

OLIN CHEMICALS

Filing of Petition for Affirmation of GRAS Status

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1786; 21 U.S.C. 321(s), 348, 371(a)) and the regulations for affirmation of GRAS status (21 CFR 121.40), published in the FEDERAL REGISTER of December 2, 1972 (37 FR 25705), notice is given that a petition (GRASP 2G0004) has been filed by Olin Chemicals, 120 Long Ridge Road, Stamford, CT 06904, and placed on public display at the office of the Hearing Clerk, Food and Drug Administration, proposing affirmation that 0.5 p.p.m. calcium hypochlorite used in live oyster-conditioning water is generally recognized as safe (GRAS).

Interested persons may, on or before May 7, 1973, review the petition and/or file comments (preferably in quintuplicate) with the Hearing Clerk, Department of Health, Education, and Welfare, Food and Drug Administration, Room 6-88, 5600 Fishers Lane, Rockville, MD 20852. Comments should include any available information that would be helpful in determining whether the substance is, or is not, generally recognized as safe. A copy of the petition and received comments may be seen in the office of the Hearing Clerk, address given above, during working hours, Monday through Friday.

Dated: February 25, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73-4330 Filed 3-6-73;8:45 am]

[Docket No. FDC-D-607; NADA No. 8-689V]

PFIZER, INC.

Oxytetracycline With or Without Vitamin A; Withdrawal of Approval of New Animal Drug Application

In the FEDERAL REGISTER of August 25, 1970 (35 FR 13542, DESI 8689B), the Commissioner of Food and Drugs announced the conclusions of the Food and Drug Administration following evaluation of a report received from the National Academy of Sciences—National Research Council, Drug Efficacy Study Group on Terramycin Animal Formula Tablets and Terramycin Bolus with Vitaman A, new animal drug application (NADA) No. 8-689V; marketed by Pfizer, Inc., 235 East 42d Street, New York, NY 10017.

Pfizer, Inc., responded to the announcement by waiving an opportunity for a hearing and requesting that approval of NADA No. 8-689V be withdrawn.

Based on the grounds set forth in said announcement and the firm's response, the Commissioner concludes that approval of said new animal drug application should be withdrawn. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-351; 21 U.S.C. 360(b) and under authority delegated to the Commissioner (21 CFR 2.120), approval of NADA No. 8-689V, including all amendments and supplements thereto, is hereby withdrawn effective on March 7, 1973.

Dated: February 23, 1973.

WILLIAM F. RANDOLPH,
Acting Associated Commissioner for Compliance.

[FR Doc.73-4331 Filed 3-6-73;8:45 am]

Food and Drug Administration

[Docket No. FDC-D-448; NDA 5-933; DESI-5933]

COOPER LABORATORIES, INC.

Bistrimate; Final Order on Objections and Request for a Hearing Regarding Withdrawal of Approval of New Drug Application

In an announcement published in the FEDERAL REGISTER of August 25, 1970 (35 FR 13541), 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 Bistrimate Tablets (NDA 5-933) containing bismuth sodium triglycollamate. The holder of the new drug application at that time was Smith, Miller and Patch, Inc., 401 Joyce Kilmer Avenue, New Brunswick, New Jersey 08902. The present holder of the new drug application is Cooper Laboratories, Inc., 2900 North 17th Street, Philadelphia, Pennsylvania 19132.

The announcement stated that there is a lack of substantial evidence that the drug Bistrimate is effective for its labeled indications, and that the Commissioner intended to initiate proceedings to withdraw approval of the new drug application for the drug. Interested persons were invited to submit any pertinent data bearing on the proposal within 30 days following publication of the announcement. Material submitted

by Smith, Miller and Patch in response to the announcement was reviewed and found not to provide substantial evidence of effectiveness.

As a result of this review, on September 13, 1971, Smith, Miller and Patch, Inc., was notified by letter that the Commissioner intended to initiate proceedings to withdraw approval of the new drug application.

Subsequently, on June 6, 1972, there was published in the FEDERAL REGISTER (37 FR 11284), a notice to Smith, Miller and Patch, Inc., holder of NDA 5-933 for Bistrimate Tablets, and to any interested person who may be adversely affected, that the Commissioner of Food and Drugs proposed to issue an order withdrawing approval of said application, and all amendments and supplements thereto, on the ground that new information before him with respect to the drug, evaluated together with the evidence available to him when the application was approved, shows 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. The notice provided an opportunity for hearing on withdrawal of the new drug application for Bistrimate (NDA 5-933). Thirty days were allowed for filing a written appearance requesting a hearing by the applicant or any interested person who would be adversely affected by an order withdrawing approval of the application, giving the reasons why approval of the new drug application should not be withdrawn, together with a well-organized and full-factual analysis of the clinical and other investigational data they were prepared to prove in support of their opposition.

On July 5, 1972, a written appearance and request for a hearing was submitted by Cooper Laboratories, Inc., the current holder of the new drug application (NDA 5-933). Submitted with the request was a statement of grounds including the medical documentation relied upon, legal arguments, and an affidavit.

The medical presentation of Cooper Laboratories, Inc., has been considered, and the Commissioner of Food and Drugs concludes that there is no genuine and substantial issue of fact requiring a hearing and that the legal arguments offered are insubstantial, all as explained in more detail below.

I. *The drug.* Bistrimate is the sodium bismuth salt of triglycollamic acid combined with three equivalents of disodium triglycollamate to form a double salt-like compound. It contains 18.3 percent metallic bismuth.

II. *Recommended uses.* Bistrimate is a prescription drug recommended for use in treatment of chronic sore throat and syphilis. It is recommended for administration in tablets equivalent to 75 mgs. of metallic bismuth each. The administration of two tablets three times a day is recommended, but it is cautioned that care be exercised, and that the drug be taken only as prescribed.

III. *Medical documentation to support claims of effectiveness.* In response to the notice, Cooper Laboratories, Inc., has submitted an affidavit and several literature reprints. None of this submission concerns or refers to the effectiveness of Bistrimate as a treatment for chronic sore throat. No evidence whatever has been submitted that Bistrimate is effective for the treatment of chronic sore throat. Previously, on January 22, 1971, the holder of the new drug application (Smith, Miller and Patch, Inc.), informed the Commissioner by letter that it would not be opposed to deleting chronic sore throat as an indication for Bistrimate.

A. *The affidavit.* Included as a part of the July 5, 1972 submission, is the affidavit of Dr. Herbert J. Spoor, a physician who has prescribed Bistrimate for syphilis and has found it to be effective for this condition. Dr. Spoor's affidavit states that it is his opinion that Bistrimate is an effective treatment for syphilis. He makes no reference to any adequate and well-controlled clinical investigations having been conducted to support his opinion, but relies only upon general clinical experience to justify his conclusion.

Of the 45 articles authored or coauthored by Dr. Spoor, cited in the bibliography attached to the affidavit, none deal with syphilis or any form of bismuth treatment.

In addition to his affidavit, Dr. Spoor had a meeting with representatives of the Food and Drug Administration on February 9, 1971, to discuss Bistrimate. At that time, Dr. Spoor told the Food and Drug Administration personnel about a group of patients treated at the New York Eye-Ear Infirmary Syphilis Clinic between 1967-70. His report of that treatment consisted of a list of patients who had a positive serologic test for syphilis and were treated with a variety of drugs; no controls of any kind were employed in this group of patients. In addition, only six of 136 patients were treated with bismuth tablets. Of those patients, according to Dr. Spoor's summary sheet which was supplied to the FDA, the results were: "Claims improvement "1; "Not known "2; "Improved? "1; "No change "1; "Still not happy "1. The efficacy of Bistrimate cannot be evaluated on the basis of these six patients. Moreover, this is the only specific basis the Commissioner has been given to support Dr. Spoor's opinion that Bistrimate is effective in the treatment of syphilis. It does not constitute substantial evidence of efficacy.

B. *Four cited articles.* Cooper submitted reprints of four articles which it contends establish Bistrimate's effectiveness. The Commissioner has reviewed these articles and concludes that none of these constitute substantial evidence of efficacy, as follows:

1. Elmer R. Gross, M.D., and James K. Howles, M.D., "Non Specific Treatment of Dermatoses and Adjunctive Therapy of Syphilis with Oral Sodium Bismuth Triglycollamate." This is the text of an unpublished paper read before an American Medical Association section meeting in 1947. It is a report of the treatment of 354 patients with a variety of dermatoses (lupus erythematosus, scleroderma, lupus vulgaris, alopecia areata, etc.). There were no controls. Of the 354 patients, 222 with syphilis in various stages were treated with Bistrimate, 450 mg. daily, for periods up to 6 months. There were various treatment regimes used throughout the study. Some patients received other medications including penicillin. The criterion used by the authors was inappropriate in that they state that "for clinical purposes, patients demonstrating visible lesions are the best index of therapeutic response." This is a poor index of infection. At that time, and now, it is known that visible syphilitic lesions disappear without any treatment, although the disease continues (William Boyd, "Textbook of Pathology," 5th ed., p. 174-8 Phila., 1947). Apparently the only patients in whom serological (i.e., blood) testing was used to evaluate response were those who received both penicillin and Bistrimate.

The authors conclude that Bistrimate is the drug of choice in patients who have had major arsenical reaction, or in patients whose physical status precludes the use of arsenic. They find Bistrimate useful where parenteral bismuth therapy produced local reactions, or in geriatric syphilology where passive specific therapy is indicated. However, it is difficult to tell from the paper what percentage of patients were believed to have benefited from Bistrimate. No individual case reports are described in any detail whatever. The authors themselves realized that their conclusions were "a bit premature" and that the series was a small one.

This paper is not an adequate and well-controlled clinical study. Specifically, it fails to meet the statutory requirement as spelled out in 21 CFR 130.12(a)(5).

2. Arthur C. DeGraff, M.D. et al., "Report on the Pharmacology and Toxicology of Bistrimate" (1946). This unpublished paper consists of five parts: Part 1 relates to acute toxicity of Bistrimate in experimental animals; part 2 relates to chronic toxicity in experimental animals; part 3 concerns the urinary excretion of bismuth following administration of Bistrimate in man; part 4 concerns the effect of Bistrimate on blood clotting time; and part 5 is a report of five case histories of treatment of patients with syphilis using Bistrimate.

This paper contains no human clinical documentation of effectiveness for syphilis. The vast majority of it deals with nonpertinent data compiled from administration to animals.

The only section of the paper which is at all pertinent to the efficacy of Bistrimate on humans is a report of five case histories of treatment of patients with syphilis using the drug. No definite conclusions can be made regarding the efficacy of oral Bistrimate from only case reports without controls. Dosages of Bistrimate varied among the five patients, as did duration of administration. No statistically valid conclusion could be

drawn from this small a study, and the report itself admits that the group is small. This report does not contain any adequate and well-controlled clinical studies. Specifically, the five case histories fail to meet the criteria set forth at 21 CFR 130.12(a)(5).

3. Arthur C. DeGraff, M.D., and Robert A. Lehman, Ph. D. "Oral Sodium Bismuth Triglycollamate in the Treatment of Syphilis." This is an unpublished paper which was apparently written in 1946. Included in this paper is a short description of animal toxicity studies.

The authors state that Bistrimate was given three times daily to 13 subjects at various dosage levels for a period from 1 to 16 weeks. Twenty-four hour urine specimens were analyzed for bismuth and examined for evidence of renal irritation. The authors used a daily excretion of at least 2 mgs. of bismuth in a 24-hour specimen as an "adequate excretion level." The authors point out that some subjects achieved this level, some did not.

The authors describe two patients treated with Bistrimate, one with primary syphilis, the other with multiple gummata of late syphilis. The authors made no attempt to conduct an adequate and well-controlled investigation and do not represent their report to be one. These two patients were among the five previously discussed in Dr. DeGraff's "Report on the Pharmacology and Toxicology of Bistrimate." The entire study was totally uncontrolled. In the first patient the chancre improved after 29 days, but there is no indication that the drug was responsible, since, as earlier stated, chancres heal without treatment although the disease may continue. Further, the paper is not explicit on whether the positive serologic test was repeated or not. In the second patient, similarly uncontrolled, the gummata are reported improved but again, since the serology was not repeated it cannot be concluded that the treatment with Bistrimate had any effect.

4. Elmer R. Gross, M.D. and Carroll S. Wright, M.D., "Bistrimate in Dermatology and Syphilogy." This is an unpublished article which was apparently written in 1945. Of the 34 cases in the study, Bistrimate was not the only drug given in 26. The authors pointed out that in these 26 cases "Bistrimate was given only simultaneously with other therapy and hence cannot be used to judge therapeutic efficacy." In the eight cases where Bistrimate was administered alone it was administered alone only during the first period of treatment. Thereafter, additional therapy was used in conjunction with the Bistrimate treatment. With the eight cases where Bistrimate was initially used alone to treat syphilis, it is not possible to evaluate the therapeutic efficacy of the drug because there had not been sufficient time for followup at the time of the writing of the paper. No subsequent article has been submitted by Cooper. Although the lesions cleared up during the period of treatment, there may have been subsequent relapses, when the treatment was discontinued. Further, as previously discussed, lesions will clear up without treatment. In addition, in seven out of the 34 patients, there were symptoms definitely referable to bismuth intoxication. There were no controls used in treating the patients in this report.

These studies are not adequate and are not well-controlled investigations in accordance with the statutory requirements, as set forth in 21 CFR 130.12(a)(5). No plan or protocol for any of the studies, or the report of the results of the effectiveness of Bistrimate in any of the studies provide adequate assurance that the subjects were always suitable for the purposes of the study [(ii)(a)(2)(i)], or that the subjects were assigned to test groups in such a way as to minimize bias [(ii)(a)(2)(ii)], or that comparability or pertinent variables in test and control groups were assured [(ii)(a)(2)(iii)]. Furthermore, these studies do not adequately explain the methods of observation of subjects and recording of results [(ii)(a)(3)]. They fail to provide a comparison of the results of treatment or diagnosis with a control in such a fashion as to permit quantitative evaluation. No controls were employed [(ii)(a)(4)]. Finally, the summaries of the methods of analysis and evaluation of data derived from the studies, including appropriate statistical methods are inadequate [(ii)(a)(5)]. The most that may be said of these studies is that they are merely clinical impressions.

IV. *Legal arguments.* Cooper contends that Bistrimate is not a new drug, relying on long usage of bismuth to make the product "not a new drug." However, no evidence is presented to establish that Bistrimate is not a new drug within the meaning of the statute.

Cooper states that Bistrimate was once listed as effective by a number of medical texts. It is now indisputable that the product is not regarded as effective. There is no mention of Bistrimate in the publication of the American Medical Association's Council on Drugs, "Drug Evaluations—1971." Nor is it listed in any of the official drug compendia. A leading medical text, Goodman and Gilman, "The Pharmacological Basis of Therapeutics" (3d ed. 1965) states that it is difficult to justify the use of bismuth in any of its forms, and the current fourth edition (1970) states that "Although it was the last of the group V metals to be introduced into medicine (1785), it should be the first to be abandoned, since there is little reason to recommend its continuance in a modern therapeutic armamentarium." Moreover, because of its inefficaciousness with respect to treatment of syphilis, Bistrimate is not only a hazard to the diseased patient who is denied proper treatment; it constitutes a public health hazard, for that patient may infect others.

Finally, it is immaterial whether Bistrimate was generally recognized as safe on October 10, 1962. The Drug Amendments of 1962 require that every drug which was the subject of an NDA between 1938 and 1962 is required to be proven effective for its labeled uses. 76 Stat. 780, 788–789; USV Pharmaceutical Corp. v. Richardson, 461 F. 2d 223 (C.A. 4, 1972); Hynson, Wescott and Dunning, Inc. v. Richardson, 461 F.2d 215 (C.A. 4, 1972). Because Bistrimate was the subject of an NDA during that period of time, the act requires that it be shown by Cooper to be effective for its claimed uses. Pfizer, Inc. v. Richardson, 434 F.2d 536 (C.A. 2, 1970; Upjohn Co. v. Finch, 422 F.2d 944 (C.A. 6, 1970); Pharmaceutical Manufacturers Association v. Richardson, 318 F. Supp. 301 (D. Del., 1970).

Cooper's contentions that the Commissioner has no authority to establish criteria for adequate and well-controlled clinical investigations necessary to demonstrate effectiveness of drug products on the market, and to condition the holding on an evidentiary hearing on a showing that reasonable grounds exist therefore, have been ruled upon adversely to the firm. Diamond Laboratories, Inc., v. Richardson, 452 F. 2d 803 (C.A. 8, 1972); Ciba-Geigy Corp. v. Richardson, 446 F. 2d 466 (C.A. 2, 1971); Pfizer, Inc. v. Richardson, supra; Upjohn v. Finch, supra; Pharmaceutical Manufacturers Association v. Richardson, supra. Thus, the objections of Cooper on these grounds are unfounded.

V. *Findings.* The Commissioner, based on the information before him and a review of the medical documentation, affidavit, and legal arguments offered to support the claims of effectiveness for Bistrimate, finds that there is a lack of substantial evidence that Bistrimate has the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling, that the legal arguments are insubstantial, and that Cooper Laboratories, Inc. has failed to set forth specific facts showing that there is a genuine and substantial issue of fact requiring a hearing.

The Commissioner finds that no evidence whatever has been submitted regarding the effectiveness of Bistrimate for chronic sore throat, and thus it cannot be found to be effective for this indication. The evidence submitted to support effectiveness is wholly lacking in both quantity and quality, and does not even purport to meet the statutory standard of substantial evidence of effectiveness.

The Commissioner further finds that, because Bistrimate has not been shown to be effective in the treatment of syphilis, it permits a contagious patient to continue to transmit venereal disease. Bistrimate is thus a public health hazard in that its use exposes the public to needless risk of disease. Therefore, the new drug application heretofore approved for Bistrimate (NDA 5–933) is hereby withdrawn on the basis of a lack of substantial evidence of effectiveness and the public health hazard such ineffectiveness creates.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 505, 701, 52 Stat. 1052–1053, 1055–1056, as amended, and 76 Stat. 781–785, as amended; 21 U.S.C. 355, 371),

and under authority delegated to the Commissioner (21 CFR 2.120), the request for an evidentiary hearing is denied. Notice is given that the approval of the new drug application for Bistrimate (NDA 5-933) and all amendments and supplements thereto is withdrawn effective on March 7, 1973.

Dated: March 2, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.73-4447 Filed 3-6-73;8:45 am]

[DESI 10240; Docket No. FDC-D-273, NDA 12-718]

MESULFIN TABLETS

Final Order on Objections and Request for a Hearing Regarding Withdrawal of Approval of New-Drug Application

In the FEDERAL REGISTER of September 27, 1969 (34 FR 14907), the Food and Drug Administration announced its evaluation of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the preparation Mesulfin tablets, containing 250 milligrams sulfamethizole and 250 milligrams methenemine mandelate per tablet; Ayerst Laboratories, 685 Third Avenue, New York, NY 10017 (NDA 12-781; DESI 10240).

The announcement stated the conclusion of the Food and Drug Administration that on an overall basis there is a lack of substantial evidence that the drug will have the effect it purports to have or is recommended to have. The Commissioner further stated that he intended to initiate proceedings to withdraw NDA 12-718. However, before initiating such proceedings, the holder of the new drug application was invited to submit, within 30 days of the date of publication of the announcement in the FEDERAL REGISTER, any pertinent data bearing on the proposal. The Commissioner stated he would only consider well-organized material consisting of adequate and well-controlled studies bearing on the efficacy of Mesulfin tablets that had not previously been submitted. On October 27, 1969, Ayerst Laboratories submitted information concerning Mesulfin tablets to the FDA. The information received (discussed below) together with information previously available, did not provide substantial evidence of effectiveness of the drug for use in man for the conditions for which it is recommended in its labeling.

A notice was thereafter published in the FEDERAL REGISTER of February 18, 1971 (36 FR 3146), which provided an opportunity for hearing on withdrawal of the new drug application for Mesulfin tablets (NDA 12-718). Thirty days were allowed for filing a written appearance requesting a hearing by an interested person, giving the reasons why approval of the new drug application should not be withdrawn, together with a well-organized and full factual analysis of the clinical and other investigational data they were prepared to prove in support thereof.

On March 15, 1971, American Home Products Corp., on behalf of Ayerst Laboratories, Inc., requested an extension of time to respond to the notice, and also requested the Commissioner, pursuant to 21 CFR 130.14(a), to explain the reasons for his actions, enumerating six particular inquiries. By letter of March 24, 1971, an extension of time to April 6, 1971, was granted and a full explanation of the basis for the Commissioner's action was provided.

On April 6, 1971, American Home Products filed a response which consisted of a request for a hearing and written notice of appearance, including a statement of reasons why the firm contended that a hearing was in order, and the firm's medical documentation.

This submission has been considered, and the Commissioner of Food and Drugs concludes that there is no genuine and substantial issue of fact requiring a hearing, and that the legal arguments offered are insubstantial, all as explained in more detail below.

I. *The drug.* Mesulfin tablets is a fixed combination preparation containing, in each tablet, sulfamethizole (250 milligrams) and methenamine mandelate (250 milligrams).

II. *Recommended uses.* Mesulfin tablets are offered for use in the treatment of cystitis, urethritis, pyelitis, pyelonephritis, and prostatitis due to bacterial infection amendable to sulfonamide therapy. It is also offered for prophylaxis of patients with indwelling catheters, ureterostomies, urinary calculi, urinary stasis, and neurogenic bladders. It is also indicated to be of value in genitourinary surgery and instrumentation, and for the treatment of many infections due to organisms resistant to antibiotics, sulfonamides, and other chemotherapeutic agents. The usual dose is two tablets four times daily.

III. *The data to support claims of effectiveness.* In support of its request for hearing, American Home Products submitted numerous studies on the use of Mesulfin tablets. These consisted of two new studies, one long-term study, and 11 studies originally submitted with NDA 12-718, and arguments presented why these studies should be considered "controlled." Proposed revised labeling for Mesulfin tablets was also submitted. Also submitted were the testimonial affidavits of eight physician-investigators who have worked with Mesulfin.

A. *The recent studies.* 1. *Whalley, The Effects of Treatment or Non-Treatment of Asymptomatic Bacteriuria of Pregnancy, unpublished.* The purpose of this study was to determine the effect of treating asymptomatic bacteriuria on the course of the bacteriuria and on the incidence of ante-partum, intra-partum and post-partum complications.

The 139 patients studied were divided into three groups; the first group, consisting of 62 patients, was untreated from the date the bacteriuria was diagnosed until parturition; the second group, consisting of 52 patients, was treated with Mesulfin for a 2-week period; and a third group, consisting of 25 patients, was treated with Mesulfin from the time of diagnosis to the end of pregnancy. Of the 25 patients on continuous Mesulfin therapy, all had bacteriologically negative urine cultures throughout the study. Of the 52 treated for 2 weeks, 29 (55 percent) obtained bacteriologically negative urine cultures for the remainder of their pregnancy; three patients (5.8 percent) had no improvement with Mesulfin; reinfection occurred in 20 (38.5 percent) of this group; and of these latter 23, eight developed symptomatic urinary tract infections. All of the 62 untreated patients continued to show evidence of urinary tract infection as evidenced by consistent bacteriologically positive cultures.

The conclusion was reached that Mesulfin therapy is markedly superior to no treatment in asymptomatic bacteriuria of pregnancy.

However, for the following reasons, the Commissioner concludes that the Whalley study is not adequate and well-controlled and does not constitute substantial evidence of the effectiveness of Mesulfin. The study was not designed in a manner which leads to the collection of data capable of demonstrating the specific effects of each active ingredient, as required by 21 CFR 3.86. As the title of the study indicated, it was conducted to compare the effect of the fixed dose combination therapy versus no treatment in pregnant women with asymptomatic bacteriuria. The results of the study thus could not provide evidence as to the potential benefit or risk attributable to each active component of Mesulfin. Furthermore, the Whalley study does not appear to be well controlled. Had random allocation been applied to the three treatment groups, one would have expected 46 patients in each group. The random occurrence of 25 for continuous treatment, 52 for 2 week treatment and 62 for no treatment could be expected less than 1 time in 100 by chance. It is unlikely that randomization would have produced a distribution as uneven as the one reported. The result implies that randomization has failed to produce comparable groups with regard to numbers.

The statistical analysis of the Whalley study is clearly in error. The author concludes that there is an almost perfect correlation between the group with positive urine cultures and symptomatic urinary tract infection. However, in the untreated group, 62 patients had positive urinary cultures but only 27 had symptomatic urinary infections, less than 44 percent; this is clearly less than the 100 percent suggested by the investigator's and the company's analysis.

Finally, testing was not done to identify the microorganisms present in positive cultures before beginning medication in order to determine drug susceptibility of these microorganisms. Susceptibility tests of microorganisms to the testing

drug was performed only in case of initial treatment failure or relapse. Thus, it was not possible to evaluate the final results for drug susceptibility.

2. *McGanity and LeBlanc, Asymptomatic Bacteriuria in Pregnancy, unpublished.* The purpose of this study was to determine the effects of treatment of bacteriuria on development of urinary tract disease such as pyelonephritis and on prematurity. The methodology is described in Texas Reports on Biology and Medicine, 22:336, summer, 1964. Thirteen hundred patients were used in this study. All prenatal patients had urine cultures done on their initial visits and those having colony counts of greater than 10^5 per ml. of a single organism were placed on randomized therapy. This therapy was not based on bacteriological sensitivity studies. Drugs were initially used in therapeutic dosages and then reduced to prophylactic dosages when the urine cultures became negative. Patients were given Mesulfin, methenamine mandelate, furadantin, or no treatment. No patients were administered sulfamethizole or a sulfa drug alone. In their protocol, the investigators stated that they were using Mesulfin as a representative of the sulfa group, yet Mesulfin is a combination of a sulfa and methenamine mandelate.

Patients were followed throughout the remainder of pregnancy; delivery cultures and 6-week post-partum cultures were done. The investigators concluded that the results of the study demonstrated an incidence of asymptomatic bacteriuria of 6.5 percent; the incidence of subsequent pyelonephritis in the initially negative culture group was 2 percent. A selected group of patients with initial negative cultures who were placed on long-term drug therapy had an incidence of acute pyelonephritis of 0.9 percent, leading the investigators to conclude that continuous drug therapy appeared to diminish the risk of catheterization. In those patients with initial positive cultures receiving continuous but randomized drug therapy, the incidence of acute pyelonephritis was 4.3 percent, whereas in those without continuous therapy, the incidence of subsequent acute pyelonephritis was 20 percent. It was concluded that antibiotic [sic] therapy used continuously throughout pregnancy in patients with asymptomatic bacteriuria reduced the incidence of acute pyelonephritis to that of a normal population.

For the following reasons, the Commissioner concludes that the McGanity and LeBlanc study is not adequate and well-controlled and therefore does not constitute substantial evidence of the efficacy of Mesulfin. Like the Whalley study, this study was not designed in a manner which would lead to the collection of data capable of demonstrating the specific effects of each active ingredient, as required by 21 CFR 3.86. The comparable analysis and report suggest a reduction in bacteriuria and urinary tract infections but these results do not provide evidence as to the potential benefit or risk attributable to each active component of Mesulfin.

The study has a multipurpose protocol which does not have as its aim the evaluation of the relative importance of the components of Mesulfin in the treatment or prevention of urinary infections. It is unclear if the study was based on randomization and conducted in a double blind fashion. Both of these would be necessary for a properly controlled study. Of the 110 patients with positive cultures only nine were reported to have been administered methenamine mandelate compared to 23 for no drug, 41 for Mesulfin and 34 for Furadantin; three are unaccounted for. None were administered sulfamethizole or another sulfa drug alone. Adequate randomization would have resulted in more patients having taken methenamine mandelate, thus making any statistical conclusion both more accurate and more reliable.

The chi-square analyses on pages 6, 7, and 8 of the McGanity and LeBlanc study, although providing a summary of the data, are insufficient to support a claim that the components are contributing to the efficacy of the combined product, since there is no data comparing the sulfa component to the methenamine mandelate and in turn comparing the components individually to the composite drug and to no treatment. Moreover, four times as many patients were treated with Mesulfin than methenamine mandelate. This statistical variation questions the reliability of the results.

A criterion for bacteriuria was not stated although "negative culture" was defined as "colony count less than 10^5" in the clinical protocol. The criterion of "negative culture" is questionable since the count is much too high to be considered as such, especially when the organism is of the same species, strain, or serotype. The clinical protocol and summary presented are not coherent. It is therefore difficult to arrive at a meaningful evaluation.

B. *The Long-Term Study.* Zinsser, et. al., Comparative Drug Study in Chronic Urinary Infections Using Computer Definition of Patient Disease Patterns and Quantitative Measures of Drug Efficacy by Sequential Analysis and Patient Derived Autodefinition of a Disease: Pyelonephritis. This long-term study together with the submitted analysis of the data by Dr. Hyman Menduke clearly reveal that the study was designed primarily to investigate the diseases involved rather than the drug efficacy. The study comprises a retrospective analysis of a patient population covering the past 20 years. Dr. Menduke's letter points out that the subjects were not assigned on a random basis, nor were the treatments specified for certain durations with specific intervals per treatment. In his analysis, Dr. Menduke only addresses those patients with a "usable episode," whose condition at the beginning and at the end is unknown. Dr. Menduke also redefined the sampling unit to a per-patient basis. Moreover, this set of observations suggests that at least one component is not contributing to the drug's effect; Dr. Menduke's analysis reveals that methanamine mandelate has a success rate equivalent to the no treatment group. The clinical protocol for the study included a bacteriological evaluation but Dr. Menduke did not mention a bacteriological evaluation at all. The study was not controlled as required by section 505 of the Act nor designed to evaluate the effectiveness of each component as required by 21 CFR 3.86. For these reasons, the Commissioner finds that the data as presented do not constitute an adequate and well-controlled investigation and are not substantial evidence of the effectiveness of Mesulfin.

C. *The studies contained in the New Drug Application file.* 1. John P. Colmore, M.D., and Barbara F. Branden, M.D., University of Oklahoma Medical Center, evaluated the effectiveness of Mesulfin in patients with pyelonephritis and bacteriuria of pregnancy. Quantitative urine bacteriology was obtained at each visit and CBS's, urinalysis, SGOT, and BUN determinations were obtained before initiation of therapy and monthly thereafter. The principal infecting organisms were E. coli or an Escherichia species and Klebsiella-Aerobacter, 63 and 14 cases respectively. A total of 110 patients were treated with two tablets q.i.d. and of these 84 were evaluated. Results are reported that "Mesulfin was shown to be highly effective (79.8 percent success) and safe in the eradication of bacteria due to gram-negative bacilli (particularly E. coli, other Escherichia species and Klebsiella-Aerobacter)".

This study fails to investigate the effectiveness of each individual active component of the combination drug Mesulfin; hence it is not determined which component is effective or the overall effect of the sulfamethizole or methenamine mandelate in the combination formulation, as required by 21 CFR 3.86. Nor was the study controlled as required by section 505 of the Act.

The drug is reported safe and effective when used as the treatment of bacteriuria in the third trimester of pregnancy with exception of one case of hemolytic anemia with recovery following discontinuance of therapy. The time involved for return to normal is not given, nor are followup reports of urine cultures given. The Commissioner finds that, based on the data submitted, this study is not adequate and well-controlled and does not constitute substantial evidence of the effectiveness of Mesulfin.

2. Fred K. Garvey and Harold L. Murray: A Clinical Report on the Use of Combined Mandelamine and Thiosulfil in Resistant Urinary Tract Infections, N.C. Med. J., 22(5) May 1961. These doctors investigated the effectiveness of Mesulfin for the treatment of chronic bacillary urinary tract infections resistant to antibiotic therapy. Twenty-five patients meeting this criterion were selected for study. Before initiating therapy, the infecting organism was identified by culture technique and the degree of pyuria noted for each patient. The dosage used

was two tablets four times a day except in a few cases when only one tablet was given four times daily. The main duration of therapy was 3 to 4 months. In 21 of the 25 patients Mesulfin effectively relieved the symptoms and cleared the urine of microscopic evidence of pyuria and bacteriuria. The authors concluded the product is superior to other antimicrobial agents in that it is relatively free from toxicity, continuous in its action, and has the advantage of waging a two-fold attack on bacteria—that is, in both the tissues and the urinary stream.

The Commissioner finds that this study was not adequate for the following reasons: Microscopic examination alone is not acceptable criterion used for cure of urinary tract infection. Culture of urine and repeated cultures that remain normal varying in time based on the site of infection in the urinary tract are required. Cultures were not done on most patients as a follow-up and no culture reports are presented. Furthermore, there was no clinical study conducted to show the effectiveness of each drug (methenamine mandelate and sulfamethizole) compared to the overall effectiveness of the combination as required by 21 CFR 3.86. No controls were employed as required by section 505 of the Act.

Early in their experience the investigators noted a frequently occurring turbidity of the urine which varied from a milk cloudiness to a buttermilk flocculence. Turbidity was greater at lower pH levels and qualitative analysis of the sediment showed ammonium, uric acid, oxalate, calcium and phosphate ions. They reported no sulfa crystals large enough to be morphologically evident under microscope. They concluded that apparently, the flocculency was due to amorphous deposits of the varying ions resulting from a lower pH in the urine, and became more marked after the urine cooled. The pH of urine was not recorded even though it is well known that most of the sulphonamide compounds have a low solubility in water and in urine, unless the latter is alkaline. This requirement for alkaline urine for sulfa solubility is in direct conflict with acid urine required for methenamine to be effective.

In Zinsser, et al., "Formation of an Insoluble Condensation Product from Sulfamethizole and Formaldehyde" appearing in January 1963, Journal of Pharmaceutical Sciences, the composition of the sediment found in human urine after the ingestion of a combination of sulfamethizole, methenamine, and mandelic acid using the Bratton and Marshall assay procedure was more than 50 percent sulfonamide. The sediment was also said to contain ammonium and urate salts. Their in vitro studies showed sulfamethizole, methenamine, and mandelic acid in the pH range of 4.5 to 6.0, and that precipitation of the sulfonamide Since methenamine is hydrolyzed to formaldehyde in acidic solution, the aldehyde was tested in the same manner, and the formaldehyde precipitated the sulfamethizole from solution. Zinsser reported that other investigators have independently discovered that sulfamethizole formed the same insoluble condensation product with either formaldehyde or methenamine. Helv Druery, J. Chim. Acta., 31, p. 179 (1948); U. P. Basu, J. Indian Chem. Socy., 26, p. 125 (1949). The findings of these investigators are in contradistinction to the conclusions as to the etiology and composition of the precipitate as described by Garvey and Murray.

3. Fred K. Garvey and Harold L. Murray, "A Clinical and Laboratory Study of Combined Mandelamine and Thiosulfil in Resistant Urinary Tract Infections", North Carolina M.J. 21:183, May, 1960.

The authors conducted an in vitro study of the comparative effect of methenamine mandelate and sulfamethizole, alone and in combination, and Mesulfin, against Proteus, Aerobacter, and Pseudomonas bacilli isolated from patients who were resistant to previous therapy. The isolates were used to inoculate urine of four nonmedicated healthy male subjects to establish a normal growth of the bacteria. The four males were given 0.5 gm. of each test drug every 6 hours for a total of four doses, allowing at least 4 days between each course. On the morning following administration of the test drug, their first voided specimens were collected, combined and filtered through porcelain candles and used as diluent for the culture. After incubation, the effect of each dosage regimen on growth of the test bacteria was determined turbidometrically. All organisms grew well in normal urine. In urine containing methenamine mandelate alone, growth of all these organisms were substantially inhibited. Aerogenes and Pseudomonas growth was inhibited but Proteus growth was simply delayed in urine containing Thiosulfil (sulfamethizole). Growth of these organisms in the presence of urine containing both drugs was satisfactorily inhibited and compared favorably with Mesulfin.

The size of the group is so small that the study cannot be considered adequate and results are statistically insignificant. There is no data on patient tolerance for the drug, side effects, or problems encountered in connection with other body processes. None of the investigation methods are outlined, making an objective statistical evaluation impossible. Furthermore, there is no data to indicate at what level the drugs obtained their desired effect. For these reasons, the Commissioner finds that this study is not adequate and it does not constitute substantial evidence of the effectiveness of Mesulfin.

4. Drs. S. A. Wolfson, G. M. Kalmanson, M. E. Rubini, and L. B. Guz, Wadesworth Hospital, Veterans' Administration Center and Department of Medicine U.C.L.A. did an epidemiological survey of 521 consecutive admissions to the medical service of the VA hospital. Fifteen percent of the male patients presented asymptomatic significant bacteriuria, 100,000 organisms per ml. of urine. Fifty-nine percent of these elderly male patients were selected for treatment with 4 grams divided doses of Mesulfin daily for 10 days. Pretreatment urine cultures identified the infecting organisms as Escherichia Coli, Pseudomonas, Proteus or Klebsiella-Aerobacter. Followup cultures were obtained 10 days, 1 month, and 3 to 6 months after cessation of therapy. The cure rate was 59 percent based on the criterion that the original organisms found prior to therapy were eradicated and did not recur within the followup period.

This study is not adequate since the individual components of Mesulfin were not tested individually, as required by 21 CFR 3.86. Furthermore, it is obviously not controlled since there is no indication that any controls were used at all, as required by section 505 of the Act. Thus, there is no basis upon which to compare the patients treated with Mesulfin and those who would have been untreated. The Commissioner finds that this study does not constitute substantial evidence of the efficacy of Mesulfin.

5. Rodger Barnes, M.D. (and Associates) of White Memorial Clinic, Los Angeles, Calif., evaluated the effectiveness of Mesulfin for the treatment of acute and chronic urinary tract infections in a series of 97 patients. Prior to initiating therapy, a complete urinalysis was done and bacteria were evaluated using gram-staining techniques. The usual dosage employed was two tablets q.i.d. In acute conditions duration of treatment was from 1 to 6 weeks and for chronic infections, therapy was extended for periods of 12 months or more. At the end of the treatment period, gram-staining techniques were again employed and urinalyses were done. Successful therapy was defined as symptomatic improvement with a negative post-treatment culture; partial success was defined as symptomatic improvement, but no post-treatment culture taken. Results showed the drug was a success or partial success in 55 patients (56 percent) and not effective in 35 patients (36 percent) who showed a positive post-treatment culture; 54 percent of the patients showed reduction of WBC in the urine after Mesulfin therapy. Adverse reactions noted consisted of dizziness, nausea, blurred vision, diarrhea, and irritation of the bladder. Dr. Barnes recommended the drug for use in treatment of chronic urinary tract infection when it is necessary to continue antibacterial medication over a long period of time.

The number of post-treatment cultures obtained per patient is not stated. Treatment was declared a success (or the drug considered successful) in 56 percent of the trials. This number includes those patients who were asymptomatic with a negative post-treatment culture and those who showed symptomatic improvement but who had positive post-treatment cultures. There is no value given for those patients who had post-treatment negative cultures alone.

This is obviously not a controlled study since there is no indication that any controls were employed, as required by section 505 of the Act. Moreover, there is no data as to the type of bacteria which were involved in the patients' infections. Finally, the individual components were not tested against the combination drug to determine if the combination was more effective than the single drug, as required by 21 CFR 3.86. The Commissioner finds that this study does not constitute substantial evidence of the efficacy of Mesulfin.

6. Bruce H. Stewart, M.D., Cleveland, Ohio, used Mesulfin to treat 26 cases of urinary tract infections in whom conventional therapy had failed. Adult dosage was two tablets q.i.d., and for children one tablet t.i.d. The organisms identified in pretreatment cultures were: *E. coli, Proteus, A. aeruginosa, Alkaligenes species, S faecalis, A. viridans* and *S. aureus*. Five patients had negative pretreatment cultures. Negative posttreatment cultures were obtained in two with recurrent cystitis and one with chronic prostatitis. Negative cultures were also obtained for one patient with urethral stenosis with infection, and one with benign prostatic hyperplasia with infection. One patient with urethritis relapsed after treatment. Three cases of chronic pyelonephritis had negative posttreatment cultures, four were positive and an additional four relapsed. Three patients with probable post operative pyelonephritis had positive posttreatment cultures as had one patient with postoperative phyloplasty.

The study was not controlled as required by section 505 of the Act and the individual components of the drug were not tested against the combination as required by 21 CFR 3.86. Moreover, the results indicate that the drug may not be effective. The Commissioner finds that this study does not constitute substantial evidence of the effectiveness of Mesulfin.

7. Cecil M. Crigler, M.D., Houston, Tex., treated urinary tract infections in 31 female patients and one male patient. Dosage of Mesulfin administered was two tablets q.i.d. from 2 to 8 weeks. The principal infecting organisms were identified as *E. coli, P. vulgaris,* and *S. aureus*. Pre- and post-treatment cultures were obtained in 16 cases and in 15 of these the post-treatment cultures were negative. In nine of the 15 cases the organism present was shown to be resistant to many of the commonly used antibiotics and sulfa drugs. An *E. coli* infection in one patient which did not respond to Mesulfin was also resistant to penicillin, bacitracin, erythromycin, and several sulfonamides. The only side effect noted was one patient reporting marked bladder cramps.

This study was not controlled as required by section 505 of the act and the individual components were not tested against the combination as required by 21 CFR 3.86. No follow-up data is provided. No data is given for the 15 patients on whom preclinical cultures were not taken. The Commissioner finds that this study does not constitute substantial evidence of the effectiveness of Mesulfin.

8. Yves Goudreau, M.D., of Montreal, Canada, treated four cases of chronic cystitis and one case of subacute pyelonephritis with Mesulfin. A divided daily dosage of 1–2 grams was used from 1 to 2 weeks. Negative postculture was obtained in the pyelonephritic patient and in three of the four chronic cystitis patients.

There is no definition as to length of followup. The report refers to one followup culture on each patient; a single followup is inadequate to document effectiveness of the drug. There were no controls used as required by section 505 of the Act and the individual components of Mesulfin were not tested against the combination as required by 21 CFR 3.86. The Commissioner finds that this study is not substantial evidence of the effectiveness of Mesulfin.

9. H. S. Everett, M.D., Baltimore, Md., treated five female patients with cystitis and a sixth with a low grade urinary tract infection with 0.5 gm. q.i.d. of Mesulfin. Organisms cultured were the usual gram negative found in the urinary tract. Only three patients had negative posttreatment cultures; two were positive. All five patients were listed as clinically improved.

Duration of followup is not given, hence the extent of effectiveness of the drug cannot be determined. This is obviously not a controlled study since there is no indication that any controls were employed, as required by section 505 of the Act. The individual components were not tested against the combination drug to determine if the combination was more effective than the single drug as required by 21 CFR 3.86. The Commissioner finds that this study does not constitute substantial evidence of effectiveness of Mesulfin.

10. Temple W. Williams, Hanna ABU-Nassau and Ellare M. Yow, "Methenamine Mandelate—Sulfamethizole Combination Evaluation in Management of Urinary Tract Infections", Tex. St. M.J. 60:149 (February 1964). The investigators evaluated the results of Mesulfin in the treatment of 37 patients with symptoms of acute or chronic pyelonephritis. Criteria for selection of patients were: Presence of symptoms referable to the urinary tract, and demonstration of pyuria and/or significant bacteriuria. Urine samples were collected before and after treatment and examined for colony count. Gram negative organisms and *E. coli* predominated. Dosage of 1 gram initially followed by 1 gram four times daily was used in acute pyelonephritis and 1–4 grams in chronic pyelonephritis. A good response was interpreted as meaning symptomatic response within 2 to 3 days, cessation of pyuria, and a significant reduction of bacteriuria when present. Fair response was interpreted as diminished pyuria and bacteriuria but with no symptomatic response until the completion of at least 1 week of therapy. Of the 15 acute pyelonephritic patients, 11 showed good response and four patients fair. Of the 22 chronic pyelonephritic patients, only two had good response and 19 fair with one patient with poor response.

This study is not a controlled study as required by section 505 of the Act. Like the other clinical studies reported above, there are no studies to determine the effectiveness of either active component individually as required by 21 CFR 3.86. The Commissioner finds that this study does not constitute substantial evidence of the effectiveness of Mesulfin.

11. H. A. Baker and A. Sidorwicz, "Therapy of Urinary Tract Infections Based on In Vitro Studies with a combination of Sulfamethylthiadiazole and Methenamine Mandelate", Clin. Med. 70:1307 July 1963.

This is an in vitro study evaluating sulfamethylthiadiazole, methenamine mandelate and the two in combination against *E. coli, Aerobacter aeruginosa, proteus sp.* and *Ps. aeruginosa*. The two drugs were tested at a concentration of 2.5 mg./ml. alone and in combination (i.e., total of 5 mg./ml.).

The authors concluded that lowering the pH increased the activity of sulfamethylthiadiazole and the methenamine mandelate was more active at pH 6.0 than at pH 9.0; sulfamethylthiadiazole was bacteriostatic while methenamine mandelate was bactericidal as well as bacteriostatic; and the combination has an antibacterial activity superior to either agent.

Absolutely no data has been provided to determine if any patients at all were used in the study. There is no data to support the conclusion of the investigators. The study is obviously inadequate and not well controlled. The Commissioner finds that this study is not substantial evidence of the effectiveness of Mesulfin.

D. *The physicians' affidavits.* American Home Products has also submitted the affidavits of eight physicians, all of whom conducted the studies on Mesulfin discussed above, and all of whom attest to the effectiveness of Mesulfin and the validity of their own studies. These affidavits are in fact testimonials to Mesulfin. They neither contain nor refer to adequate and well-controlled clinical studies. The Commissioner finds that these affidavits are inadequate to establish that Mesulfin is effective.

E. *Other medical authorities supporting the Commissioner's determination.* The AMA Drug Evaluations, 1971, does not recommend the combination of sulfamethizole and methenamine mandelate for any indication. Indeed, the AMA Drug Evaluations, 1971, at pp. 436–7 states that the "Use of Methenamine [is] usually restricted to patients with infections not cured by more effective antibacterial agents." Sulfamethizole is recommended for use (p. 47) in urinary tract infections alone, not in combination with any other drug.

Furthermore, in Goodman and Gilman, The Pharmacological Basis Of Therapeutics, Fourth Edition (1970), the authors state at page 1042 that "an incompatability between methenamine mandelate and sulfamethizole has been

noted (Lipton, 1963); the formaldehyde liberated in the urine forms an insoluble precipitate with the sulfanamide." None of the studies submitted by American Home Products addressed this problem nor offered any explanation. Finally, in Goodman and Gilman, it is stated at p. 1161 that sulfanamides are the drug of choice in treating urinary infections caused by E. coli. For treating urinary infections caused by A. aerogenes, A. faecalis, proteus and pseudomonas aeruginosa, sulfanamides are not listed at all as drugs of choice. Only for treating proteus mirabilis are sulfanamides recommended. Methenamine mandelate is nowhere listed as a drug of choice for urinary infections.

F. *Summary.* In order to establish that a drug is effective for the conditions for which it is prescribed, recommended or suggested, substantial evidence consisting of adequate and well-controlled clinical investigations must be submitted to the FDA. 21 U.S.C. 355(e); 21 CFR 130.-12(a)(5). No controls were employed in the Colmore, Wolfson, Barnes, Stewart, Cigler, Gaudreau, Everett, Williams, Baker, and the first Garvey study discussed. The deficiencies in the controls used in the other studies and the inadequacies of all the studies are discussed in detail above.

As pointed out above, Mesulfin is a fixed dose combination drug, composed of 250 mg. sulfamethizole and 250 mg. methenamine mandelate. As the Commissioner stated in the preamble to 21 CFR 3.86 (36 FR 3126, Feb. 18, 1971): "A fixed dose combination drug must have an advantage to the patient over and above that obtained when one of the individual ingredients is used in the usual safe and effective dose. No drug should be present in a fixed combination unless its inclusion clearly enhances safety or efficacy and the fixed ratio of doses is safe and effective for all indications and for patients requiring such concurrent therapy."

American Home Products claims that Mesulfin is a rational fixed combination drug. However, American Home Products has produced no adequate and well-controlled clinical investigations that support this contention. The only submitted study that compared the combination against its individual components and no treatment was the second Garvey study involving only four laboratory subjects. Both the NAS/NRC and the Commissioner have found the combination of methenamine mandelate and sulfamethizole, i.e., Mesulfin, ineffective for its intended uses. Moreover, there is evidence, cited above, that sulfamethizole and methenamine mandelate are antagonistic to one another, which evidence American Home Products has not refuted. Therefore, claimants' contention is without merit.

IV. *The NAS/NRC evaluation of Mesulfin.* American Home Products claims that the Commissioner's evaluation of Mesulfin differs substantially from that of the NAS/NRC. The NAS/NRC Panel found that indication for use of Mesulfin in the treatment of cystitis, urethritis, pyelitis, pyelonephritis and prostatis due to bacterial infection amenable to sulfonamide therapy, was ineffective unless qualified. The panel gave several examples of the qualifications that would have to be added to the label of Mesulfin: "for example patients having any one of these conditions would rarely be cured by sulfonamide therapy in the presence of obstruction; if gonorrhea is meant by "urethritis," it should be so stated, and if a claim is made in regard to pyelonephritis, it should be stated that this product is most effective against acute, nonobstructive first episode, bacterial urinary tract infections and in general is less effective against chronic infections or in the presence of anatomic abnormalities." Moreover, the NAS/NRC made no reference to combining methenamine mandelate with sulfamethizole in its discussion of the effectiveness of Mesulfin for these indications or any other indications. The panel found that American Home Products had not submitted any reference or scientific study relating to the combination of sulfamethizole and methenamine mandelate. It is apparent that the NAS/NRC did not find the fixed combination of sulfamethizole and methenamine mandelate effective for these indications, as American Home Products' claims. The Commissioner concurred in this finding. American Home Products has still not submitted any adequate and well-controlled study that supports the efficacy of Mesulfin for these indications.

Significantly, the NAS/NRC found that Mesulfin was ineffective: in genitourinary surgery and instrumentation, and that addition of methenamine mandelate to sulfamethizole would make no difference; in infections due to organisms resistant to antibiotics, sulfonamides, and other chemotherapeutic agents; and for prophylaxis of patients with indwelling catheters, ureterostomies, urinary calculi, urinary stasis and neurogenic bladders. It concluded that wide usage of methenamine does not imply effectiveness and that effectiveness should be documented.

V. *Legal objections.* The Commissioner has authority to establish criteria for adequate and well-controlled clinical investigations necessary to demonstrate effectiveness of drug products on the market and may condition holding of an evidentiary hearing on a showing by American Home Products that reasonable grounds exist therefor. Diamond Laboratories, Inc. v. Richardson, 452 F. 2d 803 (C.A. 8, 1972); Ciba-Geigy Corp. v. Richardson, 446 F. 2d 466 (C.A. 2, 1971); Pfizer, Inc. v. Richardson, 434 536 (C.A. 2, 1970); Pharmaceutical Manufacturers Ass'n v. Richardson, 318 F. Supp. 301 (D. Del., 1970).

Since American Home Products has submitted no adequate and well-controlled clinical studies establishing the effectiveness of Mesulfin for its recommended uses, no hearing on the withdrawal of the NDA for Mesulfin is justified as no genuine issue exists as to the material question of the effectiveness of Mesulfin for its recommended uses. 21 CFR 3.86, 130.12(a)(5)(ii), 130.14(b) and 130.27(b)(3); Ciba-Geigy Corp. v. Richardson, supra; Upjohn Co. v. Finch, 422 F. 2d 944 (C.A. 6, 1970).

VI. *Findings.* The Commissioner, based on the review of the medical documentation offered to support the claims of effectiveness for Mesulfin, finds that American Home Products has failed to present substantial evidence of effectiveness for this product. Therefore, pursuant to 21 CFR 130.14(b), American Home Products' request for a hearing is denied. No objection or documentation was presented by any other firms and, in accordance with 21 CFR 130.15, this failure is construed as an election by any other firm not to avail itself of the opportunity for the hearing.

The Commissioner further finds that the approval of the new-drug application heretofore approved for Mesulfin (NDA 12-718) should be withdrawn on the basis of a lack of substantial evidence of effectiveness.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 505, 701, 52 Stat. 1052-53, 1055-56, as amended; 21 U.S.C. 355, 371), and under authority delegated to the Commissioner (21 CFR 2.120), notice is given that the approval of the new-drug application for Mesulfin (NDA 12-718) is withdrawn. The withdrawal is effective immediately.

(Secs. 505, 701, 52 Stat. 1052-53, 1055-56, as amended, and 76 Stat. 781-785, as amended; 21 U.S.C. 355, 371)

Dated: March 2, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.73-4446 Filed 3-6-73;8:45 am]

National Institutes of Health

TOBACCO WORKING GROUP, SUBCOMMITTEE ON SMOKE FILTRATION

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Tobacco Working Group's Subcommittee on Smoke Filtration, March 8, 1973, at 2 p.m., National Institutes of Health, Building 31, Conference Room 3. This meeting will be open to the public from 2 p.m. to 5 p.m. on March 8 to discuss current experimental data. Attendance by the public will be limited to space available.

Mr. Frank Karel, Associate Director for 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 committee members.

Dr. Gio B. Gori, Executive Secretary, Building 31, Room 11A03, National Institutes of Health, Bethesda, Md. 20014 (301—496-6616) will provide substantive program information.

Dated: March 1, 1973.

ROBERT W. BERLINER,
Acting Deputy Director, National Institutes of Health.

[FR Doc.73-4271 Filed 3-6-73;8:45 am]

NATIONAL CANCER ADVISORY BOARD SUBCOMMITTEE ON CENTERS

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board Subcommittee on Centers, March 10, 1973, at 10 a.m., National Institutes of Health, Building 31, C-Wing, Conference Room 7. This meeting will be open to the public from 10 a.m., March 10, 1973, to discuss funding plans for the Centers Program and selection of new Comprehensive Centers. Attendance by the public will be limited to space available.

Mr. Frank Karel, Associate Director for 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 subcommittee members.

Dr. John Yarbro, Executive Secretary, Westwood Building, Room 838, National Institutes of Health, Bethesda, Md. 20014 (301—496–7427), will provide substantive program information.

ROBERT W. BERLINER,
Acting Deputy Director,
National Institutes of Health.

MARCH 1, 1973.

[FR Doc.73–4273 Filed 3–6–73;8:45 am]

TOBACCO WORKING GROUP, SUBCOMMITTEE ON DATA ANALYSIS

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Tobacco Working Group's Subcommittee on Data Analysis, March 8, 1973, at 9 a.m., National Institutes of Health, Building 31, Conference Room 3. This meeting will be open to the public from 9 a.m., to 12 noon on March 8 to discuss current experimental data. Attendance by the public will be limited to space available.

Mr. Frank Karel, Associate Director for 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 committee members.

Dr. Gio B. Gori, Executive Secretary, Building 31, Room 11A03, National Institutes of Health, Bethesda, Md. 20014, 301—496–6616, will provide substantive program information.

ROBERT W. BERLINER,
Acting Deputy Director,
National Institutes of Health.

MARCH 1, 1973.

[FR Doc.73–4272 Filed 3–6–73;8:45 am]

ATOMIC ENERGY COMMISSION

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

[Docket No. 50–247]

Order Extending Facility Operating License Expiration Date

Consolidated Edison Co. of New York, Inc., is the holder of Facility Operating License No. DPR–26 issued by the Commission on October 19, 1971, which authorizes fuel loading and subcritical testing of the Indian Point Nuclear Generating Unit No. 2, a 2758 megawatt (thermal) pressurized water nuclear reactor, located on the company's site in the village of Buchanan, Westchester County, N.Y.

On January 30, 1973, the company requested an extension of the expiration date because of delays which prevent completion of subcritical testing. Such testing was interrupted by the determination to refabricate the core. The final shipment of fuel is expected on site shortly, but because of the time element involved the fuel may not be loaded into the reactor prior to the expiration of DPR–26. The Director of Regulation having determined that this action involves no significant hazards consideration different from those previously evaluated, and good cause having been shown:

It is hereby ordered, That the latest expiration date of Facility Operating License No. DPR–26 is extended from March 1, 1973, to June 1, 1973.

Dated at Bethesda, Md., this 1st day of March 1973.

For the Atomic Energy Commission.

A. GIAMBUSSO,
Deputy Director for Reactor Projects, Directorate of Licensing.

[FR Doc.73–4335 Filed 3–6–73;8:45 am]

[Docket No. 50–270]

DUKE POWER CO.

Order Extending Completion Date

Duke Power Co. is the holder of Provisional Construction Permit No. CPPR–34 issued by the Commission on November 6, 1967, for the construction of the Oconee Nuclear Station, Unit No. 2, a 2,568 megawatt (thermal) pressurized water nuclear reactor presently under construction at the company's site in Oconee County, S.C., approximately 8 miles northeast of Seneca, S.C.

On January 25, 1973, the company requested an extension of the completion date because construction of Unit No. 2 has been delayed due to: (i) Diversion of construction forces from Unit No. 2 to Unit No. 1 to solve problems occasioned by the lateness of Unit No. 1, (ii) delay in delivery of major reactor coolant components, and (iii) modifications required to the reactor vessel internals for Unit No. 2. The Director of Regulation having determined that this action involves no significant hazards consideration, and good cause having been shown:

It is hereby ordered, That the latest completion date for CPPR–34 is extended from February 28, 1973, to September 1, 1973.

Date of issuance: February 28, 1973.

For the Atomic Energy Commission.

A. GIAMBUSSO,
Deputy Director for Reactor Projects, Directorate of Licensing.

[FR Doc.73–4336 Filed 3–6–73;8:45 am]

[Docket No. 50–275]

PACIFIC GAS & ELECTRIC CO.

Notice of Opportunity for Hearing

The Pacific Gas & Electric Co. (the licensee) is the holder of Provisional Construction Permit No. CPPR–39 (the permit) issued by the Atomic Energy Commission on April 23, 1968. The permit authorizes the licensee to construct a pressurized water nuclear reactor, designated as the Diablo Canyon Reactor Unit No. 1, at the licensee's site in San Luis Obispo County, Calif.

The facility is 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. Notice is hereby given, pursuant to 10 CFR Part 50, "Implementation of the National Environmental Policy Act of 1969," that the Commission is providing an opportunity for hearing with respect to whether, considering those matters covered by Appendix D to 10 CFR Part 50, the existing construction permit should be continued, modified, terminated or appropriately conditioned to protect environmental values. Requests for a hearing and petitions to intervene shall be filed in accordance with the Commission's rules of practice in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed within the time prescribed in this notice, the Commission or an atomic safety and licensing board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition and the Secretary or the designated atomic safety and licensing board will issue a notice of hearing or an appropriate order.

A petition for leave to intervene must be filed under oath or affirmation in accordance with the provisions of 10 CFR 2.714. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and any other contentions of the petitioner including the facts and reasons why he should be permitted to intervene, with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceedings on the petitioner's interest. Any such petition shall be accompanied by a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene and setting forth with particularity both the facts pertaining to his interest and the basis for his contentions with regard to each aspect on which he desires to intervene. A petition that sets forth contentions relating only to matters outside the jurisdiction of the Commission will be denied.

A request for a hearing or a petition for leave to intervene must be filed with the Office of the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief Public Proceedings Staff, or the Commission's Public Document Room, 1717 H Street NW., Washington, DC, on or before April 6, 1973. A petition for leave to intervene which is not timely will not be granted unless the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the petition or request determines that the petitioner has made a substantial showing of good cause for failure to file on time and after the consideration of those factors specified in 10 CFR 2.714(a).

For further details with respect to the matters under consideration, see the licensee's Environmental Report dated August 9, 1971, and Supplements thereto dated November 9, 1971, July 28, 1972, and August 25, 1972, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the San Luis Obispo County Free Library, 1354 Bishop Street, San Luis Obispo, CA. The Commission's Draft Environmental Statement is also available at the above locations. As it becomes available, the following document will also be available at the above location: (1) The Commission's final environmental statement on environmental considerations.

Copies of item (1) may be obtained when available by request to the Deputy Director for Reactor Projects, Directorate of Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

For the Atomic Energy Commission.

Dated at Bethesda, Md., this 28th day of February 1973.

GORDON K. DICKER,
Chief, Environmental Projects Branch No. 2, Directorate of Licensing.

[FR Doc.73-4334 Filed 3-6-73;8:45 am]

[Docket No. 50-312]

SACRAMENTO MUNICIPAL UTILITY DISTRICT

Notice and Order for Prehearing Conference

Take Notice, that pursuant to the Commission's "Memorandum and Order" and "Notice of Hearing On a Facility Operating License" both dated February 23, 1973, and the rules of the Commission, a hearing will be held on the application filed under section 104(b) of the Atomic Energy Act of 1954, as amended, by the Sacramento Municipal Utility District for a facility operating license. Said license would authorize the operation of a pressurized water nuclear reactor, identified as the Rancho Seco Nuclear Generating Station, Unit No. 1, at steady State power levels not to exceed 2,772 megawatts (thermal) at applicant's site in Sacramento County, Calif.

In accordance with the Commission's rules of practice, a special prehearing conference will be held commencing at 9:30 a.m., on March 15, 1973, at the Federal Building and Court House, 650 Capital Mall, Room 3410, Sacramento, CA 95814.

While all members of the public are entitled to attend this conference, it should be noted that no evidence will be received, nor will there be opportunity for comments from members of the public through limited appearances. Such limited appearances will be permitted at the first session of the evidentiary hearing to be scheduled at a later date.

The primary objective of said special prehearing conference will be to establish a clear and particularized identification of the actual matters in controversy through a review of the contentions filed by the intervenors, Mr. Dick Gregory et al., and to determine which contentions should be admitted as matters in controversy in this proceeding. The Board will also consider any preliminary matters by the parties, any prospects of settlement, any need for discovery, establishment of a schedule for the proceeding, and such other matters as may aid in the early resolution of the matter.

It is so ordered.

Issued at Washington, D.C., this 1st day of March 1973.

THE ATOMIC SAFETY AND LICENSING BOARD
JOHN B. FARMAKIDES,
Chairman,

[FR Doc.73-4292 Filed 3-6-73;8:45 am]

[Docket No. 50-281]

VIRGINIA ELECTRIC & POWER CO.

Notice of Issuance of Facility Operating License

Correction

In FR Doc. 73-2307, appearing at page 3540 for the issue of Wednesday, February 7, 1973 the phrase in the 20th line of the second paragraph now reading "on or before March 9, 1973", should read "within 30 days from the date of its publication in the FEDERAL REGISTER".

CIVIL AERONAUTICS BOARD

[Docket No. 23333; Order 73-2-109]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Specific Commodity Rates

Issued under delegated authority, February 27, 1973.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers, embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA). The agreement, which was adopted at the 14th meeting of the Joint Specific Commodity Rates Board held in Geneva on November 20-24, 1972, has been assigned the above CAB agreement number.

The agreement proposes revisions to the specific commodity rate structure applicable within the South Pacific area. These revisions, insofar as they would affect air transportation, are outlined in the attachments hereto.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, provided that approval is subject to the condition hereinafter ordered.

Accordingly, it is ordered, That:

Agreement CAB 23461, R-2 be and hereby is approved, provided that approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publication; provided further that tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

ATTACHMENT I

IATA commodity item No.[1]	Specific commodity rate: Cents per kg.	Specific commodity rate: Min. wgt.—kgs.	Market
ADDED RATES UNDER EXISTING COMMODITY DESCRIPTIONS			
1211	124	200	Auckland to New York.
1925	178	300	Do.
2199	96	200	Auckland to Los Angeles.
4123	107	1,000	Melbourne to Los Angeles.
4701	225	100	Perth to Los Angeles.
	167	500	Do.
	145	1,000	Do.
8100	160	100	Sydney to Los Angeles.
	184	100	Sydney to New York.
8372	130	500	Sydney to Los Angeles.
	154	500	Sydney to New York.
8400	209	45	Perth to Los Angeles.
	167	300	Do.
9202	113	250	Auckland to Honolulu.
9587	107	100	Do.
9910	120	100	Auckland to Los Angeles.
9993	198	200	Perth to Los Angeles.
	151	1,000	Do.
CANCELED RATES UNDER EXISTING COMMODITY DESCRIPTIONS			
0000	85	500	Sydney to Los Angeles.
	80	2,000	Do.
1100	95	200	Auckland to Los Angeles.
	85	500	Do.
	114	500	Auckland to New York.
4701	302	100	Los Angeles to Auckland.
	292	500	Do.

[1] See applicable tariff for commodity descriptions.

ATTACHMENT II

NEW OR CHANGED SPECIFIC COMMODITY DESCRIPTIONS AND RATES

IATA commodity item no.	Description	Specific commodity rate		Market
		Cents per kg.	Min. wgt.—kgs.	
0402	Coconut meat [1]	33	5,000	Nandi to Honolulu.
0629	Coconut extract [1]	37	3,000	Do.
1021	Greyhounds [2]	201	100	Brisbane to Los Angeles.
1430	Cut flowers—except orchids [2]	266	100	Los Angeles to Sydney.
2036	Leather and/or plastic belts [2]	95	1,000	Melbourne to Los Angeles.
2300	Cutlery [2]	107	2,000	Melbourne to New York.
4401	Electrical equipment, n.e.s. [2]	302	100	Los Angeles to Auckland.
4900	Wheel castors [1]	95	2,000	Melbourne to Los Angeles.
6000	Chemicals and pharmaceuticals [2]	315	500	New York to Sydney.
9617	Handicraft products, namely metal, wood, straw, leather, earth, onyx, mother-of-pearl and glass articles. [1]	381	45	Port Moresby to New York.

[1] New description.
[2] Area changed to include South Pacific.

ATTACHMENT III

NEW OR CHANGED SPECIFIC COMMODITY DESCRIPTIONS [1]

IATA commodity item No. — *Description*

4416 — Automobile radios, dictation machines, hearing aids, records, recording tape and wire, radio, television, phonograph and sound recording sets, including combinations thereof, electrical appliances, lighting fixtures, enameled and/or insulated wire, telephone, telegraph, teletype apparatus, electronic tubes, and semiconductors, n.e.s.

6002 — Chemicals, dyes, fertilizers, insecticides, paints, pigments, varnishes, drugs, pharmaceuticals, medicines, cosmetics, soaps, toilet preparations and articles, perfumes, essential oils (bottles, packaging, printed advertising material and/or advertising sets appertaining thereto only when shipped with one of the main articles mentioned above), gums, resins, and plastics solely in the form of sheets, slabs, rods, tubings, powder, and other unfinished forms, n.e.s.

[FR Doc.73-4391 Filed 3-6-73;8:45 am]

[1] Additions indicated by underscores, deletions by strikeovers.

[Docket No. 25219]

KOREAN AIR LINES CO., LTD., AND SEABOARD WORLD AIRLINES, INC.

Notice of Proposed Approval

Joint application of Korean Air Lines Co., Ltd., and Seaboard World Airlines, Inc., for approval pursuant to section 408(b) of the Federal Aviation Act of 1958, as amended, Docket 25219.

Notice is hereby given, pursuant to the statutory requirements of section 408(b) of the Federal Aviation Act of 1958, as amended, that the undersigned intends to issue the attached order under delegated authority on March 9, 1973. Prior to that time, interested persons may file comments or request a hearing with respect to the action proposed in the order.

Dated at Washington, D.C., March 2, 1973.

[SEAL] A. M. ANDREWS,
Director,
Bureau of Operating Rights.

[Docket 25219]

KOREAN AIR LINES CO., LTD. AND SEABOARD WORLD AIRLINES, INC.

ORDER OF APPROVAL

By joint application filed February 15, 1973, Korean Air Lines Co., Ltd. (Korean) and Seaboard World Airlines, Inc. (Seaboard) have requested Board approval pursuant to section 408(b) of the Federal Aviation Act of 1958, as amended (the Act), with respect to the lease of two DC-8-63F aircraft by Seaboard to Korean.

Seaboard is a U.S. certified all-cargo air carrier. Korean holds Board authority as a foreign air carrier and, in this connection, conducts scheduled air transportation with jet aircraft between the Republic of Korea and the United States. Korean intends to use one of the leased aircraft in passenger service between Korea and the United States and the other aircraft in passenger service outside the United States.

The lease agreement between the parties indicates that Seaboard will lease two DC-8-63F aircraft [1] to Korean for the periods March 11, 1973, and March 25, 1973, respectively, until April 30, 1975. Rental for each aircraft will be at the rate of $140,000 per month.

According to the application, the instant lease transaction was entered into pursuant to the provisions of a supplemental letter to an earlier lease agreement between Seaboard and Korean which was approved by the Board [2] and which also provided for the lease of two DC-8-63F aircraft to Korean. In this connection the application indicates that the two aircraft previously leased to Korean will continue to be operated by Korean in accordance with the terms of the earlier lease.

The application recites, inter alia, that the aircraft in question are two of the eleven DC-8-63F aircraft which, together with two DC-8-54 and one DC-8-55 aircraft, presently constitute Seaboard's operating fleet. It is asserted that, as with the prior aircraft leased to Korean, the instant aircraft are not required by Seaboard in the operation of its certificated services during the 2-year period of the lease, due to the continuing excess of transatlantic cargo capacity over demand and the reduction in Department of Defense utilization of Seaboard's aircraft. Thus, it is further asserted that Seaboard has no comparable revenue use for the aircraft during the term of the lease and the revenues received for the lease of the instant aircraft are vitally needed by Seaboard. The applicants also submit that the transaction does not affect the control of Seaboard, create a monopoly, nor tend to restrain competition.

No objections to the application or requests for a hearing have been received.

Upon consideration of the foregoing, it is concluded that the lease of the two DC-8-63F aircraft from Seaboard to Korean covered by the instant application would involve the leasing of a substantial portion of the properties of Seaboard within the meaning of section 408 of the Act, and, therefore, the lease transaction is subject to such section. However, it is further concluded that the transaction does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, does not result in creating a monopoly, and does not tend to restrain competition. Furthermore, no person disclosing a substantial interest in the proceeding is currently requesting a hearing, and it is concluded that the public interest does not require a hearing. It appears that Seaboard is able to carry out the lease without depriving itself of the aircraft necessary to meet the requirements of its authorized services. Moreover, as indicated earlier herein, the transaction is similar to others approved by the Board. Under all the circumstances, it is not found that the lease transaction will be inconsistent with the public interest or that the conditions of section 408 will be unfulfilled.

Notice of intent to dispose of the application without a hearing has been published in the FEDERAL REGISTER, and a copy of such notice has been furnished by the Board to the Attorney General not later than the day following the date of such publication, both in accordance with the requirements of section 408(b) of the Act.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.13, it is found that the foregoing transaction should be approved under the third proviso of section 408(b) of the Act without a hearing.[3]

Accordingly, it is ordered, That:

The lease without crew of two DC-8-63F aircraft from Seaboard to Korean as described in the application in Docket 25219 be and it hereby is approved pursuant to section 408 of the Act.

Persons entitled to petition the Board for review of this order pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of this order.

This order shall be effective upon issuance and the filing of such petitions shall not stay its effectiveness.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.73-4390 Filed 3-6-73;8:45 am]

[1] Aircraft N8637 (Manufacturer's Serial No. 46052) and Aircraft N8638 (Manufacturer's Serial No. 46053).

[2] See Order 72-12-50, Dec. 12, 1972, Docket 24926.

[3] It is further found, pursuant to 14 CFR 385.6, that the actions taken herein are governed by prior Board precedent and policy, and, because of the imminent transaction date, that immediate action is required to enable effectuation of the transaction; therefore, it is determined that the filing of petitions for review of this order will not preclude this order from becoming effective immediately.

ENVIRONMENTAL PROTECTION AGENCY

MOTOR VEHICLE POLLUTION CONTROL SUSPENSION REQUEST

Notice and Procedures for Public Hearing

Correction

In FR Doc. 73-3671 appearing on page 5281 of the issue for Tuesday, February 27, 1973, in the seventh line of the third column "44 hours notice" should read "24 hours notice".

NATIONAL AIR POLLUTION MANPOWER DEVELOPMENT ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given that a meeting of the National Air Pollution Manpower Development Advisory Committee will be held at 8 p.m., March 26, and at 8:30 a.m. on March 27-28, 1973, in the National Environmental Research Center Auditorium, EPA, Research Triangle Park, N.C.

This is the regular quarterly meeting of this Committee. Most of the meeting will be devoted to Committee review of applications for training grants and fellowships. Reports will also be presented by ad hoc subcommittees on Specialty Training Programs and Training Priorities.

The meeting will be open ot the public. Any member of the public wishing to attend or participate should contact Mr. Ronnie E. Townsend, Manpower Development Staff, Research Triangle Park, N.C., (919) 549-8411, extension 2492.

WILLIAM D. RUCKELSHAUS,
Administrator.

MARCH 1, 1973.

[FR Doc.73-4407 Filed 3-6-73;8:45 am]

TECHNICAL ADVISORY GROUP TO THE MUNICIPAL WATER SYSTEMS DIVISION

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given that a meeting of the Technical Advisory Group to the Municipal Waste Water Systems Division will be held on March 21, 1973, at 8:30 a.m. in the Crystal City Marriott Hotel in Crystal City, Arlington, Va.

This is a regularly scheduled meeting of this advisory group. The agenda includes a review of items needed to implement the 1972 Amendments to the Federal Water Pollution Control Act and a review of wastewater treatment facility designs, operation and maintenance information.

The meeting will be open to the public. Any member of the public who would like to participate may submit written comments to the Chairman of the advisory group prior to the closing of the meeting. Persons desiring more information should contact Mr. Ralph C. Palange, Executive Secretary, Technical Advisory Group to the Municipal Waste Water Systems Division at (703) 557-7602.

WILLIAM D. RUCKELHAUS,
Administrator.

MARCH 1, 1973.

[FR Doc.73-4408 Filed 3-6-73;8:45 am]

FEDERAL MARITIME COMMISSION

LYKES BROS. STEAMSHIP CO., INC., AND SOUTH AFRICAN MARINE CORP., LTD.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street, NW., Room 1015; or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before March 27, 1973. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. R. J. Finnan, Rate Analyst, Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, LA 70130.

Agreement No. 10036 is an arrangement between Lykes Bros. Steamship Co., Inc., and the South African Marine Corp., Ltd., which would permit the two lines to meet together, discuss, and agree on matters of mutual interest and courses of action to promote trade between the United States and Southwest Africa, the Republic of South Africa and Mozambique, including the spacing of their vessels, and coverage of ports, not inconsistent with the rules, regulations, limitations, and procedures of conferences to which either might belong and which cover the agreement trade. Any agreement reached involving matters other than the spacing of sailings, and the coverage of ports, will not be implemented prior to the approval of the Federal Maritime Commission.

Dated: March 2, 1973.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.73-4369 Filed 3-6-73;8:45 am]

MARSEILLES NORTH ATLANTIC U.S.A. FREIGHT CONFERENCE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015, or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before March 27, 1973. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Stanley O. Sher, Esq., Bebchick, Sher & Kushnick, 919 18th Street NW., Washington, DC 20006.

Agreement No. 5660-17 modifies the basic agreement of the above-named conference by extending its scope to all interior points in Continental Europe.

Dated: March 2, 1973.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.73-4370 Filed 3-6-73;8:45 am]

MARSEILLES NORTH ATLANTIC U.S.A. FREIGHT CONFERENCE

Notice of a Petition Filed

Notice is hereby given that the following petition has been filed with the Commission for approval pursuant to section 14b of the Shipping Act, 1916, as amended (75 Stat. 762, 46 U.S.C. 814).

Interested parties may inspect a copy of the proposed contract form and of the petition at the Washington office of the Federal Maritime Commission, 1405 I Street NW., room 1015 or at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to the proposed contract form and the petition including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, 1405 I Street, NW., Washington, DC 20573, on or before March 27, 1973. Any person desiring a hearing on the proposed contract system shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the proposed contract form and the petition (as indicated hereinafter), and the statement should indicate that this has been done.

Notice of agreement filed by:

Stanley O. Sher, Bebchick, Sher & Kushnick, 919 18th Street NW., Washington, DC 20006.

Agreement No. 5660 D.R. 2 modifies the dual rate contract of the above named Conference by extending its coverage to all points in Continental Europe.

Dated: March 2, 1973.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.73-4371 Filed 3-6-73;8:45 am]

FEDERAL POWER COMMISSION

[Projects Nos. 160, 162, 383, 689, 951, 1232, 2001, 2178, and 2505]

ALASKA

Order Vacating Land Withdrawals

FEBRUARY 28, 1973.

The Alaska Power Administration, U.S. Department of the Interior, has reviewed the land withdrawals created for the nine projects designated above and has recommended revocation of these withdrawals in their entirety, thereby requiring Commission consideration under section 24 of the Federal Power Act. The withdrawn lands are described in the attachment below.

Proceedings for Projects Nos. 160, 162, 383, 689, 2178, and 2505 ended without issuance of a license. The license for Project No. 951 has expired and the licenses for Projects Nos. 1232 and 2001 have been surrendered.

The lands withdrawn for Projects Nos. 160, 162, 2178, and 2505 are located along Power Creek, a tributary of Eyak Lake, near Cordova, Alaska. These projects contemplated diversion of Power Creek a short distance upstream from Ohman Falls to a powerhouse about 1½ miles below the falls. This powersite is also covered by the withdrawal for Project No. 2656 for which an application for license is pending. Since the site is covered by the withdrawal for Project No. 2656, the withdrawals for Projects Nos. 160, 162, 2178, and 2505 no longer serve a useful purpose.

The lands withdrawn for Projects Nos. 383 and 689 are located along the Soule Glacier River, a tributary to Portland Canal, about 8 miles southwest of Hyder, Alaska. Development of the power potential of the Soule Glacier River is considered economically unfeasible. Studies indicate that equivalent power could be obtained more cheaply from diesel generators or by development of a hydroelectric site on the Davis River located about 5 miles south of the Soule Glacier River.

Project No. 951 was a 1,180 horsepower project the license for which expired in 1955. Redevelopment of this site is considered unlikely because equivalent power could be obtained more cheaply from portable diesel generators.

The license for minor Project No. 1232 (installed capacity less than 100 horsepower) was surrendered in 1943. The site was subsequently redeveloped as Project No. 2001 (installed capacity 50 horsepower) the license for which was surrendered in 1953. Redevelopment of this site is considered unlikely because equivalent power could be obtained more cheaply from portable diesel generators.

Revocation of the withdrawals will facilitate the disposal of some of the lands and facilitate the administration of the lands which remain in federal ownership.

The U.S. Geological Survey has concurred with the recommendations of the Alaska Power Administration.

The Commission finds:

The withdrawals of the subject lands pursuant to the applications for Projects Nos. 160, 162, 383, 689, 951, 1232, 2001, 2178, and 2505 serve no useful purpose and should be vacated in their entirety.

The Commission orders:

The withdrawals of the subject lands pursuant to the applications for Projects Nos. 160, 162, 383, 689, 951, 1232, 2001, 2178, and 2505 are hereby vacated in their entirety.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

ATTACHMENT

1. Lands withdrawn for Project No. 160 as described in the Commission's February 15, 1921, notice of land withdrawal to the General Land Office (now Bureau of Land Management):

VICINITY OF ORCA INLET, PRINCE WILLIAM SOUND, CHUGACH NATIONAL FOREST, ALASKA

All lands within one-quarter of a mile of Power Creek for 2 miles of its length beginning at and extending upstream from Eyak Lake.

(Approximately 640 acres.)

NOTE: Project No. 160 (and Project Nos. 162 and 2178 cited below) contemplated the diversion of Power Creek at a point about one-half mile above Ohman Falls. The latest topographic maps show that this diversion point is more than 2 miles upstream from Eyak Lake, hence the notice of February 15, 1921, was incomplete.

2. A notice of land withdrawal was not issued for Project No. 162. This project affected the same lands as Project No. 160 (see item 1 above).

3. Lands withdrawn for Project No. 383 as described in the Commission's March 23, 1923, notice of land withdrawal to the General Land Office:

TONGASS NATIONAL FOREST, ALASKA

Soule Glacier River, tributary to Portland Canal from the west, approximately 8 miles southwest of Hyder, Alaska.

All lands within one-quarter of a mile of Soule Glacier River from its mouth to a point 2 miles above the mouth.

(Approximately 640 acres.)

Additional lands withdrawn for Project No. 383 as described in the Commission's April 21, 1925, notice of land withdrawal to the General Land Office:

All lands within one-quarter of a mile of Soule Glacier River from a point 2 miles above the mouth of said river to "Unnamed Lake."

Also all lands lying within 500 feet of elevation 100 feet above the mean low water level of said "Unnamed Lake."

(Approximately 480 acres.)

4. Project No. 689 affected lands along the Soule Glacier River near Hyder, Alaska. A notice of land withdrawal was not issued for this project and the acreage involved has not been determined.

5. Lands withdrawn for Project No. 951 as described in the Commission's February 9, 1929, notices of land withdrawal to the General Land Office:

TONGASS NATIONAL FOREST, ALASKA, SITKA RECORDING DISTRICT, CHICHAGOF ISLAND, DIVISION NO. 1

All lands within 100 feet of the marginal limits of Rust Lake; all lands within the project boundaries surrounding the powerhouses and appurtenant structures on the shore of Sister Lake; all lands within 100 feet of the diversion dam locations; all lands within 50 feet of the center line of the pipeline, flume, and tunnel locations between Rust Lake and said Powerhouse Site; all as shown on a map entitld "Chichagof Power Co., Map of Power Project, Chichagof Island, Alaska," and filed in the office of the Federal Power Commission on December 31, 1928.

(Approximately 43 acres.)

All lands lying within 50 feet of the center line of the constructed transmission line location, approximately 4.5 miles in length from the powerhouse on the shore of Sister Lake to the location of the mine, stamp mill, and cyanid plant at Chichagof, Alaska, all as shown on the above described map.

(Approximately 54 acres.)

6. Lands withdrawn for Project No. 1232 as described in the Commission's January 18, 1933, notice of land withdrawal to the General Land Office:

PORT WALTER, BARANOF ISLAND, TONGASS NATIONAL FOREST, ALASKA

All lands lying within 50 feet of the center line and the two parallel 8-inch wood stave pipelines into which it branches; all lands below the 250-foot contour above mean sea level which drain into the reservoir lake and into that section of the stream between the lake outlet and the storage dam; all as shown

on a map designated "Exhibit E" and entitled "Chatham Strait Fish Company, Port Walter, Alaska, Tongass National Forest, Map to accompany application for license for minor project," and filed in the office of the Federal Power Commission on January 9, 1933.

(Approximately 50 acres.)

7. Lands withdrawn for Project No. 2001 as described in the Commission's August 29, 1949, notice of land withdrawal to the Bureau of Land Management:

TONGASS NATIONAL FOREST, ALASKA, BARANOF ISLAND, PORT WALTER, AN ARM OF CHATHAM STRAIT

All lands of the United States lying within 10 feet of the high water line of the reservoir (Lake Osprey) and New Port Walter Creek to intake, and 50 feet from center line of water conduit, powerhouse and dam, and 20 feet either side of center line of transmission line, all as shown on a map designated "Exhibit K" and entitled "Map Showing Project Boundaries Accompanying Application for License (Minor Project) of Newport Fisheries, Inc.," filed in the office of the Federal Power Commission on February 8, 1949.

(Approximately 40.04 acres.)

8. A notice of land withdrawal was not issued for Project No. 2178. This project affected the same lands as Project No. 160 (see item 1 above).

9. Project No. 2505 affected lands lying along Power Creek, near Cordova, Alaska. A precise boundary was not established for this project, a notice of land withdrawal was not issued, and the acreage involved has not been determined. The project was similar to Project No. 160 except that a storage reservoir was contemplated above Ohman Falls.

[FR Doc.73-4290 Filed 3-6-73;8:45 am]

[Project No. 1222]

ALASKA

Order Vacating Land Withdrawal

FEBRUARY 28, 1973.

The Alaska Power Administration, Department of the Interior, has reviewed the land withdrawal for Project No. 1222 and recommended that it be vacated in its entirety, thereby requiring Commission consideration under section 24 of the Federal Power Act.

The following described lands are withdrawn pursuant to the filing on September 29, 1932, by the Wards Cove Packing Co., of an application for Project No. 1222 for which the Commission gave notice of land withdrawal to the General Land Office (now Bureau of Land Management) by letter dated October 8, 1932.

WARD COVE, REVILLAGIGEDO ISLAND, ALASKA

All lands draining into a small unnamed stream tributary to Ward Cove, which lie below elevation 150 feet above mean sea level and upstream from the southeast boundary of the Trade and Manufacturing Site belonging to the Wards Cove Packing Co. (U.S. Survey No. 1207), as shown on a map designated "Exhibit E" and entitled "Wards Cove Packing Company, Alaska, Tongass National Forest, Map to Accompany Application for License for Minor Project," and filed in the office of the Federal Power Commission on September 29, 1932.

(Approximately 3 acres.)

Project No. 1222 was located on Walsh Creek, about 3 miles northwest of Ketchikan, Alaska, and consisted of a rock-filled crib dam 18.5 feet high with a crest 80.5 feet long, a 3-acre reservoir with a capacity of 15 acre-feet, and a 700-foot-long conduit leading to a 20-horsepower water wheel connected to a generator in the licensee's fish cannery.

The 25-year license for the project expired April 20, 1958, and the development of electrical energy has been discontinued as the cannery now receives its power from Ketchikan Public Utilities. The dam, reservoir, and pipeline are being maintained by the Wards Cove Packing Co., Inc., for water supply purposes.

Walsh Creek has no significant power potential as its drainage area is less than 1 square mile.

The Commission finds:

The withdrawal for Project No. 1222 no longer serves a useful purpose and should be vacated in its entirety.

The Commission orders:

The withdrawal of the subject lands pursuant to the application for Project No. 1222 is hereby vacated in its entirety.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-4289 Filed 3-6-73;8:45 am]

[Docket No. CP73-223]

COLUMBIA GAS TRANSMISSION CORP.

Notice of Application

FEBRUARY 28, 1973.

Take notice that on February 20, 1973, Columbia Gas Transmission Corp. (Applicant), 20 Montchanin Road, Wilmington, DE 19807, filed in Docket No. CP73-223 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to receive volumes of synthetic gas as mixed with natural gas for certain of its customers and deliver such volumes to those customers at existing points of delivery, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that certain of its customers have exercised agreements with Columbia LNG Corporation (Columbia LNG), an affiliate of Applicant, providing for the purchase of a specified share of synthetic gas from Columbia LNG and for the delivery of such volumes by Applicant as proposed herein. Applicant also states that it has been advised that Columbia LNG anticipates annual deliveries of 75,600,000 Mcf of synthetic gas at an average daily rate of 216,000 Mcf per day, to commence January 1, 1974. It is stated that customers of Applicant were given the opportunity to purchase synthetic gas based on their purchases of historic gas from Applicant under Applicant's existing rate schedules.

Applicant proposes to accept for the account of certain of its customers, their respective shares of synthetic gas purchased from Columbia LNG, at Green Springs, Ohio, and to deliver such volumes to these customers at existing points of delivery at monthly load factors represented by each customer's maximum monthly volumes. Applicant states that the synthetic gas so accepted will be at essentially uniform monthly and daily rates. Applicant also states that it will be under no obligation to deliver gas to customers when Applicant is delivering that customer's total daily entitlement under the rate schedules contained in Applicant's effective FPC gas tariff.

Applicant states that customers will pay applicant 13 cents per Mcf for the delivery of mixed gas proposed herein, that the rate is a one-part rate per Mcf, and that the rate will be calculated from time-to-time based upon Applicant's average systemwide transmission and storage costs as reflected in Applicant's effective rates.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 26, 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.73-4278 Filed 3-6-73;8:45 am]

[Docket No. E-7743]

CONNECTICUT LIGHT & POWER CO.

Notice of Further Extension of Time and Postponement of Hearing

FEBRUARY 28, 1973.

On February 22, 1973, The Connecticut Municipal Group filed a motion for

further extension of time of the remaining procedural dates as established by the order issued November 30, 1972, and January 16, 1973, in the above matter. The motion states that the Commission Staff Counsel and the company consent to the request.

Upon consideration, notice is hereby given that the procedural dates in the above matter are further modified as follows:

Interveners' prepared testimony and exhibits, March 30, 1973.
Connecticut Light & Power Co.'s rebuttal testimony and exhibits, April 21, 1973.
Hearing, May 5, 1973 (10 a.m., e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-4279 Filed 3-6-73;8:45 am]

[Project 2338]

CONSOLIDATED EDISON CO. OF NEW YORK, INC.

Notice of Extension of Time

FEBRUARY 28, 1973.

On February 21, 1973, Consolidated Edison Co. of New York, Inc., filed a motion for an extension of time to answer the petition filed February 2, 1973, by the Hudson River Fishermen's Association (HRFA), for hearing and for order regulating operation of Pumped Storage Project (Cornwall Project). The motion states that HRFA has no objection to the requested extension of time.

Upon consideration, notice is hereby given that the time is extended to and including April 4, 1973, within which answers may be filed to the petition filed by HRFA.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-4280 Filed 3-6-73;8:45 am]

[Docket No. CI73-556]

DYNAMIC EXPLORATION, INC.

Notice of Application

FEBRUARY 28, 1973.

Take notice that on February 22, 1973, Dynamic Exploration, Inc. (applicant), Post Office Box 52889, Oil Center Station, Lafayette, LA 70501, filed in Docket No. CI73-556 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to United Gas Pipe Line Co., from the North Bourg Field, Lafourche Parish, La., 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 proposes to commence the sale of natural gas within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and that it proposes to continue said sale for 1 year from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant proposes to sell approximately 120,000 Mcf of gas per month at 45 cents per Mcf at 14.7 p.s.i.a., subject to upward and downward B.t.u. adjustment.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 16, 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.73-4193 Filed 3-6-73;8:45 am]

[Docket No. CP73-221]

EL PASO NATURAL GAS CO.

Notice of Application

FEBRUARY 28, 1973.

Take notice that on February 16, 1973, El Paso Natural Gas Co., Post Office Box 1492, El Paso, TX 79978, filed in Docket No. CP73-221 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to construct and operate certain facilities and to sell and deliver natural gas to Northern Natural Gas Co. (Northern), 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 purchases, gathers and transports natural gas from fields located in Lea County, N. Mex., that it has excess capacity on its system, and that it 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 Applicant. It is also stated that Northern 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 states that it will receive up to 75,000 Mcf of raw, sour, natural gas per day from Northern, at approximately 100 p.s.i.a. or less, for an initial price of 18.87 cents per Mcf pursuant to an agreement between Applicant and Northern dated January 31, 1973. It is stated that Applicant will receive such gas at seven points of interconnection of existing natural gas gathering facilities in the Lea County area of New Mexico and that approximately 32,000 Mcf of such natural gas will be delivered to Warren for Applicant's account.

Applicant proposes to sell, at a rate equivalent to that under Applicant's Rate Schedule X-1, and deliver to Northern daily volumes of residue gas equal to the volume of gas remaining after Applicant processes the raw gas purchased from Northern, approximately 60,000 Mcf per day. The current rate under Rate Schedule X-1 is 30.9 cents per Mcf. It is stated that the proposed sale and delivery of natural gas to Northern will be at an existing point of connection at the outlet of Mobil Oil Corp.'s Coyanosa Gas Plant, Pecos County, Tex., and/or at the point of interconnection where Applicant's 12-inch line in Lea County, N. Mex., crosses Northern's 16-inch mainline.

Applicant states that it commenced the sale and delivery of natural gas to Northern and installed three metering and regulating stations at the points of interconnection between Applicant's and Northern's gathering system facilities in Lea County, N. Mex., to make sales and deliveries within the contemplation of § 157.22 of the regulations under the Natural Gas Act (18 CFR 157.22).

Applicant proposes to construct and operate an interconnecting meter station, to be known as Field Sales Meter Station No. 1, to accomodate deliveries to Northern at the point of interconnection where Northern's 16-inch mainline crosses Applicant's 12-inch Gulf-Eunice pipeline in Lea County, N. Mex. Applicant also proposes to continue the operation of the aforementioned metering and regulating stations. Applicant estimated the total cost of the facilities constructed in connection with this project will total $52,087.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 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.73-4281 Filed 3-6-73;8:45 am]

[Docket No. CI73-553]

EXCHANGE OIL & GAS CORP.

Notice of Application

FEBRUARY 28, 1973.

Take notice that on February 20, 1973, Exchange Oil & Gas Corp. (applicant), 1010 Common Street, New Orleans, LA 70112, filed in Docket No. CI73-553 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to United Gas Pipe Line Co. from the Orange Grove Field, Terrebonne Parish, La., 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 commenced the sale of natural gas on February 12, 1973, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and that it proposes to continue said sale for 1 year from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70), except that the sale may be terminated after 6 months' deliveries under the authorization requested herein. Applicant proposes to sell approximately 37,500 Mcf of gas per month at 35 cents per Mcf at 15.025 p.s.i.a., subject to upward and downward B.t.u. adjustment.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 16, 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.73-4192 Filed 3-6-73;8:45 am]

[Docket No. CI73-544]

EXXON CORP.

Notice of Application

FEBRUARY 28, 1973.

Take notice that on February 16, 1973, Exxon Corp. (Applicant), Post Office Box 2180, Houston, TX 77001, filed in Docket No. CI73-544 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the sale of natural gas to Union Texas Petroleum, a Division of Allied Chemical Corp. (Union Texas), for resale in interstate commerce and pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale of natural gas in interstate commerce to El Paso Natural Gas Co. (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 is presently selling natural gas from production in the Fort Chadbourne and West Fort Chadbourne Fields, Coke and Runnels Counties, Tex., under a percentage-type casinghead gas contract to Union Texas for processing at the latter's Perkins Natural Gasoline Plant in Coke County and resale to El Paso. Applicant states further that the primary term of its percentage contract with Union Texas has expired and that Applicant now proposes to sell to El Paso at 36 cents per Mcf at 14.65 p.s.i.a. residue gas from the Fort Chadbourne and West Fort Chadbourne casinghead gas after having the casinghead gas processed for Applicant by Union Texas at the Perkins Natural Gasoline Plant.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 26, 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 and permission and approval for the proposed abandonment 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.73-4282 Filed 3-6-73;8:45 am]

[Docket No. E-7806]

ILLINOIS POWER CO.

Notice of Further Extension of Time

FEBRUARY 28, 1973.

On January 24, 1973, Illinois Power Co. filed a motion for an extension of time to comply with paragraph (D) of the order issued on December 29, 1972. The motion states that nine electric cooperatives have no objection to the motion. On January 19, 1973, a notice was issued changing the other procedural dates established by that order pursuant to a motion filed January 15, 1973 by the Illinois Power Co. On February 16, 1973, Illinois Power Co. filed a request for an extension of time so as to file a proposed offer of settlement. This extension is within the time of the earlier request.

Upon consideration, notice is hereby given that the time is extended to and

including April 16, 1973, within which Illinois Power Co. shall respond to paragraph (D) of the order issued December 29, 1972. The procedural dates are further modified accordingly:

Service of evidence by parties supporting, April 23, 1973.
Service of evidence by parties opposing, April 30, 1973.
Service of rebuttal evidence supporting, May 8, 1973.
Hearing and cross-examination, May 15, 1973 (10 a.m., e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-4283 Filed 3-6-73;8:45 am]

[Docket No. CI73-555]

McCULLOCH OIL CORP. OF TEXAS

Notice of Application

FEBRUARY 28, 1973.

Take notice that on February 22, 1973, McCulloch Oil Corp. of Texas (applicant), 10880 Wilshire Boulevard, Los Angeles, CA 90024, filed in Docket No. CI73-555 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to El Paso Natural Gas Co. from Hemphill County, Tex., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell approximately 7,500 Mcf of natural gas per day at 50 cents per Mcf at 14.65 p.s.i.a., subject to upward and downward B.t.u. adjustment, until July 1, 1974, within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70). Estimated initial upward B.t.u. adjustment is 6.5 cents per Mcf.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 16, 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.73-4191 Filed 3-6-73;8:45 am]

[Project 2684]

NORTH CENTRAL POWER CO., INC.

Notice of Application

FEBRUARY 28, 1973.

Public notice is hereby given pursuant to section 4(e) of the Federal Power Act (16 U.S.C. 791a-825r) that application for approval of compliance with license Article 18 was filed on July 14, 1972, by North Central Power Co., Inc. (correspondence to: Mr. Mark F. Dahlberg, vice-president, North Central Power Co., Inc., Grantsburg, Wis. 54840) Licensee for Project 2684, known as the Arpin Dam, located on the Chippewa River in Sawyer County, Wis.

Licensee has filed for approval of its compliance with Article 18 of its minor license, issued June 3, 1969 (41 FPC 682) requiring the development of recreational facilities and the submission of plans for stump removal from the reservoir.

Licensee states that it has completed all recreational development having completed the construction of a public boat landing and having placed two picnic tables on the site.

The development of a proposed park on a 29-acre parcel of land has been dropped from present plans. The parcel is being reserved for future development.

Licensee has consulted with the State of Wisconsin, Department of Natural Resources concerning stump removal and has received a recommendation that the stumps be left for fish and wildlife enhancement.

Any person desiring to be heard or to make protest with reference to said application should on or before April 6, 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.73-4284 Filed 3-6-73;8:45 am]

[Docket No. CI73-202]

PENNZOIL CO.

Notice of Application

FEBRUARY 28, 1973.

Take notice that on February 15, 1973, Pennzoil Co. (Applicant), 900 Southwest Tower, Houston, TX 77002, filed in Docket No. CI73-202 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 authorizing the sale for resale and delivery of natural gas in interstate commerce with pregranted abandonment authorization to Northern Natural Gas Co. (Northern) from the Quito Area, Ward County, Tex., 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 Northern from the Quito Area at an initial rate of 37 cents per Mcf at 14.65 p.s.i.a., subject to upward and downward B.t.u. adjustment. The basic contract for the subject sale provides of 1-cent per Mcf price escalations each year, for reimbursement to Applicant for 90 percent of any new or increased taxes and for a contract term of 20 years.

Applicant states that on September 19, 1972, it filed an application for a certificate of public convenience and necessity in Docket No. CI73-202 authorizing the sale of the subject gas and was granted a temporary certificate for the sale on October 3, 1972, at 27 cents per Mcf. Applicant further states that it accepted the temporary certificate, but deliveries of gas have not commenced thereunder.

Applicant asserts that the instant contract prices were reasonable at the time the contract was entered into and that recently executed contracts for the sale of gas in the same area call for higher prices in the neighborhood of 45 to 50 cents per Mcf. Also, Applicant asserts that the instant contract prices are lower than recently negotiated intrastate contracts, such as the sales reported at 52 cents per Mcf in New Mexico and Oklahoma, 73 cents per Mcf in Ohio and 76 cents per Mcf in Alabama-Florida. Applicant believes that the assurance of a long-term supply of natural gas produced domestically, like the present one, is extremely beneficial to consumers faced with the prospect of paying in excess of $1 (initial price) for gas imported from countries with uncertain political futures or transported over long distances from Alaska.

In the alternative, Applicant requests an amendment of the certificate heretofore issued in Docket No. CI73-202 to accomplish the above-described results on a permanent basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 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.73-4286 Filed 3-6-73;8:45 am]

[Docket No. CI73-546]

PENNZOIL OFFSHORE GAS OPERATORS, INC.

Notice of Application

FEBRUARY 28, 1973.

Take notice that on February 16, 1973, Pennzoil Gas Operators, Inc. (Applicant), 900 Southwest Tower, Houston, TX 77002, filed in Docket No. CI73-546 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 authorizing sales for resale and delivery of natural gas in interstate commerce with pregranted abandonment authorization to Sea Robin Pipeline Co. from Block 270, East Cameron area, and Block 330, Eugene Island 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 Sea Robin, an affiliated company, from Block 270 and Block 330 at an initial rate of 35 cents per Mcf at 15.025 p.s.i.a., subject to upward and downward B.t.u. adjustment. The basic contracts for the subject sales dated April 20, 1972, provide for 2.5 cents per Mcf price escalations every 3 years, for reimbursement to Applicant for any new or additional taxes and for a contract term of 20 years.

Applicant states that it was issued certificates of public convenience and necessity in Dockets Nos. CI72-692 and CI72-694 for the subject sales from Block 330 and Block 270, respectively, on October 17, 1972, in Amoco Production Co. (Operator) et al., Docket No. G-4904 et al. Applicant indicates that deliveries have not commenced under either of these certificates. Applicant also indicates that certain wells in these blocks were commenced prior to April 6, 1972, and are not to be covered by this application.

Applicant asserts that the instant prices were reasonable at the time the subject contracts were entered into and that recently executed contracts for the sale of gas in the same area call for higher prices in the neighborhood of 45 cents per Mcf to 50 cents per Mcf. Also, Applicant asserts that the instant contract prices are lower than recently negotiated intrastate contracts, such as those sales reported at 52 cents per Mcf in New Mexico and Oklahoma, 73 cents per Mcf in Ohio and 76 cents per Mcf in Alabama-Florida. Applicant believes that the assurance of a long-term supply of natural gas produced domestically, like the present one, is extremely beneficial to consumers faced with the prospect of paying in excess of $1 (initial price) for gas imported from countries with uncertain political futures or transported over long distances from Alaska.

In the alternative, Applicant requests an amendment of the certificates issued in Dockets Nos. CI72-692 and CI72-694 to accomplish the above-described results on a permanent basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 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.73-4285 Filed 3-6-73;8:45 am]

[Docket No. CP72-259]

SOUTHERN NATURAL GAS CO.

Notice of Application

MARCH 1, 1973.

Take notice that on February 20, 1973, Southern Natural Gas Co. (Applicant), Post Office Box 2563, Birmingham, AL 35202, filed in Docket No. CP72-259 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Sea Robin Pipeline Co. (Sea Robin) from Block 225, Ship Shoal 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 Sea Robin from Block 225 at an initial rate of 35 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 April 27, 1972, provides for 2.5-cents per Mcf price escalations every 3 years, for reimbursement to Applicant for any increased or new taxes and for a contract term expiring on January 1, 1993.

Applicant states that it was granted a temporary certificate for the subject sale in Docket No. CP72-259 but that deliveries have not commenced from the subject acreage. Such certificate was issued at a rate of 26 cents per Mcf on June 9, 1972. In the event the Commission approves the instant proposal, Applicant requests that its original application in this docket filed May 10, 1972, be considered withdrawn.

Applicant asserts that the instant contract prices were reasonable at the time of execution of the contract and that recently executed intrastate sales in southern Louisiana call for higher rates, some in excess of 50 cents per Mcf. Applicant further asserts that the cost of liquefied natural gas and other nonconventional supply sources are much higher. Applicant alleges that the instant definite pricing provisions in the gas sales contract are needed to provide funds for increasing lease sale costs in the southern Louisiana area and otherwise to provide funds for exploration, development, and production of needed gas supplies, thereby maintaining Applicant's financial integrity.

In the alternative, Applicant requests that this application be treated as an amendment to its existing, pending application in Docket No. CP72-259 to accomplish the above described results on a permanent basis. In such case Applicant requests that its notice of withdrawal of application be disregarded.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 26, 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. Persons who have heretofore filed petitions to intervene in this docket need not file again.

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.73-4291 Filed 3-6-73;8:45 am]

[Docket No. E-7929]

TOLEDO EDISON CO.

Order Accepting for Filing

FEBRUARY 28, 1973.

On December 22, 1972, Toledo Edison Co. (Toledo) tendered for filing copies of the following rate schedules: Municipal Resale Service Rate—Small, applicable to 11 small municipalities[1] and Municipal Resale Service Rate—Large, applicable to the cities of Bowling Green, Napoleon, Montpelier and Bryan.

[1] The Villages of Bradner, Custar, Edgerton, Elmore, Genoa, Haskins, Liberty Center, Oak Harbor, Pemberville, Pioneer, and Woodville, Ohio.

Toledo stated that the proposed changes would increase Toledo's revenues from jurisdictional sales and service by $494,747 based on a 1971 test year. The proposed tariff is intended to be applicable to all of its municipal wholesale customers and Toledo maintains that it is replacing existing individual municipal wholesale agreements with the standardized rate tariffs submitted.

Toledo says that the existing agreements with the large municipalities of Bowling Green, Napoleon, and Montpelier have expired, and that as to those municipalities, the proposed effective date of the new tariff will be March 1, 1973. The new tariff is proposed to become effective as to Bryan upon the expiration date of the current agreement May 31, 1974.

With regard to the 11 small municipalities the proposed tariff rate is the same as that incorporated in existing rate schedules except for a revision to the fuel adjustment clause which excludes fuel handling costs. This revised fuel clause would have the effect of reducing revenues from the small municipalities. The company requests that the revised fuel clause go into effect on March 1, 1973.

Notice of the proposed increase was issued on January 11, 1973, petitions to intervene or protests were due February 5, 1973.[2] A timely petition to intervene was filed by the city of Napoleon, Ohio. On February 5, 1973,[3] Bowling Green, Bryan, and Napoleon (Cities) filed a joint motion to reject the filing contending that it lacks jurisdiction for allocation of demand charges to Cities contrary to the regulations under the Federal Power Act, § 35.13(b)(iv); it violates antitrust laws and prohibitions of section 205(b) of the Federal Power Act in that it eliminates provision for coordination with the two municipals with self-generation contrary to the standards confirmed in the Gainesville decision and restricts self-generation through imposition of high minimum charges and refusal to provide outage service and transmission service; it acts to impose unlawful restrictions on retail sales by Cities; and that the ratchet provision is unlawful.

Also on February 5, 1973, the Cities filed a motion by the Cities to protest, reject, request for hearing and 5 months suspension, and to intervene in which the arguments raised in joint motion to reject were reargued. The Cities also maintain that the lack of environmental impact statement is a reason for rejection. Alternatively, the Cities request suspension of the filing and hearing on Toledo's anticompetitive practices and their environmental impact, or refuse to accept the proposed tariff sheets unless Toledo agrees to coordinate operations with the Cities generating plants and correct various discrimination clauses or order a hearing and 5-month suspension. On February 20, 1973, Toledo filed an answer to the Cities' motions.

We believe that the allegations contained in the Cities' motions raise issues which may require development in an evidentiary hearing and therefore will deny said motions.

Our review of Toledo's filing reveals that, with respect to the three large cities being served under expired contracts, as well as the city of Bryan, the proposed rate increase has not yet been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. Therefore, we will accept for filing, the tendered large municipal rate schedule and suspend it for 5 months. However, Toledo's contract with the city of Bryan does not expire until May 31, 1974, therefore, the proposed rate increase applicable to the city of Bryan may not become effective until that date.

With regard to the small municipal rate schedule, we will permit the revised fuel adjustment clause to go into effect on March 1, 1973, without suspension, subject to the condition that Toledo file a revised fuel clause in conformance with New England Power Co., Docket No. E-7541 Opinion No. 633.

Finally, in order that the Commission has an up to date record on all the issues presented, we shall require Toledo to submit cost and revenue data for calendar year 1972. In this connection our caveat * * * on page 7 in Duke Power Co., Opinion No. 641, in Docket No. E-7557 is particularly appropriate in cases such as this where a 1971 test period is being used. There we stated:

> * * * our filing requirements are not to be construed as a limitation on evidence which may be proffered as an aid to us in determining just and reasonable rates. All evidentiary material relevant to a fair determination of cost and revenue expectations may be appropriately presented in filings before us.

The Commission finds:

(1) The tariff schedule, Municipal Resale Service Rate—Large, tendered for filing December 22, 1972, should be accepted for filing as hereinafter ordered.

(2) The above increased rates and charges have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful.

(3) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in Toledo's Municipal Resale Service Rate—Large as proposed to be amended in this docket, and that the tendered Rate Schedule be suspended as hereinafter provided.

(4) The disposition of this proceeding should be expedited in accordance with the procedure set forth below.

[2] The original notice provided for filing Green, Ohio, filed the same date extending the filing date for interventions until Feb. 5, 1973.
petitions and intervention by Jan. 22, 1973. On Jan. 22, 1973, the Secretary granted a motion by the cities of Bryan and Bowling

[3] Supplemented by Feb. 21, 1973, filing.

(5) In the event this proceeding is not concluded prior to the termination of the suspension period herein ordered, the placing of the tariff changes applied for in this proceeding into effect, subject to refund with interest while pending Commission determination as to their justness and reasonableness, is consistent with the purpose of the Economic Stabilization Act of 1970, as amended.

(6) The tariff schedule, Municipal Resale Service Rate—Small, tendered for filing December 22, 1972, is accepted to become effective as hereinafter ordered.

(7) Participation of the applicants for intervention cities of Napoleon, Bowling Green, and Bryan, Ohio, may be in the public interest.

(8) The motions of the Cities should be denied.

The Commission orders:

(A) Toledo's rate schedule, Municipal Resale Service Rate—Large, filed on December 22, 1972, is accepted for filing and suspended until August 1, 1973, as hereinafter provided.

(B) Toledo's Municipal Resale Service Rate—Small is accepted for filing and the revised fuel adjustment clause therein is permitted to become effective March 1, 1973. Toledo shall file a revised fuel clause in conformance with New England Power Co., Docket No. E–7541 Opinion No. 633 within 60 days from the date of issuance of this order.

(D) The Cities' motion to reject the filing and motion to protest, reject, request for hearing and 5 months suspension and intervention are denied for the reasons heretofore stated.

(E) Pursuant to the authority of the Federal Power Act, including sections 205, 206, 308, and 309 thereof, the Commission's rules of practice and procedure, and the regulations under the Federal Power Act, a public hearing shall be held commencing with a prehearing conference on July 24, 1973, at 10 a.m. in a hearing room of the Federal Power Commission, at 441 G Street NW., Washington, DC 20426 concerning the lawfulness of the rate increase as set forth above.

(F) On or before April 16, 1973, Toledo shall file cost and revenue data for the calendar year 1972. On or before July 16, 1973, the Commission Staff shall serve its prepared testimony and exhibits. The prepared testimony and exhibits of any or all intervenors shall be served on or before July 30, 1973. Any rebuttal evidence by Toledo shall be served on or before August 13, 1973. Cross-examination on the evidence filed will commence on August 28, 1973.

(H) A Presiding Examiner to be designated by the Chief Examiner for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided and shall control the proceeding in accordance with the policies expressed in § 2.59 of the Commission's rules of practice and procedure.

(I) Pending such hearing and decision thereon, Toledo's proposed rate schedule Municipal Service Rate—Large listed above is hereby suspended except as hereinafter noted, and the use thereof deferred until August 1, 1973, subject to the terms and conditions of this order: *Provided, however,* That with respect to the city of Bryan, the proposed rate increase may not become effective prior to May 31, 1974. Toledo shall refund at such times and in such manner as may be required by final order of the Commission, the portion of the increased rates and charges found by the Commission in this proceeding not justified, together with interest at the rate of 7 percent per annum, from the date of payment of Toledo until refunded; shall bear all costs of all refunding; shall keep accurate accounts in detail of all amounts received by reason of the increased rates and charges effective as of August 1, 1973, for each billing period, and shall report (original and one copy) in writing and under oath, to the Commission monthly, for each billing period, by customer, under the above described tariff sheets, and the revenue immediately prior to August 1, 1973, and under the rates and charges declared by this order to have become effective, together with the differences in the revenues so computed.

(J) The parties named above are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting the rights and interests specifically set forth in the respective petitions to intervene: *and provided, further,* That the admission of such intervenors shall not be construed as recognition that they or any of them might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(K) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-4288 Filed 3-6-73;8:45 am]

[Docket No. RI73-226]

MOBIL OIL CORP.

Order Providing for Hearing on and Suspension of Proposed Change in Rate, Allowing Rate Change To Become Effective Subject To Refund

FEBRUARY 28, 1973.

Respondent has filed a proposed change in rate and charge for the jurisdictional sale of natural gas, as set forth in Appendix A below.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed change, and that the supplement herein be suspended and its use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto [18 CFR Ch. I], and the Commission's rules of practice and procedure, a public hearing shall be held concerning the lawfulness of the proposed change.

(B) Pending hearing and decision thereon, the rate supplement herein is suspended and its use deferred until date shown in the "Date Suspended Until" column. This supplement shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the Respondent or by the Commission. Respondent shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplement, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf*		Rate in effect subject to refund in dockets Nos.
									Rate in effect	Proposed increased rate	
RI73-226	Mobil Oil Corp	26	[1] 18	El Paso Natural Gas Co. (Kermit Field, Winkler County, Tex.) (Permian Basin).		1-29-73	(2)	[3] Accepted			RI70-102
	do		19	do	$21,663	1-29-73		4-1-73	19.1908	27.0	RI70-102

* Unless otherwise stated, the pressure base is 14.65 p.s.i.a.

[1] Renegotiates Mobil Oil Corp. Rate Schedule No. 26 providing for, among other things a new term, a new delivery point and a new pricing schedule.

[2] Or 1 day from the date of first delivery under the renegotiated contract, whichever is later.

[3] Accepted for filing to be effective on the date shown in the "Effective date" column.

[4] Date of first delivery under renegotiated contract.

The proposed increase of Mobil Oil Corp. does not exceed the rate limit for a 1-day suspension and therefore is suspended for 1-day from the expiration of the 60-day notice period or the contractual effective date, whichever is later.

Mobil is required to notify the Commission of the date of the first delivery and the effective date of the rate increase. Additionally, Mobil is required to file a rate schedule quality statement with the Commission within 90 days of first delivery.

Mobil's proposed increased rate and charge exceed the applicable area price level for increased rates as set forth in the Commission's statement of general policy No. 61-1, as amended (18 CFR 2.56).

The rate increase granted in this case has been reviewed in the light of and is consistent with the Economic Stabilization Act of 1970 as amended, Executive Order No. 11695, and the rules and regulations issued thereunder.

[FR Doc.73-4274 Filed 3-6-73;8:45 am]

TRANSCONTINENTAL GAS PIPE LINE

Notice of Filing of Exchange Agreement

FEBRUARY 23, 1973.

Take notice that on February 14, 1973, Transcontinental Gas Pipe Line Co. tendered for filing the following sheets to its FPC Gas Tariff, original volume No. 2:

Original sheets Nos. 542 through 547 constituting rate schedule X-60, an exchange agreement dated May 17, 1972 between Transco and United Gas Pipe Line Co. (United).

The subject exchange arrangement was authorized by the Commission by certificate issued in joint Docket No. CP73-42 on January 19, 1973.

The tariff sheets are proposed to become effective January 19, 1973, the date of issuance of the certificate in Docket No. CP73-42, and the company requests to permit the filing to become effective on such date.

The company states that copies of the filing have been mailed to United.

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 8, 1973.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-4275 Filed 3-6-73;8:45 am]

[Docket No. ID-1494]

WILLIAM C. TALLMAN

Notice of Application

FEBRUARY 28, 1973.

Take notice that on October 16, 1972, William C. Tallman (Applicant) filed an application pursuant to section 305(b) of the Federal Power Act seeking authority to hold interlocking directorate positions.

Applicant is president and director of Public Service Co. of New Hampshire, a public utility principally engaged in the transmission, generation, and sale of electric energy in 212 cities and towns in New Hampshire, Maine, and Vermont. Applicant is also director of both Connecticut Yankee Atomic Power Co., and Yankee Atomic Electric Co. Connecticut Yankee was organized by 11 participating investor-owned utilities to construct a single-unit nuclear electric generating plant in Haddam, Conn. Yankee Atomic was organized by 11 investor-owned utilities in September 1954, to operate an atomic-electric plant in Rowe, Mass.

On January 18, 1966, Applicant was elected director of Maine Yankee Atomic Power Co. However, the company did not become a public utility until it commenced generation of power for transmission in interstate commerce in late 1972. Therefore, no previous authority to hold such positions was requested. Applicant now seeks authority to hold the position of director of Maine Yankee Atomic Power Co.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 9, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-4287 Filed 3-6-73;8:45 am]

FEDERAL RESERVE SYSTEM

FIRST NATIONAL HOLDING CORP.

Order Approving Acquisition of Woods-Tucker Leasing Corp.

First National Holding Corp., Atlanta, Ga., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y, to acquire all of the outstanding common stock of Woods-Tucker Leasing Corp., Hattiesburg, Miss. (Company). The Company engages in the business of leasing personal property (fixtures and equipment) on a "full pay-out basis", and acting as agent, broker, or adviser in the leasing of such property. These activities have been determined by the Board to be closely related to the business of banking (12 CFR 225.4(a)).

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 28326). The time for filing comments and views has expired, and none has been timely received.

The Company, which was organized in 1970, had net leases outstanding of $1.7 million on June 30, 1972, from business generated by its own employees and agents in Alabama, Louisiana, and Mississippi. It does no business outside these States.

Applicant's banking subsidiary, First National Bank of Atlanta ("First National"), is the third largest banking organization in the State of Georgia, with deposits of $870.1 million, representing 9.9 percent of the total State deposits as of June 30, 1972. It is the only subsidiary of Applicant which engages in financial leasing and does so only in the State of Georgia. It has no leases outstanding, and does not actively seek business in the Company's market, i.e., Alabama, Louisiana, and Mississippi. Consequently, no present competition would be eliminated by the acquisition.

Company is relatively small, and its growth is limited by available financing. It is not likely to expand its leasing activities into Georgia. First National is capable of expanding into Company's market, but there are a number of regional and national competitors there. Barriers to entry into the product and geographic markets are not great, and there are several potential entrants. It appears, therefore, that removal of First National, as a possible de novo entrant, would not be adverse to probable future competition. In brief, no adverse competitive effects would result from this acquisition.

Public benefits are likely to result from the acquisition, inasmuch as Applicant is apparently able to provide more funds and at more favorable rates than those now obtainable by Company; this could enable Company to compete more effectively in its present market, to expand, and, possibly, to lower its rates.

There is no evidence that consummation of the proposed transaction would result in undue concentration of resources, conflicts of interest, unsound banking practices, or decreased or unfair competition.

Based upon the foregoing and other considerations reflected on 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 evasions thereof.

By order of the Board of Governors,[1] effective February 27, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-4293 Filed 3-6-73;8:45 am]

FIRST NATIONAL STATE BANCORPORATION

Order Approving Acquisition of Bank

First National State Bancorporation, Newark, N.J., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of the successor by merger to Somerset Hills & County National Bank, Basking Ridge, N.J. (Bank).

The bank into which Bank is to be merged has no significance except as a means to facilitate acquisition of the voting shares of Bank. Therefore, the proposed acquisition of the shares of the successor bank is treated herein as the proposed acquisition of shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the second largest banking organization in New Jersey, controls seven banks with aggregate deposits of approximately $1.2 billion, representing 6.7 percent of total deposits in commercial banks in the State.[2] Applicant's acquisition of Bank ($59.6 million in deposits) would increase its share of commercial bank deposits in New Jersey by only 0.3 percentage points; its rank among banking organizations in the State would be unchanged; and there would be no significant increase in the concentration of banking resources in the State.

Bank operates two offices in the New Brunswick banking market where it is the 17th largest of 20 banks, controlling approximately 0.5 percentage points of market deposits. Bank also operates five offices in the Plainfield banking market and, with 9.4 percent of market deposits, is the fourth largest of 17 banks in that market.

One of Applicant's subsidiary banks, The Edison Bank, N.A. (Edison Bank), operates an office in the New Brunswick banking market located 2.4 miles from an office of Bank. Edison Bank controls 9.6 percent of deposits in the New Brunswick banking market and is the third largest bank in that market. Applicant's acquisition of Bank would neither significantly increase the concentration of deposits in that market nor give Applicant a dominant position in that market. Bank derives 4.1 percent of its loans and 4.2 percent of its deposits from the area served by Edison Bank. Some existing competition among these two banks would, therefore, be eliminated upon consummation of this proposal. However, since Bank and Edison Bank are separated by the Raritan River and seven offices of three competing banks and because competition among the 17 banks in the market seems keen, it does not appear that a significant amount of existing or potential competition in the New Brunswick market would be eliminated upon consummation of this proposal.

Applicant is not presently represented in the Plainfield market and none of its subsidiary banks derive a significant amount of their deposits or loans from that market. Although consummation of the proposal would foreclose the possibility that Applicant would enter the market de novo or through branches of its present subsidiaries, it would not raise significant barriers to entry into this market by other holding companies, since about 15 other independent banks would be available for acquisition. Additionally, due to the highly competitive structure of the Plainfield market (there are 20 competing banks), foreclosure of the possibility of Applicant's entry would have no significant adverse effects on potential competition in the Plainfield market. On the basis of these and other facts of record, the Board concludes that consummation of the proposed acquisition would not result in significant adverse effects upon existing or potential competition in any relevant area nor would it adversely affect any competing bank.

The financial condition and managerial resources of Applicant, its subsidiary banks and Bank are regarded as generally satisfactory and the future prospects of each appears favorable. Upon approval of this application, Applicant proposes to add accounts receivable financing, commercial term loans, construction loans, and international banking services to the services presently offered by Bank. Applicant also proposes to improve the trust and data processing services presently offered by Bank. Although it appears such services are presently available in Bank's area, the increased and improved services that would be offered by Bank as a result of its affiliation with Applicant would provide area residents another competitive alternative for specialized banking services. Considerations relating to the convenience and needs of the communities to be served are consistent with and lend some weight toward approval of the application.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before March 29, 1973, or (b) later than May 28, 1973, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York pursuant to delegated authority.

By order of the Board of Governors,[1] effective February 27, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-4294 Filed 3-6-73;8:45 am]

NATIONAL BANCSHARES CORPORATION OF TEXAS

Order Approving Acquisition of Bank

National Bancshares Corporation of Texas, San Antonio, Tex., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire all of the voting shares (less directors' qualifying shares) of the successor by merger to The First National Bank of Eagle Pass, Eagle Pass, Tex. (Bank). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and none has been timely received. The Board has considered the application in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the eighth largest multibank holding company in Texas, controls two banks located in the San Antonio area with aggregate deposits of $295.2 million, representing .98 percent of total deposits of commercial banks in the State. (All banking data are as of June 30, 1972, and reflect holding company formations and acquisitions approved through January 22, 1973.) Acquisition of Bank ($16.7 million of deposits) would increase applicant's share of deposits in the State insignificantly and its ranking

[1] Voting for this action: Vice Chairman Robertson and Governors Daane, Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns and Governor Mitchell.

[2] Banking data are as of June 30, 1972, and reflect bank holding company formations and acquisitions approved by the Board through Dec. 31, 1972.

[1] Voting for this action: Vice Chairman Robertson and Governors Daane, Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns and Governor Mitchell.

among banking organizations in the State would be unchanged.

Bank, which operates one office in Eagle Pass, Tex., is the largest of two banks in the Maverick County banking market and controls approximately 71 percent of the deposits of commercial banks in that area. Bank is located approximately 140 miles southwest of applicant's two subsidiary banks in the San Antonio area. No competition exists between Bank and either of applicant's subsidiary banks. Thus, consummation of the proposed acquisition would not have an adverse effect on existing competition. Furthermore, in view of the distance separating applicant's present subsidiary banks and Bank and the size of Bank, it appears unlikely that any competition would develop between Bank and applicant's subsidiary banks in the future. Since the population-to-banking office ratio in Bank's market is below the State average, it appears unlikely that applicant would attempt de novo entry into the Maverick County market.

The present financial and managerial resources and prospects of applicant, its subsidiary banks and Bank are regarded as satisfactory and consistent with approval. Entry of applicant should provide a source of expanded and more sophisticated financial services to residents of the Maverick County banking market. Convenience and needs considerations are therefore consistent with approval. It is the Board's judgment that the proposed transaction would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before March 29, 1973, or (b) later than May 28, 1973, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Dallas pursuant to delegated authority.

By order of the Board of Governors,[1] effective February 27, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-4295 Filed 3-6-73;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 Southwest Bank & Trust Co., Irving, 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 28, 1973.

Board of Governors of the Federal Reserve System, February 28, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-4352 Filed 3-6-73;8:45 am]

NEW ENGLAND MERCHANTS CO., INC.

Acquisition of Bank

New England Merchants Co., Inc., Boston, Mass., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of the successor by merger to the Barnstable County National Bank of Hyannis, Hyannis, Mass. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than March 28, 1973.

Board of Governors of the Federal Reserve System, February 28, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-4353 Filed 3-6-73;8:45 am]

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

ASHLAND MINING CORP. AND FREEMAN COAL MINING CORP.

Applications for Renewal Permits; Opportunity for Public Hearing

Applications for Renewal Permits for Noncompliance with the Interim Mandatory Dust Standard (2.0 mg./m.^{3}) have been received as follows:

(1) ICP Docket No. 20015, Ashland Mining Corp., Ashland No. 11B Mine, USBM ID No. 46 02132 0, Ashland, W. Va.
Section ID No. 001 (1st Left Section).
(2) ICP Docket No. 20170, Freeman Coal Mining Corp., Orient No. 6 Mine, USBM ID No. 11 00599 0, Waltonville, Ill.,
Section ID No. 001 (Main East),
Section ID No. 017 (Main South),
Section ID No. 023 (Main North),
Section ID No. 027 (11 South off Main East),
Section ID No. 029 (2 West off Main South),
Section ID No. 030 (3 West off Main South),
Section ID No. 032 (12 South off Main East),
Section ID No. 033 (6 South off Main East),
Section ID No. 034 (7 South off Main East),
Section ID No. 035 (5 South off Main East),
Section ID No. 036 (13 South off Main East),
Section ID No. 037 (4 West off Main South).

In accordance with the provisions of section 202(b)(4) (30 U.S.C. 842(b)(4)) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed on or before March 22, 1973. Requests for public hearing must be filed in accordance with 30 CFR Part 505 (35 FR 11296, July 15, 1970), as amended, copies of which may be obtained from the panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Room 800, 1730 K Street NW., Washington, DC 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

MARCH 1, 1973.

[FR Doc.73-4312 Filed 3-6-73;8:45 am]

IMPERIAL COLLIERY CO. ET AL.

Applications for Renewal Permits; Opportunity for Public Hearing

Applications for Renewal Permits for Noncompliance with the Interim Mandatory Dust Standard (2.0 mg./m.^{3}) have been received as follows:

(1) ICP Docket No. 20012, Imperial Colliery Co., Imperial No. 14 Mine, US BM ID No. 46 01344 0, Burnwell, W. Va.
Section ID No. 004 [East Mains (Parallel Mains)],
Section ID No. 006 [First Right (Longwall Hdgs)].
(2) ICP Docket No. 20013, Imperial Colliery Co., Imperial No. 11 Mine, US BM ID No. 01343 0, Eskdale, W. Va.
Section ID No. 002 (Mains).
(3) ICP Docket No. 20178, Freeman Coal Mining Corp., Orient No. 4 UG Mine, USBM ID No. 11 00628 0, Marion, Ill.
Section ID No. 020 (15 North off NW),
Section ID No. 021 (16 North off NW),
Section ID No. 025 (Main 2d SE Entries off NE),
Section ID No. 026 (11 South off NW),
Section ID No. 027 (10 South off NW),
Section ID No. 028 (9 South off NW).
(4) ICP Docket No. 20772, Kanawha Coal Co., Madison Mine No. 2, US BM ID No. 46 02844 0, Ashford, W. Va.
Section ID No. 003 (102-2 Panel),
Section ID No. 002 (200-2 Panel),
Section ID No. 004 (100-2 Panel).

[1] Voting for this action: Vice Chairman Robertson and Governors Daane, Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns and Governor Mitchell.

In accordance with the provisions of section 202(b)(4) (30 U.S.C. 842(b)(4)) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed on or before March 22, 1973. Requests for public hearing must be filed in accordance with 30 CFR Part 505 (35 FR 11296, July 15, 1970), as amended, copies of which may be obtained from the panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Room 800, 1730 K Street NW., Washington, DC 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

MARCH 1, 1973.

[FR Doc.73-4313 Filed 3-6-73;8:45 am]

NATIONAL ADVISORY COUNCIL ON THE EDUCATION OF DISADVANTAGED CHILDREN

NOTICE OF PUBLIC MEETING

Notice is hereby given, Public Law 92-463, that the next meeting of the National Advisory Council on the Education of Disadvantaged Children will be held on March 16, 1973 at 9 a.m.-5 p.m., and March 17, 1973 at 9 a.m.-4 p.m., local time in Room 261, 1717 H Street NW., Washington, DC 20006.

The National Advisory Council on the Education of Disadvantaged Children is established under section 148 of the Elementary and Secondary Education Act (20 U.S.C. 2411) to advise the President and the Congress on the effectiveness of compensatory education to improve the educational attainment of disadvantaged children.

The meeting is called to review the final draft for the Annual Report to the President and the Congress for March 31, 1973.

Because of limited space for the public meeting of March 16 and 17 all persons wishing to attend should call for reservations at Area Code 202—632-5221 by March 12, 1973.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on the Education of Disadvantaged Children, located in Room 202, 1717 H Street NW., Washington, DC 20006.

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

ROBERTA LOVENHEIM,
Executive Director.

[FR Doc.73-4459 Filed 3-6-73;8:45 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 73-18]

AD HOC SUBCOMMITTEE OF SPACE SCIENCE AND APPLICATIONS STEERING COMMITTEE FOR EVALUATION OF PIONEER VENUS FLIGHT EXPERIMENT PROPOSALS

Notice of Meeting

The NASA ad hoc Subcommittee of the Space Science and Applications Steering Committee for the Evaluation of Pioneer Venus Flight Experiment Proposals will meet at the Goddard Space Flight Center on March 12, 13, and 14, 1973. The meeting will be held in the conference room of Building 26, Goddard Space Flight Center, Greenbelt, Md. 20771.

The subcommittee will serve the National Aeronautics and Space Administration in a consultative capacity to review, evaluate, and categorize the flight experiments proposed for the planned pioneer Venus flight. After completing this evaluation of the experiment proposals, the subcommittee will be terminated. Dr. Robert F. Fellows of Headquarters, NASA, will chair the subcommittee, which will have 18 members. For further information regarding the meeting, please contact Mr. Robert W. Jackson: area code 202—755-3770.

It has been determined that the subject matter to be discussed at this meeting falls within the provisions of section 552(b) of title 5 of the United States Code and that public interest requires that the discussion and evaluation of flight experiment proposals be withheld from public disclosure. Accordingly, the meeting will not be open to the public. The agenda for the meeting is as follows:

MARCH 12, 1973

Time	*Topic*
9:00 a.m.	Mission Constraints and Definition (*Action.* The NASA Program Office is required to clarify the planned purpose, scheduling, and constraints of the mission and the anticipated physical limitations and facilities of the spacecraft.)
10:00 a.m.	Instruction and Procedures (*Action.* To establish the procedures to be followed in evaluating and categorizing the proposals in accordance with NASA Management Instruction 7100.1. Emphasis will be placed upon the avoidance of any conflict of interest.)
10:30 a.m.	Evaluation and Categorization of Flight Experiment Proposals (*Action.* The Subcommittee is required to evaluate the experiment proposals for the planned Pioneer Venus flight with respect to scientific merit, value of the expected scientific return and other parameters, and is required to recommend their categorization to NASA in accordance with NASA Management Instruction 7100.1.)

MARCH 13 & 14, 1973

Time	*Topic*
	Evaluation and Categorization of Flight Experiment Proposals, continued.

HOMER E. NEWELL,
Associate Administrator, National Aeronautics and Space Administration.

MARCH 2, 1973.

[FR Doc.73-4364 Filed 3-6-73;8:45 am]

[Notice (73-19)]

RESEARCH AND TECHNOLOGY ADVISORY COUNCIL, COMMITTEE ON AERONAUTICS

Notice of Meeting

The NASA Research and Technology Advisory Council, Committee on Aeronautics, will meet on March 14, 15, and 16, 1973, at the NASA Ames Research Center, Moffett Field, Calif. 94035. The meeting will be held in the Conference Room of Building 200. Members of the public will be admitted to the open portion of the meeting beginning at 9 a.m. on the agenda below on a first-come-first-served basis up to the seating capacity of the room, which is about 40 persons. All visitors must report to the Ames Research Center receptionist in Building 200.

The NASA Research and Technology Advisory Council, Committee on Aeronautics, serves in the advisory capacity only. In this capacity, the Committee is concerned with aerodynamics and aircraft vehicle systems. The current Chairman is Mr. E. S. Carter. There are 12 members. The following list sets forth the approved agenda and schedule for the March 14, 15, and 16, 1973, meeting of the Aeronautics Committee. For further information, please contact Mr. J. Lloyd Jones, Area Code 202—755-2397.

MARCH 14, 1973

Time	*Topic*
9:00 a.m.	Report of the Chairman. (*Purpose.* To discuss the report of the Chairman prepared to relay the results of the previous meeting to the Council.)
9:30 a.m.	Report of the Executive Secretary. (*Purpose.* To report on recent developments of interest including policy, program, and organizational changes as well as review of the status of the proposed Full-Scale Subsonic Wind Tunnel and the proposed High Reynolds Number Wind Tunnel.)

Time	Topic
10:30 a.m.	Review of the Activities of the RTAC Joint Ad Hoc Panel on Aerospace Vehicle Dynamics and Control. (*Purpose.* To review the activities to date of the RTAC Ad Hoc Panel on Aerospace Vehicle Dynamics and Control with a view to offering comments and guidance to the member of the Committee on Aeronautics that is serving on the ad hoc panel.)
11:00 a.m.	Status Report on the Computational Aerodynamic Program. (*Purpose.* To advise the Committee on the status of NASA's computational aerodynamics program.)
11:30 a.m.	Review of Wake Turbulence Minimization Program. (*Purpose.* To advise the Committee of the accelerated program being undertaken by NASA seeking both Short-range and long-range aerodynamic solutions to the aircraft operational hazard caused by aircraft trailing vortices.)
12:30 p.m.	Lunch.
1:30 p.m.	Review of Advanced Supersonic Technology Program. (*Purpose.* The Committee will be briefed on NASA's Advanced Supersonic Technology program in order that it may comment on the scope of the activity, the program balance, possible deficiencies, and the adequacy of the effort.)
	MARCH 15, 1973
8:30 a.m.	Review of Studies on High-Lift Transonic Maneuverability Including Stall/Spin Research. (*Purpose.* The Committee will be briefed on the research currently underway and planned on high-lift maneuverability, including stall/spin research in order that it may comment on the scope of the activity, the balance of the effort, possible deficiencies, and the adequacy of the effort.)
11:30 a.m.	Review of Powered-Lift Research. (*Purpose.* The Committee will be briefed on NASA's powered-lift research program in order to comment on the scope of the activity, the balance of the program, possible deficiencies, and the adequacy of the effort.)
12:30 p.m.	Lunch.
1:30 p.m.	Continuation of Review of Powered-Lift Research.
2:00 p.m.	Review of the Committee's Method for Handling its Consideration of the Problems of General Aviation. (*Purpose.* To discuss the desirability of establishing an ad hoc panel to review the field of general aviation and report on those areas that would benefit from research by NASA.)
3:30 p.m.	Executive Session. (*Purpose.* To develop final Committee comments and recommendations pertaining to the scope and focus of the technical programs reviewed earlier as well as the importance and value of the results. Classified information will be discussed as well as information of a proprietary nature offered in confidence. Preliminary projected future year distribution of efforts and related budget limitations will be presented.)
	MARCH 16, 1973
8:30 a.m.	Continuation of Executive Session.
12:00 p.m.	Adjournment.

HOMER E. NEWELL,
Associate Administrator, National Aeronautics and Space Administration.

MARCH 2, 1972.

[FR Doc.73-4365 Filed 3-6-73;8:45 am]

NATIONAL COMMISSION ON MATERIALS POLICY

REVIEW OF CERTAIN REPORTS

Notice of Closed Meeting

FEBRUARY 28, 1973.

Pursuant to the requirements of the Federal Advisory Committee Act, notice is hereby given that there will be a meeting of the National Commission on Materials Policy on Friday, March 9, 1973, at 10 a.m. The meeting will be held in the Commission's offices, Room 3002, 2025 M Street NW., Washington, DC. The meeting will be held for the purpose of reviewing reports prepared for the Commission by staff members and by various persons and groups outside the Government, and for the purpose of preparing the Commission's final report to the Congress and the President. The meeting will not be open to the public.

JAMES BOYD,
Executive Director.

[FR Doc.73-4261 Filed 3-6-73;8:45 am]

NATIONAL CREDIT UNION ADMINISTRATION

NATIONAL CREDIT UNION BOARD

Notice of Meeting and Agenda

Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770, notice is hereby given that the National Credit Union Board will hold its quarterly meeting on March 27-28, 1973, at the offices of the National Credit Union Administration, 2025 M Street NW., Washington, DC 20456. The meetings will commence at 9 a.m. daily in Room 4210.

The agenda for this meeting will consist of an update briefing regarding the activities of the several offices of the National Credit Union Administration, a briefing on the progress of the Administration's library project, a briefing on share insurance activities, and other aspects of the Administration. Matters for discussion will include revisions of manuals published by the Administration, legislation, and a meeting with representatives of trade associations.

This meeting of the National Credit Union Board will be open to the public. Members of the public may file written statements with the Board either before or after the meeting. To the extent that time permits, interested persons may be permitted to present oral statements to the Board only on items listed in the aforementioned agenda. Requests to present such oral statements must be approved in advance by the Chairman of the Board. Such requests should be directed to the Chairman, National Credit Union Board, National Credit Union Administration, Washington, D.C. 20456.

HERMAN NICKERSON, Jr.,
Administrator.

FEBRUARY 28, 1973.

[FR Doc.73-4301 Filed 3-6-73;8:45 am]

TARIFF COMMISSION

[AA1921-110]

CANNED BARTLETT PEARS FROM AUSTRALIA

Determination of Likelihood of Injury

MARCH 1, 1973.

On November 30, 1972, the Tariff Commission received advice from the Treasury Department that canned Bartlett pears from Australia are being, or are likely to be, sold in the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). In accordance with the requirement of section 201(a) of that Act, the Tariff Commission instituted investigation No. AA1921-110 to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. A public hearing was held on January 9, 1973.[1]

In arriving at a determination in this case, the Commission gave due consideration to all written submissions from interested parties, evidence adduced at the hearing, and all factual information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of its investigation, the Commission[2] has determined, by a vote

[1] Notice of the Commission's investigation and hearing was published in the FEDERAL REGISTER of Dec. 12, 1972 (37 FR 26475).

[2] Vice Chairman Parker and Commissioner Young did not participate in the decision.

of 2 to 2,[3] that an industry in the United States is likely to be injured by reason of the importation of canned Bartlett pears from Australia that are being, or are likely to be, sold at less than fair value (LTFV) within the meaning of the Antidumping Act of 1921, as amended.

STATEMENT OF REASONS FOR AFFIRMATIVE DETERMINATION OF CHAIRMAN BEDELL AND COMMISSIONER MOORE

Under the Antidumping Act of 1921, an affirmative determination by the Tariff Commission requires satisfaction of two conditions: (1) That an industry in the United States is being injured, or is likely to be injured, or is prevented from being established;[4] and (2) that such injury or likelihood of injury must be "by reason of" the importation into the United States of the class or kind of foreign merchandise the Secretary of the Treasury has advised is being, or is likely to be, sold at less than fair value (LTFV).

Our determination is in the affirmative since, in our judgment, both of the required conditions are satisfied, i.e., an industry in the United States is likely to be injured, and such likelihood of injury is by reason of imports of Australian canned Bartlett pears sold at LTFV. The reasons for our determination are set forth below.

In this case, in our view, the domestic industry consists of those enterprises, proprietary and grower-owned cooperatives, engaged in the production of canned Bartlett pears.

Most of the LTFV canned pear imports are being sold in a marketing region encompassing the States in the Northeast and mid-Atlantic Regions, i.e., Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, and Maryland. In recent years, this region has accounted for about one-fourth of the total U.S. apparent consumption of domestic canned Bartlett pears, and an estimated three-fifths of U.S. consumption of canned Bartlett pears from Australia sold at LTFV prices.

Penetration of the domestic regional market of the Northeast and mid-Atlantic States by LTFV imports of canned pears from Australia apparently was less than 1 percent of consumption in the marketing year ending May 1970, but grew to the significant level of 8.9 percent in the year ending May 1971. In the marketing year ending May 1972, such regional penetration by the LTFV imports decreased to about 5 percent, a lesser but still significant level. This reduced penetration in the year ending May 1972, however, reflected reduced imports coincident with Treasury's antidumping investigation; reductions in imports have been a typical reaction in antidumping cases. Treasury's investigation in this case was instituted in January 1972, and its determination was that all imports of Australian canned pears in calendar year 1971 were sold at LTFV prices.

The apparent suppression of levels of domestic producers' prices in the marketing year ending in May 1971, and the depression of such prices in the year ending May 1972 cannot be attributed solely to the LTFV imports of canned Bartlett pears from Australia. The fact remains, however, that it has been demonstrated that there have been substantial inroads into the U.S. market by imports of Australian canned pears when sold at LTFV, and below the U.S. price level. The cause of the price depression is difficult to determine because of the inability to separate or to measure the impact of the LTFV sales apart from the impact of imports of Italian canned pears. Italian canned pear imports not only undersold domestic canned pears but also undersold LTFV imports of canned pears from Australia. Such underselling of Italian canned pears contributed substantially to the disruptive situation in the U.S. market.

The evidence in this investigation leads us to the conclusion that a U.S. industry is likely to be injured by reason of the importation of canned Bartlett pears from Australia at LTFV prices. Capacity of the Australian industry will increasingly exceed the levels of consumption of the Australian home market and its foreign markets outside the United States. Consumption in the Australian home market has been absorbing about one-fourth of the total canned pear production in recent years, and is not likely to expand substantially. The pressure to find export markets for the bulk of annual production of canned pears will therefore continue.

Australian Government efforts, such as the so-called "tree-pull" program, to restrict the supply of pears and thereby to reduce the supply of canned pears are judged unlikely to succeed. With respect to the "tree-pull" program, there is no definite assurance that the program will be continued. Furthermore, there is no known legal requirement, nor is there any agreement among the growers to comply with the "tree-pull" program. The industry's expectations of new and expanded markets probably will largely offset or nullify such Government efforts.

The pressures on the Australian industry to find new export markets and to expand existing markets for canned pears is expected to grow considerably during coming years. This expectation is based on the projected loss to Australia of its main export market—the United Kingdom, as a consequence of its membership in the European Economic Community (EEC). As a member of the EEC, the United Kingdom will impose a duty on various Australian goods, including canned pears. As now provided, with respect to non-EEC countries, the United Kingdom is scheduled to impose a duty of about 9.6 percent ad valorem on canned pears, effective January 1, 1974, and to increase that rate in several stages to the final level of 24 percent ad valorem, effective July 1, 1977, or January 1, 1978. The probabilities that Australia will obtain significant tariff concessions are minimal, as such concessions would be disadvantageous to other EEC members, especially Italy. Beginning in 1973, the United Kingdom will reduce its tariff on imports of canned Bartlett pears from other EEC members so that by 1977 such imports will be entered duty-free. These tariff reductions, together with Australia's burden of high export transportation costs, will gradually, but effectively, shut off any substantial exports of canned Bartlett pears from Australia to the United Kingdom in the coming years.

The Australian industry has argued that their market for canned Bartlett pears in Japan will expand considerably. This is speculation as there is no conclusive evidence of expanded demand for exports to that market in the foreseeable future.

Faced with the loss of its largest export market—the United Kingdom—and lacking other significant export outlets for its canned Bartlett pears, the Australian industry can be expected to earmark an increasing share of its output for the U.S. market, with the bulk of such exports destined for the populous regional market of the Northeast and mid-Atlantic States. Indeed, we tend to view the recent rise of imports from Australia as the precursor of an effort to establish and to develop the U.S. market as a replacement for the United Kingdom market.

In this situation, as we see it, continued penetration of the Northeast and mid-Atlantic regional market with LTFV imports from Australia is a prime likelihood. Continued penetration by LTFV imports from Australia would create abnormal pressures on the domestic industry, through losses of sales of canned Bartlett pears, suppression or depression of domestic producers' prices, and losses of revenue and profits stemming from both lost sales and reduced prices.

Sensitivity of the U.S. canned pear industry to the abnormal pressures from LTFV sales has been indicated in recent years. This sensitivity is based on certain conditions. Bartlett pears, in contrast with winter pears (such as Anjou and Bosc), are highly perishable and have a limited storage span. Decisions concerning the disposal of pears, as fresh or canned fruit, must be made early in the season. If after marketing decisions are made, involving rather close limits, the producers are faced with large imports selling at LTFV prices their marketing plans are seriously disrupted. Subjected to such pressures continually, the domestic industry is likely to be injured.

Our conclusion is, therefore, that an industry in the United States is likely to be injured by reason of the importation of canned Bartlett pears from

[3] Chairman Bedell and Commissioner Moore determined in the affirmative; Commissioners Leonard and Ablondi determined in the negative. Pursuant to section 201(a) of the Antidumping Act of 1921, as amended, the Commission is deemed to have made an affirmative decision when the Commissioners voting are equally divided.

[4] Prevention from being established is not an issue in this case.

Australia which are being, or are likely to be, sold at less than fair value.

STATEMENT OF REASONS FOR NEGATIVE DETERMINATION OF COMMISSIONER LEONARD

The finding of a majority [5] of the Commission in this investigation is that an industry in the United States is likely to be injured by reason of the importation of canned Bartlett pears sold, or likely to be sold, at less than fair value. The majority of the Commission did not find that an industry is being injured by reason of the less-than-fair-value (LTFV) canned Bartlett pears from Australia. I agree with the majority that there is no present injury due to the LTFV imports of Australian canned Bartlett pears. I cannot make the causal connection necessary between LTFV imports and any present injury to a domestic industry.

The penetration of the U.S. market by Australian canned pears has been relatively small and exhibited no particular upward trend. Downward fluctuations in the prices of domestic canned pears have not been correlated with increases in LTFV imports; indeed, the opposite is indicated—when prices of domestic pears were high (1970/71), the LTFV imports were at their peak, and when domestic prices were lower (1971/72), the LTFV imports were also lower. Any lost sales or decline in prices or reduction in profitability experienced by the domestic industry were caused by factors other than the sale of Australian canned pears at LTFV.

However, I cannot agree with the finding of the majority that there is a likelihood of injury due to the LTFV imports. Such a finding is predicated on two major assumptions. One of these is the projected lack of success of the Australian Government's recently initiated program to limit the supply of fresh pears. Some salient facts which discredit this assumption should be cited. During 1970–72, fresh pear production in Australia—although substantially larger than during the previous 3 years—varied little from year to year and averaged about 210,000 tons. Canned pear production, however, declined from 4.4 million equivalent cases [6] in 1970 to an estimated 2.2 million cases in 1972. Such reduction in output of canned pears was achieved in the absence of the recently initiated program aimed at limiting the supply of fresh pears.

Both the Australian Government and the canners themselves are aware of the pear oversupply problem and both have addressed themselves to the solution of the problem. It appears unlikely that the Australian canners would seek that solution in the U.S. market.

The second assumption is that the joining of the European Community by the United Kingdom (currently the prime market for Australian canned pears),[7] is forcing, and will force, the Australian producers to shift their exports from that market to the United States. It is claimed that Italy, a major European Community producer, will gain a substantially improved market position over Australia in the United Kingdom. This assumption appears also to be questionable. For one, the change in the dutiable status of the various imports (including canned pears) into the United Kingdom is scheduled to be implemented in four or five stages and is to reach its final stage in 1977 or 1978. Moreover, it is doubtful whether Italy could—even with a tariff advantage—supplant Australia as the major supplier of canned pears to the United Kingdom to a substantial degree. In recent years the United Kingdom has imported an average of 2.9 million cases of canned pears; nearly 50 percent (1.4 million cases) originated in Australia. The current production of canned pears in Italy is about 2.7 million cases annually; its major market, West Germany, takes half (1.3 million cases) and the Italian home market takes from 15 percent to 20 percent (0.4 to 0.5 million cases) of this production. Therefore, it does not seem likely that Italy would be able to supply much more than 0.5 million cases (20 percent of its output) to the U.K. market.

As a matter of fact, some degree of benefit may eventually (by 1977 or 1978) accrue to U.S. producers of canned pears from the elimination of the preferential treatment for Australian pears entering the United Kingdom. For the first time, as far as the applicable tariffs are concerned, U.S. canned pears would be able to compete with Australian canned pears on an equal footing in the U.K. market.

Thus, the bases for a finding of likelihood of injury to a domestic industry by reason of the importation of canned Bartlett pears from Australia sold, or likely to be sold, at less than fair value are unconvincing, and a negative determination in this investigation is required.

STATEMENT FOR NEGATIVE DETERMINATION OF COMMISSIONER ABLONDI

I am of the opinion, that, under section 201(a) of the Antidumping Act, 1921, as amended, an industry in the United States is not being or is not likely to be injured, or is not prevented from being established, by reason of sales at less than fair value of Bartlett pears imported from Australia.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.73-4400 Filed 3-6-73;8:45 am]

[AA1921-116]

IMPRESSION FABRIC OF MAN-MADE FIBER FROM JAPAN

Notice of Investigation and Hearing

Having received advice from the Treasury Department on February 13, 1973, that impression fabric of man-made fiber from Japan is being, or is likely to be, sold at less than fair value, the U.S. Tariff Commission has instituted investigation No. AA1921-116 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, Eighth and E Streets, NW., Washington, D.C., beginning at 10 a.m., e.s.t. on Tuesday, April 3, 1973. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its office in Washington, D.C., not later than noon, Thursday, March 29, 1973.

Issued: March 1, 1973.

By order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

[FR Doc.73-4310 Filed 3-6-73;8:45 am]

[AA1921-111]

ROLLER CHAIN, OTHER THAN BICYCLE, FROM JAPAN

Determination of Injury

MARCH 1, 1973.

The Treasury Department advised the Tariff Commission on November 30, 1972, that roller chain, other than bicycle, from Japan is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. In accordance with the requirements of section 201(a) of the Antidumping Act (19 U.S.C. 160(a)), the Tariff Commission instituted Investigation No. AA1921-111 to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

A public hearing was held on January 23, 1973. Notice of the investigation and hearing was published in the FEDERAL REGISTER of December 8, 1972 (37 FR 26169).

In arriving at a determination in this case, the Commission gave due consideration to all written submissions from interested parties, evidence adduced at the hearing, and all factual information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of the investigation, the Commission [8] has determined that an industry in the United States is being injured by reason of the importation of roller chain, other than bicycle, from Japan covered by the aforementioned

[5] Pursuant to section 201(a) of the Antidumping Act, 1921, as amended, the Commission is deemed to have made an affirmative determination when the Commissioners voting are equally divided.

[6] Cases equivalent to 24 size 2½ cans.

[7] Australian canned pears enter the United Kingdom duty free.

[8] Commissioner Young did not participate in the decision.

less-than-fair value determination of the Treasury Department.[2]

STATEMENT OF REASONS

The Antidumping Act, 1921, as amended, requires that the Tariff Commission find two conditions satisfied before an affirmative determination can be made.

First, there must be injury, or likelihood of injury, to an industry in the United States, or an industry in the United States must be prevented from being established. Second, such injury (or likelihood of injury or prevention of establishment of an industry) must be "by reason of" the importation into the United States of the class or kind of foreign merchandise the Secretary of the Treasury determined is being, or is likely to be, sold at less than fair value (LTFV).

In our judgment the aforementioned conditions are satisfied in the instant case. Accordingly, we have made an affirmative determination—that an industry [3] in the United States is being injured by reason of imports of roller chain, other than bicycle, from Japan sold at less than fair value. Our determination is based primarily on the following considerations:

Market penetration. The Treasury Department's investigation covered imports by one Japanese firm over a period of 2½ months and imports entered by four other Japanese firms over a period of 7 months. The investigation showed that three of the five firms investigated made sales at LTFV; imports entered by a number of other firms that accounted for about 40 percent of Japanese roller chain exports to the United States were not investigated. Of the total roller chain imports entered by the five companies investigated, 30 percent were found by Treasury to have been sold at LTFV. These LTFV sales were the equivalent of 20 percent of all of the roller chain imported from Japan on an annual basis in 1971. We find that the price advantage afforded by such sales in the United States at LTFV enabled Japanese importers to make substantial inroads into an already declining market. In addition, such sales occurring as they did during a period of rapidly rising costs and during which the market was being increasingly supplied by imports—the import share increased from 13 percent in 1966 to 31 percent in the first 9 months of 1972—the impact of the LTFV imports was severe. Moreover, in specific markets which were targeted by Japanese roller chain producers, particularly the agricultural Original Equipment Manufacturers (OEM) market which traditionally has accounted for about one-fifth of U.S. consumption of roller chain, penetration by imports from Japan reached an estimated 40 percent of consumption in 1971. The inroads into this market are a direct result of leverage gained by sales at LTFV.

Price depression. The price level for roller chain in the U.S. market was depressed during recent years, especially during the 1971–72 period of the Treasury investigation of LTFV imports from Japan. Domestic prices for roller chain were forced down in order to meet the competition of the Japanese product, especially in popular, fast-moving sizes, but the differentials between United States and LTFV Japanese prices were so great (in some instances as high as 49 percent on high-volume sizes) that despite these price reductions, the Commission was able to verify that many sales were lost by domestic producers, and that many of the sales made by domestic producers were negotiated only at considerably reduced prices.

The price differential between domestic and LTFV Japanese roller chain was clearly evidenced by data submitted to the Commission by OEM purchasers, importers, and domestic producers on sales that occurred during the period of the Treasury investigation of LTFV imports of Japanese roller chain. This substantial price differential favoring LTFV Japanese chain resulted in depressed prices and reduced profits for the domestic industry.

Profitability. During 1970–72, the domestic industry remained profitable, although at slightly reduced margins. The profitability of individual firms during this period, however, was adversely affected as a result of lost sales and of reduced profits on sales of many fast-moving, high-volume sizes of roller chain. The reduced profitability of these firms was a direct result of the depression of the price level by widespread sales of Japanese chain at LTFV prices in the domestic market.

Conclusion. On the basis of the foregoing, we conclude that an industry in the United States is being injured by reason of imports of roller chain, other than bicycle, from Japan sold at less than fair value.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-4309 Filed 3-6-73;8:45 am]

[2] Vice Chairman Parker's determination is limited to the importation of roller chain from the 3 Japanese concerns found by the Secretary of the Treasury to have been making sales at less than fair value.

[3] We have determined that a domestic industry injured by the LTFV imports herein considered consists of all facilities in the United States used in the production of roller chain. In 1971, roller chain was produced by 7 firms operating 9 plants in the United States. All of the domestic firms produced the sizes of roller chain imported from Japan and sold at less than fair value.

[AA1921-115]

SYNTHETIC METHIONINE

Rescheduling of Hearing Date

Notice is hereby given that the hearing in Investigation No. AA1921-115, scheduled to be held in the Tariff Commission's Hearing Room, Tariff Commission Building, Eighth and E Streets NW., Washington, DC, beginning at 10 a.m., (e.s.t.), on April 10, 1973, has been rescheduled for 10 a.m. (e.s.t.), on April 19, 1973. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its offices in Washington, D.C., not later than noon, Friday, April 13, 1973.

The hearing is being held in connection with a Commission investigation under the provisions of section 201(a) of the Antidumping Act, 1921, as amended, to determine whether an industry in the United States is being or is likely to be injured, or is being prevented from being established, by reason of the importation of synthetic methionine from Japan which the Assistant Secretary of the Treasury has determined is being, or is likely to be sold, at less than fair value. Notice of the investigation was published in the FEDERAL REGISTER of February 26, 1973 (38 FR 5212).

Issued: March 3, 1973.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-4311 Filed 3-6-73;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

ARIZONA DEVELOPMENTAL PLAN

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, CFR, notice is hereby given that an Occupational Safety and Health Plan for the State of Arizona has been submitted to the Assistant Secretary of Labor for Occupational Safety and Health for approval. A preliminary examination of the plan raises serious questions involving its enforcement features that put in issue not only the approval but possible disapproval of the plan. The questions are discussed below in this numbered paragraph. In order to insure that the public has an opportunity to discuss these questions and to identify and discuss any additional questions, interested persons are hereby invited to submit in writing data, views, and arguments on the plan within the time provided under paragraph No. 3 of this notice.

The plan identifies the Industrial Commission of Arizona as the State agency designated by the Governor of the State to administer the plan throughout the State. It further creates a Division of Occupational Safety and Health within the Commission. The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1).

Although Arizona has enacted enabling legislation, the Arizona Occupational Safety and Health Act of 1972, A.R.S. 23-401 et seq., the plan is still developmental; that is, steps remain which are in-

tended to make the plan as effective as the Federal program. The plan includes proposed amendments to this legislation and a 3-year developmental schedule before becoming fully operational. The amendments are accompanied by a statement of the Governor's support and a legal opinion that they meet the requirements of the Occupational Safety and Health Act of 1970 and are consistent with the laws and constitution of Arizona.

The plan asserts that upon enactment of the legislative amendments and upon culmination of the developmental period, the Arizona occupational safety and health program will comply with all the requirements of section 18 of the Occupational Safety and Health Act of 1970 and 29 CFR Part 1902.

The preliminary examination of the plan indicates that in its enforcement provisions there is no distinction between serious and nonserious violations and that "first instance" sanctions (i.e. the assessment of sanctions for first violations) are available only in situations involving imminent danger to employees. Public comments are particularly invited to these features of the plan.

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, Washington, D.C. 20210; Regional Administrator, Occupational Safety and Health Administration, 9470 Federal Building, 450 Golden Gate Avenue, Box 36017, San Francisco, CA 94102; and the Arizona Industrial Commission, 1601 West Jefferson Street (Post Office Box 1907, 85005), Phoenix, AZ 85007. Copies of the plan may be obtained at the expense of the person(s) requesting the copies.

3. *Public participation.* Interested persons are hereby given until April 6, 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, Room 305, Railway Labor Building, Washington, D.C. 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 addresses.

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 6, 1973. If the Assistant Secretary finds that substantial objections are filed, he shall hold a formal or informal hearing on the subjects and issues relating to approval or disapproval of the plan.

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 2d day of March 1973.

CHAIN ROBBINS,
Acting Assistant Secretary of Labor.

[FR Doc.73-4373 Filed 3-6-73;8:45 am]

MISSOURI DEVELOPMENTAL PLAN

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 Missouri 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 the approval of the plan is in issue before him.

The plan designates the Division of Industrial Inspection as the agency to be 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). The Division of Industrial Inspection is to have full authority to administer and to enforce occupational safety and health laws applicable to all employees within the State with the exception of domestic servants, clergymen and other participants in religious services, self-employed agricultural workers and their immediate families, employees of the the United States, employees whose safety and health are subject to protection under the Atomic Energy Act of 1954, 45 U.S.C. 431, and the Longshoremens' Health and Safety Act of 1969, 30 U.S.C. 801, the Federal Metal and Nonmetallic Mine Safety Act, 30 U.S.C. 721, the Federal Safety Appliances Act, 45 U.S.C. 1, the Federal Railroad Safety Act of 1970, 45 U.S.C. 431, and the Longshoremen's and Harbor Worker's Compensation Act, 33 U.S.C. 901.

Implementation of the plan is dependent upon enactment of the Missouri Occupational Safety and Health Act of 1973 which is presently being considered by the 1973 session of the Missouri General Assembly. The proposed legislation is accompanied by a statement of legal opinion that it will meet the requirements of the Federal Act and that it is consistent with the constitution and other laws of the State of Missouri. The legislation is intended to meet the requirements of Part 1902 of the regulations of the Occupational Safety and Health Administration of the United States Department of Labor.

Within the proposed Act are provisions relating to the authority of the Director of the Division of Industrial Inspection to inspect workplaces including inspections in response to employee complaints with employees having the right to request an informal review of any refusal to issue a citation with respect to an alleged violation; the right of both a representative of the employer and the employees to consult with or accompany inspectors during an inspection; and a prohibition of advance notice of such inspections. The legislation also contains sanctions against employers for violation of standards and abatement orders with employers having the right of review of such alleged violations, abatement periods and proposed penalties, and employees having the opportunity to participate in such review proceedings.

The legislation also includes provisions relating to the granting of variances; the promulgation of temporary emergency standards; the prompt restraint of imminent danger situations; the requirement of employer recordkeeping and reporting; the protection of employees against new and unforeseen hazards; the protection of employees against discharge or discrimination in terms and conditions of employment; and the safeguarding of trade secrets.

The plan is developmental within the terms of 29 CFR 1902.2(b) and there is set forth in it anticipated target dates for bringing the various provisions of the plan into full conformity with the criteria of 29 CFR Part 1902 within the required 3-year period. Also appearing in the plan are a comprehensive description of the resources to be allocated to it and a description of the States' merit system of personnel.

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, 823 Walnut Street, Waltower Building, Room 300, Kansas City, MO 64106; and the Department of Labor and Industrial Relations, 1904 Missouri Boulevard, Jefferson City, MO 65101. Copies of the plan may be obtained at the expense of the person(s) requesting the copies.

3. *Public participation.* Interested persons are hereby given until April 6, 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, D.C. 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 6, 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 1st day of March 1973.

CHAIN ROBBINS,
Acting Assistant Secretary of Labor.

[FR Doc.73-4354 Filed 3-6-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 192]

ASSIGNMENT OF HEARINGS

MARCH 2, 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 136974, Checker Transfer & Storage Co., now assigned April 2, 1973, will be held in Room 709, South Carolina Public Service Commission, Owen Building, 1321 Lady Street, Columbia, SC.

MC 115162 Sub 212, Poole Truck Line, Inc., continued to March 26, 1973 (1 week), in Room 208, Federal Building, 51 SW First Avenue, Miami, FL.

AB 8 Sub 2, Denver & Rio Grande Western Railroad Co., abandonment between Montrose and Ridgeway, Montrose and Ouray Counties, Colo., now assigned March 26, 1973, will be held at the Council Chambers, City Hall, 433 South First Street, Montrose, Colo.

MC-133276 Sub 7, Berry Transport, Inc., now assigned March 26, 1973, will be held on sixth floor, Highway Licenses Bureau, 12th and Washington Street, Olympia, Wash.

MC-136790, Hall Distributors Ltd., now assigned March 14, 1973, will be held on the sixth floor, Highway Licenses Bureau, 12th and Washington Street, Olympia, Wash.

MC-F-11580, North Park Transportation Co.—Purchase—Clarence Shaw, DBA Saratoga Truck Line (Mary Alice Sjoden, executrix), now assigned March 29, 1973, will be held in Room 262, New Customs House, 19th and Stout Street, Denver, Colo.

MC 123004 Sub 2, The Luper Transportation Company, now assigned April 2, 1973, MC 117119, Sub 463, Willis Shaw Frozen Express, Inc., now assigned April 5, 1973, will be held in Room 666, New Federal Building, 601 East 12th Street, Kansas City, Mo.

MC 111424 Sub 4, Shippers Truck Service, Inc., now assigned April 9, 1973, at New York, N.Y., is postponed indefinitely.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-4388 Filed 3-6-73;8:45 am]

[Notice 17]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

MARCH 2, 1973.

The following publications are governed by the new § 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications *as filed* by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING[1]

MOTOR CARRIERS OF PROPERTY

No. MC 117565 (Sub-No. 34) (Republication), filed October 1, 1970, published in the FEDERAL REGISTER issue of October 22, 1970, and republished this issue. Applicant: MOTOR SERVICE COMPANY, INC., 237 South Fifth Street, Coshocton, OH 43812. Applicant's representative: Louis J. Amato, Post Office Box E, Bowling Green, Ky. 42101. A decision and order of the Commission, Review Board No. 3, dated January 23, 1973, and served February 2, 1973, finds that operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, (1) of *all-terrain vehicles* and *parts, accessories, and attachments therefor*, from points in Huron County, Ohio, to points in the United States (except Hawaii); (2) of *trailers* designed to be drawn by passenger automobiles, in initial movements, from Mason, Ohio, to points in Michigan, Indiana, Kentucky, West Virginia, and Pennsylvania; and (3) of *utility trailers* designed to be drawn by passenger automobiles, in initial movements, from points in Mahaska County, Iowa, to points in the United States (except Hawaii), will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

[1] Except as otherwise specifically noted, each applicant (on applications filed after Mar. 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

No. MC 121659 (Sub-No. 3) (Republication), filed December 19, 1972, State Docket published in the FEDERAL REGISTER issue of September 20, 1972, and republished this issue. Applicant: ALLISON-LOGAN FREIGHT LINES, INC., 106 West High Street, Post Office Box 724, Terrell, TX 75160. By order of the Commission, Operating Rights Board, dated February 6, 1973, and served February 15, 1973, finds applicant entitled to a Certificate of Registration solely within the State of Texas, as a motor common carrier, pursuant to that portion of Certificate of Convenience and Necessity No. 4354, authorized by order dated November 28, 1972, issued by the Railroad Commission of Texas, as follows: General commodities: The proposed routes will be State Highway 34 from Terrell, Tex., to Quinlan, Tex., thence State Highway 34 at the intersection of FM Road 35 to the intersection of FM Road 35 and FM Road 513 and then FM Road 35 and FM Road 47 to connect with existing authority, serving all intermediate points, returning over the same routes. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a Certificate of Registration in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 136305 (Sub-No. 2) (Republication), filed March 20, 1972, published in the FEDERAL REGISTER issue of April 20, 1972, and republished this issue. Applicant: GAIL CISSELL and ALICE CISSELL, a partnership, doing business as CISSELL TRANSFER & STORAGE CO., 112 East Railroad Avenue, Portales, NM 88130. Applicant's representative: Edwin E. Piper, Jr., 715 Simms Building, Albuquerque, N. Mex. 87107. A supplemental order of the Commission, Operating Rights Board, dated December 14, 1972, and served January 8, 1973, finds

that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, of *used household goods*, between points in Curry, DeBaca, Guadalupe, Quay, and Roosevelt Counties, N. Mex., and Bailey and Parmer Counties, Tex.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

MOTOR CARRIER OF PASSENGERS

No. MC 130171 (Republication), filed July 10, 1972, published in the FEDERAL REGISTER issue of July 17, 1972, and republished this issue. Applicant: AUTOMOBILE CLUB OF MISSOURI, 3917 Lindell Boulevard, St. Louis, MO 63108. Applicant's representative: Gregory M. Rebman, Suite 1230, Boatmen's Bank Building, St. Louis, Mo. 63102. An order of the Commission, Operating Rights Board, dated January 22, 1973, and served February 14, 1973, finds that operation by applicant at St. Louis and Kansas City, Mo., as a *broker* in arranging for transportation by motor vehicle, in interstate or foreign commerce, of *passengers and their baggage*, in all expense round-trip tours, in special and charter operations beginning and ending in St. Louis and Kansas City, Mo., on the one hand, and, on the other, points in the United States, including Alaska and Hawaii, will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a license in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 135392 (Republication), filed March 3, 1971, published in the FEDERAL REGISTER issue of June 24, 1971, and republished this issue. Applicant: IRON RANGE BUS LINES LIMITED, 329 John Street, Thunder Bay "P", Ontario, Canada. Applicant's representative: John W. Erickson, 17A South Cumberland Street, Thunder Bay "P", Ontario, Canada. A supplemental order of the Commission, Operating Rights Board, dated January 22, 1973, and served February 8, 1973, finds that the present and future public convenience and necessity require operation by applicant, in foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, of *passengers and their baggage*, in the same vehicle with passengers, in charter operations, in round trip sightseeing and pleasure tours beginning and ending at ports of entry on the international boundary line between the United States and Canada, located in Michigan and Minnesota, and extending to points in Minnesota and Wisconsin; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

NOTICE FOR FILING PETITIONS

No. MC 21866 (Sub-No. 61) (notice of filing of petition for modification of commodity description in a certificate), filed January 26, 1973. Petitioner: WEST MOTOR FREIGHT, INC., 740 South Reading Avenue, Boyertown, PA 19512. Petitioner's representative: Alan Kahn, Suite 1920, 2 Penn Center Plaza, Philadelphia, Pa. 19102. Petitioner presently holds a motor *common carrier* certificate on No. MC 21866 (Sub-No. 61), issued August 25, 1967, and authorizing, as pertinent, the transportation of: *Iron and steel*, and *equipment* used or useful in the erection thereof, between Pottstown, Pa., on the one hand, and, on the other, points in Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and the District of Columbia. By the instant petition, petitioner seeks to modify the commodity description to read: "*Iron and steel articles*, and *equipment* used or useful in the erection thereof." Any person or persons desiring to participate may file an original and six copies of his written representations, views, and arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 118722 (Sub-Nos. 2 and 3) (notice of filing of petition for removal of plantsite restrictions), filed February 12, 1973. Petitioner: FRIGID EXPRESS, INC., 396 Henderson Street, Jersey City, NJ 07302. Petitioner's representative: Charles J. Williams, 47 Lincoln Park, Newark, NJ 07102. Petitioner presently holds motor *common carrier* certificates in No. MC-118722 (Sub-Nos. 2 and 3) issued November 26, 1965, and September 21, 1966, respectively, authorizing operations over irregular routes of: (1) In Sub-No. 2—*Prepared frozen foods*, from (origin) the plantsite of Gretchen Grant Kitchens, Inc., at Jersey City, N.J., and (2) *frozen poultry, fish*, and *shellfish*, when moving in the same vehicle with prepared frozen foods from the plantsite of Gretchen Grant Kitchens, Inc., at Jersey City, N.J., from (origin) New York, N.Y., and Jersey City, N.J.; and (3) in Sub-No. 3—*Prepared frozen foods*, and *frozen poultry, fish*, and *shellfish*, when moving in the same vehicle and at the same time with prepared foods, from (origin) the storage and warehouse facilities of Durkee Famous Foods, Gretchen Grant Kitchens Division, the Gilden Co., at Jersey City, N.J., and destined in (1), (2), and (3) above to Birmingham, Ala., Athens, Augusta, Macon, and Savannah, Ga., Bloomington, Chicago, East St. Louis, Joliet, Moline, Peoria, Rockford, and Springfield, Ill., Bloomington, Evansville, Fort Wayne, Indianapolis, Lafayette, South Bend, and Terre Haute, Ind., Lexington and Louisville, Ky., New Orleans, La., Ann Arbor, Detroit, Grand Rapids, Jackson, Kalamazoo, and Lansing, Mich., Duluth, Hopkins, Minneapolis, and St. Paul, Minn., Jefferson, Joplin, Kansas City, St. Joseph, St. Louis, and Springfield, Mo., Charlotte, Raleigh, and Winston-Salem, N.C., Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Lima, Portsmouth, Springfield, Toledo, and Youngstown, Ohio, Pittsburgh, Pa., Charleston, Columbia, and Spartanburg, S.C., and Baraboo, Eau Claire, Madison, Milwaukee, and Oshkosh, Wis., with no transportation for compensation on return except as otherwise authorized. By the instant petition, petitioner seeks to remove (a) the restrictions "from the plantsite of Gretchen Grant Kitchens, Inc., at Jersey City, N.J." in (1) and (2) above and the restriction "from the storage and warehouse facilities of Durkee Famous Foods, Gretchen grant Kitchens Division, the Gilden Co., at Jersey City, N.J." from (3) above. Any person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 124211 (Sub-No. 191) (Notice of filing of petition for amendment and reconsideration of an application), filed June 29, 1971, published in the FEDERAL REGISTER issues of July 29, 1971, and as petitioned, on January 17, 1973, and republished with reply and representation information this issue. Petitioner: HILT TRUCK LINE, INC., Post Office Box 988 D.T.S., Omaha, Nebr., 68101. Petitioner's representative: Thomas L. Hilt (same address as applicant). Authority sought

to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products, 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 M.C.C. 209 and 766, from Darr, Lincoln, and Norfolk, Nebr., to points in Kentucky. NOTE: The purpose of this republication is to indicate the additional origins of Darr and Lincoln, Nebr., and applicant's request for reconsideration of an order of the Commission, Review Board No. 3, filed November 13, 1972, and served November 21, 1972, wherein it stated that the applicant failed to show evidence of its ability to satisfy the shipper's needs. Applicant states that the requested authority can be tacked at points in Nebraska with its existing authority in Sub-Nos. 36 and 121 to serve points in Iowa, Illinois, and Nebraska, and can also be tacked at points in Missouri with the authority it holds in Sub-No. 39 to serve points in Illinois, Kansas, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin. Applicant further states that tacking is unlikely as operations thereunder would be unduly circuitous to the extent that shippers would not want to utilize the services of the applicant. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition on or before April 6, 1973.

No. MC 125985 (Sub-No. 9) (Notice of filing of petition for territorial modification of a certificate), filed February 2, 1973. Petitioner: AUTO DRIVEAWAY COMPANY, a Corporation, 343 South Dearborn Street, Chicago, IL 60604. Petitioner's representative: Daniel B. Johnson, 716 Perpeutal Building, 1111 E Street NW., Washington, DC 20004. Petitioner presently holds a motor *common carrier* certificate in No. MC–125985 (Sub-No. 9) issued December 11, 1972, authorizing the transportation of: *Motor homes*, in driveaway service, between Oneonta, N.Y., Commerce City, Colo., Middlebury, Ind., Spencer, Wis., Ft. Worth, Tex., Waycross, Ga., Fredericksburg, Va., Forest Grove, Oreg., Hutchinson, Kans., Hialeah, Fla., and Nampa, Idaho, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). By the instant petition, petitioner seeks modification of its certificate by expanding its territorial authority to read: "Between points in the United States (including Alaska and Hawaii, but excluding points in California), on the one hand, and on the other, points in the United States (except Mount Clemens and Pontiac, Mich.)". Any person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition on or before April 6, 1973.

No. MC 126600 (Notice of Filing of Petition To Add a Shipper), filed January 17, 1973. Petitioner: EHRSAM TRANSPORT, INC., 108 North Factory, Enterprise, Kans. 67441. Petitioner's representative: William P. Keefe (same address as applicant). Petitioner presently holds a permit in No. MC–126600 issued September 12, 1972, authorizing operations as a contract carrier, by motor vehicle, over irregular routes, transporting: (1) *Materials handling and processing equipment, elevator equipment, power transmission equipment, foundry castings, and materials and supplies* used in the manufacture of such commodities (except commodities the transportation of which because of their size or weight require the use of special equipment, and except commodities in bulk), between Enterprise, Wichita, and Clay Center, Kans., on the one hand, and, on the other, points in the United States, including, Alaska, but excluding Hawaii, under a continuing contract, or contracts, with Combustion Engineering, Inc., Ehrsam Wichita Foundry, Inc., and Ehrsam, Inc.; (2) *Forest products and lumber products* (except in bulk), and *agricultural commodities* (not including manufactured products thereof) as defined in section 203(b)(6) of the Interstate Commerce Act when transported in the same vehicle and at the same time with forest products and lumber products (except in bulk), from points in Washington, Oregon, Idaho, California, and Arizona, to points in Kansas, Missouri, Oklahoma, and Texas, with no transportation for compensation on return, except as otherwise authorized, under a continuing contract, or contracts, with Combustion Engineering, Inc.; and (3) *Materials handling and processing equipment, elevator equipment, power transmission equipment, foundry castings, and materials and supplies* used in the manufacture of such commodities, except in bulk, between Concordia, Kans., on the one hand, and, on the other, points in the United States, and the District of Columbia, except Alaska, Hawaii, and Cushing, Okla., under a continuing contract, or contracts, with Combustion Engineering, Inc. By instant petition, petitioner seeks to add Wichita Brass & Aluminum Foundry at Wichita, Kans. as an additional contracting shipper to its presently held authority as stated in (1), (2), and (3) above. Petitioner has pending a similar petition filed October 18, 1972, and published in the FEDERAL REGISTER on November 29, 1972 to add North Central Foundry, Inc. as an additional contracting shipper to its authority as stated herein. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition on or before April 6, 1973.

No. MC 129759 (Sub-No. 2) (Notice of Filing of Petition To Add a Shipper), filed February 7, 1973. Petitioner: TRIANGLE TRUCKING CO., a Corporation, 936 West Carlisle Street, Martins Ferry, OH 43935. Petitioner's representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Petitioner presently holds a motor *contract carrier* permit in No. MC–129759 (Sub-No. 2) issued April 14, 1972, authorizing transportation, over irregular routes by motor vehicle, of: (1) *Pipe, cable, and strip steel*, from Glendale, W. Va., to points in Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, and Wisconsin, and the District of Columbia; and (2) *cable, wire, rods, pipe, and pipe fittings and component parts*, from New Brunswick and South Brunswick, N.J., to points in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, West Virginia, and Wisconsin; and (3) *commodities* used in the manufacture and distribution of the commodities named in (1) and (2) above (except commodities in bulk), from points in the destination States named in (1) and (2) above, to Glendale, W. Va., and New Brunswick and South Brunswick, N.J., restricted in (1), (2), and (3) above against the transportation of shipments originating at points in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and New Jersey destined to New Brunswick and South Brunswick, N.J., and limited to a transportation service to be conducted under a continuing contract, or contracts, with Triangle Conduit & Cable Co., Inc., of Glendale, W. Va., and Triangle-Price Co. of South Brunswick, N.J. By the instant petition, petitioner seeks to add Triangle Pipe & Tube Co., Inc., of Glendale, W. Va., as a contracting shipper. Petitioner further indicates that Triangle Pipe & Tube Co., Inc., has been formed through the corporate reorganization of Triangle Conduit & Cable Co., Inc. Any person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition on or before April 6, 1973.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATION UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE.

No. MC 52938 (Sub-No. 9), filed January 23, 1973. Applicant: MASHKIN FREIGHT LINES, INC., 115 Park Avenue, East Hartford, CT 06108. Applicant's representative: Hugh M. Joseloff, 410 Asylum Street, Hartford, CT 06103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except household goods as defined by the Commission, office furniture and equipment, and commodities which require the use of dump and tank trucks or special equipment), between points in Connecticut. NOTE: This application is a matter directly related to a purchase proceeding in No. MC–F–11790 published in the FEDERAL REGISTER issue of February 14, 1973. Applicant states that the requested authority can be tacked at points in Fairfield and New Haven Counties, Conn. to provide a through service between New York, N.Y. and other Con-

necticut counties. If a hearing is deemed necessary, applicant requests it be held at Hartford, Conn. or Washington, D.C.

No. MC 138416, filed February 22, 1973. Applicant: MISSISSIPPI FREIGHT LINES, INC., 1720 Central Avenue, Memphis, TN 38104. Applicant's representative: A. Alvis Layne, 915 Pennsylvania Building, Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over regular and irregular routes, transporting: Regular routes: *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), between Forest and Jackson, Miss., from Forest over U.S. Highway 80 to Jackson, and return over the same route, serving all intermediate points and the U.S. Navy jet base near Lauderdale, Miss., as an off-route point. Irregular routes: *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), (1) between Forest, Miss., and points within a 25-mile radius of Forest, and (2) between Forest and Meridian, Miss. NOTE: The instant application is a matter directly related to MC-F 11750 published in the FEDERAL REGISTER issue of December 26, 1972. Common control may be involved. Applicant states that the requested irregular route authority can be joined at Carthage, Forest, and Union, Miss., and may also be tacked with other authority. Applicant is currently seeking in the purchase of a Certificate of Registration in MC-F 11750 to provide service to points in Mississippi. If a hearing is deemed necessary, applicant requests it be held at Jackson, Miss.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11802. Authority sought for purchase by WEST COAST TRUCK LINES, INC., Post Office Box 668, Coos Bay, OR 97420, of a portion of the operating rights of OREGON TRANSFER CO., 3232 Northwest Industrial, Portland, OR 97210, and for acquisition by E. P. BARTON, also of Coos Bay, Oreg. 97420, of control of such rights through the purchase. Applicants' attorney: John G. McLaughlin, 100 Southwest Market Street, 620 Blue Cross Building, Portland, OR 97201. Operating rights sought to be transferred: *Commodities*, the transportation of which, by reason of size or weight, requires the use of special equipment; and of *related machinery parts and related contractor's materials and supplies* when their transportation is incidental to the transportation of the commodities authorized above, as a *common carrier* over irregular routes, between points in Oregon and Washington. Vendee is authorized to operate as a *common carrier* in California, Oregon, and Washington. Application has been filed for temporary authority under section 210a(b).

No. MC-F-11803. Authority sought for purchase by F-B TRUCK LINE COMPANY, 1891 West 2100 South, Salt Lake City, UT 84119, of a portion of the operating rights of B-LINE TRANSPORT CO., INC., East 7100 Broadway, Spokane, WA 99213, and for acquisition by MERLIN J. NORTON, also of Salt Lake City, Utah 84119, of control of such rights through the purchase. Applicants' representative: David J. Lister, 1891 West 2100 South, Salt Lake City, UT 84119. Operating rights sought to be transferred: *Heavy machinery, structural steel, culverts, pipe, and construction and building materials and equipment*, as a *common carrier* over irrgular routes, between points in Washington, that part of Oregon on and north of the 44th parallel, that part of Montana on and west of a direct north and south line extending from the northwest corner of Wyoming to the boundary of the United States and Canada, and those in boundary, Bonner, Kootenai, Benewah, Shoshone, Letah, Nez Perce, Clearwater, Lewis, Idaho, Adams, Washington, Valley, Payette, Gem, Boise, Custer, Ada, Canyon, and Elmore Counties, Idaho; *commodities*, the transportation of which, by reason of size or weight, requires the use of special equipment; and of *related machinery parts and related contractor's materials and supplies* when their transportation is incidental to the transportation of the commodities authorized above, between points in Washington, that part of Oregon on and north of the 44th parallel, that part of Montana on and west of a direct north and south line extending from the northwest corner of Wyoming to the boundary of the United States and Canada, and those in Boundary, Bonner, Kootenai, Beneway, Shoshone, Latah, Nez Perce, Clearwater, Lewis, Idaho, Adams, Washington, Valley, Payette, Gem, Boise, Custer, Ada, Canyon, and Elmore Counties, Idaho. Vendee is authorized to operate as a *common carrier* in Idaho, Utah, Montana, California, Oregon, Washington, Colorado, Nevada, Wyoming, Arizona, and New Mexico. Application has not been filed for temporary authority under sction 210a(b).

No. MC-F-11804. Authority sought for control and merger by DALLAS & MAVIS, INC., a noncarrier, 4200 39th Avenue, Kenosha, WI 53140, of the operating rights and property of DALLAS & MAVIS FORWARDING CO., INC., 4000 West Sample Street, South Bend, IN 46627, and for acquisition by JUPITER TRANSPORTATION COMPANY 400 East Randolph Street, Chicago, IL 60601, of control of such rights and property through the transaction. Applicants' attorneys: Jack Goodman, 39 South La Salle Street, Chicago, IL 60603, Charles Pieroni, 4000 West Sample Street, South Bend, IN 46627, Friedman & Koven, 208 South La Salle Street, Chicago, IL 60604, and Paul F. Sullivan, 711 Washington Building, 15th and New York Avenue NW., Washington, DC 20005. Operating rights sought to be controlled and merged: Specified commodities, primarily, *new automobiles, new trucks, new tractors, and new chassis; buses; cranes; shovels, straddle trucks, fork trucks, and building construction, and moving machinery*, all self-propelled; *lumber; snow plows, spreaders, and leaf and debris collectors*, etc., as a *common carrier* over regular and irregular routes, from, to, and between, all points in the United States, with certain restrictions, as more specifically described in Docket No. MC-29886 and sub-numbers thereunder. This notice does not purport to be a complete description of all of the operating rights of the carrier involved. The foregoing summary is believed to be sufficient for purposes of public notice regarding the nature and extent of this carrier's operating rights, without stating, in full, the entirety, thereof. DALLAS & MAVIS, INC., holds no authority from this Commission. However it is affiliated with KENOSHA AUTO TRANSPORT CORPORATION, 4200 39th Avenue, Kenosha, WI 53140, which is authorized to operate as a common carrier in all of the States in the United States (except Alaska and Hawaii). Application has not been filed for temporary authority under section 210a(b).

NOTE: If the application in No. MC-F-11687—COMMERCIAL CARRIERS, INC.—PURCHASE—PAUL A. MAVIS, is denied, then applicant seeks to purchase the operating rights as follows: *New automobiles*, in initial movements, as a *common carrier* over irregular routes, from Long Beach, Calif., to points and places in Arizona, New Mexico, Nevada, Oregon, and Utah; *new automobiles and new trucks*, in initial movement, from Maywood, Calif., and points and places within 1 mile thereof, to points and places in Arizona, Nevada, and Oregon; *new automobiles*, in secondary movements, from points and places in California, on San Francisco Bay, to points and places in California, except Long Beach, San Pedro, and Wilmington; *new automobiles and new trucks*, in secondary movements, from Phoenix, Ariz., to Los Angeles, Calif.; *new automobiles, new trucks, and new chassis*, in initial movements, in truckaway service, from San Leandro, Calif., and all points and places within 1 mile of San Leandro except points and places in Oakland, Calif., to points and places in California, Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming; *new trucks, and new chassis*, in initial movements, in driveaway service, from the above-specified origin points and places to the destination points and places described immediately above; *new trucks*, in secondary movements, in driveaway and truckaway service, from San Leandro, Calif., and points and places within 20 miles thereof; to points and places in the States named above; *new automobiles, new trucks, and new chassis*, in secondary

movements, in truckaway service, from Salt Lake City, Utah, to San Leandro, Calif., and points and places within 20 miles thereof; *automobiles*, in initial movements, in truckaway service, from the site of the plant of the Chrysler Corp. located adjacent to Maywood, Calif., to points in the Los Angeles Harbor commercial zone, as defined by the Commission, and points in Idaho and Washington; *automobiles*, in secondary movements, in truckaway service, from points in the Los Angeles Harbor commercial zone, as defined by the Commission, to points in Los Angeles County, Calif.; *new automobiles*, in secondary movements, by the truckaway method, from Phoenix, Ariz., to a defined area in California; *automobiles, trucks, and buses* (except those which have been repossessed, embezzled, stolen, or wrecked, and except trailers), in secondary movements, in truckaway service from points in Nebraska to points in New Mexico, Arizona, and California, between points in New Mexico, Arizona, and that part of California, south of the northern boundaries of San Luis Obisno, Kern, and San Bernardino Counties, Calif.; *automobiles*, (except used automobiles, and except repossessed, embezzled, stolen or wrecked automobiles), in secondary movements, in truckaway services, from Sacramento, Calif., to points in Arizona and New Mexico, with restriction; *new and used motor vehicles* (except trailers), in secondary movements, in truckaway service, between points in Arizona, New Mexico, Nevada, and Utah (except shipments from Phoenix, Ariz.), with restriction, from Phoenix, Ariz., to points in Arizona, New Mexico, Nevada, and Utah; *automobiles and trucks*, in initial movements, in truckaway service, from the plantsite of Chrysler Corp., in Maywood, Calif., to Farwell, Tex., and points in New Mexico, from Maywood, Calif., to points in Montana; *motor vehicles* (except trailers, trucks, imported motor vehicles, and used motor vehicles which have been repossessed, embezzled, stolen, or damaged), in secondary movements, in truckaway service, between points in Nevada and points in that part of California south of the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties, Calif., with restriction.

No. MC–F–11805. Authority sought for control by QUICK AIR FREIGHT, INC., Port Columbus Cargo Building, Columbus, Ohio 43219, of VANDALIA AIR FREIGHT, INC., Dayton Municipal Airport, Vandalia, Ohio 45377, and for acquisition by UNITED TRANSPORTATION, INC., 525 Kennedy Drive, Columbus, OH 43215, and, in turn, by RONALD KAUFFMAN, Port Columbus Cargo Building, Columbus, Ohio 43219, of control of VANDALIA AIR FREIGHT, INC., through the acquisition by QUICK AIR FREIGHT, INC. Applicants' attorney: James R. Stiverson, 50 West Broad Street, Columbus, OH 43215. Operating rights sought to be controlled: Under a certificate of registration, in Docket No. MC–120265 (Sub-No. 1), covering the transportation of property, as a common carrier, in interstate commerce, within the State of Ohio. Quick Air Freight, Inc., is authorized to operate as a common carrier in Ohio, Illinois, Indiana, Michigan, New York, Pennsylvania, Kentucky, and West Virginia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11806. Authority sought for purchase by Hagen, Inc., 4120 Floyd Boulevard, Sioux City, IA 51108, of the operating rights and property of Winkoma, Inc., Sun Prairie, Wis. 53590, and for acquisition by Fred Hagen, also of Sioux City, Iowa 51108, of control of such rights and property through the purchase. Applicants' attorney: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Operating rights sought to be transferred: *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, and *dairy products*, except commodities in bulk, in tank vehicles, as a *common carrier over* irregular routes, from points in Wisconsin, and from Minneapolis, Minn., to points in Kansas, Missouri, Iowa, Nebraska, Oklahoma, and Arkansas, and to East St. Louis, Ill.; *such commodities* as are dealth in by retail gift and curio shops, from Monroe, Wis., to points in Arkansas, Iowa, Kansas, Missouri, Nebraska, Oklahoma, and East St. Louis, Ill.; *cheese* and *cheese products*, from the plantsite and warehouse facilities utilized by the Paul Cheese Co., at Green Bay, Wis., to points in South Dakota; *fresh meats* and *food products*, from the plantsite and warehouse facilities utilized by Purdy Steak Corp. at or near Cudahy, Wis., to points in Minnesota, North Dakota, South Dakota, and Colorado, with restriction; *dairy products*, from Clinton, Iowa, to points in Colorado, Iowa, Nebraska, Kansas, Missouri, and North Dakota, from Green Bay and LaCrosse, Wis., to points in Colorado and North Dakota. Vendee is authorized to operate as a *common carrier* in Illinois, Iowa, Minnesota, Montana, Nebraska, North Dakota, Wisconsin, Wyoming, South Dakota, Idaho, Oregon, Missouri, Indiana, Kansas, Michigan, Utah, Arizona, California, Colorado, Washington, Nevada, New Mexico, Ohio, Kentucky, North Carolina, South Carolina, Alabama, Georgia, Louisiana, Mississippi, Texas, and Tennessee. Application has not been filed for temporary authority under section 210a (b).

No. MC–F–11807. Authority sought for control by S. R. Bowen, a noncarrier, 219 North Jackson, Mason City, IA 50401, of Seco, Inc., also of Mason City, IA 50401. Applicants' attorney: Thomas F. Kilroy, Post Office Box 624, Springfield, VA 22150. Operating rights sought to be controlled: In Docket No. MC–135109 (Sub-No. 1 TA), drugs, in containers, for the account of ICI America, Inc., successor in interest to Atlas Chemical Industries, Inc., as a contract carrier, over irregular routes, from the plantsite of ICI America, Inc. at or near Newark, Del., to the warehouse utilized by said shipper at Chicago, Ill., Dallas, Tex., Memphis, Tenn., and St. Louis, Mo. S. R. Bowen, holds no authority from this Commission. However, he is affiliated with Seco Trucking Co., Inc., 219 North Jackson Avenue, Mason City, IA 50401, which is authorized to operate as a *contract carrier* in Pennsylvania, Illinois, Missouri, Iowa, Nebraska, South Dakota, Minnesota, Michigan, North Dakota, Wisconsin, Oklahoma, Kansas, Arkansas, Indiana, Ohio, Louisiana, New Mexico, Texas, and Arizona. Application has not been filed for temporary authority under section 210a(b).

NOTE: In pending Docket No. MC–135109 a corresponding permanent application has been filed.

By the Commission.

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

[FR Doc.73–4384 Filed 3–6–73;8:45 am]

[Notice 27]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MARCH 1, 1973.

The following are notices of filing of applications[1] for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC–67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, on or before March 22, 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 14552 (Sub-No. 47 TA), filed February 21, 1973. Applicant: J. V. McNICHOLAS TRANSFER COMPANY, 555 West Federal Street, Youngstown, OH 44502. Applicant's representative: Paul F. Beery, 88 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel sheets and coil*, from the plantsite of Jones and Laughlin Steel Corp. plants and warehouses at or near Cleveland, Ohio to Fisher Body Division of General Motors Corp. at or

[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.

near Marion, Ind., for 180 days. Restricted to traffic originating at and destined to the named plants. Supporting shipper: Jones and Laughlin Steel Corp., Cleveland Works Division, 3341 Jennings Road, Cleveland, OH 44101. 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 32367 (Sub-No. 21 TA) (Correction), filed October 31, 1972, published in the FEDERAL REGISTER issue of November 18, 1972, and republished as corrected this issue. Applicant: RED & WHITE MARKET & TRANSFER, INC. (Nebraska Corp.), 607 South Burlington Avenue, Hastings, NE 68901. Applicant's representative: Gailyn L. Larsen, Box 80806, Lincoln, NE.

NOTE: The purpose of this partial republication is to add the commodity description, Part (3) which was omitted in error. Part (3) should read: *Engine parts and accessories*, from Rockport, Ill., to Hastings, Nebr. The rest of the application remains as previously published.

No. MC 93980 (Sub-No. 57 TA), filed February 20, 1973. Applicant: VANCE TRUCKING COMPANY, INCORPORATED, Post Office Box 1119, Henderson, NC 27536. Applicant's representative: Henry M. Strause (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wooden fences, wooden gates, fence material, and cedar lumber*, from at or near Nansemond City, Va., to points in Alabama, Connecticut, Delaware, Georgia, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia, for 180 days. Supporting shipper: Atlantic Forest Products Co., 767 East Street, Walpole, MA 02081. Send protests to: Archie W. Andrews, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Post Office Box 26896, Raleigh, NC 27611.

No. MC 117565 (Sub-No. 83 TA), filed February 21, 1973. Applicant: MOTOR SERVICE COMPANY, INC., Post Office Box 448, Route 3, Coshocton, OH 43812. Applicant's representative: John R. Hafner (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Movable offices, booths, shelters, and canopies, and accessories* for movable offices, booths, shelters, and canopies, from Mount Clemens, Mich., to points in the United States (except Alaska and Hawaii), for 180 days. Supporting shipper: Par-Kut Engineering & Fabricating, Inc., 25500 Joy Boulevard, Mount Clemens, MI 48043. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 255 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

No. MC 119639 (Sub-No. 9 TA), filed November 1, 1972. Applicant: INCO EXPRESS, INC., 3600 South 124th, Seattle, WA 98168. Applicant's representative: Joseph O. Earp, 411 Lyon Building, Seattle, WA 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cloth or fabric coated with plastic, and liquid plastic*, in containers, from Los Angeles County, Calif., to the international boundary line between the United States and Canada, at or near Blaine and Sumas, Wash., for 180 days. Supporting shipper: E. I. du Pont de Nemours & Co., 10th and Market Streets, Wilmington, Del. 19898. Send protests to: L. D. Boone, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 6049 Federal Office Building, Seattle, WA 98104.

No. MC 126276 (Sub-No. 76 TA), filed February 20, 1973. Applicant: FAST MOTOR SERVICE, INC., 12855 Ponderosa Drive, Palos Heights, Ill. 60463. Applicant's representative: Anthony T. Thomas, 1811 West 21st Street, Chicago, IL 60608. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Metal containers and metal container ends*, from the plantsite of American Can Co. at Edison, N.J., to Milwaukee, Wis. Shipments require trailers with rear doors having minimum openings of 110", for 180 days. Supporting shipper: Mr. Richard Edwards, assistant traffic manager, operations, American Can Co., Greenwich, Conn. 06830. Send protests to: Robert G. Anderson, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

No. MC 135660 (Sub-No. 6 TA), filed February 21, 1973. Applicant: BROWNSBERGER ENTERPRISES, INC., Rural Free Delivery No. 1, Box 243, Butler, Mo. 64730. Applicant's representative: Clyde N. Christey, 641 Harrison Street, Topeka, KS 66603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe, plastic tubing, plastic conduit, plastic molding, valves, fittings, compounds, joint sealers, bonding cement, thinner, vinyl*, and *accessories* used in the installation of such products, from Linn Creek, Mo., to Denver and Colorado Springs, Colo., and Albuquerque, N. Mex., for 180 days. Supporting shipper: Central Missouri Pipe Co., Post Office Box 75, Linn Creek, MO. 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 136172 (Sub-No. 4 TA), filed February 20, 1973. Applicant: DICK BELL TRUCKING, INC., 16036 Valley Boulevard, Fontana, CA 92335. Applicant's representative: Ernest D. Salm, 8179 Havasu Circle, Buena Park, CA 90621. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mattresses and box springs*, in packages, restricted against uncrated shipments, from Los Angeles, Calif. to points in Arizona and Nevada, for 180 days. Supporting shipper: C. B. Van Vorst Co., 6000 South St. Andrews Place, Los Angeles, CA 90047. 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 138329 (Sub-No. 1 TA), filed February 21, 1973. Applicant: HICKMAN BROTHERS TRUCKING, INC., Route 8, Box 351–A, Charlotte, NC 28212. Applicant's representative: L. B. Hickman (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, from Chesterfield County, S.C. to Mecklenburg County, N.C., for 180 days. Supporting shipper: Blythe Brothers Co., Post Office Box 989, Charlotte, NC 28201. Send protests to: Frank H. Wait, Jr., Interstate Commerce Commission, Bureau of Operations, 800 Briar Creek Road, room CC516, Charlotte, NC 28205.

No. MC 138365 (Sub-No. 1 TA), filed February 20, 1973. Applicant: GERALD HAEGELE, doing business as GERALD TRANSPORTATION, 5227 Brass Lantern, St. Louis, MO 63128. Applicant's representative: Brainerd W. LaTourette, Jr., room 1450, 611 Olive Street, St. Louis, MO 63101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper, printing rollers, ink, shellac, and items related to the printing industry*, between points in St. Louis County, Mo., and points in the St. Louis, Mo.-East St. Louis, Ill., commercial zone as defined by the Commission, for 180 days. NOTE: Applicant states to tack or interline at St. Louis, Mo. Supporting shipper: The Orchard Corp. of America, 1154 Reco Avenue, St. Louis, MO 63126. Send protests to: District Supervisor J. P. Werthmann, Interstate Commerce Commission, Bureau of Operations, room 1465, 210 North 12th Street, St. Louis, MO 63101.

No. MC 138409 (Sub-No. 1 TA), filed February 20, 1973. Applicant: BILLY C. ALBRITTON, Route No. 2, 2005 Eastwood Drive, Kinston, NC 28501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, dry, in bags and in bulk, in dump or flat bed equipment, from Hartsville, S.C., to Lenoir, Duplin, Pender, Wayne, Harnett, and Sampson Counties, N.C., for 180 days. Supporting shipper: International Minerals & Chemical Corp., Box 834, Dunn, N.C. 28334. Send protests to: Archie W. Andrews, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Post Office Box 26896, Raleigh, N.C. 27611.

No. MC 138417 TA, filed February 20, 1973. Applicant: NORTH SHORE DELIVERY SERVICE, INC., 1325 Cooch's Bridge Road, Newark, DE 18711. Applicant's representative: Francis P. Desmond, 115 East Fifth Street, Chester,

PA 19013. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Unfinished textile fabric products*, between Newark, Del., and New York commercial zone, for 180 days. Supporting shipper: F. Schumacher & Co., 1325 Cooch's Bridge Road, Newark, DE 19711. Send protests to: Peter R. Guman, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 1518 Walnut Street, Room 1600, Philadelphia, PA 19102.

No. MC 138418 TA, filed February 20, 1973. Applicant: STANDARD CONTAINER TRANSPORT CORPORATION, 145 North Avenue East, Elizabeth, NJ 07201. Applicant's representative: Bert Collins, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel beams*, from carrier's terminal in Elizabeth, N.J., to Washington, D.C., Baltimore and Bladensburg, Md., and New York, N.Y., for 180 days. Supporting shippers: I. B. Steinberg Steel Co., Inc., 485 Main Street, Post Office Box 461, Fort Lee, NJ 07024 and Drachman Structurals, Inc., 200 East Sunrise Highway, Freeport, NY 11520. Send protests to: District Supervisor Robert E. Johnston, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 138418 (Sub-No. 1 TA), filed February 20, 1973. Applicant: STANDARD CONTAINER TRANSPORT CORPORATION, 145 North Avenue East, Elizabeth, NJ 07201. Applicant's representative: Bert Collins, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Heavy machinery*, from piers in New York, and Albany, N.Y., and Port Newark, N.J. to Rowe, Mass., for 180 days. Supporting shipper: S & R Services, 19 Rector Street, New York, NY 10006. Send protests to: Robert E. Johnston, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 138418 (Sub-No. 2 TA), filed February 20, 1973. Applicant: STANDARD CONTAINER TRANSPORT CORPORATION, 145 North Avenue East, Elizabeth, NJ 07201. Applicant's representative: Bert Collins, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel beams*, from carrier's terminal in Elizabeth, N.J., to Scranton, Pa., for 180 days. Supporting shipper: Drachman Structurals, Inc., 200 East Sunrise Highway, Freeport, NY 11520. Send protests to: District Supervisor Robert E. Johnston, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 138420 TA, filed February 20, 1973. Applicant: CHIZEK ELEVATOR & TRANSPORT, INC., Post Office Box 147, Cleveland, WI 53015. Applicant's representative: Carmen Chizek (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and advertising equipment, premiums, materials, and supplies* when shipped therewith, from St. Louis, Mo., to all points in Wisconsin (except Racine, Kenosha, Milwaukee, Cudahy, Burlington, Stratford, and Twin Lakes); (2) *Empty malt beverage containers* used in the transportation of the commodities in part (1) of this application from the destination points set forth in part (1) of this application to St. Louis, Mo.; (3) *Malt beverages and advertising equipment, premiums, materials, and supplies* when shipped therewith, from Monroe, Wis., to points in Missouri, and Springfield, Belleville, and Collinsville, Ill.; (4) *Empty malt beverage containers* used in the transportation of the commodities in part (3) of this application from the destination points set forth in part (3) of this application to Monroe, Wis.; (5) *Malt and carbonated beverages and advertising equipment, premiums, materials, and supplies* when shipped therewith, from Minneapolis and St. Paul, Minn., to Sheboygan, Wis.; and (6) *Empty malt and carbonated beverage containers* used in the transportation of the commodities in part (5) of this application from Sheboygan, Wis., to Minneapolis and St. Paul, Minn., for 180 days. Supporting shippers: (1) S & S Distributing, Inc., 918 Hoeschler Drive, Sparta, WI (Herbert Severson); (2) Pehler Bros., Inc., 106 West Harrison Street, Arcadia, WI (Aurelius Pehler); (3) J. A. Brickle Distributing Co., 374 Gillett Street, Fond du Lac, WI (J. A. Brickle); (4) Joseph Huber Brewing Co., 1208 14th Avenue, Monroe, WI (Kent Baumgartener); (5) Tri-County Distributors, Inc., 724 South Outagamie Street, Appleton, WI (Joseph Wolfe); (6) Ken McCarville Distributing Co., Inc., 436 Rainbow Road, Spring Green, WI (John K. McCarville); (7) Benkowski Distributing Co., Inc., 506A South Broadway, Green Bay, WI (David E. Benkowski); (8) Larry's Distributing Co., Inc., 1923 North 18th Street, Sheboygan, WI (Robert Gutschow); and (9) Leard Bros., Inc., 320 North Ohio Street, Prairie du Chien, WI (Verle Leard). Send protests to: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, room 807, Milwaukee, WI 53203.

By the Commission.

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

[FR Doc.73-4385 Filed 3-6-73;8:45 am]

[Notice 28]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MARCH 2, 1973.

The following are notices of filing of applications[1] for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, on or before March 22, 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 22195 (Sub-No. 148 TA), filed February 23, 1973. Applicant: DAN DUGAN TRANSPORT COMPANY, 41st and Grange Avenue, Post Office Box 946, Sioux Falls, SD 57101. Applicant's representative: J. P. Everist (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Asphalts, road oils, and residual fuel oils*, in bulk, in tank vehicles, from Woodbury County, Iowa, to points in Nebraska, Minnesota, North Dakota, South Dakota, and Iowa, for 180 days. Supporting shipper: Debro, Inc., Bridgeport Industrial Park, Sioux City, Iowa 51102. Send protests to: J. L. Hammond, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 369, Federal Building, Pierre, S. Dak. 57501.

No. MC 26396 (Sub-No. 71 TA), filed February 20, 1973. Applicant: POPELKA TRUCKING CO., doing business as THE WAGGONERS, 201 West Park, 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: *Particle board*, from points in Montana to points in North Carolina, New Jersey, and Virginia, for 180 days. Supporting shipper: Evans Products Co., Particleboard Division, Post Office Drawer 12, Missoula, MT 59801. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 222, U.S. Post Office Building, Billings, Mont. 59101.

No. MC 42537 (Sub-No. 46 TA), filed February 23, 1973. Applicant: CASSENS TRANSPORT COMPANY, Post Office Box 468, Edwardsville, IL 62025, and 1 West State Street, Hamel, IL 62046. Applicant's representative: Donald W. Smith, 900 Circle Tower, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trucks* in secondary movements, in driveaway service, from Venice, Ill., to points

[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.

in Missouri, for 180 days. Restriction: Restricted to traffic having an immediately prior movement by rail. Supporting shipper: Donald C. Rae, Manager, Claims and Traffic Department, Chrysler Corp., Post Office Box 1976, Detroit, MI 48231. Send protests to: Harold C. Jolliff, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

No. MC 103993 (Sub-No. 759 TA), filed February 19, 1973. Applicant: MORGAN DRIVE-AWAY, INC., 2800 West Lexington Avenue, Elkhart, IN 46514. Applicant's representative: Paul D. Borghesani (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, initial movements from Anson County, N.C. (except Wadesboro, N.C.), to points in the United States east of the Mississippi River, for 180 days. Supporting shipper: Schult Mobile Home Corp., Middlebury, Ind. Send protests to: District Supervisor J. H. Gray, Bureau of Operations, Interstate Commerce Commission, 345 West Wayne Street, Room 204, Fort Wayne, IN 46802.

No. MC 107012 (Sub-No. 174 TA), filed February 19, 1973. Applicant: NORTH AMERICAN VAN LINES, INC., Post Office Box 988, East and Meyer Road, Lincoln Highway, Fort Wayne, IN 46801. Applicant's representative: Karlton Holle (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from Sardis, Miss., to points in the United States (except Alaska and Hawaii), for 180 days. Restriction: Restricted to transportation of traffic originating at Sardis, Miss. Supporting shipper: Carrom Division, Affiliated Hospital Products, Inc., Sardis, Miss. Send protests to: District Supervisor J. H. Gray, Bureau of Operations, Interstate Commerce Commission, 345 West Wayne Street, Room 204, Fort Wayne, IN 46802.

No. MC 109533 (Sub-No. 52 TA), filed February 26, 1973. Applicant: OVERNITE TRANSPORTATION COMPANY, 1100 Commerce Road, Post Office Box 1216 (23209 Box ZIP), Richmond, VA 23224. Applicant's representative: C. H. Swanson (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, household goods as described by the Commission, commodities in bulk, and those requiring special equipment) serving the plantsite of Southwestern Co., Inc., located at or near Brentwood, Tenn., as an off-route point, for 180 days. NOTE: Applicant intends to tack with its present authority and to interline with other carriers. Tacking will occur at Knoxville, Tenn., Charlotte, N.C., and Chattanooga, Tenn. Supporting shipper: The Southwestern Co., 2968 Foster Creighton Drive, Post Office Box 11379, Nashville, TN 37211. Send protests to: Robert W. Waldron, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 10-502 Federal Building, 400 North Eighth Street, Richmond, VA 23240.

No. MC 109612 (Sub-No. 33 TA), filed February 20, 1973. Applicant: LEE MOTOR LINES, INC., Post Office Box 728, Muncie, IN 47305. Applicant's representative: Donald W. Smith, 900 Circle Tower Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers and closures therefor*, from the plantsite of Midland Glass Co., Inc., at Terre Haute, Ind., to the plantsite of Schlitz Brewing Co., Inc., at Memphis, Tenn., for 180 days. NOTE: Applicant does intend to tack. Supporting shipper: Midland Glass Co., Inc., Cliffwood, N.J. Send protests to: District Supervisor J. H. Gray, Bureau of Operations, Interstate Commerce Commission, 345 West Wayne Street, Room 204, Fort Wayne, IN 46802.

No. MC 112989 (Sub-No. 28 TA), filed February 23, 1973. Applicant: WEST COAST TRUCK LINES, INC., Post Office Box 668, Coos Bay, OR 97420. Applicant's representative: Jerry R. Woods, 620 Blue Cross Building, Portland, Oreg. 97201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gates and accessories, iron or steel posts, and iron or steel fencing*, from Los Angeles County, Calif., to points in Arizona, Colorado, Nevada, and Utah, for 180 days. Supporting shippers: Master Fence Fittings, Inc., 700 East Lambert Road, Post Office Box 365, La Habra, CA 90631. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Building, 319 Southwest Pine Street, Portland, OR 97204.

No. MC 113106 (Sub-No. 38 TA), filed February 22, 1973. Applicant: THE BLUE DIAMOND COMPANY, 4401 East Fairmount Avenue, Baltimore, MD 21224. Applicant's representative: Chester A. Zyblut, 1522 K Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer, fertilizer materials, and agricultural related chemicals, and seed in containers*, from E. Hempfield Township, Lancaster County, Pa., to points in New York, New Jersey, Delaware, Maryland, and West Virginia, for 180 days. Supporting shipper: Mr. A. S. Corbin, Manager, Transportation Services, Royster Co., Post Office Drawer 1940, Norfolk, VA 23501. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 814-B Federal Building, Baltimore, Md. 21201.

No. MC 114829 (Sub-No. 9 TA), filed February 23, 1973. Applicant: GENERAL CARTAGE COMPANY, INC., Box 417, Sterling, IL 61081. Applicant's representative: Daniel C. Sullivan, 327 South La Salle Street, Chicago, IL 60604. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Door, door accessories, door parts, and automatic door openers*, from Sterling and Rock Falls, Ill., to points in Iowa, Minnesota, Indiana, Wisconsin, and Omaha, Nebr., for 180 days. Supporting shipper: Mr. J. L Rutt, Franz Manufacturing Co., 301 West Third Street, Sterling, IL 61081. Send protests to: District Supervisor Richard O. Chandler, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

No. MC 117799 (Sub-No. 49 TA), filed February 22, 1973. Applicant: BEST WAY FROZEN EXPRESS, INC., 3033 Excelsior Boulevard, Room 205, 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: *Manufactured mulches* (except in bulk) from Barberton and Findlay, Ohio, to points in the United States (except Alaska and Hawaii), for 150 days. Supporting shipper: Environmental Products Corp., 10501 Taconic Terrace, Cincinnati, OH. Send protests to: A. N. Spath, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 448 Federal Building and U.S. Court House, 110 South Fourth Street, Minneapolis, MN 55401.

No. MC 119726 (Sub-No. 29 TA), filed February 22, 1973. Applicant: N.A.B. TRUCKING CO., INC., Post Office Box 21006, 2502 West Howard Street, Indianapolis, IN 46221. Applicant's representative: James L. Beattey, 130 East Washington Street, Suite 1000, Indianapolis, IN 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty glass containers, caps, covers, and tops*, from Terre Haute, Ind., to Memphis, Tenn., for 180 days. Supporting shipper: Midland Glass Co., Inc., Cliffwood, N.J. Send protests to: District Supervisor James W. Habermehl, Interstate Commerce Commission, Bureau of Operations, 802 Century Building, 36 South Penn St., Indianapolis, IN 46204.

No. MC 124692 (Sub-No. 100 TA), filed February 21, 1973. Applicant: SAMMONS TRUCKING, Post Office Box 1447, Missoula, MT 59801. Applicant's representative: Gene P. Johnson, 425 Gate City Building, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fabricated iron and steel articles* (except those requiring special equipment) from the plantsite and warehouse facilities of Tube-Lok Products at Portland, Oreg. to the plantsite and warehouse facilities of Tube-Lok Products at Mattoon, Ill., for 180 days. Supporting shipper: Tube-Lok Products, 4644 Southeast 17th Avenue, Portland, OR 97202. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 222 U.S. Post Office Building, Billings, Mont. 59101.

No. MC 127418 (Sub-No. 6 TA) (Correction), filed December 4, 1972, pub-

lished in the FEDERAL REGISTER issue of December 27, 1972, and republished as corrected this issue. Applicant: TROPARCTIC REFRIGERATED SERVICE, INC., Post Office Box 1272, Gainesville, GA 30501. Applicant's representative: Archie B. Culbreth, Suite 246, 1252 West Peachtree Street NW., Atlanta, GA 30309. NOTE: The purpose of this partial republication is to add Nevada as a destination point in part (1) of the application, which was omitted in error. The rest of the application remains the same.

No. MC 133095 (Sub-No. 37 TA), filed February 26, 1973. Applicant: TEXAS CONTINENTAL EXPRESS, INC., Post Office Box 434, 2603 West Euless Boulevard, Euless, TX 76039. Applicant's representative: Rocky Moore (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcohol and alcoholic beverages*, from the plantsite and warehouse facilities of Schenley Distillers, Inc., located at Frankfort and Louisville, Ky. and Lawrenceburg, Ind., to Houston, Tex., for 180 days. Supporting shippers: Schenley Distillers, Inc., 36 East Fourth Street, Cincinnati, OH 45202 and Key Distributors, Inc., Post Office Box 303, Houston, TX 77001. Send protests to: H. C. Morrison, Sr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

No. MC 133318 (Sub-No. 5 TA), filed February 23, 1973. Applicant: VAN DE HOGEN CARTAGE LIMITED, Route 4, Chatham, Ontario, Canada. Applicant's representative: William J. Hirsch, 35 Court Street, Suite 444, Buffalo, NY. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Building brick*, from Corunna, Mich. to ports of entry on the International Boundary line between the United States and Canada on the Detroit and St. Mary's Rivers, for 90 days. Supporting shipper: Windsor Builders Supply Ltd.; doing business as Canadian Builders Supply, 2595 Dougall Avenue, Windsor, ON, Canada. Send protests to: District Supervisor Melvin Kirsch, Interstate Commerce Commission, Bureau of Operations, 1110 David Broderick Tower, 10 Witherill Street, Detroit, MI 48226.

No. MC 134631 (Sub-No. 15 TA), filed February 22, 1973. Applicant: SCHULTZ TRANSIT, INC., Post Office Box 503, 323 Bridge Street, Winona, MN 55987. Applicant's representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, from Winona, Minn., to points in the United States (except Alaska and Hawaii), for 180 days. Supporting shipper: Watkins Products, Inc., 150 Liberty Street, Winona, MN 55987. 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 138097 (Sub-No. 1 TA) (Correction), filed October 30, 1972, published in the FEDERAL REGISTER issue of November 21, 1972, and republished as corrected this issue. Applicant: PERCY KAGEL, doing business as KAGEL TRUCKING, 404 Fifth Avenue, Ironton, MN 56455. Applicant's representative: A. R. Fowler, 2288 University Avenue, St. Paul, MN 55114. NOTE: The purpose of this republication is to add four additional supporting shippers. The additional shippers are: Boundary Forest Products, Inc., Ely, Minn. 55731; Hamdorf Lumber Co., Ironton, Minn. 56455; Kainz Logging Co., Ely, Minn. 55731; and Burns Kneeland Lumber Co., Aitkin, Minn. 56431, which was omitted in previous publication. The rest of the application remains the same.

No. MC 138223 (Sub-No. 3 TA) (Amendment), filed November 20, 1972, published in the FEDERAL REGISTER issue of December 15, 1972, as MC 138210 TA and republished as amended this issue. Applicant: LINE HALL TRANSFER, INC., 75 West Emerson Avenue, Rahway, NJ 07065. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by department stores and *supplies and equipment* used in the conduct of such business, for the account of Buckeye Mart, between Jersey City, N.J., on the one hand, and, on the other, Columbus, Ohio, for 180 days. Supporting shipper: Buckeye Mart, 3636 Indianola Avenue, Columbus, OH 43214. Send protests to: District Supervisor Robert E. Johnston, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102. NOTE: The purpose of this republication is to show that applicant now seeks to operate as a *contract carrier*, in lieu of common carrier, shown in error in the previous publication.

No. MC 138384 (Sub-No. 1 TA), filed February 8, 1973. Applicant: ELWOOD LYNCH, Krafts Trailer Court, Moberly, Mo. 65270. Applicant's representatives: Tom Kretsinger and Warren Sapp, Suite 910 Fairfax Building, 101 West 11th Street, Kansas City, MO 64105. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Belleville, Ill., to Moberly, Mo., and *empty malt beverage containers*, from Moberly, Mo., to Belleville, Ill., for 180 days. Supporting shipper: Hunt Distributing Inc., Moberly, Mo. Send protests to: Vernon V. Coble, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 600 Federal Building, 911 Walnut Street, Kansas City, Mo. 64106.

By the Commission.

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

[FR Doc.73-4386 Filed 3-6-73;8:45 am]

[Notice 225]

MOTOR CARRIER TRANSFER PROCEEDINGS

MARCH 2, 1973.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC-74322. By application filed February 27, 1973, LEE GODDARD, INC., Post Office Box 803, Bay City, MI 48706, seeks temporary authority to lease the operating rights of BARNEY KOSOFSKY, doing business as BARNEY'S CARTAGE COMPANY, 4500 Lawton, Detroit, MI, under section 210a(b). The transfer to LEE GODDARD, INC., of the operating rights of BARNEY KOSOFSKY, doing business as BARNEY'S CARTAGE COMPANY, is presently pending.

By the Commission.

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

[FR Doc.73-4387 Filed 3-6-73;8:45 am]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

MARCH 2, 1973.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by § 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

Texas Docket No. 2627 filed January 5, 1973. Applicant: CENTRAL FREIGHT LINES, INC., 303 South 12th Street, Waco, TX 76703. Applicant's representative: Phillip Robinson, Post Office Box 2207, Austin, TX 78767. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities*, between Longview, Tex., and the site of the Martin Lake Steam Electric Station, Texas Utilities Services, Inc., as follows: From Longview over Texas Highway 149 to Tatum, thence over Texas Highway 43, 5 miles to its intersection with Farm Road 2658, thence over Farm Road 2658 one-half mile to the named electric station, and return over the same route, serving all intermediate points. Both

intrastate and interstate authority sought.

HEARING: Approximately 30 days after publication in the FEDERAL REGISTER unless application is protested, then approximately 90 days after publication in the FEDERAL REGISTER. Requests for procedural information should be addressed to the Texas Railroad Commission, Drawer 12967, Capitol Station, Austin, TX 78711, and should not be directed to the Interstate Commerce Commission.

Kansas Docket No. 87,469–M, Route No. 8435, dated January 16, 1973. Applicant: GOLDEN PLAINS EXPRESS, INC., 540 West 29 North, Post Office Box 4209. Applicant's representative: Jack Glaves, 900 O. W. Garvey Building, Wichita, Kans. 67202. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *agricultural implements and equipment*, assembled or unassembled, *parts or portions thereof, tools, materials, equipment, supplies, and machinery* used in the manufacture, assembly, repair, distribution, sale, and transport thereof, through, between, and to and from all points and places in the State of Kansas. Both intrastate and interstate authority sought.

HEARING: March 20, 21, and 22, 1973, at the Fiesta Room, Mid-Town Holiday Inn, 1000 North Broadway, Wichita, KS. Requests for procedural information should be addressed to the State Corporation Commission, fourth floor, State Office Building, Topeka, Kans. 66612, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73–4382 Filed 3–6–73;8:45 am]

[Notice No. 8]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

MARCH 2, 1973.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969 (49 CFR 1042.4(c)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(c)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed on or before April 6, 1973.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC–2202 (Deviation No. 119), ROADWAY EXPRESS, INC., Post Office Box 471, Akron, OH 44309, filed February 21, 1973. Carrier's representative: J. F. Clements, same address as applicant. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Shreveport, La., over U.S. Highway 80 to junction Louisiana Highway 3 near Bossier City, La., thence over Louisiana Highway 3 to the Louisiana-Arkansas State line, thence over Arkansas Highway 29 to junction Interstate Highway 30 near Hope, Ark., thence over Interstate Highway 30 to Little Rock, Ark., thence over Interstate Highway 40 to junction U.S. Highway 65 near Conway, Ark., thence over U.S. Highway 65 to Springfield, Mo., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent regular route as follows: (1) From Shreveport, La., over U.S. Highway 80 to Dallas, Tex., thence over U.S. Highway 75 to Denison, Tex., thence over U.S. Highway 69 to junction U.S. Highways 60–66 about 6 miles west of Vinita, Okla., thence over U.S. Highway 66 to Springfield, Mo., and (2) from Marshall, Tex., over U.S. Highway 59 to junction Texas Highway 49, thence over Texas Highway 49 to junction U.S. Highway 271, thence over U.S. Highway 271 via Paris, Tex., to junction Oklahoma Highway 3, thence over Oklahoma Highway 3 to junction U.S. Highway 69, and return over the same routes.

No. MC–89913 (Deviation No. 2), FRISCO TRANSPORTATION COMPANY, 906 Olive Street, St. Louis, MO 63101, filed February 8, 1973. Carrier's representative: J. S. Bowie, same address as applicant. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: Between Kansas City, Mo., and Fayetteville, Ark., over U.S. Highway 71, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Kansas City, Mo., over U.S. Highway 50 to Warrensburg, Mo., thence over Missouri Highway 13 to Springfield, Mo., (2) from St. Louis, Mo., over U.S. Highway 66 to junction U.S. Highway 60, thence over U.S. Highway 60 to junction U.S. Highway 166, thence over U.S. Highway 166 to Joplin, Mo., (3) from Carthage, Mo., over U.S. Highway 66 to Springfield, Mo., (4) from junction Alternate U.S. Highway 71 and U.S. Highway 166, near Fidelity, Mo., over U.S. Highway 166 to Sarcoxie, Mo., thence over Missouri Highway 37 to the Missouri-Arkansas State line, thence over Arkansas Highway 47 to Gateway, Ark., thence over U.S. Highway 62 to Rogers, Ark., thence over U.S. Highway 71 to Alma, Ark., (5) from Springfield, Mo., over U.S. Highway 66 to junction unnumbered highway approximately four miles west of Springfield, thence over unnumbered highway via Brookline Station to junction U.S. Highway 60, thence over U.S. Highway 60 to Seneca, Mo., (6) from junction U.S. Highway 71 and Missouri Highway 7 over Missouri Highway 7 to junction Missouri Highway 13, thence over Missouri Highway 13 to Clinton, Mo., and (7) from junction U.S. Highway 71 and Missouri Highway 7 over U.S. Highway 71 to Kansas City, Mo., and return over the same routes.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73–4383 Filed 3–6–73;8:45 am]

[Ex Parte No. 293]

NORTHEASTERN RAILROAD

Order of Investigation

At a general session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 9th day of February 1973.

It appearing, That in recent years, seven Class I railroads operating in Northeastern United States, have entered into reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 205 et seq.); and that, to date, there has been little progress toward a traditional income-based reorganization for any of these carriers;

It further appearing, That six of the railroads are under the supervision of five Federal judges, sitting in four United States Judicial Districts, which in turn are located in three Appellate Circuits; thus making it difficult for the separate railroads to undertake mutually beneficial cooperative measures, to coordinate their efforts at planning reorganization and continuing operations, to rationalize the railroad system in the territory, to consolidate properties, make joint use of facilities, coordinate operations, and plan for territorywide release of redundant capacity; and to give effect to national policies pertaining to the regulated sector of surface transportation;

It further appearing, That the Trustees of the Penn Central Transportation Company, in interim reports dated January 1, and February 1, 1973, to the United States District Court for the Eastern District of Pennsylvania, have stated that without massive Government financial assistance for improvement of the railroad, a reorganization cannot be achieved in 1976, the target year previously stated by Trustees; and that most of the major northeastern railroads in reorganization are already receiving substantial subsidies from State or local governments, but that notwithstanding

the subsidy funds, the railroads have been unable to reverse the downward trend in their financial condition and their ability to compete with other modes of transportation;

It further appearing, that several of the railroads in bankruptcy have had to contend with recurring cash crises and/or creditors' petitions for dismissal of the reorganization proceedings which, if granted, could lead to the eventual cessation and liquidation of the transport facilities of the carriers;

It further appearing, that the abovementioned factors create implications of nationwide importance, including but not limited to such matters as: rationalization of the rail transportation system in the Northeast, the public need for rail services in the Northeast and whether such services should be performed by a single rail system rather than a multi-railroad system of competing carriers, the effects that consolidation or cessation of services would have on connecting carriers, on service to the public, railroad employees, and the human environment; and the need for additional legislation;

It is ordered, That pursuant to the provisions of the National Transportation Policy (49 U.S.C., preceding section 1), section 12 of the Interstate Commerce Act (49 U.S.C. 12), sections 77(b)(5), 77(c)(11), and 77(q) of the Bankruptcy Act (11 U.S.C., sections 205, et seq.), and in consideration of sections 3(a), 3(b)(4), 6(a) and 6(b) of the Emergency Rail Services Act (45 U.S.C. 661), an investigation be, and it is hereby, instituted upon the Commission's own motion, into and concerning the operations, finances, and other practices of the Boston and Maine Corporation, the Central Railroad Company of New Jersey, the Erie-Lackawanna Railway, the Lehigh and Hudson River Railway Company, the Lehigh Valley Railroad Company, the New York, New Haven & Hartford Railroad Company, the Penn Central Transportation Company, the Reading Company—all debtors in reorganization—in order to determine, among other things, whether such operations, financial condition and practices are adequate to the transportation needs of the public and sufficient to the implementation of the National Transportation Policy; which investigation should provide a basis for determining whether the Northeastern section of the country should be limited to service by a single railroad system or whether adequate service to the public requires operation by two or more competing rail systems and what orders of the Commission or legislative changes would be appropriate in the premises;

It is further ordered, That Robert W. Meserve, Trustee of the Boston and Maine Corporation, R. D. Timpany, Trustee of the Central Railroad Company of New Jersey, T. Patton and R. J. Taylor, Jr., Trustees of the Erie-Lackawanna Railway, J. C. Troiana, Trustee of the Lehigh and Hudson River Railway Company, J. F. Nash and R. C. Haldeman, Trustees of the Lehigh Valley Railroad Company, R. D. Smith, Trustee of the New York, New Haven & Hartford Railroad Company, G. P. Baker, R. C. Bond, and J. Langdon, Jr., Trustees of the Penn Central Transportation Company, and R. Dilworth and A. Lewis, Trustees of the Reading Company be, and they are hereby made respondents in this proceeding, that this order be served on said respondents and upon the Governors and Public Utility Commissions of the States of Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, the District of Columbia, Virginia, West Virginia, Kentucky, Ohio, Michigan, Indiana, Illinois, and Missouri; and upon the Federal Railroad Administration, United States Department of Transportation; and that notice to the public be given by posting a copy of this order in the office of the Secretary of the Commission; and by publication of this order in the FEDERAL REGISTER;

It is further ordered,

(1) That this proceeding be initiated under the modified procedure specified below.

(2) That any person, other than the respondents desiring to introduce evidence in this proceeding shall advise the Secretary in writing not later than February 28, 1973, with copies to the respondents; and such person shall state whether he can and is willing to consolidate his interest with those of other interested parties by filing joint statements to thereby reduce the number of pleadings that need to be served;

(3) That on or before March 15, 1973, the respondents, and any person having given notice of his intention as provided in (2) above, shall file with the Secretary of the Commission verified statements containing evidence of the operating and financial affairs of the respondents subsequent to the filing of the petitions for reorganization under section 77 of the Bankruptcy Act, including but not limited to all efforts at joint use of facilities, consolidation of properties, or coordination of operations with other carriers, and of such other matters as may be appropriate to the purposes of this inquiry as described in the first ordering paragraph hereof; that each verified statement shall be signed in ink by the affiant and verified (notarized) in the manner provided by rule 50 and form No. 6 of the Commission's general rules of practice; and that the post office address of the affiant or his counsel shall be shown;

(4) That, except as hereinafter provided, verified statements (whether having appendices or not) shall be filed and served as follows:

The original and 24 copies of each such document for the use of the Commission shall be sent to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

One copy of each statement shall be sent by first-class mail to each of the regional offices of the Commission where it will be open to public inspection.

One copy of each statement shall be served upon each respondent herein. Respondents should also serve one copy of each statement upon each person who (under item (2) above) gives notice of intent to participate, and upon the individuals and public bodies listed in the second ordering paragraph.

In all cases, where service is made by mail, the document shall be mailed in time to be received by March 15, 1973.

Each verified statement shall contain a certificate of service stating that it has been timely served on all parties, as herein provided; and verified statements not so served will not be considered.

(5) That on or before April 15, 1973, any party to the proceeding, having received the initial statements of others, may file supplemental verified statements in the same form, number, and manner as hereinbefore prescribed, each duly attested and containing a certificate of service.

(6) That copies of verified statements, exhibits, and other written evidence of the Commission staff shall be served only on the respondents and be made available for inspection by all other persons at the regional and Washington, D.C., offices of the Commission;

And it is further ordered, That additional procedures, if deemed necessary, for the introduction of further evidence will be prescribed by further order of this Commission.

Due and timely execution of the Commission's functions with regard to the matters involved in this investigation makes it imperative and unavoidable that an initial or recommended decision and order by an administrative law judge be omitted.

By the Commission.

NOTE: The order instituting this investigation will not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

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

[FR Doc.73-4389 Filed 3-6-73;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
5611–5829	2
5831–5985	5
5987–6125	6
6127–6267	7

federal register

WEDNESDAY, MARCH 7, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 44

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

DRUG LISTING ACT OF 1972

Establishment of Implementing Regulations

Title 21—Food and Drugs

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

SUBCHAPTER C—DRUGS

PART 130—NEW DRUGS

PART 132—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

Establishment of Implementing Regulations for the Drug Listing Act of 1972

In the FEDERAL REGISTER of December 12, 1972 (37 FR 26431), the Commissioner of Food and Drugs proposed to amend 21 CFR Parts 130 and 132 to provide procedural regulations for the enforcement of the "Drug Listing Act of 1972," an Act to amend the Federal Food, Drug, and Cosmetic Act, which became effective on February 1, 1973. Interested persons were invited to submit comments on the proposal within 40 days. Comments were received from six trade associations and 18 manufacturers. In addition, members of the industry met with representatives of the Food and Drug Administration to discuss a means of achieving compatibility between the National Drug Code (NDC) and the Universal Product Code (UPC), a retail industry identification number.

The principal comments received and the Commissioner's conclusions are as follows:

1. Three drug manufacturers and one trade association objected to the statement in the preamble that the first listing of drugs will be required during June 1973. These persons state that the Drug Listing Act and the legislative history clearly reflect a congressional mandate that the first listing of drugs would not be required until the time of the first registration under section 510 of the Federal Food, Drug, and Cosmetic Act which occurs after the effective date of the Drug Listing Act. They noted that subsection 510(b) requires such registration on or before December 31 of each year. Accordingly, they believe that persons subject to the new drug listing requirements should not be required to submit drug listings prior to registration in December 1973.

The Commissioner does not agree with these comments. All persons who are registered are required under section 510(j)(2) to provide drug listing information once during the month of June of each year and once during the month of December of each year. Thus, for persons who are registered prior to February 1, 1973, the first drug list must be reported during the month of June 1973. In enacting the Drug Listing Act of 1972, Congress intended to provide the Food and Drug Administration with the legislative authority to compile a list of currently marketed drugs in order to assist the Agency in the enforcement of Federal laws requiring that drugs be safe and effective, and not adulterated or misbranded. In light of this congressional intent to protect the public health, the Comissioner can find no justification for delaying the filing of the first drug listing information beyond June 1973.

The Commissioner wishes to make clear that the filing of the drug list is separate from registration. Persons already registered are not required to "re-register" during June 1973. Persons who register under subsection 510 (c) or (d) between February 1 and June 1, 1973, are required under section 510(j)(1) to file the drug listing information at the time of registration. However, because of the time needed by the Food and Drug Administration to develop procedures for handling this information and for informing the affected industry as to how this information is to be reported, the Commissioner has determined that persons who register under § 510 (c) or (d) between February 1 and June 1, 1973, will not be required to submit the drug listing information until June 1973.

2. Four manufacturers of in vitro diagnostic products objected to the request that they register and submit drug listing information. The objections were based primarily on the contention that in vitro diagnostic products differ in many ways from conventional drug products and these differences make the proposed regulations inappropriate for such products. They further contend that many of these products are devices and therefore not subject to the drug registration and listing provisions of the Act.

In vitro diagnostic products that are drugs are clearly subject to all of the drug provisions of the Act, including the provisions of section 510. In vitro diagnostic products which are determined to be devices are not subject to section 510 of the Act and are therefore not subject to registration and listing. In any doubtful cases, the courts have held that the Food and Drug Administration has the legal authority to classify such products as drugs. Rather than attempt to classify all such products as drugs or devices, the Commissioner has proposed to establish a new procedure containing labeling requirements and a mechanism for establishing standards governing these products (37 FR 16613). The Food and Drug Administration is seeking the cooperation of the industry to register and submit drug listing in order to eliminate the need for regulatory action to obtain the information.

The Food and Drug Administration has the authority administratively to determine whether products are drugs or devices. Until new device legislation is enacted, and where the authority inherent in section 505 of the Act is necessary to adequately protect the public health, products which may be devices in the classic sense will be regarded as new drugs. No such determination will be necessary for listing purposes provided that the manufacturers of all in vitro diagnostic products register and submit the listing information.

Two manufacturers of in vitro diagnostic products requested that the Food and Drug Administration allow such manufacturers until December 1973 to submit listing information. The basis for this request is that most manufacturers of in vitro diagnostic products did not participate in the voluntary drug inventory program and will therefore require more time to develop listing information. The Commissioner has considered this request and has concluded that a June 1973 reporting date should allow ample time for the submission of listing information.

3. One manufacturer, while acknowledging that the preamble to the proposed regulations recognizes that they duplicate, in some respects, existing reporting requirements under sections 505, 507, and 512 of the Federal Food, Drug, and Cosmetic Act and section 351 of the Public Health Service Act, urged that steps be taken to eliminate such duplication in the final regulations. The Commissioner, although recognizing the problems associated with the duplicity of many of the reporting requirements, has concluded that it would be premature to eliminate or reduce this duplicity until the procedures of the drug listing regulations become fully operational. The Commissioner has determined that Congress, in enacting the Drug Listing Act, was aware that some of the information required to be submitted in the drug listing is required to be submitted to the Food and Drug Administration under existing regulations. However, Congress clearly intended that procedures be established for compiling the information required by the Drug Listing Act in a single system. As was stated in the preamble to the proposal, when the drug listing regulations become fully operative, steps will be undertaken to relieve the duplication, but such steps will still be compatible with the need for ready availability of the information for review purposes.

4. Two manufacturers submitted comments concerning the definition of "establishment" in § 132.1(a). One manufacturer requested that clinical chemistry laboratories be exempted from that part of the definition regarding "independent laboratories that engage in control activities for registered establishments (e.g., consulting laboratories)." This manufacturer expressed concern that such laboratories will no longer be willing to perform such services if they are required to register. The manufacturer also stated that the particular laboratory used by a manufacturer is generally proprietary information and that, if the Commissioner feels it to be essential that he be aware of these clinical laboratories, the manufacturer should submit the names of those he is using as a separate part of his drug listing information.

The Commissioner rejects the request that consulting laboratories not be required to register. The definition of "establishment" in the proposed regulations remains unchanged from that in the current regulations (21 CFR 132.1(b)) and consulting laboratories are already required to register. Such consulting laboratories are required to register in-

dependently of the firm for whom they perform services. Establishments who utilize the services of these consulting laboratories are not required to identify such laboratories in either their registration or drug listing submission. However, this does not exempt establishments from providing this information to the Food and Drug Administration when specifically requested.

A manufacturer stated that, since the proposed regulations can have no applicability to foreign establishments not registered under the Act, the definition of the term establishment should be amended to include only establishments registered under the Act. The Commissioner disagrees with this statement and sees no need to amend the definition of establishment as suggested by this manufacturer. The definition neither requires nor prohibits registration of foreign establishments. However, the 1972 law clearly requires a foreign drug manufacturer to comply with the drug listing requirements of the Act, whether or not he is registered. No unlisted drug may be imported into the United States. The proposed regulations contain no requirements regarding the registration of foreign establishments. The Commissioner published in the FEDERAL REGISTER of May 24, 1972 (37 FR 10510), a proposal concerning the registration of foreign drug establishments and a final order in this regard will be issued at a later date.

5. One manufacturer urged that the definition of "commercial distribution" in § 132.1(d) be revised so as to exclude products which are merely being distributed by a drug manufacturer. This manufacturer commented that section 510(j) of the Act requires the submission of drug listing information only for those drugs which the establishment manufactures, prepares, propagates, compounds, or processes. In addition, the manufacturer stated that if establishments include in their listing drugs which they merely distribute, the Food and Drug Administration will receive a false count as to the number of drugs actually being manufactured in this country.

The Commissioner has considered these comments but, in view of revisions of § 132.2 in the final regulations as to who must register and submit a drug list, has concluded that no revision in the definition of commercial distribution is necessary. Firms that merely distribute drug products and do not meet the definition of "manufacture, preparation, propagation, compounding, or processing" of a drug in § 132.1(c) are not required to register. In the final regulations a new § 132.2(b) is added to allow distributors (who are otherwise exempted from registration) to furnish drug listing information directly to the Food and Drug Administration for those products which they distribute under their own label but which are manufactured, prepared, propagated, compounded, processed, repackaged or otherwise changed in regard to container, wrapper, or labeling by a registered establishment. In such an instance, the Food and Drug Administration will assign a "Labeler Code" to the distributor and transmit drug listing instructions. To avoid duplicity in the submission of drug listing information, registered establishments are not required to submit drug listing information for those products for which the distributor has submitted this information directly to the Food and Drug Administration. This procedure is covered in paragraph 12(b) of this preamble.

6. Two trade associations and six manufacturers filed comments concerning the definition of "any material change" in § 132.1(g). In general, these comments suggested that the definition be revised to clarify that only "material or significant" changes in the labeling of a prescription drug or in the label or package insert of an over-the-counter drug are to be reported. In response to these comments, the applicable phrase of the definition of "any material change" has been revised in the final regulation to read "any significant change in the labeling of a prescription drug, and any significant change in the label or package insert of an over-the-counter drug." Changes that are not significant include changes in arrangement or printing or changes of an editorial nature.

7. One trade association submitted comments regarding the definition of bulk drug substance in § 132.1(h). The trade association said that it is not the intent of the Federal Food, Drug, and Cosmetic Act to require noncommercial in-house or subsidiary transfer of bulk drugs to conform to the requirements of the Drug Listing Act. They recommended that in order to exclude domestic and foreign internal transfers of bulk drug substances from the drug listing requirements, the phrase "or internal transfers of bulk drug substances" should be added to the end of the last sentence in § 132.1 (h).

The Commissioner agrees that it was not intended that owners or operators of registered establishments report as a separate entity on the drug list a bulk drug substance which is manufactured, prepared, propagated, compounded, or processed at one registered domestic establishment for noncommercial internal or interplant transfer for additional processing to another registered domestic establishment within the same parent, subsidiary, and/or affiliate company. However, because of the need to obtain and compile information on all drugs (bulk as well as finished dosage forms) which are imported into the United States and the requirements as set forth in § 132.31 that no drug may be imported into the United States unless it is first the subject of a drug listing, the proceeding statement concerning internal or interplant transfers of a bulk drug substance does not apply to such transfers between foreign and domestic establishments regardless if these establishments are within the same parent, subsidiary, and/or affiliate company.

Therefore the definition of "Commercial distribution" (§ 132.1(d)) is revised by adding the following phrase "but does not include internal or interplant transfer of a bulk drug substance between registered domestic establishments within the same parent, subsidiary, and/or affiliate company."

8. Four trade associations and one manufacturer offered comments regarding who must register and submit a drug list (§ 132.2). One trade association stated that a corporate group should be permitted to designate a single corporate member as the central registrant, regardless of so-called "parent" or "subsidiary" relationship, so long as there exists joint ownership and control among all the companies and suggested that the parenthetical clauses in § 132.2(a) be expanded to read "(except * * * parent, subsidiary and/or affiliate companies)." This same trade association also commented that the Food and Drug Administration should emphasize in the final order that establishments operating in intrastate commerce (including those marketing virus, serum, toxin, or analogous products for treatment of domestic animals in intrastate commerce) are required to register their establishments and list their products. One trade association suggested that the phrase "a list of drugs used" be used in place of the phrase "drug listing" in that part of the last sentence in § 132.2(a) relating to the manufacturing, preparation, propagation, compounding, or processing of an animal feed bearing or containing an animal drug. Another trade association stated that when the registration requirements contained in § 132.2 are viewed in context with the information required in registration and drug listings as set forth in § 132.5, it could be required that an "NDC" number be assigned when a new drug application (NDA) is initially submitted. This trade association suggested that the proposal be revised to require an "NDC" number assignment only when finished labeling for an approved NDA is submitted. One manufacturer submitted a similar comment remarking that, because of the long time span between submission of a now drug application, new animal drug application, antibiotic Forms 5 or 6, or Form 1800 (Medicated Feed Application) and FDA approval thereof, filings under this regulation should be deferred until submission of final printed labeling or some other act occurring late in the pendency of the application. One trade association suggested that intermediate premixes, feed additive concentrates, and feed additive supplements be exempt from drug listing along with medicated feeds.

The Commissioner agrees that a corporate group should be permitted to submit listing information for all subsidiaries and or affiliate companies when operations are conducted at more than one establishment so long as there exists joint ownership and control among all the establishments. However, each establishment must be registered separately. This is what was intended in the proposal. To clarify this intent, the parenthetical clauses in § 132.2(a) have been expanded in the final order to read "(except * * * parent, subsidiary and or af-

filiate company, for all establishments when operations are conducted at more than one establishment so long as there exists joint ownership and control among all the establishments)."

While agreeing competely with the comment made regarding the applicability of the registration and drug listing requirements of section 510 of the Act to establishments engaged in intrastate commerce, the Commissioner sees no need to clarify these requirements. Section 132.2(a) as proposed already contains the statement that all establishments are required to register and submit drug listing information "whether or not the output of such establishment or any particular drug so listed enters interstate commerce."

Section 132.51(g) exempts from registration, domestic manufacturers of a virus, serum, toxin, or analogous product intended for the treatment of domestic animals, who hold an unsuspended and unrevoked license issued by the Secretary of Agriculture. Thus, any intrastate manufacturer of such products, or any manufacturer of such products who for any other reason does not hold a USDA license, is required to register and submit a drug list.

The Commissioner rejects the comment that the phrase "a list of drugs used" be used in place of phrase "drug listing" in § 132.2(a). Drug listing requires more than just the submission of a list of drugs used.

The Commissioner has considered the comments concerning the registration and drug listing requirements contained in proposed §§ 132.2(b) and 132.5. Most of these comments reflect a lack of understanding of the proposed regulations. Establishment registration is entirely separate from drug listing. Establishments are required to register under § 132.2 within 5 days after beginning operations or after the submission of a new drug application, new animal drug application, Form 1800 (Medicated Feed Application), antibiotic Forms 5 or 6, or an establishment license application in order to manufacture biological products. At the time of such registration, the owners or operators of such establishments are required to submit a list of every drug in commercial distribution. However, since drugs subject to section 505, 506, 507, or 512 of the Federal Food, Drug, and Cosmetic Act, or 351 of the Public Health Service Act may not be commercially distributed prior to approval by the Food and Drug Administration, it is not necessary for an establishment to include such products in the drug listing information until approval for the commercial marketing of these products has been obtained. An NDC number will not be assigned to such drugs until after commercial distribution of these products has been approved by the Food and Drug Administration and the information required by § 132.5 concerning these drugs has been included in the establishment's drug listing submission. In order to clarify that registration and drug listing are separate requirements, separate forms will be used.

The Commissioner has determined that all animal drugs including animal feeds bearing or containing animal drugs are subject to the registration and drug listing requirements of the Drug Listing Act. As stated in the preamble, however, it is the opinion of the Food and Drug Administration that the intent of the Drug Listing Act can be fulfilled at this time by limiting the drug listing requirements to animal dosage form drugs and drug premixes. The term "drug premixes" refers to all premixes which are intended to be used in the manufacture of an animal feed as defined in section 201(x) of the act. Manufacturers of animal feeds including feed concentrates, feed supplements, and complete animal feeds, bearing or containing an animal drug are exempted by the Commissioner in § 132.-2(a) from furnishing drug listing information at this time. Such manufacturers, however, are required to register their establishments. In order to clarify this policy, an appropriate change has been made in the last sentence of § 132.2(a).

9. One trade association and six manufacturers submitted comments regarding § 132.5. One manufacturer suggested that the statement "bulk drug substance" should be deleted from § 132.5(b)(1). This manufacturer stated that since the bulk drug substance is identified in each submission as required under sections 505, 506, 507, and 512 of the FDC Act, and in view of § 132.5(b)(6) of this regulation, in our judgement to require an additional listing of the bulk drug substance information represents an unnecessary duplication of effort. Another manufacturer commented that it is unnecessary to utilize the concept of "bulk drug substance" in the regulations since the Act is concerned with commercial distribution, which should be limited to drugs prepared in final dosage form and not extended to those fine chemicals which may technically be drugs and which are intended for interplant shipment. One other manufacturer suggested that § 132.5(b)(2) be clarified as to whether or not only one representative container or carton label need be submitted for each drug where differences exist only in that such labeling designates the drug package for hospital use only or indicates different storage conditions because of the use of a different package system. Still another manufacturer recommended that the final order clarify that, where submission of labeling is required, only that labeling which is currently in use should be submitted. This manufacturer was concerned that someone would interpret the requirement for the submission of "a copy of all labeling" to mean cumulative submission of labeling (i.e., all labeling used up to the time of the submission). One manufacturer suggested that § 132.-5(b)(3), (5), and (6) be revised to include a reference to section 151 of the Virus, Serum, Toxin, and Analogous Products Act so as to include veterinary biological products. Two manufacturers and one trade association commented that the reference to section 512 of the Act in § 132.5(b)(4), should be deleted because new animal drugs are not subject to section 503(b)(1) of the Act. One manufacture urged that the requirements for listing of premixes be simplified, perhaps by permitting filing on categories of such products, listing ranges of the various active ingredients, rather than requiring separate filings for custom manufacture of drug premixes for animal feeds.

The Commissioner has rejected the suggestion recommending that the statement "bulk drug substance" be deleted from § 132.5(b)(1). There is no duplication in the requirements for listing for bulk drug substances in § 132.5(b)(1) and (6) or in any parts of § 132.5 where reference is made to sections 505, 506, 507, and 512 of the Act.

The Commissioner agrees with the comment by one manufacturer that the drug listing requirements of the Act are concerned solely with drugs in commercial distribution. However, he disagrees that drug listing should be limited to drugs prepared in final dosage form. The Commissioner believes, that, in order for the Food and Drug Administration to enforce the provisions of the act to protect the public health, it is necessary to obtain and compile drug listing information for all drugs, including bulk drugs substances, which are commercially distributed. The Commissioner has clarified the position of the Food and Drug Administration concerning the noncommercial internal or interplant transfer of bulk drug substances in paragraph 7 above in dealing with comments received regarding §132.2.

The Commissioner has reviewed the comment concerning the requirements of §132.5(b)(2) for the submission of container or carton labels and has determined that where such labeling designates the drug package for hospital use only, or indicates different storage conditions because of the use of a different package system, a copy of such labeling is to be submitted along with a copy of all other labeling as required in § 132.5(b)(2). The Commissioner sees no need to amend § 132.5(b)(2) to clarify this statement since § 132.5(b)(2) as written requires the submission of a copy of all labeling except as specifically provided for in the section.

In order to clarify that, where submission of labeling is required, only labeling which is currently in use should be submitted, the Commissioner has concluded that the word "current" is to be inserted between the words "all" and "labeling" where they appear in § 132.5(b)-(2) and (4).

The Commissioner has rejected the suggestion that § 132.5(b)(3), (5), and (6) be revised to include a reference to section 151 of the Virus, Serum, Toxin, and Analogous Products Act so as to include veterinary biological products. The Virus, Serum, Toxin, and Analogous Products Act is enforced by the U.S. Department of Agriculture. § 132.51(g) in

the proposed regulation contains an exemption from registration for any manufacturer of a virus, serum, toxin, or analogous products intended for treatment of domestic animals, who holds an unsuspended and unrevoked license issued by the Secretary of Agriculture.

The Commissioner agrees with the comments that animal drugs are not subject to section 503(b)(1) of the Act, and thus that both prescription animal drugs and OTC animal drugs are subject to § 132.5(b)(5) and are not subject to § 132.5(b)(4). § 132.5(b)(4) is revised in the final order to clarify this policy.

In order to simplify the procedures for drug listing for drug premixes, the Commissioner has determined that § 132.5(b)(6) should be revised in the final order to provide that, for such products, "* * * the quantitative listing of ingredients may be limited to each variation of level of active drug ingredient."

10. One manufacturer commented that § 132.6 describing the updating of the drug listing should be clarified so as to indicate that only major changes are required to be submitted. This manufacturer expressed concern that § 132.6 could be interpreted as requiring that all labeling revisions, regardless of how minor, must be submitted periodically and that this places an unwarranted and extreme burden on the manufacturers of drug products. The Commissioner has determined that it was not intended that manufacturers be required to submit, at the time of the updating of the drug listing information, copies of revised labeling where the revision consists only of minor changes in arrangement or printing or changes of an editorial nature. Section 132.6(a)(4) of the proposed regulations provides that the drug listing update is to include any material change in any information previously submitted. As noted in paragraph 6 of this preamble, the definition of "any material change" in § 132.1(g) has been revised in the final order to clarify that only significant changes in labels or labeling need be submitted and specifically excludes minor changes in arrangement or printing or changes of an editorial nature. In view of the revision in § 132.1(g), the Commissioner has concluded that there is no need to revise § 132.6 as suggested in this comment.

11. One trade association and three manufacturers submitted comments concerning § 132.7, relating to additional drug listing information. Two of the manufacturers and the trade association suggested that paragraphs (b) and (c) of this section regarding the voluntary submission of production data and a qualitative listing of the inactive ingredients, respectively, be deleted. These commentors stated that request for the voluntary submission of such information should not be included in regulations implementing an act where Congress has specifically stated that the authority to require such information is not authorized by the enabling statute. One of these manufacturers remarked that if production data and qualitative listing of ingredients is desired in specific cases, the Food and Drug Administration should request such information, by letter, from the manufacturer. One manufacturer suggested that prior to requesting submission of information regarding in vitro diagnostic reagents which is deemed to be necessary to carry out the purposes of the Act, or that is requested on a voluntary basis, the Commissioner should seek comments as to the appropriateness of such submissions by way of a proposal in the FEDERAL REGISTER. This manufacturer commented that, although this information may be of value when dealing with traditional drugs administered or applied to man, they were not certain such information would be useful for in vitro diagnostic reagents.

In the opinion of the Commissioner the comment regarding the request in § 132.7 (b) and (c) for the voluntary submission of production data and a qualitative listing of the inactive ingredients was adequately discussed in the preamble to the proposal (37 FR 26432). The information in that paragraph continues to be applicable here. The Commissioner has concluded that the term "production data" in § 132.7(b) does not adequately describe the intent of this section of the regulations. In order to clarify this intent, the term "production data" in § 132.7(b) has been replaced in the final order by the phrase "information concerning the quantity of drug distributed."

The Commissioner sees no merit in the suggestion that, prior to requesting or requiring the submission of information regarding in vitro diagnostic reagents, he seek comments as to the appropriateness of such submissions by way of a proposal in the FEDERAL REGISTER. In paragraph 2 of this preamble the Commissioner set forth the position of the Food and Drug Administration regarding the inclusion of in vitro diagnostic products for coverage under these regulations. The procedures for obtaining information regarding in vitro diagnostic products will be the same as those established for obtaining such information for all other products subject to these regulations.

12. Five trade associations and 11 manufacturers submitted comments concerning § 132.8, relating to notification of the registrant of the drug establishment registration number and drug listing number. One trade association suggested that the Food and Drug Administration revise the regulations as necessary to insure that the manufacturer identification number issued under the National Drug Code system is compatible with the new animal drug application "sponsor" number assigned under 21 CFR 135.501. One manufacturer questioned if a "Labeler Code" will be assigned to firms who distribute drugs under their own label which are manufactured, prepared, propagated, compounded, or processed by a registered establishment. Two trade associations and eight manufacturers recommended against the requirement in § 132.8(b)(3) regarding the exclusive use of the National Drug Code number on labeling. Their comments noted that product labels will normally include several sets of numbers, including a list number, a lot number, a label number, a patent number, a license number, etc., and questioned whether such numbers are to be prohibited. One trade association stated that the National Drug Code System is not adequate to provide for the retrieval of comparative information about drug products, is too long for practical use in hospital systems, and cannot identify the pharmacologic-therapeutic category of any drug. One trade association and four manufacturers objected to the requirements in § 132.8(b)(3) (i) and (ii) regarding the placement of the National Drug Code number on the label. They indicated that the regulations should be revised to indicate that the National Drug Code numbers be placed "prominently" on the label; that there appears to be no logical reason for the requirement that the initials "NDC" be in a different color or type style than that used to print the National Drug Code number; and that there is no need for the use of insignificant leading and following zeroes in the National Drug Code number as it appears on the label. One manufacturer commented that a qualifying statement should be incorporated in § 132.8(b)(3) to indicate that when a National Drug Code number is used in drug labeling, the specific provisions of § 132.8(b)(3) (i) and (ii) apply only to labeling redesigned after publication of the final order. One trade association recommended that custom medicated premixes be exempted from the product identification provisions of the National Drug Code. This association noted that, because such premixes are formulations which are changed frequently, particularly with regard to the vitamin and mineral ingredients, to permit certain accommodations of the needs of the feed manufacturer, routine assignment of product code numbers to each of these formulations is not practical. The association indicated that, if such exemption is not deemed possible, consideration should be given to a "class of drugs" identification procedure. Two trade associations and one manufacturer recommended that the National Drug Code system be made compatible with the Universal Product Code system being developed by the retail industry. In addition to these written comments filed with the Hearing Clerk concerning the compatibility of the National Drug Code and the Universal Product Code, members of the affected industry met with representatives of the Food and Drug Administration to discuss this issue.

The Commissioner has carefully considered each of the comments received regarding § 132.8 together with other pertinent information and his conclusions concerning these comments are as follows:

a. The new animal drug application "sponsor" numbers assigned to manufac-

turers under 21 CFR 135.501 are intended to eliminate the need for repetition of names and addresses of each manufacturer in regulations published pursuant to section 512(i) of the Federal Food, Drug, and Cosmetic Act. The Commissioner believes that it is premature to revise these "sponsor" numbers until the procedures of the drug listing regulations become fully operational. However, when such regulations become fully operational, steps will be taken to assure compatibility between the "Labeler Code" segment of the National Drug Code and the new animal drug application "sponsor" number.

b. "Private-label" distributors of drugs are not required to register under section 510 of the Federal Food, Drug, and Cosmetic Act if they do not engage in any of the activities set out in § 132.1(c). However, the Commissioner has concluded that such distributors may submit drug listing information to the Food and Drug Administration for those products which they distribute under their own label or trade name but which are manufactured, prepared, propagated, compounded, or processed by a registered establishment, in lieu of submission by the establishment. Distributors submitting drug listing information to the Food and Drug Administration will be assigned a "Labeler Code" under the National Drug Code system. Registered establishments shall be responsible for submitting drug listing information and for obtaining from the Food and Drug Administration a "Labeler Code" which uniquely identifies each of the various private-label distributors for whom the establishment manufactures, prepares, propagates, compounds, or processes drug products for commercial distribution if such distributors do not submit drug listing information directly to the Food and Drug Administration and so certify in writing to the registered establishment. Section 132.2 is revised in the final order to permit "private-label" distributors to submit drug listing information and to be assigned a "Labeler Code."

c. There are valid reasons why the National Drug Code number should not be the only "registration or similar number" which may appear in labeling. Accordingly, the sentence "no other registration or similar number may appear in labeling" is deleted from § 132.8(b)(3) in the final order.

d. The comment that the National Drug Code System is not adequate to provide for the retrieval of comparative information about drug products, is too long for practical use in hospital systems, and cannot identify the pharmacologic-therapeutic category of any drug, is rejected as being without merit. The Commissioner has determined that the National Drug Code system, which is specifically provided for in the Drug Listing Act, is adequate to allow the Food and Drug Administration to retrieve information concerning drugs being commercially marketed in the United States to the extent provided for in the act, and as necessary to protect the public health.

e. The Commissioner believes that the requirements, with the exception of the use of leading zeros, in § 132.8(b)(3)(i) and (ii) concerning the placement of the National Drug Code number on the label, are necessary in order to assure that this number is prominently displayed on the label and is readily discernible from other graphic and printed matter on the label. Where the National Drug Code is shown in drug labeling, it is provided that the leading zeros in any segment of the National Drug Code shall appear to prevent errors in transcription and to assure compatibility with the Universal Product Code. Where the National Drug Code is used for product identification by direct imprinting on dosage forms, leading zeros may be dropped from the product segment of the National Drug Code. Section 132.8(b)(3) is amended in the final regulation to reflect this change in the use of leading zeros in the National Drug Code number.

f. There is no need to revise § 132.8(b)(3) to include a qualifying statement that, where the National Drug Code is already being used in labeling, the specific provisions of § 132.8(b)(3)(i) and (ii) apply only to labeling redesigned after publication of the final order. Reasonable time for the affected industry to redesign labels and labeling as may be necessitated by any of the provisions of these regulations is permitted. Manufacturers are allowed to redesign their labels and labeling to conform to the provisions of these regulations at the time of the first printing of labels and labeling on or after July 1, 1973.

g. In response to the comment regarding the assignment of the Product Code segment of the National Drug Code number to custom medicated premixes, § 132.8(b) is revised in the final regulation to provide for the assignment of a separate Product Code only to such premixes where there is a variation in the level of the active drug ingredient.

h. The policy of the Food and Drug Administration is to encourage the use of the National Drug Code number on all drug labels and labeling, including the label of any prescription drug container furnished to a consumer. The Commissioner believes that such use of the National Drug Code is in the interest of the public health and will be of significant value for the Food and Drug Administration in maintaining surveillance over the distribution of drugs in the United States. The retail industry is developing a Universal Product Code which will be assigned to every product sold by participating retailers throughout the United States. The Universal Product Code will be translated into a standard symbol that is preprinted on each consumer package and electronically scanned at retail checkouts to facilitate retail price totaling and inventory control. The Commissioner has determined that it is not the policy of the Food and Drug Administration to prevent industry from developing procedures to assist in the control and marketing of drug products insofar as such procedures do not conflict with public health considerations. The Commissioner has concluded that in order to encourage the use of the National Drug Code on drug labels and labeling and to reduce the multiplicity of product identification numbers appearing on drug labels and labeling, procedures shall be established to assure that the National Drug Code is compatible with the Universal Product Code. Agreement has been reached by members of the industry and the Food and Drug Administration on procedures to achieve compatibility of the National Drug Code (NDC) and the Universal Product Code. Section 132.8 is amended in the final order to reflect these procedures to assure compatibility between the National Drug Code and the Universal Product Code.

13. Comments on § 132.9, relating to inspection of registrations and drug listings, were received from six manufacturers and three trade organizations. The principal comments were that full confidentiality should be afforded to all information voluntarily submitted and which a manufacturer indicates is confidential or of a nature that he would not ordinarily disclose; the phrase "a matter of public knowledge" as used in the regulation is too vague and uncertain; and the proposed regulations fail to clearly state that any of the information supplied on the listing form which constitutes a trade secret or is otherwise entitled to confidential treatment will not be available for public disclosure. Several of the commenters requested that the comments which they previously submitted in regard to the public information proposal published in the FEDERAL REGISTER on May 15, 1972 (37 FR 9128), be applied to this proposal as well.

The applicable statutes (18 U.S.C. 1905 and 21 U.S.C. 331(j)) provide for the confidentiality of trade secrets obtained from a person. The Food and Drug Administration is bound by these statutes and will treat as confidential all information that has been demonstrated by the submitter as falling within the confidentiality provisions of either of those statutes. The information which is listed in the regulation as being illustrative of the type of information that will be available for public disclosure is that which is clearly not subject to the above-cited statutes.

14. The following comments were received in regard to § 132.31, relating to drug listing requirements for foreign drug establishments. One manufacturer commented that firms frequently import a new drug either in finished or bulk form, which does not have an approved new drug application or antibiotic or Form 5 or 6, to stockpile the drug in anticipation of FDA approval. The firm stated that since a new drug cannot be listed until it has been approved, § 132.31 should be amended to allow importation, but not commercial distribution prior to drug listing. Another manufacturer recommended that the entire § 132.31 be deleted from the regulation because foreign drug firms are not required to reg-

ister and therefore cannot be required to submit drug listing information.

The Commissioner has concluded that the drug listing requirements apply only to products in commercial distribution, as defined in § 132.1(d) of the proposal. Shipment or delivery of a new human drug that is being imported or offered for import into the United States pursuant to the investigational use provisions of § 130.3 is not commercial distribution and the drug is not required to be listed. Section 132.31(b) is revised to clarify this point.

The Commissioner does not agree with the contention that because foreign drug firms are not required to register they cannot be required to submit drug listing information. The purpose of the Drug Listing Act is to provide the Commissioner with a current list of each drug commercially distributed in the United States. Without information on imports such a list would be incomplete. It would also be a gross inequity to impose such a requirement on domestic producers while not imposing a comparable requirement on imports. The act is clear on this point and the legislative history also demonstrates that Congress intended foreign manufacturers to submit listing information on any drug which they import into the United States for commercial distribution.

15. Questions have been raised about the justification for the exemption presently contained in § 132.51(h), for governmental officers and employees, particularly in light of the clear congressional intent expressed in the Drug Listing Act that a single list be developed for all drug products distributed in interstate or intrastate commerce in the United States. The Commissioner has concluded that registration and a listing of drugs manufactured, prepared, propagated, compounded, or processed by any governmental agency, officer, or employee is clearly within the intent of the Drug Listing Act and is required to carry out the public health purposes of the act. Accordingly, this exemption is no longer in the public interest and has been deleted in the final regulations.

16. Two manufacturers and two trade associations submitted comments concerning § 132.51, relating to exemptions for domestic establishments. One trade association suggested that the introduction to this section should be revised to include the phrase "and/or filing of drug information." One manufacturer recommended that this section be revised by adding a new paragraph to exempt intermediate premixes, feed additive concentrates, and feed additive supplements. One trade association and one manufacturer suggested that § 132.51(f) be revised by deleting the phrase "or drug-containing feed concentrates" that appears in two places and by substituting the term "FD Form 1800" for the term "an antibiotic Form 10."

The Commissioner agrees with the comment that the introduction of this section should be revised to include a phrase such as "and/or filing of drug information" and the introduction has been revised accordingly.

The Commissioner in paragraph 8 of this preamble gave his conclusions concerning the comments that intermediate premixes, feed additive concentrates, and feed additive supplements be exempt along with medicated feeds from drug listing. These conclusions are applicable to the comments received regarding § 132.51. In addition, the Commissioner wishes to make it clear that manufacturers of medicated feeds, including feed additive concentrates, feed additives supplements, and complete animal feeds, are required to register except as specifically provided for in § 132.5(f).

The Commissioner has revised § 132.5 (f) in the final order to reflect the comments made regarding the deletion of the phrase "or drug-containing feed concentrates" that appears in two places and the substitution of the term "FD Form 1800" for the term "an antibiotic Form 10."

All other comments have been carefully considered by the Commissioner and, where deemed to be appropriate, have been incorporated into the regulations as set forth below.

In addition to revising the proposal to reflect the comments received, the Commissioner has added to, deleted, and rearranged parts of the proposal as he deemed necessary for the implementation of the proposed regulations.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 506, 507, 510, 512, 701(a), 704; 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055, and 1057 as amended; 21 U.S.C. 321, 352, 355, 356, 357, 360, 360(b), 371(a), and 374), the Public Health Service Act (sec. 351, 58 Stat. 702, as amended; 42 U.S.C. 262) and the Drug Listing Act of 1972 (Public Law 92–387; 86 Stat. 559–562), and under authority delegated to the Commissioner (21 CFR 2.120), Parts 130 and 132 are amended as follows:

1. In Part 130 by adding a new subparagraph (4) to § 130.27(c) as follows:

§ 130.27 Withdrawal of approval of an application.

* * * * *

(c) * * *

(4) That the applicant has failed to comply with the notice requirements of section 510(j)(2) of the act.

* * * * *

2. By revising Part 132 to read as follows:

Subpart A—Definitions

Sec.
132.1 Definitions.

Subpart B—Procedures for Domestic Drug Establishments

132.2 Who must register and submit a drug list.
132.3 Times for registration and drug listing.
132.4 How and where to register and list drugs.
132.5 Information required in registration and drug listing.
132.6 Updating drug listing information.
132.7 Additional drug listing information.
132.8 Notification of registrant; drug establishment registration number and drug listing number.
132.9 Inspection of registrations and drug listings.
132.10 Amendments to registration.
132.11 Misbranding by reference to registration or to registration number.

Subpart C—Procedures for Foreign Drug Establishments

132.31 Drug listing requirements for foreign drug establishments.

Subpart D—Exemptions

132.51 Exemptions for domestic establishments.

AUTHORITY: Federal Food, Drug, and Cosmetic Act, secs. 201, 502, 505, 506, 507, 510, 512, 701(a), 704; 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055, and 1057 as amended; 21 U.S.C. 321, 352, 355, 356, 357, 360, 360(b), 371(a), and 374, the Public Health Service Act, sec. 351, 58 Stat. 702, as amended; 42 U.S.C. 262; and the Drug Listing Act of 1972, Public Law 92–387; 86 Stat. 559–562; and authority delegated to Commissioner, 21 CFR 2.120.

Subpart A—Definitions

§ 132.1 Definitions.

(a) The term "act" means the Federal Food, Drug, and Cosmetic Act approved June 25, 1938 (52 Stat. 1040 et seq., as amended, 21 U.S.C. 301–392).

(b) "Establishment" means a place of business under one management at one general physical location. The term includes, among others, independent laboratories that engage in control activities for registered drug establishment (e.g., "consulting" laboratories), manufacturers of medicated feeds and of vitamin products that are "drugs" within the meaning of section 201(g) of the act, human blood donor centers, and animal facilities used for the production or control testing of licensed biologicals.

(c) Manufacture, preparation, propagation, compounding, or processing of a drug or drugs means the making by chemical, physical, biological, or other procedures of any articles which meet the definition of drugs as defined in section 201(g) of the act, and including manipulation, sampling, testing, or control procedures applied to the final product or to any part of the process. The term includes repackaging or otherwise changing the container, wrapper, or labeling of any drug package in furtherance of the distribution of the drug from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer.

(d) "Commercial distribution" means any distribution of a human drug except pursuant to the investigational use provisions of § 130.3 of this chapter, and any distribution of an animal drug or an animal feed bearing or containing an animal drug for noninvestigational uses but does not include internal or interplant transfer of a bulk drug substance between registered domestic establishments within the same parent, subsidiary, and/or affiliate company.

(e) "Representative sampling of advertisements" means typical advertising material (excluding labeling as determined in § 1.105(1)(2) of this chapter) which gives a balanced picture of the promotional claims being used for the drug (e.g., if more than one medical journal advertisement is used but their promotional content is essentially identical, only one need be submitted).

(f) "Representative sampling of any other labeling" as used in this part means typical labeling material (excluding labels and package inserts) which gives a balanced picture of the promotional claims being used for the drug (e.g., if more than one brochure is used but their promotional content is essentially identical, only one need be submitted).

(g) "Any material change" includes but is not limited to any change in the name of the drug, in the quantity or identity of the active ingredient(s) or in the quantity or identity of the inactive ingredient(s) where quantitative listing of all ingredients is required pursuant to § 132.7(a)(2), any significant change in the labeling of a prescription drug, and any significant change in the label or package insert of an over-the-counter drug. Changes that are not significant include changes in arrangement or printing or changes of an editorial nature.

(h) "Bulk drug substance" means any substance that is represneted for use in a drug and when used in the manufacturing, processing, or packaging of a drug becomes an active ingredient or a finished dosage form of such drug, but does not include intermediates used in the synthesis of such substances.

(i) "Advertising" and "labeling" include the promotional material described in § 1.105(1) (1) and (2) of this chapter respectively.

(j) The definitions and interpretations contained in sections 201 and 510 of the act shall be applicable to such terms when used in this Part 132.

Subpart B—Procedures for Domestic Drug Establishments

§ 132.2 Who must register and submit a drug list.

(a) Owners or operators of all drug establishments, not exempt under section 510(g) of the act or Subpart D of this Part 132, that engage in the manufacture, preparation, propagation, compounding, or processing of a drug or drugs are required to register and to submit a list of every drug in commercial distribution (except that listing information may be submitted by the parent, subsidiary, and/or affiliate company for all establishments when operations are conducted at more than one establishment and there exists joint ownership and control among all the establishments). Such owners or operators are required to register and to submit a list of every drug in commercial distribution (except that listing information may be submitted by the parent, subsidiary, and/or affiliate company for all establishments when operations are conducted at more than one establishment and there exists joint ownership and control among all the establishments), whether or not the output of such establishment or any particular drug so listed enters interstate commerce, except that drug listing is not required at this time for the manufacturing, preparation, propagation, compounding, or processing of an animal feed (including a feed concentrate, a feed supplement, and a complete animal feed) bearing or containing an animal drug.

(b) Distributors which are not otherwise required to register under section 510 of the act, may submit drug listing information directly to the Food and Drug Administration for those drugs which they distribute under their own label or trade name but which are manufactured, prepared, propagated, compounded, or processed by a registered establishment. Where drug listing information is submitted by a distributor, the registration number of the drug establishment which manufactured, prepared, propagated, compounded, or processed the drug shall be included for each drug listed. If a distributor does not elect to obtain a "Labeler Code" the registered establishment shall submit the drug listing information. Such submissions and requests for Labeler Codes shall be made on Form FD–2658 (Registered Establishments' Report of Private Label Distributors). All distributors submitting drug listing information to the Food and Drug Administration assume full responsibility for compliance with all of the requirements of this part. Each distributor at the time of each submission of drug listing information or updating as required under § 132.6 shall so certify to the registered establishment that such submission has been made by providing a signed copy of Form FD–2656 (Registration of Drug Establishment) to the registered establishment which manufactures, prepares, propagates, compounds, or processes the drug. The original of Form FD–2656 (Registration of Drug Establishment) showing such certification shall be submitted to the Food and Drug Administration. Such certification shall be accompanied by a list showing the National Drug Code number assigned to each drug product by the distributor.

(c) Preparatory to engaging in the manufacture, preparation, propagation, compounding, or processing of a drug, owners or operators of establishments who are submitting new drug applications, new animal drug applications, Form FD–1800 (Medicated Feed Application), antibiotic Forms 5 and 6, or an establishment license application in order to manufacture biological products are required to register before the new drug application, new animal drug application, Form FD–1800, antibiotic Form 5 or 6, or establishment license application are approved.

(d) No registration fee is required. Registration and listing do not constitute an admission or agreement or determination that a product is a "drug" within the meaning of section 201(g) of the act.

§ 132.3 Times for registration and drug listing.

The owner or operator of an establishment entering into an operation defined in § 132.1(c) shall register such establishment within 5 days after the beginning of such operation and submit a list of every drug in commercial distribution at that time. If the owner or operator of the establishment defined in § 132.1(c) has not previously entered into such operation, registration shall follow within 5 days after the submission of a new drug application, new animal drug application, Form FD–1800, antibiotic Form 5 or 6, or an establishment license application in order to manufacture biological products. Owners or operators of all establishments so engaged shall register annually between November 15 and December 31 and shall update their drug listing information every June and December.

§ 132.4 How and where to register and list drugs.

(a) The first registration of an establishment shall be on Form FD–2656 (Registration of Drug Establishment) obtainable on request from the Department of Health, Education, and Welfare, Food and Drug Administration, Bureau of Drugs, Registration Section, 5600 Fishers Lane, Rockville, MD 20852, or from Food and Drug Administration district offices. Subsequent annual registration shall also be accomplished on Form FD–2656 (Registration of Drug Establishment), which will be furnished by the Food and Drug Administration before November 15 of each year to establishments whose drug registration for that year was validated pursuant to § 132.8. The completed form shall be mailed to the above address before December 31 of that year.

(b) The first list of drugs and subsequent June and December updatings shall be on Form FD–2657 (Drug Product Listing), obtainable upon request as described in paragraph (a) of this section. In lieu of Form FD–2657 (Drug Product Listing), tapes for computer inputs may be submitted if equivalent in all elements of information as specified in Form FD–2657 (Drug Product Listing). All formats proposed for such use will require initial review and approval by the Food and Drug Administration.

§ 132.5 Information required in registration and drug listing.

(a) Form FD–2656 (Registration of Drug Establishment) requires furnishing or confirming information required by the act. This information includes the name and street address of the drug establishment, including post office ZIP code; all trade names used by the establishment; the kind of ownership or operation (that is, individually owned partnership, or corporation); and the name of the owner or operator of such establishment. The term "name of the owner or operator" shall include in the case of a partnership the name of each partner, and in the case of a corporation the name and title of each corporate officer and

director and the name of the State of incorporation. The information required shall be given separately for each establishment, as defined in § 132.1(b).

(b) Form FD-2657 (Drug Product Listing) requires furnishing information required by the act as follows:

(1) A list of drugs, including bulk drug substances and drug premixes for use in the manufacture of animal feeds as well as finished dosage forms, by established name as defined in section 502(e) of the act and by proprietary name, which are being manufactured, prepared, propagated, compounded, or processed for commercial distribution and which have not been included in any list previously submitted on Form FD-2657 (Drug Product Listing) or in conjunction with the Food and Drug Administration voluntary inventory on Form FD-2422 (Survey Report of Marketed Drugs), or Form FD-2250 (National Drug Code Directory Input).

(2) For each drug so listed which is regarded by the registrant as subject to section 505, 506, 507, or 512 of the act, the new drug application number, abbreviated new drug application number, new animal drug application number, or Form 5 or Form 6 number, and a copy of all current labeling, except that only one representative container or carton label need be submitted where differences exist only in the quantity of contents statement.

(3) For each drug so listed which is regarded by the registrant as subject to section 351 of the Public Health Service Act, the license number of the manufacturer.

(4) For each human drug so listed which is subject to section 503(b)(1) of the act and regarded by the registrant as not subject to section 505, 506, or 507 of the act or 351 of the Public Health Service Act, and which is not manufactured by a registered blood bank, a copy of all current labeling except that only one representative container or carton label need be submitted where differences exist only in the quantity of contents statement and a representative sampling of advertisements.

(5) For each human over-the-counter drug or each animal drug so listed which is regarded by the registrant as not subject to section 505, 506, 507, or 512 of the act, or 351 of the Public Health Service Act, a copy of the label except that only one representative container or carton label need be submitted where differences exist only in the quantity of contents statement, package insert, and a representative sampling of any other labeling.

(6) For each prescription or over-the-counter drug so listed which is regarded by the registrant as not subject to section 505, 506, 507, or 512 of the act, or 351 of the Public Health Service Act, and which is not manufactured by a registered blood bank, quantitative listing of the active ingredient(s). If the drug is in unit dosage form the statements of the quantity of ingredient shall express the amount, not the percent, of such ingredient in each such unit, unless the quantitative listing is expressed as a percentage in the official compendium. If the drug is not in unit dosage form, the statement of the quantity of an ingredient shall express the amount, not the percent, of such ingredient in a specific unit of weight or measure of the drug unless the quantitative listing is expressed as a percentage in the official compendium, except that for drug premixes for use in the manufacture of animal feeds such ingredient which is not an antibiotic may be expressed in terms of percent. If a drug premix has been assigned a Product Code as provided for in § 132.8(b)(2)(iii), the quantitative listing of ingredients may be limited to each variation of level of action drug ingredient.

(7) For each drug listed, the registration number of every drug establishment within the parent company at which it is manufactured, prepared, propagated, compounded, or processed.

(8) For each drug listed, the registration number of every drug establishment within the parent company at which it is manufactured, prepared, propagated, compounded, or processed.

(9) For each drug so listed, the National Drug Code (NDC) number. If no NDC Labeler Code number has been assigned, the Product Code and Package Code will be included and a Labeler Code will be assigned as described in § 132.8(b)(2)(i).

§ 132.6 Updating drug listing information.

(a) After submission of the initial drug listing information, every person who is required to list drugs pursuant to § 132.2 shall submit on Form FD-2657 (Drug Product Listing) during each subsequent June and December, or at the discretion of the registrant at the time the change occurs, the following information:

(1) A list of each drug introduced by the registrant for commercial distribution which has not been included in any list previously submitted. All of the information required by § 132.5(b) shall be provided for each such drug.

(2) A list of each drug formerly listed pursuant to § 132.5(b) for which commercial distribution has been discontinued, including for each drug so listed the NDC number, the identity by established name and proprietary name, and date of discontinuance. It is requested but not required that the reason for discontinuance of distribution be included with this information.

(3) A list of each drug for which a notice of discontinuance was submitted pursuant to paragraph (a)(2) of this section and for which commercial distribution has been resumed, including for each drug so listed the NDC number, the identity by established name as defined in section 502(e) of the act and by any proprietary name, the date of resumption, and any other information required by § 132.5(b) not previously submitted.

(4) Any material change in any information previously submitted.

(b) When no changes have occurred since the previously submitted list, no report is required.

§ 132.7 Additional drug listing information.

(a) In addition to the information routinely required by §§ 132.5 and 132.6, the Commissioner may require submission of the following information by letter or by FEDERAL REGISTER notice:

(1) For a particular drug so listed which is subject to section 503(b)(1) of the act and regarded by the registrant as not subject to section 505, 506, or 507 of the act, upon request made by the Commissioner for good cause, a copy of all advertisements.

(2) For a particular drug product so listed which is regarded by the registrant as not subject to section 505, 506, 507, or 512 of the act, upon a finding by the Commissioner that it is necessary to carry out the purposes of the act, a quantitative listing of all ingredients.

(3) For a particular drug product upon request by the Commissioner, a brief statement of the basis upon which the registrant has determined that the drug product is not subject to section 505, 506, 507, or 512 of the act.

(4) For each registrant, upon a finding by the Commissioner that it is necessary to carry out the purposes of the act, a list of each listed drug product containing a particular ingredient.

(b) It is requested but not required that information concerning the quantity of drug distributed be submitted in conjunction with the annual registration in the format prescribed in section of Form FD-2656A (Optional Distribution Data), for each drug currently listed.

(c) It is requested but not required that a qualitative listing of the inactive ingredients be submitted for all listed drugs in the format prescribed in Form FD-2657 (Drug Product Listing).

(d) It is requested but not required that a quantitative listing of the active ingredients be submitted for all drugs listed which are subject to section 505, 506, 507, or 512 of the act or section 351 of the Public Health Service Act.

§ 132.8 Notification of registrant; drug establishment registration number and drug listing number.

(a) The Commissioner will provide to the registrant a validated copy of Form FD-2656 (Registration of Drug Establishment) as evidence of registration. This validated copy will be sent only to the location shown for the registering establishment. A permanent registration number will be assigned to each drug establishment registered in accordance with these regulations.

(b) A drug listing number will be assigned, using the National Drug Code numbering system, to each drug or class of drugs listed as follows:

(1) If a drug is already listed in the National Drug Code System or in the National Health Related Items Code System, the number will be the same as that assigned pursuant to those codes. A lead zero will be added by the Food and

Drug Administration to the first three characters of the code, which identifies the manufacturer or distributor, to expand the "Labeler Code" segment to four characters. The National Drug Code, Product Code and Package Code configurations used to describe such drugs, or any new drugs added to the product line, will remain the same (i.e., a four-character Product Code and a two-character Package Code). Alphanumeric characters where already used in the Product Code and Package Code segments of the National Drug Code may be retained; however, these alphanumeric characters may be converted to all numeric digits. The manufacturer or distributor shall inform the Food and Drug Administration of such changes.

(2) If a registered establishment or distributor has not previously participated in the National Drug Code system, or in the National Health Related Items Code system, the National Drug Code numbering system will be used in assigning a number, as follows (only numerics will be used):

(i) The first five numeric characters of the 10-character code identify the manufacturer or distributor and are known as the Labeler Code. The Food and Drug Administration will expand the Labeler Code from five to six numeric characters when the available five-character code combinations are exhausted. These code numbers are assigned by the Food and Drug Administration and provided to the registrant along with the validated copy of Form FD-2656 (Registration of Drug Establishment). Any registered firm that does not have an assigned "Labeler Code" will be assigned one when registration and listing information is submitted.

(ii) The last five numeric characters of the 10-character code identify the drug and the trade package size and type. The segment which identifies the drug formulation is known as the Product Code and the segment which identifies the trade package size and type is known as the Package Code. The Product Code and the Package Code shall be assigned by the manufacturer or distributor prior to drug listing and included in Form FD-2657 (Drug Product Listing). Either of two methods may be used by the manufacturer or distributor in assigning the Product and Package Codes: a 3-2 Product-Package Code configuration (i.e., 542-12) or a 4-1 Product-Package Code configuration (i.e., 5421-2). Only one such Product-Package Code configuration may be used by a manufacturer or distributor with a given Labeler Code and this same configuration shall be used in assigning the Product-Package Codes for all drugs included in the drug listing. The manufacturer or distributor shall report to the Food and Drug Administration the Product-Package Code configuration he used in assigning these codes. Once a Product Code has been assigned to a specific drug, this same code may never again be used for any other drug regardless whether the drug has been discontinued.

(iii) If the drug formulation is a custom premix intended for use in the manufacture of an animal feed, a separate Product Code is required only for each variation of level of active drug ingredient.

(3) The NDC number is requested but not required to appear on all drug labels and in all drug labeling, including the label of any prescription drug container furnished to a consumer. If the NDC number is shown on a drug label it shall be placed as follows:

(i) The NDC number shall be placed prominently in the top third of the center panel of the label of the immediate container and of the outside container or wrapper if such there be.

(ii) The NDC number shall be preceded by the initials NDC, in a different color or different type style (font) than that used to print the number if the label is printed rather than typewritten, whenever it is used on a label or in labeling.

(iii) The Product-Package Code configuration shall be indicated and the segments of the number shall be separated by a dash (i.e., NDC 15643-542-12 or NDC 15643-5421-2).

(iv) All 10 characters shall appear and the leading zeros in any segment of the NDC number shall be shown: *Provided, however,* That when the NDC number is used for product identification by direct imprinting on dosage forms, leading zeros may be dropped from the Product Code segment of the NDC number.

(v) The placing of the assigned NDC number on a label or in labeling does not require the submission of a supplemental new drug application, supplemental new animal drug application, or supplemental antibiotic Form 5 or 6.

(4) If any material change occurs in product characteristics (including but not limited to a change in dosage form, active ingredient(s) or active ingredient(s) strength or concentration, route of administration, or product name, etc.) a new NDC number shall be assigned by the registrant to the new product version and the information submitted to the Food and Drug Administration. If a change in packaging code can be revised the trade package code can be revised without the necessity of assigning a new product code segment, but the Food and Drug Administration shall be informed about the new trade package code and characteristics.

(c) Although registration and drug listing are required to engage in the drug activities described in § 132.2, validation of registration and the assignment of a drug listing number do not, in themselves, establish that the holder of the registration is legally qualified to deal in such drugs.

§ 132.9 Inspection of registrations and drug listings.

(a) A copy of the Form FD-2656 (Registration of Drug Establishment) filed by the registrant will be available for inspection pursuant to section 510(f) of the act, at the Department of Health, Education, and Welfare, Food and Drug Administration, Bureau of Drugs, Registration Section, 5600 Fishers Lane, Rockville, MD 20852. In addition, there will be available for inspection at each of the Food and Drug Administration district offices the same information for firms within the geographical area of such district office. Upon request and receipt of a self-addressed stamped envelope, verification of registration number, or location of a registered concern will be provided.

(1) The following information submitted pursuant to the drug listing requirements is illustrative of the type of information that will be available for public disclosure when it is compiled:

(i) A list of all drug products.

(ii) A list of all drug products broken down by labeled indications or pharmacological category.

(iii) A list of all drug products, broken down by manufacturer.

(iv) A list of a drug product's active ingredients.

(v) A list of drug products newly marketed or where marketing is resumed.

(vi) A list of drug products discontinued.

(vii) All labeling.

(viii) All advertising.

(ix) All data or information that has already become a matter of public knowledge.

(2) The following information submitted pursuant to the drug listing requirement is illustrative of the type of information that will not be available for public disclosure:

(i) Any data or information submitted as the basis upon which it has been determined that a particular drug product is not subject to section 505, 506, 507, or 512 of the act.

(ii) A list of a drug product's inactive ingredients.

(iii) A list of drugs containing a particular ingredient.

(iv) *Provided,* That any of the above information will be available for public disclosure if it has already become a matter of public knowledge or if the Commissioner finds that confidentiality would be inconsistent with protection of the public health.

(b) Requests for information about registrations and drug listings should be directed to the Department of Health, Education, and Welfare, Food and Drug Administration, Bureau of Drugs, Registration Section, 5600 Fishers Lane, Rockville, MD 20852.

§ 132.10 Amendments to registration.

Changes in individual ownership, corporate or partnership structure location or drug-handling activity, shall be submitted by Form FD-2656 (Registration of Drug Establishment) as amendment to registration within 5 days of such changes. Changes in the names of officers and directors of the corporations do not require such amendment but must be shown at time of annual registration.

§ 132.11 **Misbranding by reference to registration or to registration number.**

Registration of a drug establishment or drug wholesaler or assignment of a registration number or assignment of a NDC number does not in any way denote approval of the firm or its products. Any representation that creates an impression of official approval because of registration or possession of registration number or NDC number is misleading and constitutes misbranding.

Subpart C—Procedures for Foreign Drug Establishments

§ 132.31 **Drug listing requirements for foreign drug establishments.**

(a) Every foreign drug establishment shall comply with the drug listing requirements contained in Subpart B of this part, unless exempt under Subpart D of this part, whether or not it is also registered.

(b) No drug may be imported from a foreign drug establishment into the United States except a drug imported or offered for import pursuant to the investigational use provisions of § 130.3, unless it is first the subject of a drug listing as required in Subpart B of this part. The drug listing information shall be in the English language.

(c) Foreign drug establishments shall submit as part of the drug listing, the name and address of the establishment and the name of the individual responsible for submitting drug listing information. Any changes in this information shall be reported to the Food and Drug Administration at the intervals specified for updating drug listing information in § 132.6(a).

Subpart D—Exemptions

§ 132.51 **Exemptions for domestic establishments.**

The following classes of persons are exempt from registration and drug listing in accordance with this Part 132 under the provisions of section 510(g), (1), (2), and (3) of the act, or because the Commissioner has found, under section 510(g)(4), that such registration is not necessary for the protection of the public health.

(a) Pharmacies that are operating under applicable local laws regulating dispersing of prescription drugs and that do not manufacture, prepare, propagate, compound, or process drugs for sale other than in the regular course of the practice of the profession of pharmacy including the business of dispensing and selling drugs at retail. The supplying by such pharmacies of prescription drugs to a practitioner licensed to administer such drugs for his use in the course of his professional practice or to other pharmacies to meet temporary inventory shortages are not acts which require such pharmacies to register.

(b) Hospitals, clinics, and public health agencies which maintain establishments in conformance with any applicable local laws regulating the practices of pharmacy and medicine and which are regularly engaged in dispensing prescription drugs, other than human blood or blood products, upon prescription of practitioners licensed by law to administer such drug for patients under the care of such practitioners in the course of their professional practice.

(c) Practitioners who are licensed by law to prescribe or administer drugs and who manufacture, prepare, propagate, compound, or process drugs solely for use in the course of their professional practice.

(d) Persons who manufacture, prepare, propagate, compound, or process drugs solely for use in research, teaching, or chemical analysis and not for sale.

(e) Manufacturers of harmless inactive ingredients which are excipients, colorings, flavorings, emulsifiers, lubricants, preservatives, or solvents that become components of drugs, and who otherwise would not be required to register under the provisions of this Part 132.

(f) Any person who uses drugs to prepare feed for his own animals: *Provided*, That under the act and its regulations such person would not be required to hold an approved new animal drug application (or supplement thereto) or a Form FD-1800 in order to possess and use the drug.

(g) Any manufacturer of a virus, serum, toxin, or analogous product intended for treatment of domestic animals, who holds an unsuspended and unrevoked license issued by the Secretary of Agriculture under the animal virus-serum-toxin law of March 4, 1913 (37 Stat. 832; 21 U.S.C. 151 et seq.): *Provided*, That such exemption from registration shall apply only with respect to the manufacture of such animal virus, serum, toxin, or analogous product.

(h) Carriers, by reason of their receipt, carriage, holding, or delivery of drugs in the usual course of business as carriers.

Effective date. This order shall be effective on March 7, 1973, except that § 132.8(b)(3) shall not be effective for labeling bearing a National Drug Code number printed prior to July 1, 1973. All registered drug establishments and all distributors who voluntarily elect to submit drug listing information shall submit the first drug listing to the Food and Drug Administration during the month of June 1973.

Dated: March 2, 1973.

SHERWIN GARDNER,
Deputy Commissioner of Food and Drugs.

[FR Doc.73-4319 Filed 3-6-73;8:45 am]

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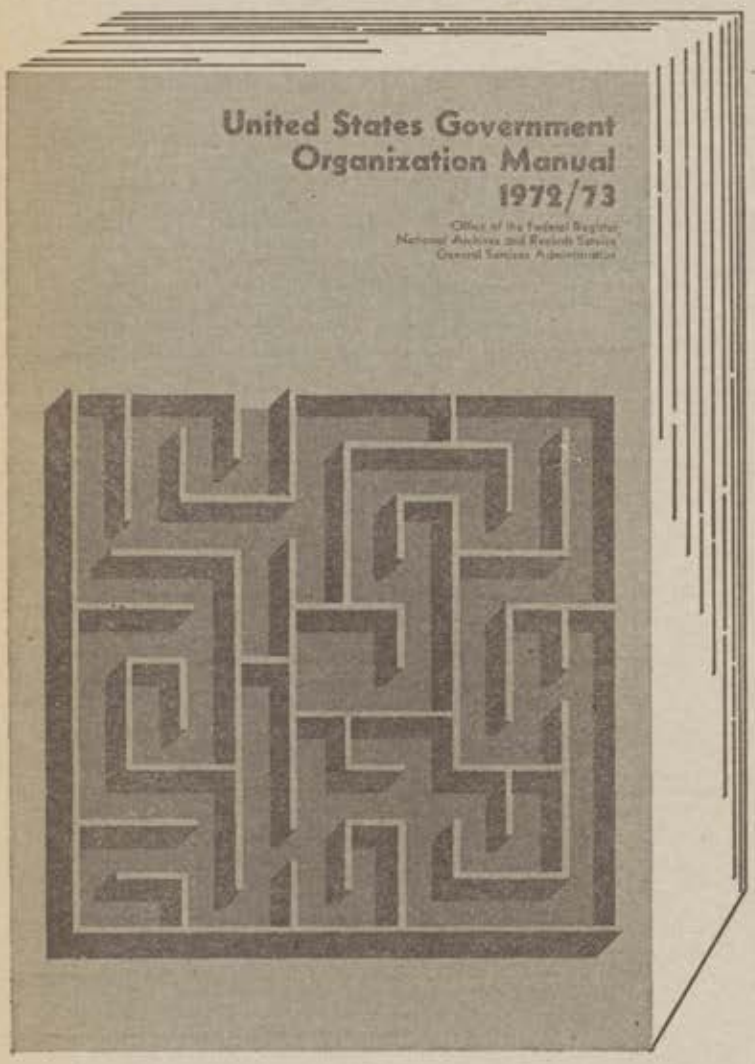

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