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PART I

(Part II begins on page 9555)

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.

(Continued inside)

REMINDERS

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

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List of CFR Parts Affected

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

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

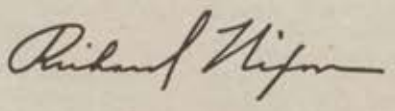
Presidential Documents

Title 3—The President

EXECUTIVE ORDER 11711

Inspection of Income, Excess-Profits, Estate, and Gift Tax Returns by the Senate Committee on Government Operations

By virtue of the authority vested in me by section 55(a) of the Internal Revenue Code of 1939, as amended (26 U.S.C. (1952 Ed.) 55(a)), and by section 6103(a) of the Internal Revenue Code of 1954 (26 U.S.C. 6103(a)), it is hereby ordered that any income, excess-profits, estate, or gift tax return for the years 1950 to 1973, inclusive, shall, during the Ninety-third Congress, be open to inspection by the Senate Committee on Government Operations or any duly authorized subcommittee thereof, in connection with its studies of the operation of Government activities at all levels with a view to determining the economy and efficiency of the Government. Such inspection shall be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in Treasury Decisions 6132 and 6133, relating to the inspection of returns by committees of the Congress, approved by the President on May 3, 1955.



THE WHITE HOUSE,
April 13, 1973.

[FR Doc.73-7452 Filed 4-13-73;12:44 pm]

Rules and Regulations

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Veterans Administration

Section 213.3327 is amended to show that following positions are excepted under schedule C: One Confidential Assistant to the Administrator, three Confidential Assistants to the Executive Assistant to the Administrator, and two Confidential Assistants to the Assistant Deputy Administrator.

Effective April 17, 1973, paragraphs (a)(6), (a)(7), and (a)(8) of § 213.3327 are added as set out below.

§ 213.3327 Veterans Administration.

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

(6) One Confidential Assistant to the Administrator.

(7) Three Confidential Assistants to the Executive Assistant to the Administrator.

(8) Two Confidential Assistants to the Assistant Deputy Administrator.

* * * * *

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

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

[FR Doc.73–7385 Filed 4–16–73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Housing and Urban Development

Section 213.3384 is amended to reflect the following title changes: From Private Secretary to the Assistant to the Secretary for Congressional Relations to Private Secretary to the Assistant Secretary for Legislative Affairs; from Private Secretary to the Deputy Assistant to the Secretary for Congressional Relations to Private Secretary to the Deputy Assistant Secretary for Legislative Affairs, and from Staff Assistant to the Director for Public Affairs to Staff Assistant to the Assistant to the Secretary (Public Affairs).

Effective April 17, 1973, paragraphs (a)(10), (a)(23), and (a)(25) of § 213.3384 are amended as set out below.

§ 213.3384 Department of Housing and Urban Development.

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

(10) One Private Secretary to the Assistant Secretary for Legislative Affairs.

* * * * *

(23) One Private Secretary to the Deputy Assistant Secretary for Legislative Affairs.

* * * * *

(25) One Staff Assistant to the Assistant to the Secretary (Public Affairs).

* * * * *

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

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

[FR Doc.73–7386 Filed 4–16–73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Transportation

Section 213.3394 is amended to show that one position of Legislative Affairs Officer, Office of the General Manager, National Transportation Safety Board, is excepted under schedule C.

Effective April 17, 1973, § 213.3394 (b)(4) is added as set out below.

§ 213.3394 Department of Transportation.

* * * * *

(b) *National Transportation Safety Board.* * * *

(4) One Legislative Affairs Officer, Office of the General Manager.

* * * * *

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

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

[FR Doc.73–7384 Filed 4–16–73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Housing and Urban Development

Section 213.3384 is amended to show that the following positions in the Office of the Assistant to the Secretary for Public Affairs are excepted under schedule C: Three Public Information Officers and two Public Information Specialists.

Effective on April 17, 1973, paragraphs (a)(46) and (a)(47) are added to § 213.3384 as set out below.

§ 213.3384 Department of Housing and Urban Development.

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

(46) Three Public Information Officers, Office of the Assistant to the Secretary for Public Affairs.

(47) Two Public Information Specialists, Office of the Assistant to the Secretary for Public Affairs.

* * * * *

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

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

[FR Doc.73–7475 Filed 4–16–73;8:45 am]

Title 7—Agriculture

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

[Valencia Orange Reg. 425, Amdt. 1]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation increases the quantity of California-Arizona valencia oranges that may be shipped to fresh market during the weekly regulation period April 6–12, 1973. The quantity that may be shipped is increased due to improved market conditions for California-Arizona valencia oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 908.

(a) *Findings.*—(1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR part 908), regulating the handling of valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) and upon the basis of the recommendation and information submitted by the Valencia Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Valencia Orange Regulation 425 (38 FR 8661). The marketing picture now indicates that there is a greater demand for valencia oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of valencia oranges to fill the current demand thereby making a greater quantity of valencia oranges available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this

amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of valencia oranges grown in Arizona and designated part of California.

(b) *Order, as amended.*—The provisions in paragraph (b)(1)(iii) of § 908.725 (Valencia Orange Regulation 425 (38 FR 8661)) are hereby amended to read as follows:

§ 908.725 Valencia Orange Regulation 425.

* * * * *

(b) *Order.* (1) * * *

(iii) District 3: 475,000 cartons.

* * * * *

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

Dated: April 11, 1973.

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

[FR Doc.73-7352 Filed 4-16-73;8:45 am]

[Amdt. 2]

PART 966—TOMATOES GROWN IN FLORIDA

Limitation of Shipments

This amendment relieves restrictions on the handling of tomatoes grown in Florida by increasing the maximum net weight tolerance per carton.

Findings.—Pursuant to Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in the production area, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and upon the basis of the recommendation and information submitted by the Florida Tomato Committee, established pursuant to said marketing agreement and order, and upon other available information, it is hereby found that the amendment to the limitation of shipments hereinafter set forth will tend to effectuate the declared policy of the act.

The automatic weighing and packing equipment in the packing houses at the present time cannot be adjusted finely enough for the present 1½ pound net weight range without exceeding the underweight tolerance. This amendment will not affect imports.

It is hereby further found that it is impracticable to give preliminary notice, or engage in public rulemaking procedure, and that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) because: (1) The time intervening between the date when the information upon which this regulation 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; (2) more orderly marketing than would otherwise prevail will be promoted by regulating the handling of tomatoes in the manner set forth in this amendment; (3) compliance with this amendment will not require any special preparation by handlers which cannot be completed by the effective date; and (4) this amendment relieves restrictions on the handling of tomatoes in the production area.

Regulation, as amended.—In § 966.310 (37 FR 21423; 24735), paragraph (b) is hereby amended to read as follows:

§ 966.310 Limitation of shipments.

* * * * *

(b) *Container net weight requirements.*—(1) No person shall handle any lot of tomatoes unless they are packed in one of the following net weight ranges:

Container net weight	Minimum net weight	Maximum net weight
	Pounds	
20	20	22
30	30	32
40	40	42
60	60	62

(2) To allow for variations incident to proper packing, not more than a total of 15 percent, by count, of the containers in any lot may vary from the net weight specified.

* * * * *

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

Effective date.—Dated April 12, 1973, to become effective April 12, 1973.

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

[FR Doc.73-7404 Filed 4-16-73;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

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

Areas Quarantined

This amendment quarantines portions of San Bernardino County in California because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR part 82, as amended, apply to the quarantined 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, new subdivisions (vii) and (viii) relating to San Bernadino County are added to read:

(a) * * *

(1) *California.* * * *

(vii) The premises of Fobian Ranch (No. 1), 17595 Slover Avenue, City of Bloomington in San Bernardino County, located in the east one-half of the east one-half of the west one-half of lot 587.

(viii) The premises of Fobian Ranch (No. 2), 17922 Slover Avenue, city of Bloomington in San Bernardino County, located in Orchard tract No. 1, tract No. 1930 west, lot 35.

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

Effective date.—The foregoing amendment shall become effective April 11, 1973.

The amendment imposes certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish its purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 11th day of April 1973.

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

[FR Doc.73-7403 Filed 4-16-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airworthiness Docket No. 73-SW-16, Amdt. 39-1622]

PART 39—AIRWORTHINESS DIRECTIVES

Bell Model 206A, 206B, 206A-1 and 206B-1 Helicopters

Amendment 39-1602 (38 FR 6377), A.D. 73-5-4, required an inspection of each pylon support link near the top bearing for cracks prior to further flight and a daily visual check for cracks in each link on Bell Model 206A, 206B, 206A-1 and 206B-1 helicopters. It also required disassembly and inspection of each link bearing inner race face within the next 10 hours time in service after receipt of the message dated February 28, 1973, or on March 12, 1973, as applicable. The manufacturer also issued Service Bulletin No. 206-01-73-2 dated March 9, 1973. Since issuing Amendment 39-1602, no additional reports of cracked pylon links have been confirmed; however, the

manufacturer and the FAA believe, in the interest of safety, it is necessary to supersede A.D. 73-5-4, Amdt. 39-1602 with a new A.D. that requires a more thorough one-time inspection and a 25-hour periodic inspection of the top bearing area of the pylon support links. A new pylon support link, P/N 206-031-589, has been designed by the manufacturer and will be available at a future date.

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

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

BELL: Applies to Bell Models 206A, 206B, 206 A-1 and 206B-1 helicopters equipped with pylon support links, P/N 206-031-508-5 or -7 certificated in all categories.

Compliance required as indicated.

To prevent possible failure of a pylon support link, P/N 206-031-508-5 or -7 accomplish the following:

(a) Within the next 10 hours time in service after the effective date of this A.D., unless already accomplished, inspect the pylon support link assemblies in accordance with part II of Bell Helicopter Co. Service Bulletin No. 206-01-73-2, revision A, dated March 27, 1973, or later FAA approved revision or in accordance with an equivalent procedure approved by the Chief, Engineering and Manufacturing Branch, Flight Standards Division, Southwest Region, Federal Aviation Administration. If the bearing inner race measures more than 1.255 inches in diameter or there is any crack in the link, the link assembly must be replaced prior to next flight.

(b) Within 25 hours time in service after compliance with paragraph (a) and thereafter at intervals not to exceed 25 hours from the last inspection, inspect the pylon support link assemblies in accordance with part III of Bell Service Bulletin No. 206-01-73-2, revision A, dated March 27, 1973, or later FAA approved revision or in accordance with an equivalent procedure approved by the Chief, Engineering and Manufacturing Branch, Flight Standards Division, Southwest Region, Federal Aviation Administration. If any crack is found, the link assembly must be removed and replaced prior to next flight.

(c) This airworthiness directive is no longer applicable when pylon support links, P/N 206-031-589, are installed.

This supersedes Amendment 39-1602 (38 FR 6377), A.D. 73-5-4.

This amendment becomes effective April 18, 1973.

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

Issued in Forth Worth, Tex., on April 5, 1973.

HENRY L. NEWMAN,
Director, Southwest Region.

[FR Doc.73-7331 Filed 4-16-73;8:45 am]

[Docket No. 73-SO-21, Amdt. 39-1620]

PART 39—AIRWORTHINESS DIRECTIVES

Pitts Model S-2A Series Airplanes

Amendment 39-1607 (38 FR 8242), AD 73-7-6 requires inspection of the horizontal stabilizer tubes for cracks and repair as necessary on Pitts Model S-2A airplanes. After issuing Amendment 39-1607, the Agency determined that the repetitive inspection could be eliminated if the airplanes are modified in accordance with Pitts Service Bulletin No. 7 dated March 12, 1973. Therefore, the AD is being amended to delete the necessity for repetitive inspections after the airplane has been modified in accordance with Pitts Service Bulletin No. 7.

Since this amendment provides an alternative means of compliance and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 part 39 of the Federal Aviation Regulations, Amendment 39-1607 (38 FR 8242), AD 73-7-6 is amended as follows:

Amend paragraph (b) of AD 73-7-6 to read:

(b) Repeat the inspection in paragraph (a) above every 50 hours time in service after initial inspection or until the aircraft has been modified in accordance with Pitts Service Bulletin No. 7, dated March 12, 1973. Modification in accordance with Service Bulletin No. 7 eliminates the need for repetitive inspection.

This amendment becomes effective April 17, 1973.

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

Issued in East Point, Ga., on April 5, 1973.

DUANE W. FREER,
Acting Director, Southern Region.

[FR Doc.73-7330 Filed 4-16-73;8:45 am]

[Docket No. 12385; Amdt. 39-1624]

PART 39—AIRWORTHINESS DIRECTIVES

Rolls Royce Continental Engines

Amendment 39-1567 (37 FR 25158), AD 72-25-2 requires repetitive inspections of oil pump drive gears and replacement, if necessary, on specified Rolls Royce Continental engines. After issuing Amendment 39-1567 the FAA has been informed that Rolls Royce Service Bulletin No. T-200, dated November 26, 1971, that is referenced in the airworthiness directive (AD), can be obtained in the United States from Teledyne Continental Motors. Therefore, the AD is being amended by adding a note containing the address to which the requests for the referenced service bulletin may be forwarded.

Since this amendment provides a clarification only, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

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

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of part 39 of the Federal Aviation Administration, amendment 39-1567 (37 FR 25158), AD 72-25-2 is amended by adding a note at the end of the AD to read as follows:

NOTE.—Copies of Rolls Royce Service Bulletin No. T-200, dated November 26, 1971, may be obtained by request to the following address:

Teledyne Continental Motors, attention: Circulation Dept., P.O. Box 90, Mobile, Ala. 36601.

This amendment becomes effective April 23, 1973.

Issued in Washington, D.C., on April 10, 1973.

JAMES F. RUDOLPH,
Director,
Flight Standards Service.

[FR Doc.73-7329 Filed 4-16-73;8:45 am]

[Airspace Docket No. 72-NW-25]

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

Designation of VOR Federal Airway

On March 15, 1973, FR Doc. 73-4992 was published in the FEDERAL REGISTER (38 FR 6989) which amends part 71 of the Federal Aviation Regulations, effective 0901 G.m.t., May 24, 1973, by designating a new VOR Federal Airway from Burley, Idaho, to St. Anthony, Idaho, intersection. Action is taken herein to correct the description of St. Anthony intersection.

Since amending the description of this intersection is a minor editorial change on which the public would have no particular reason to comment, notice and public procedure thereon are unnecessary.

In consideration of the foregoing, effective on April 17, 1973, FR Doc. 73-4992 (38 FR 6989) is amended, as hereinafter set forth.

In V-365, line four, delete "Dubois, Idaho, 099° radials." and substitute "Dubois, Idaho, 100° radials." therefor.

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

Issued in Washington, D.C. on April 9, 1973.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73-7333 Filed 4-16-73;8:45 am]

[Airspace Docket No. 73-EA-4]

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

Alteration of Control Zone and Transition Area

On page 4980 of the FEDERAL REGISTER for February 23, 1973, the Federal Aviation Administration published proposed regulations which would alter the Hazleton, Pa., control zone (38 FR 384) and transition area (38 FR 500).

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

In view of the foregoing, the proposed regulations are hereby adopted, effective 0901 G.m.t. June 21, 1973.

(Sec. 307(a), Federal Aviation Act, 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 April 4, 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 Hazleton, Pa., control zone and insert the following in lieu thereof:

Within a 5-mile radius of the center (40°59'13" N., 75°59'36" W.) of Hazleton Municipal Airport, Hazleton, Pa.; within a 5.5-mile radius of the center of the airport, extending clockwise from a 040° bearing to a 090° bearing from the airport; within 1.5 miles each side of the Hazleton VOR 082° radial, extending from the 5-mile radius zone to the VOR; within 2 miles each side of the Hazleton VOR 084° radial, extending from 7 miles east of the VOR to 13.5 miles east of the VOR; within 2 miles each side of a 276° bearing from the Weatherly RBN (40°58'47" N., 75° 53'52" W.), extending from the 5-mile radius zone to the RBN. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

2. Amend § 71.181 of part 71 of the Federal Aviation Regulations so as to delete the description of the Hazleton, Pa., transition area and insert the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the center (40°59'13" N., 75°59'36" W.) of Hazleton Municipal Airport, Hazleton, Pa.; within 3.5 miles each side of the Hazleton VOR 262° radial, extending from the 8.5-mile radius area to 11.5 miles west of the VOR; within 4.5 miles each side of the Hazleton VOR 084° radial, extending from the 8.5-mile radius area to 19 miles east of the VOR; within 4.5 miles each side of a 071° bearing from the Weatherly RBN (40°58'47" N., 75°53'52" W.), extending from the 8.5-mile-radius area to 10 miles east of the RBN; within 3.5 miles each side of a 076° bearing from the Weatherly RBN, extending from the 8.5-mile radius area to 11.5 miles east of the RBN.

[FR Doc.73-7335 Filed 4-16-73;8:45 am]

[Airspace Docket No. 73-RM-6]

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

Revocation of Control Zone and Alteration of Transition Area

The purpose of this amendment to part 71 of the Federal Aviation Regulations is to revoke the Dillon, Mont., control zone and alter the description of the Dillon, Mont., transition area.

Among the requirements for any control zone is the necessity for a federally certified weather observer who must take hourly and special weather observations at the airport upon which the control zone is designated. The FAA Flight Service Station personnel at Dillon, Mont., have been taking these weather observations. The FAA Flight Service Station will be decommissioned approximately June 15, 1973, and weather observations will no longer be available to support a control zone.

The area of Dillon, Mont., will continue to be served by 1,200-foot and 11,700-foot MSL transition areas, plus a 700-foot transition area. These transition areas will adequately provide controlled airspace for aircraft executing instrument approach procedures at Dillon Airport. In view of the above, the Dillon, Mont., control zone is being revoked.

In order to provide controlled airspace above 700 feet above the surface for aircraft executing prescribed instrument procedures at Dillon, a 700-foot transition area is required to replace the control zone.

Since this amendment is less restrictive than the currently designated airspace and would pose no additional burden on any person, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, in § 71.171 (38 FR 351) the Dillon, Mont., control zone is revoked.

In § 71.181 (38 FR 435) the description of the Dillion, Mont., transition area is amended to read as follows:

DILLION, MONT.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Dillon Airport (lat. 45°15'20" N., long. 112°33'10" W.) and within 3 miles each side of the Dillon VORTAC 025° radial, extending from the 6-mile-radius zone to 8.5 miles northeast of the VORTAC; and that airspace extending upward from 1,200 feet above the surface within 9.5 miles northwest and 6 miles southeast of the Dillon VORTAC 025° radial, extending from the VORTAC to 24 miles northeast; and that airspace extending upward from 11,700 feet MSL within 7.5 miles west and 10.5 miles east of the Dillon VORTAC 168° and 348° radials extending from 4.5 miles north to 19.5 miles south of the VORTAC.

Effective date.—This amendment shall be effective 0901 G.m.t., June 21, 1973.

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

Issued in Aurora, Colo., on April 6, 1973.

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

[FR Doc.73-7334 Filed 4-16-73;8:45 am]

[Airspace Docket No. 72-SW-78]

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

Alteration and Revocation of VOR Federal Airways

On January 29, 1973, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (38 FR 2704) stating that the Federal Aviation Administration (FAA) was considering an amendment to part 71 of the Federal Aviation Regulations that would modify several VOR Federal airways in the Houston, Tex., terminal area, and would revoke those not normally used.

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

In consideration of the foregoing, part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., June 21, 1973, as hereinafter set forth.

Section 71.123 (37 FR 307) is amended as follows:

1. In V-13:

Delete all before "Shreveport, La.," and substitute "From Corpus Christi, Tex.; via INT Corpus Christi 038° and Palacios, Tex., 241° radials; Palacios; Humble, Tex., Lufkin, Tex.; including an east alternate from Humble via Daisetta, Tex., to Lufkin;" therefor.

2. In V-15:

Delete all before "College Station, Tex.," and substitute "From Scholes, Tex., via Houston, Tex.; Humble, Tex.; Navasota, Tex.;" therefor.

3. In V-20:

Delete all before "New Orleans, La.," and substitute "From McAllen, Tex., via INT McAllen 039° and Corpus Christi, Tex., 181° radials; Corpus Christi, including a south alternate from McAllen via Harlingen, Tex., to INT McAllen 039° and Corpus Christi 181° radials; INT Corpus Christi 054° and Palacios, Tex., 226° radials; Palacios; Houston, Tex.; Beaumont, Tex.; Lake Charles, La.; including a north alternate via INT Beaumont 056° and Lake Charles 272° radials; Lafayette, La., including a N alternate via INT Lake Charles 064° and Lafayette 285° radials;" therfor.

4. In V-70.

Delete all before "Lafayette, La.;" and substitute "From Corpus Christi, Tex.,

via INT Corpus Christi 054° and Palacios, Tex., 226° radials, Palacios; Scholes, Tex.; Sabine Pass, Tex.; Lake Charles, La.;" therefor.

5. In V–76:

Delete "via Eagle Lake, Tex.; Scholes, Tex." and substitute "via Eagle Lake, Tex." therefor.

6. In V–180:

V–180 is deleted.

7. in V–198:

Delete "Sabine Pass, including a north alternate from Eagle Lake to Sabine Pass via Humble, Tex.;" and substitute "Sabine Pass;" therefor.

8. In V–222:

Delete "INT Industry 085° and Humble, Tex., 274° radials; Humble;" and substitute "INT Industry 101° and Humble 259° radials; Humble;" therefor.

9. In V–306:

Delete all before "Lake Charles, La.," and substitute "From Austin, Tex., via Navasota, Tex.; Daisetta, Tex.; including a south alternate from Navasota via Humble, Tex., to Daisetta;" therefor.

10. In V–477:

Delete all before "Scurry, Tex.," and substitute "From Humble, Tex., via Leona, Tex.; including a west alternate via Navasota, Tex.;" therefor.

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

Issued in Washington, D.C., on April 9, 1973.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air-Traffic Rules Division.

[FR Doc.73–7332 Filed 4–16–73;8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER E—ORGANIZATION REGULATIONS

[Reg. OR–71; Amdt. 32]

PART 385—DELEGATIONS AND REVIEW OF ACTION UNDER DELEGATIONS; NONHEARING MATTERS

Delegation of Authority to Director, Bureau of Operating Rights, To Waive Certain Charter Requirements

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 11th day of April, 1973.

The Director, Bureau of Operating Rights, presently has delegated authority to waive provisions of the Board's several charter regulations, which explicitly provide for such waivers.[1] By SPR–54 and SPR–61, respectively, the Board has recently adopted parts 372 and 372a of its special regulations (14 CFR parts 372 and 372a). Although these new rules, which provide for overseas military personnel charters (part 372) and travel group charters (part 372a) also contain provisions for waivers by the Board, we have not heretofore formally delegated to the Director, Bureau of Operating Rights, the same authority that he has with respect to granting or denying waivers under our other charter rules. The within amendment to part 385 of our organization regulations reflects our formalization of the delegation of authority.

Since the amendment provided for herein is a rule of agency organization, the Board finds that notice and public procedure are unnecessary and the rule may be made effective immediately.

In consideration of the foregoing, the Board hereby amends § 385.13(cc) of the Organization Regulations (14 CFR part 385) effective April 11, 1973, to read as follows:

§ 385.13 Delegation to the Director, Bureau of Operating Rights.

* * * * *

(bb) Issue order * * *

(cc) Grant or deny requests for waiver of parts 207, 208, 212, 214, 372, 372a, 373, 378, and 378a of this chapter, where grant or denial of the request is in accordance with established Board precedent.

* * * * *

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324. Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 F.R. 5989; 49 U.S.C. 1324 (note).)

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73–7399 Filed 4–16–73;8:45 am]

[1] Sec. 385.13(cc).

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–5383]

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

Calculation of Registration Fee for Certain Put and Call Options

The Securities and Exchange Commission announced today that it has adopted an amendment to rule 457 (17 CFR 230.457) of the rules and regulations under the Securities Act of 1933 (the 1933 Act). Rule 457 sets forth the method by which the registration fee required by section 6(b) [1] of the 1933 Act is calculated in various situations in which the maximum aggregate offering price is based upon fluctuating factors, such as market price or underlying asset values, or is otherwise uncertain at the time of filing due to the nature of the proposed offering.

The newly adopted amendment adds a paragraph (k) to rule 457 which provides that, for the purpose of calculating the registration fee under the 1933 Act, the proposed maximum aggregate offering price of any put and call option which is traded on a national securities exchange and registered by such exchange, or a facility thereof, shall be computed on the basis of the maximum aggregate fees or charges to be imposed by such registrant in connection with the issuance of the option. At the present time, the only registrant to which the new provision will be applicable is the Chicago Board Options Exchange Clearing Corp., a wholly owned subsidiary of the Chicago Board Options Exchange, Inc. (CBOE). The CBOE is a registered national securities exchange which has been organized for the purpose of providing a central primary market for the issuance and trading of put and call options.

Commission action.—Pursuant to authority in the provisions of sections 6(b), 7, and 19(a) of the Securities Act of 1933, as amended, the Commission hereby amends § 230.457 of chapter II of title 17 of the Code of Federal Regulations by adding new paragraph (k) thereto, which reads in pertinent part as follows:

§ 230.457 Computation of fee.

* * * * *

(k) Notwithstanding the other provisions of this rule, the proposed maximum aggregate offering price of any put or call option which is traded on a national securities exchange and registered by such exchange or a facility thereof shall, for the purpose of calculating the registration fee, be computed upon the basis of the maximum aggregate fees or charges to be imposed by such registrant in connection with the issuance of such option.

Because the amendment is in the nature of an interpretation of an existing statutory provision, the Commission finds that, for good cause, the notice and procedures specified in the Administrative Procedure Act (5 U.S.C. 533) are unnecessary, and accordingly it adopts the amendment effective immediately.

(Secs. 6(b), 7, 19(a), 48 Stat. 78, 85, sec. 209, 48 Stat. 908, sec. 1, 79 Stat. 1051, 15 U.S.C. 77f(b), 77g, 77s(a).)

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

APRIL 9, 1973.

[FR Doc.73–7368 Filed 4–16–73;8:45 am]

[1] Section 6(b) provides that:

"At the time of filing a registration statement the applicant shall pay to the Commission a fee of one-fiftieth of 1 per centum of the maximum aggregate price at which such securities are proposed to be offered, but in no case shall such fee be less than $100."

[Release No. 34–10052]

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

Utilization of Exchange Memberships for Public Purposes

On March 15, 1973, the Commission announced [1] that, in view of a general stay of the effectiveness of Securities Exchange Act rule 19b–2 (17 CFR 240.19b–2) [2] ordered by the Court of Appeals for the Third Circuit, the Commission would temporarily suspend the effectiveness of rule 19b–2 for 10 business days in order to permit the court of appeals to consider

[1] See, Securities Exchange Act Rel. No. 10043 (Mar. 15, 1973).

[2] See, also FEDERAL REGISTER (Feb. 8, 1973) at pp. 3901.

the Commission's motion for reconsideration of its stay orders. On March 19, 1973, the court of appeals entered an order modifying its prior orders staying rule 19b–2, to limit the extent of the stay actually granted. The court's order recites, in part:

It is ordered, That the stay entered by this court on March 9, 1973, and March 14, 1973, being for the purpose of preserving the status quo as it existed on January 16, 1973, only applies to members of petitioner (No. 71–1116) (the PBW Stock Exchange) and petitioner's business on that date and respondent (the Commission) may apply for termination of the stay if the trading volume on the PBW Stock Exchange attributable to members who are not in compliance with rule 19b–2 (in the aggregate or with respect to any particular member(s)) shall substantially increase during the pendency of this stay.

As a result of this action by the court of appeals, the temporary suspension of the effectiveness of rule 19b–2 will terminate, as previously announced, on March 29, 1973. As of that date, all exchanges which have not already done so will be required to adopt rule 19b–2 as promulgated, subject to the following modifications:

1. The terms of rule 19b–2 shall be enforced only with respect to members or prospective members of registered exchanges which joined or propose to join the exchange on or after January 16, 1973, the date of the adoption of rule 19b–2.

2. Those members of exchanges who became members prior to January 16, 1973, and who are not already in compliance with the public business requirement of the rule, may continue as members of the exchanges, provided that the trading volume of those members does not substantially increase during the pendency of the litigation concerning the propriety and validity of the Commission's rule.

While existing exchange members not in compliance with rule 19b–2 thus may maintain the present nature of their business pending the outcome of this litigation, the Commission urges all such members to file with the exchanges of which they are members plans setting forth the steps they intend to take to achieve compliance with rule 19b–2 when the stay is terminated, unless they intend to resign from exchange membership in the event the rule's validity is sustained.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

MARCH 22, 1973.

[FR Doc.73–7363 Filed 4–16–73;8:45 am]

Title 19—Customs Duties

CHAPTER I—BUREAU OF CUSTOMS, DEPARTMENT OF THE TREASURY

[T.D. 73–103]

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

Limitations

Pursuant to § 24.1(a) (4), (6), of the Customs regulations, Customs officials are permitted to accept U.S. Government checks, traveler's checks, or money orders, tendered to pay customs exactions, and to make change for these prescribed instruments in an amount not in excess of $20 of the amount owed customs. This present $20 limitation has been found to be too restrictive and has caused great inconvenience to travelers, especially those arriving at major airports.

A survey of the Customs regions has found that a $50 limitation would alleviate this inconvenience.

Accordingly, paragraph (a)(6) of § 24.1 of 19 CFR Chapter I is amended by substituting "$50" for "$20" to read as follows:

§ 24.1 Collection of customs duties, taxes, and other charges.

(a) Except as provided in paragraph (b) of this section, the following procedure shall be observed in the collection of customs duties, taxes, and other charges:

* * * * *

(6) The face amount of a U.S. Government check, traveler's check, or money order tendered in accordance with this paragraph shall not exceed the amount due by more than $50 and any required change is authorized to be made out of any available cash funds on hand.

* * * * *

(R.S. 3009, 3473, as amended, sec. 1, 36 Stat. 965, as amended, sec. 648, 46 Stat. 762; 19 U.S.C. 197, 198, 1648.)

(R.S. 251, as amended, sec. 624, 46 Stat. 759; 5 U.S.C. 301, 19 U.S.C. 66, 1624.)

Because this amendment merely relaxes a restriction on the public and requires no public initiative, notice and public procedure thereon is found to be unnecessary, and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

Effective date.—This amendment shall be effective on April 17, 1973.

[SEAL] VERNON D. ACREE,
Commissioner of Customs.

Approved April 6, 1973.

EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[FR Doc.73–7411 Filed 4–16–73;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—BUREAU OF SPORT FISHERIES, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM

PART 32—HUNTING

Certain Lands and Waters in McIntosh County, Ga.

Certain lands and waters in McIntosh County, Ga.: Designation of closed area under Migratory Bird Treaty Act.

On page 1936 of the FEDERAL REGISTER of January 19, 1973, there was published a notice of proposal to designate an area closed to the hunting of migratory birds, as set forth below. The purpose of this designation is to aid administration of the Wolf Island National Wildlife Refuge and to improve the effectiveness of the refuge for the purposes for which it was established by the United States.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections with respect to the proposed designation. Since ample opportunity was given for public comment, suggestions, or objections by publishing a notice of proposed rulemaking, and none have been received; and since the date of the opening of the season requires the protection sought immediately, it is found and determined for the good cause stated that further notice and public procedure are impracticable, unnecessary, and contrary to public interest. The proposed designation is hereby adopted without change and is effective on April 17, 1973.

The text of the designation is as follows:

This action is taken by virtue of and pursuant to section 3 of the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755), as amended by the act of June 20, 1936 (49 Stat. 1556), and by virtue of the reorganization plan II (53 Stat. 1433), and in accordance with section 4(a) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 238), as amended (5 U.S.C. 553).

Having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds, included in the terms of the convention between the United States and Great Britain for the protection of migratory birds, concluded August 16, 1916, and the convention between the United States and the United Mexican States for the protection of migratory birds and game mammals, concluded February 7, 1936, I hereby designate as a closed area in or on which pursuing, hunting, taking, capturing, or killing of migratory birds, or attempting to take, capture, or kill migratory birds is not permitted, all the land, marsh, and water areas within the following-described boundary:

An area of land and water in McIntosh County, Ga., comprising Wolf Island National Wildlife Refuge and certain lands and waters adjacent thereto, embraced within the following boundaries:

WOLF ISLAND

Beginning at a point in the low water mark of Wolf Island at the extreme north end of Wolf Island Spit in Doboy Sound; thence with the low water mark of Wolf Island southerly with the Atlantic Ocean, westerly and northwesterly with Altamaha Sound, northerly with Little Mud River and easterly with South River, crossing the mouths of numerous unnamed tidal creeks and guts, approximately 53,000 feet, to a point where the low water mark of the west bank of Wolf Creek intersects the low water mark of South River; thence easterly, crossing Wolf Creek, a distance of approximately 400 feet, to a point in the low water mark of the east bank of Wolf Creek where it intersects the low water mark of South

River; thence easterly with the low water mark of Wolf Island, a distance of approximately 3,500 feet, to a point in the low water mark of the west bank of Beacon Creek as it intersects the low water mark of Doboy Sound; thence southeasterly, crossing the mouth of Beacon Creek, a distance of approximately 1,100 feet, to the point of beginning.

EGG ISLAND

Beginning at a point in the low water mark of Egg Island, said point being at the extreme northwest end of said island in Altamaha Sound; thence with the low water mark of Egg Island, easterly, southeasterly, southwesterly, and northwesterly with the waters of Altamaha Sound, crossing the mouths of numerous unnamed tidal creeks and guts, a total distance of approximately 24,000 feet, to the point of beginning.

LITTLE EGG ISLAND

Beginning at a point in the low water mark of Little Egg Island at the extreme west end of said island; thence with the low water mark of the Little Egg Island easterly, southerly, westerly, and northerly with the waters of Altamaha Sound, a distance of approximately 1,000 feet, to the place of beginning.

F. V. SCHMIDT,
Acting Director, Bureau of Sport Fisheries and Wildlife.

APRIL 6, 1973.

[FR Doc.73-7328 Filed 4-16-73;8:45 am]

Title 24—Housing and Urban Development

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-102]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of part 1914 of subchapter B of chapter X of title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
*	*	*	*	*	*	*
New Jersey	Gloucester	Greenwich, Township of.				Apr. 18, 1973.
New York	Cayuga	Brutus, Town of				Apr. 18, 1973, Emergency.
Do	do	Mentz, Town of				Do.
Do	Monroe	Honeoye Falls, Village of.				Do.
Ohio	Mahoning	Youngstown, City of.				Do.
Pennsylvania	Berks	Earl, Township of.				Do.
Do	Tioga	Elkland, Borough of.				Do.
Do	Allegheny	Harrison, Township of.				Do.
Do	Wayne	Honesdale, Borough of.				Do.
Do	do	Palmyra, Township of.				Do.
Do	Northampton	Lower Mt. Bethel, Township of.				Do.
Do	Bucks	New Britain, Township of.				Do.
Do	Luzerne	Tunkhannock, Borough of.				Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408-410, Public Law 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969.)

Issued April 10, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-7273 Filed 4-16-73;8:45 am]

[Docket No. FI-103]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of part 1914 of subchapter B of chapter X of title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
*	*	*	*	*	*	*
Pennsylvania...	Delaware.....	Thornbury, Township of.	I 42 045 8420 01 through I 42 045 8420 08	Department of Community Affairs, Commonwealth of Pa., Harrisburg, Pa. 17120. Pennsylvania Insurance Department, 108 Finance Bldg., Harrsburg, Pa. 17120.	Thornbury Township Supervisors, P.O. Box 6, Concord Rd., Thornton, Pa. 19373.	Aug. 6, 1971. Emergency. Apr. 27, 1973. Regular.
Do.....	Washington.....	West Brownsville, Borough of.	I 42 125 9000 01 I 42 125 9000 02	.....do.....	Borough Bldg., Main St., West Brownsville, Pa. 15418.	Dec. 3, 1971. Emergency. Apr. 27, 1973. Regular.
Wisconsin.....	St. Croix.....	Unincorporated areas.	I 55 109 0000 01 through I 55 109 0000 16	Department of Natural Resources, P.O. Box 450, Madison, Wis. 53701. Wisconsin Insurance Department, 212 North Bassett St., Madison, Wis. 53703.	Office of the Zoning Administrator, St. Croix County, Old County Court House, Hudson, Wis. 54016.	Apr. 2, 1971. Emergency. Apr. 27, 1973. Regular.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408-410, Public Law 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969.)

Issued April 10, 1973.

CHARLES W. WIECKING,
Acting Federal Insurance Administrator.

[FR Doc.73-7271 Filed 4-16-73;8:45 am]

[Docket No. FI-104]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

The Federal Insurance Administrator finds that comment and public procedure and the use of delayed effective dates in identifying the areas of communities which have special flood or mudslide hazards, in accordance with 24 CFR part 1915, would be contrary to the public interest. The purpose of such identifications is to guide new development away from areas threatened by flooding, a purpose which is accomplished pursuant to statute by denying subsidized flood insurance to structures thereafter built within such areas. The practice of issuing proposed identifications for comment or of delaying effective dates would tend to frustrate this purpose by permitting imprudent or unscrupulous builders to start construction within such hazardous areas before the official identification became final, thus increasing the communities' aggregate exposure to loss of life and property and the agency's financial exposure to flood losses, both of which are contrary to the statutory purposes of the program. Accordingly, the Department is not providing for public comment in issuing this amendment and it will become effective upon publication in the FEDERAL REGISTER. Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1915.3 List of communities with special hazard areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
*	*	*	*	*	*	*
New Jersey.....	Essex.....	Millburn, Township of.	H 34 013 1945 01 through H 34 013 1945 03	Bureau of Water Control, Department of Environmental Protection, P.O. Box, 1390, Trenton, N.J. 08625. New Jersey Department of Insurance, State House Annex, Trenton, N.J. 08625.	Office of the Township Engineer, Town Hall, Township of Millburn, Millburn Ave., Millburn, N.J. 07041.	Apr. 27, 1973.

State	County	Location	Map No.	State map repository	Local map repository	Identification of areas which have special flood hazards
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Pennsylvania	Bucks	New Hope, Borough of.	H 42 017 5870 01	Department of Community Affairs, Commonwealth of Pa., Harrisburg, Pa. 17120. Pennsylvania Insurance Department, 108 Finance Bldg., Harrisburg, Pa. 17120.	Borough Hall, Mechanic and South Main Sts., New Hope, Pa. 18938.	Do.
Do.	Delaware	Ridley, Township of.	H 42 045 2002 01 through H 42 045 2002 05	do.	Township Municipal Bldg., Southeast Corner MacDade Blvd. and Morton Ave., Folsom, Pa. 19033	Do.
Do.	do.	Thornbury, Township of.	H 42 045 8421 01 through H 42 045 8421 08	do.	Thornbury Township Supervisors, P.O. Box 6, Concord Rd., Thornton, Pa. 19373.	Do.
Do.	Montgomery	Upper Dublin, Township of.	H 42 091 0140 01 through H 42 091 0140 04	do.	Upper Dublin Township Bldg., 801 Loch Alsh Ave., Fort Washington, Pa. 19034.	Do.
Do.	Washington	West Brownsville, Borough of.	H 42 125 9000 01 H 42 125 9000 02	do.	Borough Bldg., Main St., West Brownsville, Pa. 15418.	Do.
Wisconsin	St. Croix	Unincorporated areas.	H 55 109 0000 01 through H 55 109 0000 16	Department of Natural Resources, P.O. Box 450, Madison, Wis. 53701. Wisconsin Insurance Department, 212 North Bassett St., Madison, Wis. 53703.	Office of the Zoning Administrator, St. Croix County, Old County Court House, Hudson, Wis. 54016.	Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408–410, Public Law 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969.)

Issued April 10, 1973.

CHARLES W. WIECKING,
Acting Federal Insurance Administrator.

[FR Doc.73–7272 Filed 4–16–73;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 7270]

PART 53—FOUNDATION EXCISE TAXES

Subpart B—Taxes on Self-Dealing

By a notice of proposed rulemaking appearing in the FEDERAL REGISTER for Saturday, June 5, 1971 (36 FR 10968), amendments to the Foundation Excise Tax Regulations (26 CFR parts 53 and 143) under section 4941 of the Internal Revenue Code of 1954, as enacted by section 101(b) of the Tax Reform Act of 1969 (83 Stat. 499), were published.

Section 4941 prohibits generally the following transactions between a private foundation and certain related persons and government officials ("disqualified persons"): (1) Sale or exchange, or leasing of property; (2) lending of money or other extension of credit; (3) furnishing of goods, services, or facilities; (4) payments of compensation or expenses by the foundation to a disqualified person; (5) transfer to, or use by or for the benefit of, a disqualified person of the foundation's income or assets; and (6) payments to Government officials.

Some transactions between disqualified persons and a private foundation are permitted. A loan or the furnishing of goods, services, or facilities to the foundation is permitted if no interest or other charge is imposed. The furnishing of functionally related goods, services, or facilities by the foundation is generally permitted if it is not on a basis more favorable than that available to the general public. The furnishing by a foundation of office space and similar facilities to its manager for use for the charitable purposes of the foundation (including necessary administrative activities) is generally not self-dealing, even if the general public does not normally have access to those offices. Payment by the foundation of compensation and expenses is permitted if the payment is not excessive and if the services are reasonable and necessary for the foundation's exempt purposes. Certain transactions regarding corporate stock are permitted if made on a uniform basis at fair market value.

Section 4941 provides for initial and additional taxes on prohibited acts of self-dealing. The initial tax on the self-dealer is 5 percent of the amount involved in the self-dealing for each taxable year (or part thereof) from the date of the self-dealing until the self-dealing is corrected (or the Internal Revenue Service mails a deficiency notice regarding the transaction, if sooner). The amount involved generally is the greater of the value of what the foundation gave or what it received at the time of the self-dealing. However, in certain situations where the act of self-dealing would have been excepted from the definition of self-dealing but for the fact that the foundation did not receive fair market value, only the amount of the inadequacy is subject to the 5 percent tax. Where the self-dealing does not involve a transfer, then the amount involved is the amount used by or for the benefit of the self-dealer.

The initial tax is imposed automatically, without regard to whether the violation was inadvertent. However, if the self-dealer is a disqualified person only because he is a government official then the tax on self-dealing is imposed only if he knowingly participated in the self-dealing.

Where the initial tax is imposed on the self-dealer, there is also a tax of 2½ percent on the foundation manager, but only if the manager knowingly participated in the self-dealing. The tax on the manager may not exceed $10,000.

The additional tax is imposed if the self-dealing is not corrected. This additional tax on the self-dealer is 200 percent of the amount involved. An additional tax is also imposed on the foundation manager if he refuses to agree to any part of the correction. This tax is at the rate of 50 percent of the amount involved. Again, this tax on the manager may not exceed $10,000.

The self-dealing provisions took effect on January 1, 1970. However, the regulations contain several transitional rules to take into account transactions in effect before the effective date.

In view of the foregoing and after consideration of all relevant matter as was presented by interested persons regarding the notice of proposed rulemaking dated June 5, 1971, the Foundation Excise Tax Regulations (26 CFR parts 53 and 143) are amended as follows: Temporary Treasury regulations § 143.2 (T.D. 7030, 35 FR 4293) (1970), § 143.4 (T.D. 7034, 35 FR 4703) (1970), § 143.5 (T.D. 7036, 35 FR 63322) (1970), and § 143.8 (T.D. 7042, 35 FR 7727) (1970) are superseded and the following regulations are added. Except as otherwise specifically provided, these regulations are applicable to all acts of self-dealing engaged in after December 31, 1969.

Part 53 of 26 CFR Chapter I is amended by adding Subpart B, taxes on self-dealing, as follows:

Sec.
53.4941(a) Statutory provisions; exempt organizations; private foundations; taxes on self-dealing.

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

§ 53.4941(a) Statutory provisions; exempt organizations; private foundations; taxes on self-dealing.

SEC. 4941. *Taxes on self-dealing.*—(a) *Initial taxes.*—(1) *On self-dealer.*—There is hereby imposed a tax on each act of self-dealing between a disqualified person and a private foundation. The rate of tax shall be equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing. In the case of a government official (as defined in section 4946(c)), a tax shall be imposed by this paragraph only if such disqualified person participates in the act of self-dealing knowing that it is such an act.

(2) *On foundation manager.*—In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any foundation manager in an act of self-dealing between a disqualified person and a private foundation, knowing that it is such an act, a tax equal to 2½ percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who participated in the act of self-dealing.

§ 53.4941(a)-1 Imposition of initial taxes.

(a) *Tax on self-dealer*—(1) *In general.*—Section 4941(a)(1) of the code imposes an excise tax on each act of self-dealing between a disqualified person (as defined in sec. 4946 (a)) and a private foundation. Except as provided in subparagraph (2) of this paragraph, this tax shall be imposed on a disqualified person even though he had no knowledge at the time of the act that such act constituted self-dealing. Notwithstanding the preceding two sentences, however, a transaction between a disqualified person and a private foundation will not constitute an act of self-dealing if—

(i) The transaction is a purchase or sale of securities by a private foundation through a stockbroker where normal trading procedures on a stock exchange or recognized over-the-counter market are followed;

(ii) Neither the buyer nor the seller of the securities nor the agent of either knows the identity of the other party involved; and

(iii) The sale is made in the ordinary course of business, and does not involve a block of securities larger than the average daily trading volume of that stock over the previous 4 weeks.

However, the preceding sentence shall not apply to a transaction involving a dealer who is a disqualified person acting as a principal or to a transaction which is an act of self-dealing pursuant to section 4941(d)(1)(B) and § 53.491(d)-2 (c)(1). The tax imposed by section 4941 (a)(1) is at the rate of 5 percent of the amount involved (as defined in sec. 4941 (e)(2) and § 53.4941(e)-1(b)) with respect to the act of self-dealing for each year or partial year in the taxable period (as defined in sec. 4941 (e) (1)) and shall be paid by any disqualified person (other than a foundation manager acting only in the capacity of a foundation manager) who participates in the act of self-dealing. However, if a foundation manager is also acting as a self-dealer, he may be liable for both the tax imposed by section 4941(a)(1) and the tax imposed by section 4941(a)(2).

(2) *Government officials.*—In the case of a government official (as defined in sec. 4946(a)), the tax shall be imposed upon such government official who participates in an act of self-dealing, only if he knows that such act is an act of self-dealing. See paragraph (b)(3) of this section for a definition of "knowing".

(3) *Participation.*—For purposes of this paragraph, a disqualified person shall be treated as participating in an act of self-dealing in any case in which he engages or takes part in the transaction by himself or with others, or directs any person to do so.

(b) *Tax on foundation manager.*—(1) *In general.*—Section 4941(a)(2) of the code imposes an excise tax on the participation of any foundation manager in an act of self-dealing between a disqualified person and a private foundation. This tax is imposed only in cases in which the following circumstances are present:

(i) A tax is imposed by section 4941 (a)(1),

(ii) Such participating foundation manager knows that the act is an act of self-dealing, and

(iii) The participation by the foundation manager is willful and is not due to reasonable cause.

The tax imposed by section 4941(a)(2) is at the rate of 2½ percent of the amount involved with respect to the act of self-dealing for each year or partial year in the taxable period and shall be paid by any foundation manager described in subdivisions (ii) and (iii) of this subparagraph.

(2) *Participation.*—The term "participation" shall include silence or inaction on the part of a foundation manager where he is under a duty to speak or act, as well as any affirmative action by such manager. However, a foundation manager will not be considered to have participated in an act of self-dealing where he has opposed such act in a manner consistent with the fulfillment of his responsibilities to the private foundation.

(3) *Knowing.*—[Reserved]

(4) *Willful.*—Participation by a foundation manager shall be deemed willful if it is voluntary, conscious, and intentional. No motive to avoid the restrictions of the law or the incurrence of any tax is necessary to make the participation willful. However, participation by a foundation manager is not willful if he does not know that the transaction in which he is participating is an act of self-dealing.

(5) *Due to reasonable cause.*—A foundation manager's participation is due to reasonable cause if he has exercised his responsibility on behalf of the foundation with ordinary business care and prudence.

(6) *Advice of counsel.*—If a person, after full disclosure of the factual situation to legal counsel (including house counsel), relies on the advice of such counsel expressed in a reasoned written legal opinion that an act is not an act of self-dealing under section 4941, although such act is subsequently held to be an act of self-dealing, the person's participation in such act will ordinarily not be considered "knowing" or "willful" and will ordinarily be considered "due to reasonable cause" within the meaning of section 4941(a)(2). For purposes of this subparagraph, a written legal opinion will be considered "reasoned" even if it reaches a conclusion which is subsequently determined to be incorrect so long as such opinion addresses itself to the facts and applicable law. However, a written legal opinion will not be considered "reasoned" if it does nothing more than recite the facts and express a conclusion. However, the absence of advice of counsel with respect to an act shall not, by itself, give rise to any inference that a person participated in such act knowingly, willfully, or without reasonable cause.

(c) *Burden of proof.*—For provisions relating to the burden of proof in cases involving the issue whether a foundation manager or a government official has knowingly participated in an act of self-dealing, section 7454(b).

§ 53.4941(b) Statutory provisions; private foundations; taxes on self-dealing; additional taxes.

SEC. 4941. *Taxes on self-dealing.* * * *

(b) *Additional taxes.*—(1) *On self-dealer.*—In any case in which an initial tax is imposed by subsection (a)(1) on an act of self-dealing by a disqualified person with a private foundation and the act is not corrected within the correction period, there is hereby imposed a tax equal to 200 percent of the amount involved. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participated in the act of self-dealing.

(2) *On foundation manager.*—In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount involved. The tax imposed by this paragraph shall be paid by any

foundation manager who refused to agree to part or all of the correction.

§ 53.4941(b)–1 Imposition of additional taxes.

(a) *Tax on self-dealer.*—Section 4941(b)(1) of the Code imposes an excise tax in any case in which an initial tax is imposed by section 4941(a)(1) on an act of self-dealing by a disqualified person with a private foundation and the act is not corrected within the correction period (as defined in § 53.4941(e)–1(d)). The tax imposed by section 4941(b)(1) is at the rate of 200 percent of the amount involved and shall be paid by any disqualified person (other than a foundation manager action only in the capacity of a foundation manager) who participated in the act of self-dealing.

(b) *Tax on foundation manager.*—Section 4941(b)(2) of the Code imposes an excise tax to be paid by a foundation manager in any case in which a tax is imposed by section 4941(b)(1) and the foundation manager refused to agree to part or all of the correction of the self-dealing act. The tax imposed by section 4941(b)(2) is at the rate of 50 percent of the amount involved and shall be paid by any foundation manager who refused to agree to part or all of the correction of the self-dealing act. For the limitations on liability of a foundation manager, see § 53.4941(c)–1(b).

§ 53.4941(c) Statutory provisions; private foundations; taxes on self-dealing; special rules.

SEC. 4941. *Taxes on self-dealing.* * * *

(c) *Special rules.*—For purposes of subsections (a) and (b)—

(1) *Joint and several liability.*—If more than one person is liable under any paragraph of subsection (a) or (b) with respect to any one act of self-dealing, all such persons shall be jointly and severally liable under such paragraph with respect to such act.

(2) *$10,000 limit for management.*—With respect to any one act of self-dealing, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $10,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $10,000.

§ 53.4941(c)–1 Special rules.

(a) *Joint and several liability.*—(1) In any case where more than one person is liable for the tax imposed by any paragraph of section 4941 (a) or (b), all such persons shall be jointly and severally liable for the taxes imposed under such paragraph with respect to such act of self-dealing.

(2) The provisions of this paragraph may be illustrated by the following example:

Example.—A and B, who are managers of private foundation X, lend one of the foundation's paintings to G, a disqualified person, for display in G's office, in a transaction which gives rise to liability for tax under section 4941(a)(2) (relating to tax on foundation managers). An initial tax is imposed on both A and B with respect to the act of lending the foundation's painting to G. A and B are jointly and severally liable for the tax.

(b) *Limits on liability for management.*—(1) The maximum aggregate amount of tax collectible under section 4941(a)(2) from all foundation managers with respect to any one act of self-dealing shall be $10,000, and the maximum aggregate amount of tax collectible under section 4941(b)(2) from all foundation managers with respect to any one act of self-dealing shall be $10,000.

(2) The provisions of this paragraph may be illustrated by the following example:

Example.—A, a disqualified person with respect to private foundation Y, sells certain real estate having a fair market value of $500,000 to Y for $500,000 in cash. B, C, and D, all the managers of foundation Y, authorized the purchase on Y's behalf knowing that such purchase was an act of self-dealing. The actions of B, C, and D in approving the purchase were willful and not due to reasonable cause. Initial taxes are imposed upon the foundation managers under subsections (a)(2) and (c)(2) of section 4941. The tax to be paid by the foundation managers is $10,000 (the lesser of $10,000 or 2½ percent of the amount involved). The managers are jointly and severally liable for this $10,000, and this sum may be collected by the Internal Revenue Service from any one of them.

§ 53.4941(d) Statutory provisions; exempt organizations; private foundations; taxes on self-dealing, self-dealing defined.

SEC. 4941. *Taxes on self-dealing.* * * *

(d) *Self-dealing.*—(1) *In general.*—For purposes of this section, the term "self-dealing" means any direct or indirect—

(A) Sale or exchange, or leasing, or property between a private foundation and a disqualified person;

(B) Lending of money or other extension of credit between a private foundation and a disqualified person;

(C) Furnishing of goods, services, or facilities between a private foundation and a disqualified person;

(D) Payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person;

(E) Transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation; and

(F) Agreement by a private foundation to make any payment of money or other property to a Government official (as defined in section 4946(c)), other than an agreement to employ such individual for any period after the termination of his Government service if such individual is terminating his Government service within a 90-day period.

(2) *Special rules.*—For purposes of paragraph (1)—

(A) The transfer of real or personal property by a disqualified person to a private foundation shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the foundation assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer;

(B) The lending of money by a disqualified person to a private foundation shall not be an act of self-dealing if the loan is without interest or other charge and if the proceeds of the loan are used exclusively for purposes specified in section 501(c)(3);

(C) The furnishing of goods, services, or facilities by a disqualified person to a private foundation shall not be an act of self-dealing if the furnishing is without charge and if the goods, services, or facilities so furnished are used exclusively for purposes specified in section 501(c)(3);

(D) The furnishing of goods, services, or facilities by a private foundation to a disqualified person shall not be an act of self-dealing if such furnishing is made on a basis no more favorable than that on which such goods, services, or facilities are made available to the general public;

(E) Except in the case of a Government official (as defined in section 4946(c)), the payment of compensation (and the payment or reimbursement of expenses) by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the private foundation shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive;

(F) Any transaction between a private foundation and a corporation which is a disqualified person (as defined in section 4946(a)), pursuant to any liquidation, merger, redemption, recapitalization, or other corporate adjustment, organization, or reorganization, shall not be an act of self-dealing if all of the securities of the same class as that held by the foundation are subject to the same terms and such terms provide for receipt by the foundation of no less than fair market value; and

(G) In the case of a Government official (as defined in sec. 4946(c)), paragraph (1) shall in addition not apply to—

(i) Prizes and awards which are subject to the provisions of section 74(b), if the recipient of such prizes and awards are selected from the general public,

(ii) Scholarships and fellowship grants which are subject to the provisions of section 117(a) and are to be used for study at an educational institution described in section 151(e)(4),

(iii) Any annuity or other payment (forming part of a stock-bonus, pension, or profit-sharing plan) by a trust which is a qualified trust under section 401,

(iv) Any annuity or other payment under a plan which meets the requirements of section 404(a)(2),

(v) Any contribution or gift (other than a contribution or gift of money) to, or services or facilities made available to, any such individual, if the aggregate value of such contributions, gifts, services, and facilities to, or made available to, such individual during any calendar year does not exceed $25,

(vi) Any payment made under chapter 41 of title 5, United States Code, or

(vii) Any payment or reimbursement of traveling expenses for travel solely from one point in the United States to another point in the United States, but only if such payment or reimbursement does not exceed the actual cost of the transportation involved plus an amount for all other traveling expenses not in excess of 125 percent of the maximum amount payable under section 5702(a) of title 5, United States Code, for like travel by employees of the United States.

§ 53.4941(d)–1 Definition of self-dealing.

(a) *In general.*—For purposes of section 4941, the term "self-dealing" means any direct or indirect transaction described in § 53.4941(d)–2. For purposes of this section, it is immaterial whether the transaction results in a benefit or a detriment to the private foundation. The term "self-dealing" does not, however, include a transaction between a private foundation and a disqualified person where the disqualified person status arises only as a result of such transaction. For example, the bargain sale of property to a private foundation

is not a direct act of self-dealing if the seller becomes a disqualified person only by reason of his becoming a substantial contributor as a result of the bargain element of the sale. For the effect of sections 4942, 4943, 4944, and 4945 upon an act of self-dealing which also results in the imposition of tax under one or more of such sections, see the regulations under those sections.

(b) *Indirect self-dealing.*—(1) *Certain business transactions.*—The term "indirect self-dealing" shall not include any transaction described in § 53.4941(d)-2 between a disqualified person and an organization controlled by a private foundation (within the meaning of subpar. (5) of this paragraph) if—

(i) The transaction results from a business relationship which was established before such transaction constituted an act of self-dealing (without regard to this paragraph),

(ii) The transaction was at least as favorable to the organization controlled by the foundation as an arm's-length transaction with an unrelated person, and

(iii) Either—

(*a*) The organization controlled by the foundation could have engaged in the transaction with someone other than a disqualified person only at a severe economic hardship to such organization, or

(*b*) Because of the unique nature of the product or services provided by the organization controlled by the foundation, the disqualified person could not have engaged in the transaction with anyone else, or could have done so only by incurring severe economic hardship. See example (2) of subparagraph (8) of this paragraph.

(2) *Grants to intermediaries.*—The term "indirect self-dealing" shall not include a transaction engaged in with a government official by an intermediary organization which is a recipient of a grant from a private foundation and which is not controlled by such foundation (within the meaning of subpar. (5) of this paragraph) if the private foundation does not earmark the use of the grant for any named government official and there does not exist an agreement, oral or written, whereby the grantor foundation may cause the selection of the government official by the intermediary organization. A grant by a private foundation is earmarked if such grant is made pursuant to an agreement, either oral or written, that the grant will be used by any named individual. Thus, a grant by a private foundation shall not constitute an indirect act of self-dealing even though such foundation had reason to believe that certain government officials would derive benefits from such grant so long as the intermediary organization exercises control, in fact, over the selection process and actually makes the selection completely independently of the private foundation. See example (3) of subparagraph (8) of this paragraph.

(3) *Transactions during the administration of an estate or revocable trust.*—The term "indirect self-dealing" shall not include a transaction with respect to a private foundation's interest or expectancy in property (whether or not encumbered) held by an estate (or revocable trust, including a trust which has become irrevocable on a grantor's death), regardless of when title to the property vests under local law, if—

(i) The administrator or executor of an estate or trustee of a revocable trust either—

(*a*) Possesses a power of sale with respect to the property,

(*b*) Has the power to reallocate the property to another beneficiary, or

(*c*) Is required to sell the property under the terms of any option subject to which the property was acquired by the estate (or revocable trust);

(ii) Such transaction is approved by the probate court having jurisdiction over the estate (or by another court having jurisdiction over the estate (or trust) or over the private foundation);

(iii) Such transaction occurs before the estate is considered terminated for Federal income tax purposes pursuant to paragraph (a) of § 1.641(b)-3 of this chapter (or in the case of a revocable trust, before it is considered subject to sec. 4947);

(iv) The estate (or trust) receives an amount which equals or exceeds the fair market value of the foundation's interest or expectancy in such property at the time of the transaction, taking into account the terms of any option subject to which the property was acquired by the estate (or trust); and

(v) With respect to transactions occurring after April 16, 1973, the transaction either—

(*a*) Results in the foundation receiving an interest or expectancy at least as liquid as the one it gave up,

(*b*) Results in the foundation receiving an asset related to the active carrying out of its exempt purposes, or

(*c*) Is required under the terms of any option which is binding on the estate (or trust).

(4) *Transactions with certain organizations.*—A transaction between a private foundation and an organization which is not controlled by the foundation (within the meaning of subparagraph (5) of this paragraph), and which is not described in section 4946(a)(1) (E), (F), or (G) because persons described in section 4946(a)(1) (A), (B), (C), or (D) own no more than 35 percent of the total combined voting power or profits or beneficial interest of such organization, shall not be treated as an indirect act of self-dealing between the foundation and such disqualified persons solely because of the ownership interest of such persons in such organization.

(5) *Control.*—For purposes of this paragraph, an organization is controlled by a private foundation if the foundation or one or more of its foundation managers (acting only in such capacity) may, only by aggregating their votes or positions of authority, require the organization to engage in a transaction which if engaged in with the private foundation would constitute self-dealing. Similarly, for purposes of this paragraph, an organization is controlled by a private foundation in the case of such a transaction between the organization and a disqualified person, if such disqualified person, together with one or more persons who are disqualified persons by reason of such a person's relationship (within the meaning of section 4946(a)(1) (C) through (G)) to such disqualified person, may, only by aggregating their votes or positions of authority with that of the foundation, require the organization to engage in such a transaction. The "controlled" organization need not be a private foundation; for example, it may be any type of exempt or nonexempt organization including a school, hospital, operating foundation, or social welfare organization. For purposes of this paragraph, an organization will be considered to be controlled by a private foundation or by a private foundation and disqualified persons referred to in the second sentence of this subparagraph if such persons are able, in fact, to control the organization (even if their aggregate voting power is less than 50 percent of the total voting power of the organization's governing body) or if one or more of such persons has the right to exercise veto power over the actions of such organization relevant to any potential acts of self-dealing. A private foundation shall not be regarded as having control over an organization merely because it exercises expenditure responsibility (as defined in section 4945 (d)(4) and (h)) with respect to contributions to such organization. See example (6) of subparagraph (8) of this paragraph.

(6) *Certain transactions involving limited amounts.*—The term "indirect self-dealing" shall not include any transaction between a disqualified person and an organization controlled by a private foundation (within the meaning of subparagraph (5) of this paragraph) or between two disqualified persons where the foundation's assets may be affected by the transaction if—

(i) The transaction arises in the normal and customary course of a retail business engaged in with the general public,

(ii) In the case of a transaction between a disqualified person and an organization controlled by a private foundation, the transaction is at least as favorable to the organization controlled by the foundation as an arm's-length transaction with an unrelated person, and

(iii) The total of the amounts involved in such transactions with respect to any one such disqualified person in any one taxable year does not exceed $5,000.

See example (7) of subparagraph (8) of this paragraph.

(7) *Applicability of statutory exceptions to indirect self-dealing.*—The term "indirect self-dealing" shall not include a transaction involving one or more disqualified persons to which a private foundation is not a party, in any case in which the private foundation, by reason of section 4941(d)(2), could itself engage in such a transaction. Thus, for example, even if a private foundation has control

(within the meaning of subparagraph (5) of this paragraph) of a corporation, the corporation may pay to a disqualified person, except a government official, reasonable compensation for personal services.

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

Example (1).—Private foundation P owns the controlling interest of the voting stock of corporation X, and as a result of such interest, elects a majority of the board of directors of X. Two of the foundation managers, A and B, who are also directors of corporation X, form corporation Y for the purpose of building and managing a country club. A and B receive a total of 40 percent of Y's stock, making Y a disqualified person with respect to P under section 4946(a)(1)(E). In order to finance the construction and operation of the country club, Y requested and received a loan in the amount of $4 million from X. The making of the loan by X to Y shall constitute an indirect act of self-dealing between P and Y.

Example (2).—Private foundation W owns the controlling interest of the voting stock of corporation X, a manufacturer of certain electronic computers. Corporation Y, a disqualified person with respect to W, owns the patent for, and manufactures, one of the essential component parts used in the computers. X has been making regular purchases of the patented component from Y since 1965, subject to the same terms as all other purchasers of such component parts. X could not buy similar components from another source. Consequently, X would suffer severe economic hardship if it could not continue to purchase these components from Y, since it would then be forced to develop a computer which could be constructed with other components. Under these circumstances, the continued purchase by X from Y of these components shall not be an indirect act of self-dealing between W and Y.

Example (3).—Private foundation Y made a grant to M University, an organization described in section 170(b)(1)(A)(ii), for the purpose of conducting a seminar to study methods for improving the administration of the judicial system. M is not controlled by Y within the meaning of subparagraph (5) of this paragraph. In conducting the seminar, M made payments to certain government officials. By the nature of the grant, Y had reason to believe that government officials would be compensated for participation in the seminar. M, however, had completely independent control over the selection of such participants. Thus, such grant by Y shall not constitute an indirect act of self-dealing with respect to the government officials.

Example (4).—A, a substantial contributor to P, a private foundation, bequeathed one-half of his estate to his spouse and one-half of his estate to P. Included in A's estate is a one-third interest in AB, a partnership. The other two-thirds interest in AB is owned by B, a disqualified person with respect to P. The one-third interest in AB was subject to an option agreement when it was acquired by the estate. The executar of A's estate sells the one-third interest in AB to B pursuant to such option agreement at the price fixed in such option agreement in a sale which meets the requirements of subparagraph (3) of this paragraph. Under these circumstances, the sale does not constitute an indirect act of self-dealing between B and P.

Example (5).—A bequeathed $100,000 to his wife and a piece of unimproved real estate of equivalent value to private foundation Z, of which A was the creator and a foundation manager. Under the laws of State Y, to which the estate is subject, title to the real estate vests in the foundation upon A's death. However, the executor has the power under State law to reallocate the property to another beneficiary. During a reasonable period for administration of the estate, the executor exercises this power and distributes the $100,000 cash to the foundation and the real estate to A's wife. The probate court having jurisdiction over the estate approves the executor's action. Under these circumstances, the executor's action does not constitute an indirect act of self-dealing between the foundation and A's wife.

Example (6).—Private foundation P owns 20 percent of the voting stock of corporation W. A, a substantial contributor with respect to P, owns 16 percent of the voting stock of corporation W. B, A's son, owns 15 percent of the voting stock of corporation W. The terms of the voting stock are such that P, A, and B could vote their stock in a block to elect a majority of the board of directors of W. W is treated as controlled by P (within the meaning of subparagraph (5) of this paragraph) for purposes of this paragraph. A and B also own 50 percent of the stock of corporation Y, making Y a disqualified person with respect to P under section 4946(a)(1)(E). W makes a loan to Y of $1 million. The making of this loan by W to Y shall constitute an indirect act of self-dealing between P and Y.

Example (7).—A, a disqualified person with respect to private foundation P, enters into a contract with corporation M, which is also a disqualified person with respect to P. P owns 20 percent of M's stock, and controls M within the meaning of subparagraph (5) of this paragraph. M is in the retail department store business. Purchases by A of goods sold by M in the normal and customary course of business at retail or higher prices are not indirect acts of self-dealing so long as the total of the amounts involved in all of such purchases by A in any one year does not exceed $5,000.

§ 53.4941(d)-2 Specific acts of self-dealing.

Except as provided in § 53.4941(d)-3 or § 53.4941(d)-4—

(a) *Sale or exchange of property.*—(1) *In general.*—The sale or exchange of property between a private foundation and a disqualified person shall constitute an act of self-dealing. For example, the sale of incidental supplies by a disqualified person to a private foundation shall be an act of self-dealing regardless of the amount paid to the disqualified person for the incidental supplies. Similarly the sale of stock or other securities by a disqualified person to a private foundation in a "bargain sale" shall be an act of self-dealing regardless of the amount paid for such stock or other securities. An installment sale may be subject to the provisions of both section 4941(d)(1)(A) and section 4941(d)(1)(B).

(2) *Mortgaged property.*—For purposes of subparagraph (1) of this paragraph, the transfer of real or personal property by a disqualified person to a private foundation shall be treated as a sale or exchange if the foundation assumes a mortgage or similar lien which was placed on the property prior to the transfer, or takes subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of transfer. For purposes of this subparagraph, the term "similar lien" shall include, but is not limited to, deeds of trust and vendors' liens, but shall not include any other lien if such lien is insignificant in relation to the fair market value of the property transferred.

(b) *Leases.*—(1) *In general.*—Except as provided in subparagraph (2) of this paragraph, the leasing of property between a disqualified person and a private foundation shall constitute an act of self-dealing.

(2) *Certain leases without charge.*—The leasing of property by a disqualified person to a private foundation shall not be an act of self-dealing if the lease is without charge. For purposes of this subparagraph, a lease shall be considered to be without charge even though the private foundation pays for janitorial services, utilities, or other maintenance costs it incurs for the use of the property, so long as the payment is not made directly or indirectly to a disqualified person.

(c) *Loans.*—(1) *In general.*—Except as provided in subparagraphs (2), (3), and (4) of this paragraph, the lending of money or other extension of credit between a private foundation and a disqualified person shall constitute an act of self-dealing. Thus, for example, an act of self-dealing occurs where a third party purchases property and assumes a mortgage, the mortgagee of which is a private foundation, and subsequently the third party transfers the property to a disqualified person who either assumes liability under the mortgage or takes the property subject to the mortgage. Similarly, except in the case of the receipt and holding of a note pursuant to a transaction described in § 53.4941(d)-1(b)(3), an act of self-dealing occurs where a note, the obligor of which is a disqualified person, is transferred by a third party to a private foundation which becomes the creditor under the note.

(2) *Loans without interest.*—Subparagraph (1) of this paragraph shall not apply to the lending of money or other extension of credit by a disqualified person to a private foundation if the loan or other extension of credit is without interest or other charge.

(3) *Certain evidences of future gifts.*—The making of a promise, pledge, or similar arrangement to a private foundation by a disqualified person, whether evidenced by an oral or written agreement, a promissory note, or other instrument of indebtedness, to the extent motivated by charitable intent and unsupported by consideration, is not an extension of credit (within the meaning of this paragraph) before the date of maturity.

(4) *General banking functions.*—Under section 4941(d)(2)(E) the performance by a bank or trust company which is a disqualified person of trust functions and certain general banking services for a private foundation is not an act of self-dealing, where the banking services are reasonable and necessary to carrying out the exempt purposes of the private foundation, if the compensation paid to the

bank or trust company, taking into account the fair interest rate for the use of the funds by the bank or trust company, for such services is not excessive. The general banking services allowed by this subparagraph are:

(i) Checking accounts, as long as the bank does not charge interest on any overwithdrawals,

(ii) Savings accounts, as long as the foundation may withdraw its funds on no more than 30 days notice without subjecting itself to a loss of interest on its money for the time during which the money was on deposit, and

(iii) Safekeeping activities. See example (3) of § 53.4941 (d)-3(c)(2).

(d) *Furnishing goods, services, or facilities.*—(1) *In general.*—Except as provided in subparagraph (2) or (3) of this paragraph (or § 53.4941(d)-3(b)), the furnishing of goods, services, or facilities between a private foundation and a disqualified person shall constitute an act of self-dealing. This subparagraph shall apply, for example, to the furnishing of goods, services, or facilities such as office space, automobiles, auditoriums, secretarial help, meals, libraries, publications, laboratories, or parking lots. Thus, for example, if a foundation furnishes personal living quarters to a disqualified person (other than a foundation manager or employee) without charge, such furnishing shall be an act of self-dealing.

(2) *Furnishing of goods, services, or facilities to foundation managers and employees.*—The furnishing of goods, services, or facilities such as those described in subparagraph (1) of this paragraph to a foundation manager in recognition of his services as a foundation manager, or to another employee (including an individual who would be an employee but for the fact that he receives no compensation for his services) in recognition of his services in such capacity, is not an act of self-dealing if the value of such furnishing (whether or not includible as compensation in his gross income) is reasonable and necessary to the performance of his tasks in carrying out the exempt purposes of the foundation and, taken in conjunction with any other payment of compensation or payment or reimbursement of expenses to him by the foundation, is not excessive. For example, if a foundation furnishes meals and lodging which are reasonable and necessary (but not excessive) to a foundation manager by reason of his being a foundation manager, then, without regard to whether such meals and lodging are excludable from gross income under section 119 as furnished for the convenience of the employer, such furnishing is not an act of self-dealing. For the effect of section 4945(d)(5) upon an expenditure for unreasonable administrative expenses, see § 53.4945-6(b)(2).

(3) *Furnishing of goods, services, or facilities by a disqualified person without charge.*—The furnishing of goods, services, or facilities by a disqualified person to a private foundation shall not be an act of self-dealing if they are furnished without charge. Thus, for example, the furnishing of goods such as pencils, stationery, or other incidental supplies, or the furnishing of facilities such as a building, by a disqualified person to a foundation shall be allowed if such supplies or facilities are furnished without charge. Similarly, the furnishing of services (even though such services are not personal in nature) shall be permitted if such furnishing is without charge. For purposes of this subparagraph, a furnishing of goods shall be considered without charge even though the private foundation pays for transportation, insurance, or maintenance costs it incurs in obtaining or using the property, so long as the payment is not made directly or indirectly to the disqualified person.

(e) *Payment of compensation.*—The payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person shall constitute an act of self-dealing. See, however, § 53.4941(d)-3(c) for the exception for the payment of compensation by a foundation to a disqualified person for personal services which are reasonable and necessary to carry out the exempt purposes of the foundation.

(f) *Transfer or use of the income or assets of a private foundation.*—(1) *In general.*—The transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation shall constitute an act of self-dealing. For purposes of the preceding sentence, the payment by a private foundation of any tax imposed on a disqualified person by chapter 42 shall be treated as a transfer of the income or assets of a private foundation for the benefit of a disqualified person. Similarly, the payment by a private foundation of the premiums for an insurance policy providing liability insurance to a foundation manager for chapter 42 taxes shall be an act of self-dealing under this paragraph unless such premiums are treated as part of the compensation paid to such manager. In addition, the purchase or sale of stock or other securities by a private foundation shall be an act of self-dealing if such purchase or sale is made in an attempt to manipulate the price of the stock or other securities to the advantage of a disqualified person. Similarly, the indemnification (of a lender) or guarantee (of repayment) by a private foundation with respect to a loan to a disqualified person shall be treated as a use for the benefit of a disqualified person of the income or assets of the foundation (within the meaning of this subparagraph). In addition, if a private foundation makes a grant or other payment which satisfies the legal obligation of a disqualified person, such grant or payment shall ordinarily constitute an act of self-dealing to which this subparagraph applies. However, if a private foundation makes a grant or payment which satisfies a pledge, enforceable under local law, to an organization described in section 501(c)(3), which pledge is made on or before April 16, 1973, such grant or payment shall not constitute an act of self-dealing to which this subparagraph applies so long as the disqualified person obtains no substantial benefit, other than the satisfaction of his obligation, from such grant or payment.

(2) *Certain incidental benefits.*—The fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing. Thus, the public recognition a person may receive, arising from the charitable activities of a private foundation to which such person is a substantial contributor, does not in itself result in an act of self-dealing since generally the benefit is incidental and tenuous. For example, a grant by a private foundation to a section 509(a)(1), (2), or (3) organization will not be an act of self-dealing merely because such organization is located in the same area as a corporation which is a substantial contributor to the foundation, or merely because one of the section 509(a)(1), (2), or (3) organization's officers, directors, or trustees is also a manager of or a substantial contributor to the foundation. Similarly, a scholarship or a fellowship grant to a person other than a disqualified person, which is paid or incurred by a private foundation in accordance with a program which is consistent with—

(i) The requirements of the foundation's exempt status under section 501(c)(3),

(ii) The requirements for the allowance of deductions under section 170 for contributions made to the foundation, and

(iii) The requirements of section 4945(g)(1),

will not be an act of self-dealing under section 4941(d)(1) merely because a disqualified person indirectly receives an incidental benefit from such grant. Thus, a scholarship or a fellowship grant made by a private foundation in accordance with a program to award scholarships or fellowship grants to the children of employees of a substantial contributor shall not constitute an act of self-dealing if the requirements of the preceding sentence are satisfied. For an example of the kind of scholarship program with an employment nexus that meets the above requirements, see § 53.4945-4(b)(5) (example 1).

(3) *Indemnification of foundation managers against liability for contesting chapter 42 taxes.*—Except as provided in § 53.4941(d)-3(c), section 4941(d)(1) shall not apply to the indemnification by a private foundation of a foundation manager, with respect to his defense in a judicial or administrative proceeding involving chapter 42 or State laws relating to mismanagement of funds of charitable organizations, against all expenses (other than taxes, penalties, or expenses of correction) including attorneys' fees, if—

(i) Such expenses are reasonably incurred by him in connection with such proceeding, and

(ii) He is successful in such defense, or such proceeding is terminated by settlement, and he has not acted willfully and without reasonable cause with respect to

the act or failure to act which led to liability for tax under chapter 42.

Similarly, except as provided in § 53.4941(d)-3(c), section 4941(d)(1) shall not apply to premiums for insurance to reimburse a foundation for an indemnification payment allowed pursuant to this subparagraph.

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

Example (1).—M, a private foundation, makes a grant of $50,000 to the governing body of N city for the purpose of alleviating the slum conditions which exist in a particular neighborhood of N. Corporation P, a substantial contributor to M, is located in the same area in which the grant is to be used. Although the general improvement of the area may constitute an incidental and tenuous benefit to P, such benefit by itself will not constitute an act of self-dealing.

Example (2).—Private foundation X established a program to award scholarship grants to the children of employees of corporation M, a substantial contributor to X. After disclosure of the method of carrying out such program, X received a determination letter from the Internal Revenue Service stating that X is exempt from taxation under section 501(c)(3), that contributions to X are deductible under section 170, and that X's scholarship program qualifies under section 4945(g)(1). A scholarship grant to a person not a disqualified person with respect to X paid or incurred by X in accordance with such program shall not be an indirect act of self-dealing between X and M.

Example (3).—Private foundation Y owns voting stock in corporation Z, the management of which includes certain disqualified persons with respect to Y. Prior to Z's annual stockholder meeting, the management solicits and receives the foundation's proxies. The transfer of such proxies in and of itself shall not be an act of self-dealing.

Example (4).—A, disqualified person with respect to private foundation S, contributes certain real estate to S for the purpose of building a neighborhood recreation center in a particular underprivileged area. As a condition of the gift, S agrees to name the recreation center after A. Since the benefit to A is only incidental and tenuous, the naming of the recreation center, by itself, will not be an act of self-dealing.

(g) *Payment to a government official.*—Except as provided in section 4941(d)(2)(G) or § 53.4941(d)-3(e), the agreement by a private foundation to make any payment of money or other property to a government official, as defined in section 4946(c), shall constitute an act of self-dealing. For purposes of this paragraph, an individual who is otherwise described in section 4946(c) shall be treated as a government official while on leave of absence from the government without pay.

§ 53.4941(d)-3 Exceptions to self-dealing.

(a) *General rule.*—In general, a transaction described in section 4941(d)(2)(B), (C), (D), (E), (F), or (G) is not an act of self-dealing. Section 4941(d)(2)(B) and (C) provides limited exceptions to certain specific transactions, as described in paragraphs (b)(2), (c)(2), and (d)(3) of § 53.4941(d)-2. Section 4941(d)(2)(D), (E), (F), and (G) and paragraphs (b) through (e) of this section describe certain transactions which are not acts of self-dealing.

(b) *Furnishing of goods, services, or facilities to a disqualified person.*—(1) *In general.*—Under section 4941(d)(2)(D), the furnishing of goods, services, or facilities by a private foundation to a disqualified person shall not be an act of self-dealing if such goods, services, or facilities are made available to the general public on at least as favorable a basis as they are made available to the disqualified person. This subparagraph shall not apply, however, in the case of goods, services or facilities furnished later than May 16, 1973, unless such goods, services or facilities are functionally related, within the meaning of section 4942(j)(5), to the exercise or performance by a private foundation of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(c)(3).

(2) *General public.*—For purposes of this paragraph, the term "general public" shall include those persons who, because of the particular nature of the activities of the private foundation, would be reasonably expected to utilize such goods, services, or facilities. This paragraph shall not apply, however, unless there are a substantial number of persons other than disqualified persons who are actually utilizing such goods, services or facilities. Thus, a private foundation which furnishes recreational or park facilities to the general public may furnish such facilities to a disqualified person provided they are furnished to him on a basis which is not more favorable than that on which they are furnished to the general public. Similarly, the sale of a book or magazine by a private foundation to disqualified persons shall not be an act of self-dealing if the publication of such book or magazine is functionally related to a charitable or educational activity of the foundation and the book or magazine is made available to the disqualified persons and the general public at the same price. In addition, if the terms of the sale require, for example, payment within 60 days from the date of delivery of the book or magazine, such terms are consistent with normal commercial practices, and payment is made within the 60-day period, the transaction shall not be treated as a loan or other extension of credit under § 53.4941(d)-2(c)(1).

(c) *Payment of compensation for certain personal services.*—(1) *In general.*—Under section 4941(d)(2)(E), except in the case of a Government official (as defined in section 4946(c)), the payment of compensation (and the payment or reimbursement of expenses, including reasonable advances for expenses anticipated in the immediate future) by a private foundation to a disqualified person for the performance of personal services which are reasonable and necessary to carry out the exempt purpose of the private foundation shall not be an act of self-dealing if such compensation (or payment or reimbursement) is not excessive. For purposes of this subparagraph the term "personal services" includes the services of a broker serving as agent for the private foundation, but not the services of a dealer who buys from the private foundation as principal and resells to third parties. For the determination whether compensation is excessive, see § 1.162-7 of this chapter (Income Tax Regulations). This paragraph applies without regard to whether the person who receives the compensation (or payment or reimbursement) is an individual. The portion of any payment which represents payment for property shall not be treated as payment of compensation (or payment or reimbursement of expenses) for the performance of personal services for purposes of this paragraph. For rules with respect to the performance of general banking services, see § 53.4941(d)-2(c)(4). Further, the making of a cash advance to a foundation manager or employee for expenses on behalf of the foundation is not an act of self-dealing, so long as the amount of the advance is reasonable in relation to the duties and expense requirements of the foundation manager. Except where reasonably allowable pursuant to subdivision (iii) of this subparagraph, such advances shall not ordinarily exceed $500. For example, if a foundation makes an advance to a foundation manager to cover anticipated out-of-pocket current expenses for a reasonable period (such as a month) and the manager accounts to the foundation under a periodic reimbursement program for actual expenses incurred, the foundation will not be regarded as having engaged in an act of self-dealing—

(i) When it makes the advance,

(ii) When it replenishes the funds upon receipt of supporting vouchers from the foundation manager, or

(iii) If it temporarily adds to the advance to cover extraordinary expenses anticipated to be incurred in fulfillment of a special assignment (such as long distance travel).

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

Example (1).—M, a partnership, is a firm of 10 lawyers engaged in the practice of law. A and B, partners in M, serve as trustees to private foundation W and, therefore, are disqualified persons. In addition, A and B own more than 35 percent of the profits interest in M, thereby making M a disqualified person. M performs various legal services for W from time to time as such services are requested. The payment of compensation by W to M shall not constitute an act of self-dealing if the services performed are reasonable and necessary for the carrying out of W's exempt purposes and the amount paid by W for such services is not excessive.

Example (2).—C, a manager of private foundation X, owns an investment counseling business. Acting in his capacity as an investment counselor, C manages X's investment portfolio for which he receives an amount which is determined to be not excessive. The payment of such compensation to C shall not constitute an act of self-dealing.

Example (3).—M, a commercial bank, serves as a trustee for private foundation Y. In addition to M's duties as trustee, M

maintains Y's checking and savings accounts and rents a safety deposit box to Y. The use of the funds by M and the payment of compensation by Y to M for such general banking services shall be treated as the payment of compensation for the performance of personal services which are reasonable and necessary to carry out the exempt purposes of Y if such compensation is not excessive.

Example (4).—D, a substantial contributor to private foundation Z, owns a factory which manufactures microscopes. D contracts with Z to manufacture 100 microscopes for Z. Any payment to D under the contract shall constitute an act of self-dealing, since such payment does not constitute the payment of compensation for the performance of personal services.

(d) *Certain transactions between a foundation and a corporation.*—(1) *In general.*—Under section 4941(d)(2)(F), any transaction between a private foundation and a corporation which is a disqualified person will not be an act of self-dealing if such transaction is engaged in pursuant to a liquidation, merger, redemption, recapitalization, or other corporate adjustment, organization, or reorganization, so long as all the securities of the same class as that held (prior to such transaction) by the foundation are subject to the same terms and such terms provide for receipt by the foundation of no less than fair market value. For purposes of this paragraph, all of the securities are not subject to the same terms unless, pursuant to such transaction, the corporation makes a bona fide offer on a uniform basis to the foundation and every other person who holds such securities. The fact that a private foundation receives property, such as debentures, while all other persons holding securities of the same class receive cash for their interests, will be evidence that such offer was not made on a uniform basis. This paragraph may apply even if no other person holds any securities of the class held by the foundation. In such event, however, the consideration received by holders of other classes of securities, or the interests retained by holders of such other classes, when considered in relation to the consideration received by the foundation, must indicate that the foundation received at least as favorable treatment in relation to its interests as the holders of any other class of securities. In addition, the foundation must receive no less than the fair market value of its interests.

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

Example (1).—Private foundation X owns 50 percent of the class A preferred stock of corporation M, which is a disqualified person with respect to X. The terms of such securities provide that the stock may be called for redemption at any time by M at 105 percent of the face amount of the stock. M exercises this right and calls all the class A preferred stock by paying 105 percent of the face amount in cash. At the time of the redemption of the class A preferred stock, it is determined that the fair market value of the preferred stock is equal to its face amount. In such case, the redemption by M of the preferred stock of X is not an act of self-dealing.

Example (2).—Private foundation Y, which is on a calendar year basis, acquires 60 percent of the class A preferred stock of corporation N by will on January 10, 1970. N, which is also on a calendar year basis, is a disqualified person with respect to Y. In 1971, N offers to redeem all of the class A preferred stock for a consideration equal to 100 percent of the face amount of such stock by the issuance of debentures. The offer expires January 2, 1972. Both Y and all other holders of the class A preferred stock accept the offer and enter into the transaction on January 2, 1972, at which time it is determined that the fair market value of the debentures is no less than the fair market value of the preferred stock. The transaction on January 2, 1972, shall not be treated as an act of selfdealing for 1972. However, because under § 53.4941(e)-1(e)(1)(i) an act of selfdealing occurs on the first day of each taxable year or portion of a taxable year that an extension of credit from a foundation to a disqualified person goes uncorrected, if such debentures are held by Y after December 31, 1972, except as provided in § 53.4941(d)-4(c)(4), such extension of credit shall not be excepted from the definition of an act of selfdealing by reason of the January 2, 1972, transaction. See § 53.4941(d)-4(c)(4) for rules indicating that under certain circumstances such debentures could be held by Y until December 31, 1979.

(e) *Certain payments to government officials.*—Under section 4941(d)(2)(G), in the case of a government official, in addition to the exceptions provided in section 4941(d)(2)(B), (C), and (D), section 4941(d)(1) shall not apply to—

(1) A prize or award which is not includible in gross income under section 74(b), if the government official receiving such prize or award is selected from the general public;

(2) A scholarship or a fellowship grant which is excludable from gross income under section 117(a) and which is to be utilized for study at an educational institution described in section 151(e)(4);

(3) Any annuity or other payment (forming part of a stock-bonus, pension, or profit sharing plan) by a trust which constitutes a qualified trust under section 401;

(4) Any annuity or other payment under a plan which meets the requirements of section 404(a)(2);

(5) Any contribution or gift (other than a contribution or gift of money) to, or services or facilities made available to, any government official, if the aggregate value of such contributions, gifts, services, and facilities does not exceed $25 during any calendar year;

(6) Any payment made under 5 U.S.C. chapter 41 (relating to government employees' training programs);

(7) Any payment or reimbursement of traveling expenses (including amounts expended for meals and lodging, regardless of whether the government official is away from home within the meaning of section 162(a)(2), and including reasonable advances for such expenses anticipated in the immediate future) for travel solely from one point in the United States to another in connection with one or more purposes described in section 170(c)(1) or (2)(B), but only if such payment or reimbursement does not exceed the actual cost of the transportation involved plus an amount for all other traveling expenses not in excess of 125 percent of the maximum amount payable under 5 U.S.C. 5702(a) for like travel by employees of the United States;

(8) Any agreement to employ or make a grant to a government official for any period after the termination of his government service if such agreement is entered into within 90 days prior to such termination;

(9) If a government official attends or participates in a conference sponsored by a private foundation, the allocable portion of the cost of such conference and other nonmonetary benefits (for example, benefits of a professional, intellectual, or psychological nature, or benefits resulting from the publication or the distribution to participants of a record of the conference), as well as the payment or reimbursement of expenses (including reasonable advances for expenses anticipated in connection with such a conference in the near future), received by such government official as a result of such attendance or participation shall not be subject to section 4941(d)(1), so long as the conference is in furtherance of the exempt purposes of the foundation; or

(10) In the case of any government official who was on leave of absence without pay on December 31, 1969, pursuant to a commitment entered into on or before such date for the purpose of engaging in certain activities for which such individual was to be paid by one or more private foundations, any payment of compensation (or payment or reimbursement of expenses, including reasonable advances for expenses anticipated in the immediate future) by such private foundations to such individual for any continuous period after December 31, 1969, and prior to January 1, 1971, during which such individual remains on leave or absence to engage in such activities. A commitment is considered entered into on or before December 31, 1969, if on or before such date, the amount and nature of the payments to be made and the name of the individual receiving such payments were entered on the records of the payor, or were otherwise adequately evidenced, or the notice of the payment to be received was communicated to the payee orally or in writing.

§ 53.4941(d)-4 Transitional rules.

(a) *Certain transactions involving securities acquired by a foundation before May 27, 1969.*—(1) *In general.*—Under section 101(l)(2)(A) of the Tax Reform Act of 1969 (83 Stat. 533), any transaction between a private foundation and a corporation which is a disqualified person shall not be an act of self-dealing if such transaction is pursuant to the terms of securities of such corporation, if such terms were in existence at the time such securities were acquired by the foundation, and if such securities were acquired by the foundation before May 27, 1969.

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

Example.—Private foundation X purchased preferred stock of corporation M, a disqualified person with respect to X, on March 15,

1969. The terms of such securities on such date provided that the stock could be called by M at any time if M paid the outstanding shareholders cash equal to 105 percent of the face amount of the stock. If M exercises this right and calls the stock owned by X on February 15, 1970, such call shall not constitute an act of self-dealing even if such price is not equivalent to fair market value on such date and even if not all of the securities of that class are called.

(b) *Disposition of certain business holdings.*—(1) *In general.*—Under section 101(1)(2)(B) of the Tax Reform Act of 1969 (83 Stat. 533), the sale, exchange, or other disposition of property which is owned by a private foundation on May 26, 1969, to a disqualified person shall not be an act of self-dealing if the foundation is required to dispose of such property in order not to be liable for tax under section 4943 (determined without regard to section 4943(c)(2)(C) and as if every disposition by the foundation were made to disqualified persons) and if such disposition satisfies the requirements of subparagraph (2) of this paragraph. In determining the amount of excess business holdings for purposes of applying this paragraph in the case of a disposition completed before January 1, 1975, section 4943 shall be applied without taking section 4943(c)(4) into account.

(2) *Terms of the disposition.*—Subparagraph (1) of this paragraph shall not apply unless—

(i) The private foundation receives an amount which equals or exceeds the fair market value of the business holdings at the time of disposition or at the time a contract for such disposition was previously executed; and

(ii) At the time with respect to which subdivision (i) of this subparagraph is applied, the transaction would not have constituted a prohibited transaction within the meaning of section 503(b) or the corresponding provisions of prior law if such provisions had been applied at such time.

(3) *Property received under a trust or will.*—For purposes of this paragraph, property shall be considered as owned by a private foundation on May 26, 1969, if such property is acquired by such foundation under the terms of a will executed on or before such date, under the terms of a trust which was irrevocable on such date, or under the terms of a revocable trust executed on or before such date if the property would have passed under a will which would have met the requirements of this subparagraph but for the fact that a grantor dies without having revoked the trust. An amendment or republication of a will which was executed on or before May 26, 1969, does not prevent any interest in a business enterprise which was to pass under the terms of such will (which terms were in effect on May 26, 1969, and at all times thereafter) from being treated as owned by a private foundation on or before May 26, 1969, solely because—

(i) There is a reduction in the interest in the business enterprise which the foundation was to receive under the terms of the will (for example, if the foundation is to receive the residuary estate and one class of stock is disposed of by the decedent during his lifetime or by a subsequent codicil),

(ii) Such amendment or republication is necessary in order to comply with section 508(e) and the regulations thereunder,

(iii) There is a change in the executor of the will, or

(iv) There is any other change which does not otherwise change the rights of the foundation with respect to such interest in the business enterprise.

However, if under such amendment or republication there is an increase of the interest in the business enterprise which the foundation was to receive under the terms of the will in effect on May 26, 1969, such increase shall not be treated as owned by the private foundation on or before May 26, 1969, but under such circumstances the interest which would have been acquired before such increase shall be treated as owned by the private foundation on or before May 26, 1969.

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

Example (1).—On May 26, 1969, private foundation X owns 10 percent of corporation Y's voting stock, which is traded on the New York Stock Exchange. Disqualified persons with respect to X own an additional 40 percent of such voting stock. X is on a calendar year basis. Prior to January 1, 1975, X privately sold its entire 10 percent for cash to B, a disqualified person, at the price quoted on the stock exchange at the close of the day less commissions. Since the 10 percent owned by X would constitute excess business holdings without the application of section 4943(c)(2)(C) or (4), the disposition will not constitute an act of self-dealing.

Example (2).—Assume the facts as stated in example (1), except that the only stock of corporation Y which X owns is 1.5 percent of Y's voting stock. Since the 1.5 percent owned by X would constitute excess business holdings without the application of section 4943(c)(2)(C) or (4), the disposition of the stock to B for cash will not constitute an act of self-dealing.

Example (3).—Assume the facts as stated in example (1), except that B, instead of paying cash as consideration for the stock, issued a 10-year secured promissory note as consideration for the stock. The issuance of such promissory note will not be treated as an act of self-dealing until taxable years beginning after December 31, 1979, unless such issuance would have been a prohibited transaction under section 503(b), or unless the transaction does not remain throughout its life at least as favorable as an arm's-length contract negotiated currently. See paragraph (c) of this section.

(c) *Existing leases and loans.*—(1) *In general.*—Under section 101(1)(2)(C) of the Tax Reform Act of 1969 (83 Stat. 533), the leasing of property or the lending of money (or other extension of credit) between a disqualified person and a private foundation pursuant to a binding contract which was in effect on October 9, 1969 (or pursuant to a renewal or modification of such a contract, as described in subparagraph (2) of this paragraph), shall not be an act of self-dealing until taxable years beginning after December 31, 1979, if—

(i) At the time the contract was executed, such contract was not a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law), and

(ii) The leasing or lending of money (or other extension of credit) remains throughout the term of the lease or extension of credit at least as favorable as a current arm's-length transaction with an unrelated person.

(2) *Renewal or modification of existing contracts.*—A renewal or a modification of an existing contract is referred to in subparagraph (1) of this paragraph only if any modifications of the terms of such contract are not substantial and the relative advantages of the modified contract compared with contracts entered into at arm's-length with an unrelated person at the time of the renewal or modification are at least as favorable to the private foundation as the relative advantages of the original contract compared with contracts entered into at arm's-length with an unrelated person at the time of execution of the original contract. Such renewal or modification need not be provided for in the original contract; it may take place before or after the expiration of the original contract and at any time before the first day of the first taxable year of the private foundation beginning after December 31, 1979. Where, in a normal commercial setting, an unrelated party in the position of a private foundation could be expected to insist upon a renegotiation or termination of a binding contract, the private foundation must so act. Thus, for example, if a disqualified person leases office space from a private foundation on a month-to-month basis, and a party in the position of the private foundation could be expected to renegotiate the rent required in such contract because of a rise in the fair market value of such office space, the private foundation must so act in order to avoid participation in an act of self-dealing. Where the private foundation has no right to insist upon renegotiation, an act of self-dealing shall occur if the terms of the contract become less favorable to the foundation than an arm's-length contract negotiated currently, unless—

(i) The variation from current fair market value is de minimis, or

(ii) The contract is renegotiated by the foundation and the disqualified person so that the foundation will receive no less than fair market value.

For purposes of subdivision (i) of this subparagraph de minimis ordinarily shall be no more than one-half of 1 percent in the rate of return in the case of a loan, or 10 percent of the rent in the case of a lease.

(3) *Example.*—The provisions of subparagraphs (1) and (2) of this paragraph may be illustrated by the following example.

Example.—Under a binding contract entered into on January 1, 1964, X, a private foundation, leases a building for 10 years from Z, a disqualified person. At the time

the contract was executed, the lease was not a "prohibited transaction" within the meaning of section 503(b), since the rent charged X was only 50 percent of the rent which would have been charged in an arm's-length transaction with an unrelated person. On January 1, 1974, X renewed the lease for 5 additional years. The terms of the renewal agreement provided for a 20 percent increase in the amount of rent charged X. However, at the time of such renewal, the rent which would have been charged in an arm's-length transaction had also increased by 20 percent from that of 1964. The renewal agreement shall not be treated as an act of self-dealing.

(4) *Certain exchanges of stock or securities for bonds, debentures or other indebtedness.*—(i) In the case of a transaction described in paragraph (a) or (b) of this section or paragraph (d) of § 53.4941(d)–3, where a bond, debenture, or other indebtedness of a disqualified person is acquired by a private foundation in exchange for stock or securities which it held on October 9, 1969, and at all times thereafter, such indebtedness shall be treated as an extension of credit pursuant to a binding contract in effect on October 9, 1969, to which this paragraph applies. Thus, so long as the extension of credit remains at least as favorable as an arm's-length transaction with an unrelated person and neither the acquisition of the securities which were exchanged for the indebtedness nor the exchange of such securities for the indebtedness was a prohibited transaction within the meaning of section 503(b) (or the corresponding provisions of prior law) at the time of such acquisition, such extension of credit shall not be an act of self-dealing until taxable years beginning after December 31, 1979.

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

Example (1).—Assume the facts as stated in example (2) of § 53.4941 (d)–3 (d)(2), except that the preferred stock was held by Y on October 9, 1969, and at all times thereafter until the redemption occurred on January 2, 1972. In addition, assume that the acquisition of the preferred stock was not a prohibited transaction within the meaning of section 503(b) at the time of such acquisition and the exchange of the preferred stock for the debentures would not have been a prohibited transaction within the meaning of section 503(b). For 1973 through 1979, the extension of credit arising from the holding of the debentures is not an act of self-dealing so long as the extension of credit remains at least as favorable as an arm's-length transaction with an unrelated person. See, however, example (3) of § 53.4941 (e)–1 (e)(1)(ii).

Example (2).—Assume the same facts as stated in example (1) of § 53.4941 (d)–4 (b)(4), except that private foundation X sold its entire 10 percent of coporation Y's voting stock in exchange for Y's secured notes which mature on December 31, 1985. For taxable years beginning before January 1, 1980, the extension of credit arising from the holding of such notes by X is not an act of self-dealing so long as the extension of credit remains at least as favorable as an arm's-length transaction with an unrelated person and neither the acquisition of the securities which were exchanged for the indebtedness nor the exchange of such securities for the indebtedness was a prohibited transaction within the meaning of section 503(b) (or the corresponding provisions of prior law). Under § 53.4941(e)–1, a new extension of credit occurs on the first day of each taxable year in which an indebtedness is outstanding; therefore, if the secured notes are held by X after December 31, 1979, a new extension of credit not excepted from the definition of an act of self-dealing will occur on the first day of the first taxable year beginning after December 31, 1979, and on the first day of each succeeding taxable year in which X holds such secured notes.

(d) *Sharing of goods, services, or facilities before January 1, 1980.*—(1) Under section 101(l)(2)(D) of the Tax Reform Act of 1969 (83 Stat. 533), the use (other than leasing) of goods, services, or facilities which are shared by a private foundation and a disqualified person shall not be an act of self-dealing until taxable years beginning after December 31, 1979, if—

(i) The use is pursuant to an arrangement in effect before October 9, 1969, and at all times thereafter;

(ii) The arrangement was not a prohibited transaction (within the meaning of sec. 503(b) or the corresponding provisions of prior law) at the time it was made; and

(iii) The arrangement would not be a prohibited transaction if section 503(b) continued to apply.

For purposes of this paragraph, such arrangement need not be a binding contract.

(2) The provisions of this paragraph may be illustrated by the following example:

Example.—In 1964 X, a private foundation, and B, a disqualified person, arranged for the sharing of computer time in B's son's company for a 10-year period commencing January 1, 1965. B's son has the unilateral right to terminate the arrangement at any time. X uses the computer facilities in connection with an analysis of its grant-making activities, while B's use is related to his business affairs. Both X and B make reasonable fixed payments to the computer company based on the number of hours of computer use and comparable to fees charged in arm's length transactions with unrelated parties. The company imposes a maximum limit per month on the sum of the number of hours for which X and B use the computer facilities. Under these circumstances, the sharing of computer time is not an act of self-dealing.

(e) *Use of certain property acquired before October 9, 1969.*—(1) Under section 101(l)(2)(E) of the Tax Reform Act of 1969 (83 Stat. 533), the use of property in which a private foundation and a disqualified person have a joint or common interest will not be an act of self-dealing if the interests of both in such property were acquired before October 9, 1969.

(2) The provisions of this paragraph may be illustrated by the following example:

Example.—Prior to October 9, 1969, C, a disqualified person, gave beachfront property to private foundation X for use as a recreational facility for underprivileged, inner-city children during the summer months. However, C retained the right to use such property for his life. The use of such property by C or X is not an act of self-dealing.

§ 53.4941(e). Statutory provisions; exempt organizations; private foundations; taxes on self-dealing; self-dealing defined.

SEC. 4941. *Taxes on self-dealing.* * * *

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

(1) *Taxable period.*—The term "taxable period" means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending on whichever of the following is the earlier: (A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212, or (B) the date on which correction of the act of self-dealing is completed.

(2) *Amount involved.*—The term "amount involved" means, with respect to any act of self-dealing, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in subsection (d)(2)(E), the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) In the case of the taxes imposed by subsection (a), shall be determined as of the date on which the act of self-dealing occurs; and

(B) In the case of the taxes imposed by subsection (b), shall be the highest fair market value during the correction period.

(3) *Correction.*—The terms "correction" and "correct" mean, with respect to any act of self-dealing, undoing the transaction to the extent possible, but in any case placing the private foundation in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

(4) *Correction period.*—The term "correction period" means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (b)(1) under section 6212, extended by—

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

(B) Any other period which the Secretary or his delegate determines is reasonable and necessary to bring about correction of the act of self-dealing.

§ 53.4941(e)–1 Definitions.

(a) *Taxable period.*—(1) *In general.*—For purposes of any act of self-dealing, the term "taxable period" means the period beginning with the date on which the act of self-dealing occurs and ending on the earlier of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by section 4941(a)(1), or

(ii) The date on which correction of the act of self-dealing is completed.

(2) *Date of occurrence.*—An act of self-dealing occurs on the date on which all the terms and conditions of the transaction and the liabilities of the parties have been fixed. Thus, for example, if a private foundation gives a disqualified person a binding option on June 15, 1971, to purchase property owned by the foundation at any time before June 15, 1972, the act of self-dealing has occurred on June 15, 1971. Similarly, in the case of a conditional sales contract, the act of

self-dealing shall be considered as occurring on the date the property is transferred subject only to the condition that the buyer make payment for receipt of such property.

(3) *Special rule.*—Where a notice of deficiency referred to in subparagraph (1)(i) of this paragraph is not mailed because a waiver of the restrictions on assessment and collection of a deficiency has been accepted, or because the deficiency is paid, the date of filing of the waiver or the date of such payment, respectively, shall be treated as the end of the taxable period.

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

Example (1).—On July 16, 1970, F, a manager of private foundation X acting on behalf of the foundation, knowing his act to be one of self-dealing, willfully and without reasonable cause engaged in an act of self-dealing by selling certain real estate to A, a disqualified person. On March 25, 1973, the Internal Revenue Service mailed a notice of deficiency to A with respect to the tax imposed on the sale under section 4941(a)(1). The taxable period with respect to the act of self-dealing for both A and F is July 16, 1970, through March 25, 1973.

Example (2).—Assume the facts as stated in example (1), except that the act of self-dealing is corrected by A on March 17, 1971. The taxable period with respect to the act of self-dealing for both A and F is July 16, 1970, through March 17, 1971.

Example (3).—Assume the facts as stated in example (1), except that on August 20, 1972, A files a waiver of the restrictions on assessment and collection of the tax imposed on the sale under section 4941(a)(1) which is accepted. The taxable period with respect to the act of self-dealing for both A and F is July 16, 1970, through August 20, 1972.

(b) *Amount involved.*—(1) *In general.*—Except as provided in subparagraph (2) of this paragraph, for purposes of any act of self-dealing, the term "amount involved" means the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received.

(2) *Exceptions.*—(i) In the case of the payment of compensation for personal services to persons other than Government officials, the amount involved shall be only the excess compensation paid by the private foundation.

(ii) Where the use of money or other property is involved, the amount involved shall be the greater of the amount paid for such use or the fair market value of such use for the period for which the money or other property is used. Thus, for example, in the case of a lease of a building by a private foundation to a disqualified person, the amount involved is the greater of the amount of rent received by the private foundation from the disqualified person or the fair rental value of the building for the period such building is used by the disqualified person.

(iii) In cases in which a transaction would not have been an act of self-dealing had the private foundation received fair market value, the amount involved is the excess of the fair market value of the property transferred by the private foundation over the amount which the private foundation receives, but only if the parties have made a good faith effort to determine fair market value. For purposes of this subdivision a good faith effort to determine fair market value shall ordinarily have been made where—

(*a*) The person making the valuation is not a disqualified person with respect to the foundation and is both competent to make the valuation and not in a position, whether by stock ownership or otherwise, to derive an economic benefit from the value utilized, and

(*b*) The method utilized in making the valuation is a generally accepted method for valuing comparable property, stock, or securities for purposes of arm's-length business transactions where valuation is a significant factor.

See section 4941(d)(2)(F) and §§ 53.4941(d)-1(b)(3), 53.4941(d)-3(d)(1) and 53.4941(d)-4(b). Thus, for example, if a corporation which is a disqualified person with respect to a private foundation recapitalizes in a transaction which would be described in section 4941(d)(2)(F) but for the fact that the private foundation receives new stock worth only $95,000 in exchange for the stock which it previously held in the corporation and which has a fair market value of $100,000 at the time of the recapitalization, the amount involved would be $5,000 ($10,000−$95,000) if there had been a good faith attempt to value the stock. Similarly, if an estate enters into a transaction with a disqualified person with respect to a foundation and such transaction would be described in § 53.4941(d)-1(b)(3) but for the fact that the estate receives less than fair market value for the property exchanged, the amount involved is the excess of the fair market value of the property the estate transfers to the disqualified person over the money and the fair market value of the property received by the estate.

(3) *Time for determining fair market value.*—The fair market value of the property or the use thereof, as the case may be, shall be determined as of the date on which the act of self-dealing occurred in the case of the initial taxes imposed by section 4941(a) and shall be the highest fair market value during the correction period in the case of the additional taxes imposed by section 4941(b).

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

Example (1).—A, a disqualified person with respect to private foundation M, uses an airplane owned by M on June 15 and June 16, 1970, for a 2-day trip to New York City on personal business and pays M $500 for the use of such airplane. The fair rental value for the use of the airplane for those 2 days is $3,000. For purposes of section 4941(a), the amount involved with respect to the act of self-dealing is $3,000.

Example (2).—On April 10, 1970, B, a manager of private foundation P, borrows $100,000 from P at 6 percent interest per annum. Both principal and interest are to be paid 1 year from the date of the loan. The fair market value of the use of the money on April 10, 1970, is 10 percent per annum. Six months later, B and P terminate the loan, and B repays the $100,000 principal plus $3,000 ($100,000×6 percent for one-half year) interest. For purposes of section 4941(a), the amount involved with respect to the act of self-dealing is $5,000 ($100,000×10 percent for one-half year) for each year or partial year in the taxable period.

Example (3).—C, a substantial contributor to private foundation S, leases office space in a building owned by S for $3,600 for 1 year beginning on January 1, 1971. The fair rental value of the building for a 1-year lease on January 1, 1971, is $5,600. On December 31, 1971, the lease is terminated. For purposes of section 4941(a), the amount involved with respect to the act of self-dealing is $5,600 for each year or partial year in the taxable period.

Example (4).—D, a disqualified person with respect to private foundation T, purchases 100 shares of stock from T for $5,000 on June 15, 1972. The fair market value of the 100 shares of stock on such date is $4,800. D sells the 100 shares of stock on December 20, 1973, for $6,000. Subsequently, D receives a notice of deficiency with respect to the taxes imposed under subsections (a) and (b) of section 4941. D fails to correct during the correction period. Between June 15, 1972, and the end of the correction period, the stock was quoted on the New York Stock Exchange at a high of $67 per share. The amount involved with respect to the tax imposed under subsection (a) is $5,000, and the amount involved with respect to the tax imposed under subsection (b) for failure to correct is $6,700 (100 shares at $67 per share), the highest fair market value during the correction period.

Example (5).—Corporation M, a disqualified person with respect to private foundation V, redeems all of its Class B common stock, some of which is held by V. The redemption of V's stock would be described in section 4941(d)(2)(F) but for the fact that V receives only $95,000 in exchange for stock which has a fair market value of $100,000 at the time of the transaction. The $95,000 value of V's stock, which is not publicly traded, was determined by investment bankers in accordance with accepted methods of valuation that would be utilized if the M stock held by V were to be offered for sale to the public. Therefore, the amount involved with respect to the transaction will ordinarily be limited to $5,000 ($100,000—$95,000).

(c) *Correction.*—(1) *In general.*—Correction shall be accomplished by undoing the transaction which constituted the act of self-dealing to the extent possible, but in no case shall the resulting financial position of the private foundation be worse than that which it would be if the disqualified person were dealing under the highest fiduciary standards. For example, where a disqualified person sells property to a private foundation for cash, correction may be accomplished by recasting the transaction in the form of a gift by returning the cash to the foundation. Subparagraphs (2) through (6) of this paragrah illustrate the minimum standards of correction in the case of certain specific acts of self-dealing. Principles similar to the principles contained in such subparagraphs shall be applied with respect to other acts of self-dealing. Any correction pursuant to this paragraph and section 4941 shall not be an act of self-dealing.

(2) *Sales by foundation.*—(i) In the case of a sale of property by a private foundation to a disqualified person for

cash, undoing the transaction § 53.4941 (e)-1(c)(2)(i) includes, but is not limited to, requiring rescission of the sale where possible. However, in order to avoid placing the foundation in a position worse than that in which it would be if rescission were not required, the amount returned to the disqualified person pursuant to the rescission shall not exceed the lesser of the cash received by the private foundation or the fair market value of the property received by the disqualified person. For purposes of the preceding sentence, fair market value shall be the lesser of the fair market value at the time of the act of self-dealing or the fair market value at the time of rescission. In addition to rescission, the disqualified person is required to pay over to the private foundation any net profits he realized after the original sale with respect to the property he received from the sale. Thus, for example, the disqualified person must pay over to the foundation any income derived by him from the property he received from the original sale to the extent such income during the correction period exceeds the income derived by the foundation during the correction period from the cash which the disqualified person originally paid to the foundation.

(ii) If, prior to the end of the correction period, the disqualified person resells the property in an arm's-length transaction to a bona fide purchaser who is not the foundation or other disqualified person, no rescission is required. In such case, the disqualified person must pay over to the foundation the excess (if any) of the greater of the fair market value of such property on the date on which correction of the act of self-dealing occurs or the amount realized by the disqualified person from such arm's length resale over the amount which would have been returned to the disqualified person pursuant to subdivision (i) of this subparagraph if rescission had been required. In addition, the disqualified person is required to pay over to the foundation any net profits he realized, s described in subdivision (i) of this subparagraph.

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

Example (1).—On July 1, 1970, private foundation M sold a painting to A, a disqualified person, for $5,000, in a transaction not within any of the exceptions to self-dealing. The fair market value of the painting on such date was $6,000. On March 25, 1971, the painting is still owned by A and has a fair market value of $7,200. A did not derive any income as a result of purchasing the painting. In order to correct the act of self-dealing under this subparagraph on March 25, 1971, the sale must be rescinded by the return of the painting to M. However, pursuant to such rescission, M must not pay A more than $5,000, the original consideration received by M.

Example (2).—Assume the facts as stated in Example (1), except that A sold the painting on December 15, 1970, in an arm's-length transaction to C, a bona fide purchaser who is not a disqualified person, for $6,100. In addition, assume that the fair market value of the painting on March 25, 1971, is $7,600. In order to correct the act of self-dealing under this subparagraph on March 25, 1971, A must pay M $2,600 ($7,600, the fair market value at the time of correction, less $5,000, the amount which would have been returned to A if rescission had been required). Since the painting was sold to C in an arm's-length transaction prior to correction, no rescission is required.

(3) *Sales to foundation.*—(i) In the case of a sale of property to a private foundation by a disqualified person for cash, undoing the transaction includes, but is not limited to, requiring rescission of the sale where possible. However, in order to avoid placing the foundation in a position worse than that in which it would be if rescission were not required, the amount received from the disqualified person pursuant to the rescission shall be the greatest of the cash paid to the disqualified person, the fair market value of the property at the time of the original sale, or the fair market value of the property at the time of rescission. In addition to rescission, the disqualified person is required to pay over to the private foundation any net profits he realized after the original sale with respect to the consideration he received from the sale. Thus, for example, the disqualified person must pay over to the foundation any income derived by him from the cash he received from the original sale to the extent such income during the correction period exceeds the income derived by the foundation during the correction period from the property which the disqualified person originally transferred to the foundation.

(ii) If, prior to the end of the correction period, the foundation resells the property in an arm's-length transaction to a bona fide purchaser who is not a disqualified person, no rescission is required. In such case, the disqualified person must pay over to the foundation the excess (if any) of the amount which would have been received from the disqualified person pursuant to subdivision (i) of this subparagraph, if recission had been required over the amount realized by the foundation upon resale of the property. In addition, the disqualified person is required to pay over to the foundation any net profits he realized, as described in subdivision (i) of this subparagraph.

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

Example (1).—On February 10, 1972, D, a disqualified person with respect to private foundation P, sells 100 shares of X stock to P for $2,500 in a transaction which does not fall within any of the exceptions to self-dealing. The fair market value of the 100 shares of X stock on February 10, 1972, is $3,200. On June 1, 1973, the 100 shares of X stock have a fair market value of $2,900. From February 10, 1972, through June 1, 1973, P has received dividends of $90 from the stock, and D has received interest of $300 from the $2,500 which D received as consideration for the stock. In order to correct the act of self-dealing under this subparagraph on June 1, 1973, the sale must be rescinded by the return of the stock to D. However, pursuant to such rescission, D must pay P $3,200, the fair market value of the stock on the date of sale. In addition, D must pay P $210, the amount of income derived by D during the correction period from the $2,500 received from P ($300) minus the income derived by P during the correction period from the stock sold to P ($90).

Example (2).—Assume the facts as stated in Example (1), except that on September 1, 1972, P sells the 100 shares of X stock to E, a bona fide purchaser who is not a disqualified person, in an arm's-length transaction for $2,750. Assume further that P has not received any dividends from the stock prior to the sale to E, but that P receives interest of $260 from the $2,750 received as consideration for the stock for the period from September 1, 1972, to June 1, 1973. In order to correct the act as self-dealing under this subparagraph on June 1, 1973, D must pay P $450 ($3,200, the amount which would have been received from D if rescission had been required, less $2,750, the amount realized by P from the sale to E). In addition, D must pay P $40, the amount of income derived by D during the correction period from the $2,500 received from P ($300) minus the income derived by P during the correction period from the stock sold to P ($260 from the $2,750 received as consideration for the stock). Since the stock was sold to E in an arm's-length transaction prior to correction, no rescission is required.

(4) *Use of property by a disqualified person.*—(i) In the case of the use by a disqualified person of property owned by a private foundation, undoing the transaction includes, but is not limited to, terminating the use of such property. In addition to termination, the disqualified person must pay the foundation—

(*a*) The excess (if any) of the fair market value of the use of the property over the amount paid by the disqualified person for such use until such termination, and

(*b*) The excess (if any) of the amount which would have been paid by the disqualified person for the use of the property on or after the date of such termination, for the period such disqualified person would have used the property (without regard to any further extensions or renewals of such period) if such termination had not occurred, over the fair market value of such use for such period.

In applying (*a*) of this subdivision the fair market value of the use of property shall be the higher of the rate (that is, fair rental value per period in the case of use of property other than money or fair interest rate in the case of use of money) at the time of the act of self-dealing (within the meaning of paragraph (e)(1) of this section) or such rate at the time of correction of such act of self-dealing. In applying (*b*) of this subdivision the fair market value of the use of property shall be the rate at the time of correction.

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

Example (1).—On January 1, 1972, private foundation S rented the third story of its office building to A, a disqualified person, for 1 year at an annual rent of $10,000, in a transaction not within any of the exceptions to self-dealing. Both S and A are on the calendar year basis. The fair rental value of such office space for a 1-year period on January 1, 1972, is $12,000. On June 30, 1972,

the fair rental value of such office space for a 1-year period is $13,000. In order to correct the act of self-dealing under this subparagraph on June 30, 1972, A must terminate his use of the property. In addition, A must pay S $1,500, the excess of $6,500 (the fair rental value for 6 months as of June 30, 1972) over $5,000 (the amount paid to S from Jan. 1, 1972, to June 30, 1972).

Example (2).—On January 1, 1972, private foundation R rented the fourth story of its office building to B, a disqualified person, for 1 year at an annual rent of $10,000, in a transaction not included in any of the exceptions to self-dealing. Both R and B are on the calendar year basis. On January 1, 1973, B continues to rent the office space as a periodic tenant paying his rent monthly at an annual rate of $10,000. The fair rental value of such office space for a 1-year period on January 1, 1972, is $12,000, and as of January 1, 1973, is $1,250 per month. As of December 31, 1973, the fair rental value of such office space is $14,000 for a 1-year period and $1,200 on a monthly basis. In order to correct his acts of self-dealing (within the meaning of paragraph (e)(1) of this section) under this subparagraph on December 31, 1973, B must terminate his use of the property. In addition, B must pay R $9,000, $4,000 for his use of the property for 1972 (the excess of $14,000, the fair rental value for 1 year as of Dec. 31, 1973, over $10,000, the amount B paid R for his use of the property for 1972) and $5,000 for his use of the property for 1973 (the excess of $15,000, the fair rental value for 12 months as of Jan. 1, 1973, over $10,000, the amount B paid R for his use of the property for 1973).

Example (3).—B, a substantial contributor to private foundation T, leases office space in a building owned by T for $5,000 for 1 year beginning on November 10, 1972, in a transaction not included in any of the exceptions to self-dealing. The fair rental value of the building for a 1-year period on November 10, 1972, is $4,000. On May 10, 1973, the fair rental value of the building for the remaining period of the lease is $2,200. In order to correct the acts of self-dealing under this subparagraph on May 10, 1973, B and T must terminate the lease. In addition, B must pay T $300 (the excess of $2,500, the amount which would have been paid by B for the remaining period of the lease if it had not been terminated, over $2,200, the fair rental value at the time of correction for the remaining period of the lease).

(5) *Use of property by a private foundation.*—(i) In the case of the use by a private foundation of property owned by a disqualified person, undoing the transaction includes, but is not limited to, terminating the use of such property. In addition to termination, the disqualified person must pay the foundation—

(*a*) The excess (if any) of the amount paid to the disqualified person for such use until such termination over the fair market value of the use of the property, and

(*b*) The excess (if any) of the fair market value of the use of the property, for the period the foundation would have used the property (without regard to any further extensions or renewals of such period) if such termination had not occurred, over the amount which would have been paid to the disqualified person on or after the date of such termination for such use for such period.

In applying (*a*) of this subdivision the fair market value of the use of property shall be the lesser of the rate (that is, fair rental value per period in the case of use of property other than money or fair interest rate in the case of use of money) at the time of the act of self-dealing (within the meaning of paragraph (e)(1) of this section) or such rate at the time of correction of such act of self-dealing. In applying (*b*) of this subdivision the fair market value of the use of property shall be the rate at the time of correction.

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

Example (1).—On July 1, 1972, private foundation X leases office space in a building owned by C, a disqualified person, for 1 year at an annual rent of $6,000. Both X and C are on the calendar year basis. The fair rental value of such office space for a 1-year period as of July 1, 1972, is $4,200. As of January 1, 1973, the fair rental value of such office space for a 1-year period is $5,400, and as of June 30, 1973, the fair rental value of such office space for a 1-year period is $4,800. In order to correct his acts of self-dealing (within the meaning of paragraph (e)(1) of this section) under this subparagraph on June 30, 1973, C must terminate X's use of the property. In addition, C must pay X $1,500, $900 (the excess of $3,000, the amount paid to C from July 1, 1972, through December 31, 1972, over $2,100, the fair rental value for 6 months as of July 1, 1972) plus $600 (the excess of $3,000, the amount paid to C from January 1, 1973, through June 30, 1973, over $2,400, the fair rental value for 6 months as of June 30, 1973).

Example (2).—On April 1, 1973, D, a disqualified person with respect to private foundation Y, loans $100,000 to Y at 6 percent interest per annum. Both principal and interest are to be paid on April 1, 1978. The fair market value of the use of the money on April 1, 1973, is 9 percent per annum. On April 1, 1974, D and Y terminate the loan. On such date, the fair market value of the use of $100,000 is 10 percent per annum. In order to correct the act of self-dealing on April 1, 1974, in addition to the termination of the loan from D to Y, D must pay Y $16,000, the excess of $40,000 ($100,000×10 percent, the fair market value of the use determined at the time of correction, from April 1, 1974, to April 1, 1978) over $24,000 (the amount of interest Y would have paid to D from April 1, 1974, to April 1, 1978, if the loan from D to Y had not been terminated).

(6) *Payment of compensation to a disqualified person.*—In the case of the payment of compensation by a private foundation to a disqualified person for the performance of personal services which are reasonable and necessary to carry out the exempt purpose of such foundation, undoing the transaction requires that the disqualified person pay to the foundation any amount which is excessive. However, termination of the employment or independent contractor relationship is not required.

(7) *Special rule for correction of valuation errors.*—(i) In the case of a transaction described in paragraph (b)(2)(iii) of this section, a correction of the act of self-dealing shall ordinarily be deemed to occur if the foundation is paid an amount of money equal to the amount involved (as defined in paragraph (b)(2)(iii) of this section) plus such additional amounts as are necessary to compensate it for the loss of the use of the money or other property during the period commencing on the date of the act of self-dealing and ending on the date the transaction is corrected pursuant to this paragraph.

(ii) The provisions of this subparagraph may be illustrated by the following example:

Example.—Assume the same facts as in example (5) of paragraph (b)(4) of this section. Such transaction shall be considered as corrected by a payment of $5,000 by M to V, together with an additional payment to V of an amount equal to the interest which V could have obtained on $5,000 for the period commencing on the date of the redemption and ending on the date the act is corrected.

(d) *Correction period.*—(1) *In general.*—For purposes of section 4941, the correction period shall begin with the date on which the act of self-dealing occurs and end 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by section 4941(b)(1).

(2) *Extensions of correction period.*—(i) The correction period referred to in subparagraph (1) of this paragraph shall be extended by any period in which a deficiency cannot be assessed under section 6213(a). In addition, the correction period referred to in subparagraph (1) of this paragraph shall be extended in accordance with subdivisions (ii), (iii), and (iv) of this subparagraph, except that such subdivision (iii) or (iv) shall not operate to extend a correction period with respect to which a taxpayer has filed a petition with the U.S. Tax Court for redetermination of a deficiency within the time prescribed by section 6213(a).

(ii) The correction period referred to in subparagraph (1) of this paragraph may be extended by any period which the Commissioner determines is reasonable and necessary to bring about correction of the act of self-dealing. The Commissioner ordinarily will not extend the correction period pursuant to this subdivision unless the following factors are present:

(*a*) The foundation or an appropriate State officer (as defined in section 6104(c)(2)) is actively seeking in good faith to correct the act of self-dealing;

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

(*c*) The act of self-dealing appears to have been an isolated occurrence and it appears unlikely that similar acts of self-dealing will occur in the future.

(iii) If, within the unextended correction period, the tax imposed by section 4941(a)(1) is paid, the Commissioner shall extend the correction period to the later of—

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

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

(iv) If prior to the expiration of the correction period (including extensions) a claim for refund with respect to a tax

imposed by section 4941(a)(1) is filed, the Commissioner shall extend the correction period during the pendency of the claim plus an additional 90 days. If within such time, a suit or proceeding referred to in section 7422(g) with respect to such claim is filed, the Commissioner shall extend the correction period during the pendency of such suit or proceeding. See § 301.7422-1 of this chapter (Regulations on Procedure and Administration) for rules relating to pendency of such suit or proceeding.

(e) *Act of self-dealing.*—(1) *Number of acts; use of money or property.*—(i) *In general.*—If a transaction between a private foundation and a disqualified person is determined to be self-dealing (as defined in section 4941(d)), for purposes of section 4941 there is generally one act of self-dealing. For the date on which such act is treated as occurring, see paragraph (a)(2) of this section. If, however, such transaction relates to the leasing of property, the lending of money or other extension of credit, other use of money or property, or payment of compensation, the transaction will generally be treated (for purposes of section 4941 but not section 507 or section 6684) as giving rise to an act of self-dealing on the day the transaction occurs plus an act of self-dealing on the first day of each taxable year or portion of a taxable year which is within the taxable period and which begins after the taxable year in which the transaction occurs.

(ii) *Examples.*—The provisions of this subparagraph may be illustrated by the following examples:

Example (1).—An August 31, 1970, X, a private foundation, sells a building to A, a disqualified person with respect to X. A is on the calendar year basis. Under these circumstances, the transaction between A and X is one act of self-dealing which is treated for purposes of section 4941 as occurring on August 31, 1970.

Example (2).—Assume the facts as stated in example (1), except that, instead of selling the building to A, X leases the building to A for a term of 4 years beginning July 31, 1970, at an annual rental of $12,000. The fair rental value of the building is also $12,000 per annum as of July 31, 1970, and throughout the next 4 years. This transaction is corrected on September 30, 1973, in accordance with paragraph (c)(4) of this section. Under these circumstances, the transaction between A and X constitutes four separate acts of self-dealing, which are treated for purposes of section 4941 as occurring on July 31, 1970, January 1, 1971, January 1, 1972, and January 1, 1973. Consequently, there are four taxable periods. The first taxable period is from July 31, 1970, to September 30, 1973; the second is from January 1, 1971, to September 30, 1973; the third is from January 1, 1972, to September 30, 1973; and the fourth is from January 1, 1973, to September 30, 1973. For purposes of the initial taxes in section 4941(a), the amount involved is $5,000 for the first taxable period, $12,000 for the second, $12,000 for the third, and $9,000 for the fourth. The initial taxes to be paid by A are thus $1,000 ($5,000×5%×4 taxable years or partial taxable years in the taxable period) for the first act; $1,800 ($12,000×5%×3) for the second act; $1,200 ($12,000×5%×2) for the third act; and $450 ($9,000×5%×1) for the fourth act.

Example (3).—Assume the facts as stated in example (1) of § 53.4941(d)-4(c)(4)(ii). If the debentures are held by Y after December 31, 1979, the extension of credit will not be excepted from the definition of an act of self-dealing, because a new act of self-dealing will be treated (for purposes of section 4941) as occurring on January 1, 1980.

(2) *Number of acts; joint participation by disqualified persons.*—(i) *In general.*—If joint participation in a transaction by two or more disqualified persons constitutes self-dealing (such as a joint sale of property to a private foundation or joint use of its money or property), such transaction shall generally be treated as a separate act of self-dealing with respect to each disqualified person for purposes of section 4941. For purposes of section 507 and, in the case of a foundation manager, section 6684, however, such transaction shall be treated as only one act of self-dealing. For purposes of this subparagraph, an individual and one or more members of his family (within the meaning of section 4946(d)) shall be treated as one person, regardless of whether a member of the family is a disqualified person not only by reason of section 4946(a)(1)(D) but also by reason of another subparagraph of section 4946(a)(1). However, the liability imposed on a disqualified person and one or more members of his family for joint participation in an act of self-dealing shall be joint and several in accordance with section 4941(c)(1) and § 53.4941(c)-1(a).

(ii) *Examples.*—The provisions of this subparagraph may be illustrated by the following examples:

Example (1).—Private foundation X permits A, a substantial contributor to X, and her spouse, H, to use an automobile owned by X and normally used in its foundation activities to travel from State Z to State Y for a vacation on December 1, 1971. The automobile is then returned to X until December 21, 1971, when X again permits them to use the automobile to return to their home in State Z. Under these circumstances, there is one act of self-dealing on December 1, 1971, and a second act of self-dealing on December 21, 1971.

Example (2).—Assume the facts as stated in example (1), except that B joined A and H on their vacation and traveled with them both to and from State Y. B is a disqualified person with respect to X, but he is not related by blood or marriage to A or H. Assume also that X is not paid for the use of its automobile, but that the fair rental value during the correction period is $300 (or $100 per person) for a one-way trip between State Y and State Z. Under these circumstances, there are four acts of self-dealing, two with respect to A and H and two with respect to B. The amount involved with respect to A and H is $200 for each act, and the amount involved with respect to B is $100 for each act.

(f) *Fair market value.*—For purposes of §§ 53.4941(a)-1 through 53.4941(f)-1, fair market value shall be determined pursuant to the provisions of § 53.4942(a)-2(c)(4).

§ 53.4941(f)-1 Effective dates.

(a) *In general.*—Except as provided in paragraph (b) of this section, §§ 53.4941(a)-1 through 53.4941(e)-1 shall apply to all acts of self-dealing engaged in after December 31, 1969.

(b) *Transitional rules.*—(1) *Commitments made prior to January 1, 1970, between private foundations and government officials.*—Section 4941 shall not apply to a payment for one or more purposes described in section 170(c)(1) or (2)(B) made on or after January 1, 1970, by a private foundation to a government official, if such payment is made pursuant to a commitment entered into prior to such date, but only if such commitment was made in accordance with the foundation's usual practices and is reasonable in amount in light of the purposes of the payment. For purposes of this subparagraph, a commitment will be considered entered into prior to January 1, 1970, if prior to such date, the amount and nature of the payments to be made and the name of the payee were entered on the records of the payor, or were otherwise adequately evidenced, or the notice of the payment to be received was communicated to the payee in writing.

(2) *Special transitional rule.*—In the case of an act of self-dealing engaged in prior to July 5, 1971, section 4941(a)(1) shall not apply if—

(i) The participation (as defined in § 53.4941(a)-1(a)(3)) by the disqualified person in such act is not willful and is due to reasonable cause (as defined in § 53.4941(a)-1(b)(4) and (5)),

(ii) The transaction would not be a prohibited transaction if section 503(b) applied, and

(iii) The act is corrected (within the meaning of § 53.4941(e)-1(c)) within a period ending [insert 90 days after date on which final regulations under section 4941 are filed by the Federal Register], extended (prior to the expiration of the original period) by any period which the Commissioner determines is reasonable and necessary (within the meaning of § 53.4941(e)-1(d)) to bring about correction of the act of self-dealing.

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

Approved April 6, 1973.

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

[FR Doc.73-7325 Filed 4-16-73;8:45 am]

Title 29—Labor

CHAPTER I—NATIONAL LABOR RELATIONS BOARD

PART 103—OTHER RULES

Offers of Reinstatement to Employees in Armed Forces; Correction

FR Doc. 72-17685, published at page 21939 in the issue dated Tuesday, October 17, 1972, is corrected by changing "Universal Military Training and Service Act"

in the last paragraph to read "Military Selective Service Act of 1967".

Dated Washington, D.C., April 12, 1973.

By direction of the Board.

[SEAL] JOHN C. TRUESDALE,
Executive Secretary.

[FR Doc.73-7362 Filed 4-16-73;8:45 am]

PART 103—OTHER RULES

Subpart A—Jurisdictional Standards

HORSERACING AND DOGRACING INDUSTRIES

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. sec. 553 in which notice was given that any rule adopted would be immediately applicable. On July 18, 1972, the Board published in the FEDERAL REGISTER a notice of proposed rulemaking requesting responses from interested parties with respect to the assertion of jurisdiction over the horseracing and dogracing industries and the establishment of jurisdictional standards therefor. The Board, having considered the responses and in exercise of its discretion under sections 9 and 10 of the act, has decided to adopt a rule declining to assert jurisdiction over these industries. The National Labor Relations Board finds for good cause that this rule shall be effective on April 17, 1973, and shall apply to all proceedings affected thereby which are pending at the time of such publication or which may arise thereafter.

Dated Washington, D.C., April 12, 1973.

By direction of the Board.

[SEAL] JOHN C. TRUESDALE,
Executive Secretary.

Subpart A—Jurisdictional Standards

§ 103.3 Horseracing and dogracing industries.

The Board will not assert its jurisdiction in any proceeding under sections 8, 9, and 10 of the act involving the horseracing and dogracing industries.

[FR Doc.73-7360 Filed 4-16-73;8:45 am]

Title 32A—National Defense, Appendix

CHAPTER I—OFFICE OF EMERGENCY PREPAREDNESS

[Defense Mobilization Order 8600.1B]

DMO 8600.1B—GENERAL POLICIES FOR STRATEGIC AND CRITICAL MATERIALS STOCKPILING

1. *Purpose.*—This order sets forth revised policies for the administration of strategic and critical materials stockpiling.

2. *Cancellation.*—This order supersedes Defense Mobilization Order 8600.1A (33 FR 19079, Dec. 21, 1963).

3. *Policies.*—By virtue of the authority vested in me by Executive Order 11051, the following policies are promulgated to govern the administration of strategic and critical materials stockpiling:

a. *General.*—The strategic stockpile shall be so administered as to assure the availability of strategic and critical materials in times of national emergency.

b. *Period covered by stockpiling.*—All strategic stockpile objectives for conventional war shall be limited to meeting estimated shortages of materials for the first year of a war.

c. *Stockpile objectives.*—*Strategic* stockpile objectives shall be adequate for supplies of these materials in time of national emergency.

d. *Emergency requirements.*—The requirements estimates for use in times of national emergency, where appropriate, reflect specific requirements to the extent available. It shall be assumed that the total requirements will approximate the capacity of industry to consume, taking into account necessary wartime limitation, conservation and substitution measures. Departments and agencies having responsibilities with regard to requirements data on stockpile materials shall review such data and provide, upon his request, the Director of the Office of Emergency Preparedness with information as to all significant changes.

e. *Emergency supplies.*—Estimates of supply for the mobilization period shall be based on readily available capacity and known resources in the United States and such other countries as directed by the National Security Council. Departments and agencies having the responsibilities with regard to supply data on stockpile materials shall review such data and provide the Director of the Office of Emergency Preparedness, upon his request, with information as to all significant changes.

f. *Provision for special-property materials.*—Arrangements shall be made for the regular availability of objective scientific advice to assist in the evaluation of prospective needs for high-temperature and other special-property materials. Such materials shall be stockpiled if reasonably firm minimum requirements indicate the existence of a supply deficit in the event of an emergency.

g. *Supply-requirements reviews.*—The supply-requirements balance for any material that is now or may become important to defense shall be kept under continuing surveillance. Supply-requirements data submitted pursuant to paragraphs d. and e. above shall be examined upon receipt. A full-scale review may be undertaken at any time that a change is believed to be taken place that would have a significant bearing on the wartime readiness position. Priority of review shall be given to materials under procurement.

h. *Procurement policy.*—Unfilled objectives shall be attained expeditiously by cash procurement or otherwise as the Director shall deem appropriate. Long-term contracts shall contain termination clauses whenever possible. All feasible measures for meeting materials deficits in an emergency shall be considered. Stockpiling shall be undertaken only when it is clear that it is the best solution.

i. *Maintenance of the mobilization base.*—A portion of the mobilization base comprises existing or projected productive capacity the output of which will be relied on to fill defense requirements. All inventories of Government-owned materials held for long-term storage are a part of the mobilization base and should be weighed in determining the need for a relevant portion of the productive segment of the mobilization base. The maintenance of any portion of the productive segment of the mobilization base through stockpile procurement shall be undertaken only within unfilled stockpile objectives.

j. *Upgrading to ready usability.*—In order to satisfy the initial surge of abnormal demands following intensive mobilization in a period of national emergency, stockpile objectives of upgraded forms of such materials shall be established for immediate use in such circumstances. For this purpose a minimum readiness inventory shall be provided near centers of consumption. Materials in Government inventories may be upgraded for such stockpiling purposes only when the net cost of such processing including transportation and handling is less than the cost of new material. Materials should be upgraded to forms which will permit the greatest use-flexibility. Surplus materials may be used to pay for the upgrading of the same or other materials required to meet objectives providing that the use of excess materials for this purpose is in conformance with disposal criteria.

k. *Beneficiation of subspecification materials.*—Subspecification-grade materials in Government inventories may be beneficiated within the limits of the objectives when this can be accomplished at less cost than buying new material.

l. *Cancellation of commitments.*—Commitments for deliveries to national stockpile and Defense Production Act inventories beyond the objectives shall be canceled or reduced when settlements can be arranged which would be mutually satisfactory to the supplier and the Government and which would not be disruptive to the economy or to projects essential to the national security. Such settlements may take into account anticipated profits and cover adjustments for above-market premiums. The settlement of commitments may be made through the payment of cash or through the use of surplus materials. Responsibility with respect to the settlement of commitments in the light of overall interest of the Government rests with the Administrator of General Services who shall keep other agencies advised and consult with them to the extent appropriate.

m. *Retention of other inventories.*—Within the limits of unfilled stockpile

[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).

objectives, stockpile-grade materials in the Defense Production Act and the supplemental stockpile inventories shall be retained for national stockpile purposes.

n. *Disposals.*—The Director of the Office of Emergency Preparedness will authorize the disposal of excess materials only after due regard to: (a) Avoidance of serious disruption of the usual markets of producers, processors and consumers, and (b) the protection of the United States against avoidable loss.

In general, excess materials constitute unneeded assets and shall be disposed of as expeditiously as possible.

In making such disposals preference shall be given to materials that deteriorate, that are likely to become obsolete, that do not meet quality standards, or that do not have stockpile objectives.

The Administrator of General Services shall be responsible for disposal of excess materials. He shall advise the Secretary of State and the Assistant to the President for Economic Affairs in advance on all disposal plans.

o. *Government use.*—Under such policies and procedures as the Administrator of General Services may prescribe, Government agencies which directly or indirectly use strategic and critical materials shall fulfill their requirements through the use of materials in Government inventories that are excess to the needs thereof. Direct use means use in a Government-owned and operated facility and use in a Government-owned facility which is operated by a contractor for the Government. Indirect Government use means use by prime contractors and all tiers of subcontractors in the production of items being procured by the Government.

4. *Delegation of authority—Preparation of reports.*—The Administrator of General Services shall prepare on behalf of the Director of the Office of Emergency Preparedness and forward to him for transmittal to the Congress the reports required by section 304 of the Defense Production Act of 1950, as amended, and section 4 of the Strategic and Critical Materials Stock Piling Act.

5. *Effective date.*—This order shall take effect on the date hereof.

Dated April 11, 1973.

DARRELL M. TRENT,
Acting Director, Office of Emergency Preparedness.

[FR Doc.73-7348 Filed 4-16-73;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER I—FEDERAL PROCUREMENT REGULATIONS

EMPLOYMENT OF DISABLED AND VIETNAM ERA VETERANS

This amendment of the Federal procurement regulations revises subpart 1-12.11 relating to the listing of employment openings by Government contractors and subcontractors in order to give special emphasis to the employment of qualified disabled veterans and veterans of the Vietnam era. The amendment implements provisions of Public Law 92-540, approved October 24, 1972, Executive Order 11701, dated January 24, 1973, and rules and regulations of the Secretary of Labor issued pursuant thereto (41 CFR 50-250, 38 FR 2968, Jan. 31, 1973). It provides for the inclusion of a contract clause in all procurement contracts and first-tier subcontracts which requires Government contractors and subcontractors to offer for listing at an appropriate local office of the Federal-State employment service system all employment openings which occur at their facilities.

PART 1-2—PROCUREMENT BY FORMAL ADVERTISING

Subpart 1-2.2—Solicitation of Bids

Section 1-2.201 is amended to revise paragraph (a)(30), as follows:

§ 1-2.201 Preparation of invitations for bids.

* * * * *

(a) * * *

(30) The following provision regarding the employment of qualified disabled veterans and veterans of the Vietnam era shall be placed on the face of the invitation for bids or on a cover sheet where awards in the amount of $2,500 or more may result:

LISTING OF EMPLOYMENT OPENINGS

Bidders and offerors should note that this solicitation includes a provision requiring the listing of employment openings with the local office of the Federal-State employment service system where a contract award is for $2,500 or more.

PART 1-12—LABOR

The table of contents is changed to provide a revised entry as follows:

Sec.
1-12.1102-4 Inquiries on listing requirements.

Subpart 1-12.11 is revised to read as follows:

Subpart 1-12.11—Listing of Employment Openings

§ 1-12.1100 Scope of subpart.

This subpart sets forth policies and procedures relating to manpower requirements for Federal contractors and subcontractors and implements Public Law 92-540, approved October 24, 1972 (86 Stat. 1097; 38 U.S.C. 2012), Executive Order 11701, dated January 24, 1973, and rules and regulations of the Secretary of Labor issued pursuant thereto (41 CFR 50-250, 38 FR 2968, Jan. 31, 1973) concerning employment opportunities with Federal contractors and subcontractors, with special emphasis on the employment of qualified disabled veterans and veterans of the Vietnam era.

§ 1-12.1101 General.

Executive agencies shall cooperate with and encourage contractors and subcontractors to utilize to the fullest extent practicable the U.S. Employment Service (USES) and its affiliated local State employment service offices in meeting the contractors' and subcontractors' manpower (labor supply) requirements to staff new or expanding facilities, including the recruitment of workers in all occupations and skills both from local labor market areas and through the Federal-State manpower clearance system. Local State employment service offices are operated in every State and in the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands. In addition to providing recruitment assistance to contractors and subcontractors who need and desire it, cooperation with the local State employment service offices will further the national program of maintaining continuous assessment of manpower requirements and resources on a national local basis.

§ 1-12.1102 Listing of employment openings.

§ 1-12.1102-1 Policy.

In order to give special emphasis to the employment of qualified disabled veterans and veterans of the Vietnam era, Government contractors and first-tier subcontractors shall list all of their suitable employment openings with the appropriate local office of the State employment service system as required by Public Law 92-540, approved October 24, 1972 (86 Stat. 1097; 38 U.S.C. 2012), Executive Order 11701, dated January 24, 1973, and the rules and regulations of the Secretary of Labor issued pursuant thereto (41 CFR 50-250, 38 FR 2968, Jan. 31, 1973).

§ 1-12.1102-2 Clause.

Unless otherwise provided in this subpart, executive agencies shall include, either directly or by reference, the contract clause prescribed by this § 1-12.1102-2 in (a) all invitations for bids and requests for proposals for the procurement of personal property and nonpersonal services (including construction), and (b) all contracts for the procurement of personal property and nonpersonal services (including construction), including contracts resulting from unsolicited proposals, where it is anticipated that a contract will be for $2,500 or more.

LISTING OF EMPLOYMENT OPENINGS

(This clause is applicable pursuant to 41 CFR 50-250 if this contract is for $2,500 or more.)

(a) The contractor agrees, in order to provide special emphasis to the employment of qualified disabled veterans and veterans of the Vietnam era, that all suitable employment openings of the contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be offered for listing at an appropriate local office of the State employment service system wherein the opening occurs and to provide such reports to such local office regarding employment openings and hires as may be

required: *Provided*, That if this contract is for less than $10,000 or if it is with a State or local government the reports set forth in paragraphs (c) and (d) are not required.

(b) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment service or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. This listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in any statutes, Executive orders, or regulations regarding nondiscrimination in employment.

(c) The reports required by paragraph (a) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the contractor has more than one establishment in a State, with the central office of the State employment service. Such reports shall indicate for each establishment (i) the number of individuals who were hired during the reporting period, (ii) the number of those hired who were disabled veterans, and (iii) the number of those hired who were nondisabled veterans of the Vietnam era. The contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made under this contract. The contractor shall maintain copies of the reports submitted until the expiration of 1 year after final payment under the contract, during which time they shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor.

(d) Whenever the contractor becomes contractually bound by the listing provisions of this clause, he shall advise the employment service system in each State wherein he has establishments of the name and location of each such establishment in the State. As long as the contractor is contractually bound to these provisions and has so advised the State employment system, there is no need to advise the State system of subsequent contracts. The contractor may advise the State system when it is no longer bound by this contract clause.

(e) This clause does not apply to the listing of employment openings which occur and are filed outside of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(f) This clause does not apply to openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.

(g) As used in this clause:

(1) "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: Production and nonproduction; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings which are compensated on a salary basis of less than $18,000 per year. The term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment. It does not include openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement.

(2) "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area of the establishment where the employment opening is to be filled, including the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(3) "Openings which the contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the contractor's own organization (including any affiliates, subsidiaries, and parent companies), and includes any openings which the contractor proposes to fill from regularly established "recall" or "rehire" lists.

(4) "Openings which the contractor proposes * * * to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings for which no consideration will be given to persons outside of a special hiring arrangement, including openings which the contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the contractor and representatives of his employees.

(5) "Disabled veteran" means a person entitled to disability compensation under laws administered by the Veterans Administration for a disability rated at 30 percentum or more, or a person whose discharge or release from active duty was for a disability incurred or aggravated in line of duty.

(6) "Veteran of the Vietnam era" means a person (A) who (i) served on active duty with the Armed Forces for a period of more than 180 days, any part of which occurred after August 5, 1964, and was discharged or released therefrom with other than a dishonorable discharge, or (ii) was discharged or released from active duty for service-connected disability if any part of such duty was performed after August 5, 1964, and (B) who was so discharged or released within the 48 months preceding his application for employment covered by this clause.

(h) If any disabled veteran or veteran of the Vietnam era believes that the contractor (or any first-tier subcontractor) has failed or refuses to comply with the provisions of this contract clause relating to giving special emphasis in employment to veterans, such veteran may file a complaint with the veterans' employment representative at a local State employment service office who will attempt to informally resolve the complaint and then refer the complaint with a report on the attempt to resolve the matter to the State office of the Veterans' Employment Service of the Department of Labor. Such complaint shall then be promptly referred through the Regional Manpower Administrator to the Secretary of Labor who shall investigate such complaint and shall take such action thereon as the facts and circumstances warrant consistent with the terms of this contract and the laws and regulations applicable thereto.

(i) The contractor agrees to place this clause (excluding this paragraph (i)) in any subcontract directly under this contract.

§ 1–12.1102–3 Deviations.

Under the most compelling circumstances such as situations where the needs of the Government cannot reasonably be otherwise supplied, where listing of employment openings would be contrary to national security, or where the requirement of listing would otherwise not be in the best interests of the Government, a deviation from this subpart may be made, subject to the approval of the Secretary of Labor. Requests for any such deviations shall be addressed to the Secretary of Labor, U.S. Department of Labor, 14th Street and Constitution Avenue NW., Washington, D.C. 20210, or to the Regional Manpower Administrator of the U.S. Department of Labor of the region wherein the contract is to be signed, and shall set forth the reasons for the request.

§ 1–12.1102–4 Inquiries on listing requirements.

Contractors with inquiries regarding listing requirements shall be advised that such inquiries should be submitted to the appropriate Regional Manpower Administrator of the U.S. Department of Labor.

§ 1–12.1102–5 Failure to comply.

Upon notice that a contractor or any of his first-tier subcontractors has failed to comply with the provisions of the Listing of Employment Openings clause in § 1–12.1102–2, the contracting officer shall take such action as may be appropriate under the default provisions of the contracts concerned.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).)

Effective date.—These regulations shall be effective May 30, 1973, but may be observed earlier.

Dated April 10, 1973.

ARTHUR F. SAMPSON,
Acting Administrator of General Services.

[FR Doc.73–7358 Filed 4–16–73;8:45 am]

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[Docket No. 72–7; Notice 3]

PART 577—DEFECT NOTIFICATION

Response to Petitions for Reconsideration

This notice responds to petitions for reconsideration of the defect notification regulations, published January 23, 1973 (38 FR 2215). Petitions were received from the Firestone Tire & Rubber Co., Chrysler Corp., the Motor and Equipment Manufacturers' Association, and the Recreational Vehicle Institute. A petition was also received from the Wagner Electric Co. Although not received within 30 days of the regulation's publication (49 CFR 553.35), it has been considered in the preparation of this notice. Insofar as this notice does not grant the requests of the petitioners, they are hereby denied.

The Firestone Tire & Rubber Co. has petitioned for reconsideration of § 577.6, "Disclaimers", which prohibits manufacturers from stating or implying that the notification does not involve a safety related defect. Firestone requested that the provision, for Federal Constitutional

reasons, be dropped from the rule. This request is denied. The NHTSA does not believe, for the reasons set forth in the notice of January 23, 1973 (38 FR at 2216), that the provision is violative of the Constitution.

Chrysler Corp. has requested that the phrase, "his dealers" be modified in § 577.4(e)(1)(ii), which requires the manufacturer to estimate the date by which his dealers will be supplied with corrective parts and instructions. It argues that the phrase "his dealers" could be interpreted to mean all dealers, regardless of whether all of the manufacturer's dealers are involved in the campaign. This request is denied. Neither section 113 of the Safety Act nor the regulation require a notification campaign to extend to all of the manufacturer's dealers, whether or not they have any involvement in a particular campaign. The NHTSA does not believe that the phrase "his dealers", when read in context, means all of the manufacturer's dealers.

Chrysler also asks that special requirements be specified for the notification of "noncompliance nonoperational defects", citing as an example the improper placement of the VIN plate under Motor Vehicle Safety Standard No. 115. Chrysler states that existing provisions of the regulation dealing with malfunctions (specifically (§§ 577.4 (c)(2), (c)(3), (c)(4)), and evaluating the risk to traffic safety §§ 577.4 (d), (d)(1), (d)(1)(i), (d)(1)(ii), (d)(2)) are not pertinent to these defects. This request is denied. The NHTSA does not believe that separate requirements for notification of the type of defect described by Chrysler are either necessary or desirable. If a particular defect does not involve a malfunction, to be in compliance with the regulation a manufacturer should, in response to the appropriate provisions of the regulation, indicate that to be the case. The NHTSA believes this approach will notify purchasers of the defect as effectively as separate, more specific requirements. The NHTSA does not agree that the relationship to safety of these types of defects should not be evaluated in notification letters, similarly to other defects.

The Motor and Equipment Manufacturers Association (MEMA) objects to the requirements of §§ 577.4(e)(2)(vi) and 577.4(e)(3)(vi) that the manufacturer recommend whom the purchaser should have perform necessary repair work, and requests that these provisions be deleted. MEMA argues that the requirement is anticompetitive in that it sanctions the steering of consumers to vehicle dealerships for repairs, to the detriment of the independent repair industry, even when the manufacturer does not pay for the repair. MEMA argues that original equipment replacement parts are frequently more expensive than competitively produced parts, resulting in added costs to owners. It argues also that limiting repairs to dealers precludes the use of the full domestic repair industry, which should be utilized fully given the magnitude of recent notification campaigns.

While the NHTSA appreciates the concern of this association in not being precluded from a large market, the NHTSA believes the requirement as issued to be consistent with the National Traffic and Motor Vehicle Safety Act and the need for motor vehicle safety. The NHTSA has, in issuing the requirement, indicated that manufacturers should indicate to purchasers when special expertise may be necessary to correct defects. The repairs in issue do not involve normal maintenance, but constitute defects whose proper repair is essential to the safety of the Nation's highways. Frequently these repairs involve a higher degree of expertise and familiarity with a particular vehicle than that required to perform normal maintenance. If such expertise will more likely to be found at dealerships, in the view of the vehicle manufacturer, the NHTSA believes that opinion should be imparted to purchasers.

Moreover, even if the NHTSA deleted the requirement the manufacturer could if he desired, consistently with the regulation, recommend a repair facility. The NHTSA would not prohibit the making of such a recommendation, for it is responsive to the statutory requirement that the notification contain a statement of the measures to be taken to repair the defect (15 U.S.C. 1402(c)). Moreover, the argument that the regulation stifles competition does not appear to have merit. In the event the manufacturer does not bear the cost of repair, the regulation (§ 577.4(e)(3)(i)) requires the maufacturer to provide the purchaser with the suggested list price of repair parts. As a consequence, purchasers will be provided with information with which they can "shop," with full knowledge, for the least expensive repair facilities. The petition is accordingly denied.

The Recreational Vehicle Institute (RVI) has petitioned that the requirements of both § 577.4(a), requiring an opening statement that the notification is sent pursuant to the act, and § 577.6, prohibiting disclaimers, be deleted. RVI argues such requirements may result in delay by manufacturers in determining that defects exist, forcing the use of administrative and legal procedures before purchasers are notified. The agency cannot accept the position that the notification should be diluted because of possible evasion by manufacturers. The NHTSA believes that the need that notification letters fully inform purchasers outweighs the possible problems caused by manufacturers delaying their notifications to purchasers until forced to notify them. The request is denied.

RVI points out that § 577.4 seems to assume that defects will be evidenced by some form of mechanical failure. It asks, therefore, whether a safety-related defect can exist where proper corrective action to avoid an occurrence or possible occurrence is appropriate maintenance or operational use. RVI also requests, if NHTSA adheres to its present position regarding these issues, that it undertake rulemaking to define "safety related defect". For the following reasons, these requests are denied. There is no intent in the regulation to limit the concept of safety related defects to those involving mechanical failures. As stated above, in reply to the petition from Chrysler, nonmechanical defects can be the basis of defect notification, and purchasers can be fully notified of them under the present regulatory scheme. Moreover, the NHTSA believes any attempt to precisely define safety related defect would be ill-advised. Whether a defect exists depends solely on the facts of each particular situation. The fact that such determinations may encompass a wide variety of factual situations, and may consequently be difficult to make, does not mean that it is necessary, desirable, or even possible to replace the decision with a simple formula. The NHTSA believes, on the contrary, that the relatively broad definition of defect contained in the Safety Act is best suited to the wide variety of defective conditions that may arise.

RVI has also pointed out that references to a manufacturer's dealers in § 577.4(e), specifying measures to be taken to repair the defect, overlook the fact that manufacturers' dealers may not always provide service facilities, or that manufacturers may use service facilities other than dealers. The NHTSA agrees with RVI, and has therefore modified the provisions of that section to include "other service facilities of the manufacturer", as well as his dealers.

RVI requested that the regulation be amended to permit compliance by either a component manufacturer or a vehicle manufacturer, when the defect involves a specific component. RVI also requested that compliance be permitted by either the vehicle alterer or the complete vehicle manufacturer in cases involving altered vehicles. The regulations do not prohibit the sending of notification letters by persons other than the vehicle manufacturer. Accordingly, no modification of the regulation is called for. However, manufacturers who do utilize the services of others in meeting requirements still bear the ultimate responsibility for compliance with the regulation under the National Traffic and Motor Vehicle Safety Act.

The Wagner Electric Company has requested that the provisions of the regulation regarding manufacturers of motor vehicle equipment (excluding tires) be reconsidered in light of the fact that, under present marketing procedures, it is difficult or impossible for such manufacturers to notify jobbers, installers, dealers, or consumers. The notification required by the regulation is directed at the notification sent to retail purchasers and not that sent to distributors or dealers of the manufacturer. The notification of the latter is subject only to the statutory provision of section 113 of the Safety Act (15 U.S.C. 1402). Moreover, manufacturers of equipment (other than tires) who do not have the names of first purchasers are not required to notify them either under the National Traffic and Motor Vehicle Safety Act or the regulation.

There is consequently no need for modification of the regulation for the reasons presented by Wagner, and its request is accordingly denied.

In light of the above, Part 577 of Title 49, Code of Federal Regulations, "Defect Notification", is amended as follows:

In §§ 577.4 (e)(1), (e)(1)(ii), and (e)(2), the words "or other service facility of the manufacturer" are added directly after the words, "his dealers".

Effective date: April 17, 1973. These amendments impose no additional burdens on any person, and serve only to clarify the application of existing requirements to specific situations. Accordingly, notice and public procedure thereon are unnecessary, and good cause exists for an effective date less than 30 days from the day of publication.

(Secs. 108, 112, 113, 119, Public Law 89-563, 80 Stat. 718 as amended, secs. 2, 4, Public Law 91-265, 84 Stat. 262 (15 U.S.C. 1397, 1401, 1402, 1408); delegation of authority at 49 CFR 1.51.)

Issued on April 10, 1973.

JAMES E. WILSON,
Acting Administrator.

[FR Doc.73-7406 Filed 4-16-73;8:45 am]

Proposed Rules

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 53]

FOUNDATION EXCISE TAXES

Definition of "Knowing" With Respect to Foundation Excise Taxes Imposed on Foundation Managers and Government Officials

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 May 14, 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 May 14, 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 request for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] JOHNNIE M. WALTERS,

Commissioner of Internal Revenue.

This document contains proposed amendments to the foundation excise tax regulations (26 CFR Part 53) under sections 4941, 4944, and 4945 of the Internal Revenue Code of 1954 in order to provide revised rules relating to the definition of the term "knowing" as it applies to the excise taxes imposed on foundation managers and Government officials.

Section 4941(a)(2) imposes a tax on the participation of a foundation manager in an act of self-dealing, "knowing it is such an act, * * * unless such participation is not willful and is due to reasonable cause." Similarly, sections 4944 and 4945, respectively, impose taxes on a foundation manager who participates in the making of a jeopardizing investment or agrees to a taxable expenditure if such participation or agreement is "knowing" and is "not willful and is due to reasonable cause." In addition, section 4941(a)(1) imposes a self-dealing tax on any Government official who participates in an act of self-dealing "knowing that it is such an act."

Present regulations under sections 4944 and 4945 state that a foundation manager has acted "knowing" that an act is a jeopardizing investment or a taxable expenditure if he has actual knowledge of sufficient facts to make the act taxable under these sections and he is "generally aware that such an expenditure under these circumstances might be inconsistent with the law governing foundations."

Generally, these proposed regulations retain these requirements and add a third requirement—that the foundation manager (or government official) must have been negligent in not finding out that the act in which he participated or to which he agreed to would result in the imposition of tax under section 4941, 4944, or 4945, as the case may be.

In view of the foregoing, the foundation excise tax regulations (26 CFR part 53) under sections 4941, 4944, and 4945, relating to taxes on self-dealing, investments which jeopardize charitable purpose, and taxable expenditures, are amended as follows:

PARAGRAPH 1. Paragraph (b)(3) of § 53.4941(a)-1 is amended to read as follows:

§ 53.4941(a)-1 Imposition of initial taxes.

* * * * *

(b) *Tax on foundation manager* * * *

(3) *Knowing.*—For purposes of section 4941, a person shall be considered to have participated in a transaction "knowing" that it is an act of self-dealing only if—

(i) He has actual knowledge of sufficient facts so that, based solely upon such facts, such transaction would be an act of self-dealing,

(ii) He is generally aware that such an act under these circumstances might be inconsistent with the law governing foundations or might give rise to tax liability under chapter 42, and

(iii) He negligently failed to make sufficient attempts to ascertain whether the transaction was an act of self-dealing, or he was in fact aware that it was such an act.

For purposes of this part and chapter 42, the term "knowing" does not mean "having reason to know". However, evidence tending to show that a person has reason to know of a particular fact or particular rule is relevant in determining whether he had actual knowledge of such fact or rule. Thus, for example, evidence tending to show that a person has reason to know of sufficient facts so that, based solely upon such facts, a transaction would be an act of self-dealing is relevant in determining whether he has actual knowledge of such facts.

* * * * *

PAR. 2. Paragraph (b)(2)(i) of § 53.4944-1 is amended to read as follows:

§ 53.4944-1 Initial taxes.

* * * * *

(b) *On the management* * * *

(2) *Definitions and special rules.*—(i) *Knowing.*—For purposes of section 4944, a foundation manager shall be considered to have participated in the making of an investment "knowing" that it is jeopardizing the carrying out of any of the foundation's exempt purpose only if—

(*a*) He has actual knowledge of sufficient facts so that, based solely upon such facts, such investment would be a jeopardizing investment under paragraph (a)(2) of this section,

(*b*) He is generally aware that such an investment under these circumstances might be inconsistent with the law governing foundations or might give rise to tax liability under chapter 42, and

(*c*) He negligently failed to make sufficient attempts to ascertain whether the investment was a jeopardizing investment, or he was in fact aware that it was such an investment.

For purposes of this part and chapter 42, the term "knowing" does not mean "having reason to know." However, evidence tending to show that a foundation manager has reason to know of a particular fact or particular rule is relevant in determining whether he had actual knowledge of such fact or rule. Thus, for example, evidence tending to show that a foundation manager has reason to know of sufficient facts so that, based solely upon such facts, an investment would be a jeopardizing investment is relevant in determining whether he has actual knowledge of such facts.

* * * * *

PAR. 3. Paragraph (a)(2)(iii) of § 53.4945-1 is amended to read as follows:

§ 53.4945-1 Taxes on taxable expenditures.

(a) *Imposition of initial taxes* * * *

(2) *Tax on foundation manager* * * *

(iii) *Knowing.*—For purposes of section 4945, a foundation manager shall be considered to have agreed to an expenditure "knowing" that it is a taxable expenditure only if—

(*a*) He has actual knowledge of sufficient facts so that, based solely upon such facts, such expenditure would be a taxable expenditure,

(*b*) He is generally aware that such an expenditure under these circumstances might be inconsistent with the law governing foundations or might give rise to tax liability under chapter 42, and

(*c*) He negligently failed to make sufficient attempts to ascertain whether the expenditure was a taxable expenditure, or he was in fact aware that it was such an expenditure.

For purposes of this part and chapter 42, the term "knowing" does not mean "having reason to know". However, evidence tending to show that a foundation manager has reason to know of a particular fact or particular rule is relevant in determining whether he had actual knowledge of such fact or rule. Thus, for example, evidence tending to show that a foundation manager has reason to know of sufficient facts so that, based solely upon such facts, an expenditure would be a taxable expenditure is relevant in determining whether he has actual knowledge of such facts.

* * * * *

[FR Doc.73-7233 Filed 4-12-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1032, 1050]

MILK IN THE SOUTHERN ILLINOIS AND CENTRAL ILLINOIS MARKETING AREAS

Termination of Proceedings on Proposed Suspension of Certain Provisions of the Orders

Notice is hereby given, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), of termination of proceedings on proposed suspension of certain provisions of the orders regulating the handling of milk in the Southern Illinois and Central Illinois marketing areas. The notice of proposed suspension was issued March 21, 1973 (38 FR 8002). Interested parties were invited to submit views, data, or arguments to the Hearing Clerk not later than March 30, 1973.

In 7 CFR Part 1032, milk in the Southern Illinois marketing area, and in 7 CFR Part 1050, milk in the Central Illinois marketing area, the provisions that were proposed to be suspended March through December 1973 are as follows:

1. In § 1032.71 that part of paragraph (f) which reads "except for the months specified below, shall be" and the provisions contained in paragraphs (g) through (k) in their entirety.

2. In § 1050.71 that part of paragraph (f) which reads "except for the months specified below, shall be," and the provisions contained in paragraphs (g) through (k) in their entirety.

STATEMENT OF CONSIDERATION

The proposed suspension would have made inoperative those provisions of Order No. 32 and Order No. 50 that provide for accumulation and disbursement of money due producers with the intent of encouraging seasonal adjustments in milk production. Under such provisions (the "takeout-payback" plan), money withheld from the pool during March through July (15 cents per hundredweight March and July, 25 cents per hundredweight April, May, and June) is paid out to producers for deliveries of milk during September through December (20 percent in September and December, 30 percent in October and November).

Suspension was requested by a cooperative association of producers to improve the relationship of uniform prices under these orders to pay prices of unregulated cheese plants during the "takeout" months of March through July 1973. Since January 1, 1973, 19 of the producers who had been shipping their milk to a Southern Illinois distributing plant at Champaign, Ill., through a reload station at Platteville, Wis., discontinued delivering their milk to the reload station. The cooperative contends these producers are taking advantage of premium prices being paid in this area for milk to produce cheddar cheese.

They stated, further, that these producers intend to avoid the "takeout" period and to return to the market to participate in the "payback" moneys during the short production months. The cooperative contends that this would be a misuse of the seasonal incentive plan.

The operator of the distributing plant at Champaign supports suspension of the subject Southern Illinois order provisions so that the uniform price under the order will be more competitive with prices paid by alternative markets and thereby better assure a supply of milk to his plant.

Four other cooperative associations representing a majority of the producers supplying the two markets filed objections to the proposed suspension. They contend that producers in the market generally have made long-range production plans in response to the seasonal incentive plans. They state that discontinuance of the plans could jeopardize an adequate supply for the market in the months of September through December.

On the basis of available information, including the written views, data, and arguments submitted by interested parties, removal of the seasonal incentive plans in these markets by the emergency suspension action is not warranted. The seasonal incentive payment plan has been incorporated in these orders for many years. Producers have been accustomed to making production decisions in accordance with the price incentive provided by the plan.

The takeout months of March through July are the months of seasonally high production. The 19 producers who have left the Southern Illinois market since January 1, 1973, represent less than one percent of the producers on the market. Moreover, all those producers who have left the market were delivering milk to the same reload station. Thus far the scope of this supply problem is quite limited.

The neighboring order markets of Indiana, Paducah, and St. Louis-Ozarks have seasonal incentive plans also. If no payback moneys were provided under the Southern and Central Illinois markets, the producers supplying these markets would have an incentive to ship their milk to such neighboring markets during the seasonally short production months of September through December. Consequently, complete removal of the plans in the Southern and Central Illinois markets could threaten the adequacy of milk supplies for the markets during the payback period under such neighboring orders.

It therefore is found and determined that the proposed suspension of the seasonal incentive plans of the Southern Illinois and Central Illinois orders should not be effectuated; and the proceeding begun in this matter on March 21, 1973, should be and is hereby terminated.

Signed at Washington, D.C., on April 11, 1973.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.73-7351 Filed 4-16-73;8:45 am]

Animal and Plant Health Inspection Service

[9 CFR Parts 318, 381]

CANNED PRODUCTS

Proposed Requirements for Incubation Periods

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, and pursuant to the authority contained in section 14 of the Poultry Products Inspection Act, as amended (71 Stat. 441, as amended; 21 U.S.C. 451 et seq.), and in section 21 of the Federal Meat Inspection Act, as amended (34 Stat. 1260, as amended; 21 U.S.C. 601 et seq.), that the Animal and Plant Health Inspection Service proposes to amend the poultry products inspection regulations and the meat inspection regulations (9 CFR parts 381 and 318) as indicated below.

Statement of considerations.—The proposed amendments would modify current requirements for incubating samples of canned poultry products. The present poultry products inspection regulations require incubation periods of 10 days, except that samples of firmly packed products and products weighing 3 pounds or more are required to be incubated for at least 20 days. The proposed amendments would require incubation periods of no less than 20 days for samples of certain classes of products. Also, some provisions of the regulations would be clarified.

Currently available information indicates a need for holding incubation for

no less than 20 days in all cases, samples of firmly packed products such as shredded poultry meat and samples of products composed of poultry packed in a medium or sauce, wherein the pH of the poultry and the pH of the sauce or medium differ by more than 0.7 of a pH unit after processing.

All samples of other canned poultry products, including those weighing 3 pounds or more, would also require incubation periods of no less than 20 days, except samples of products which the Administrator determines to have satisfactory 250-production day incubation histories. The latter samples would require incubation for no less than 10 days.

Also, the regulation for incubation facilities would be clarified to specify that such facilities be provided by the operator of the official establishment. In addition, other minor changes would be made.

The proposed amendments would clarify requirements in § 318.11(i)(1) of the meat inspection regulations regarding minimum incubation periods for testing of samples, and modify current requirements in § 318.11(i)(4) for incubation of samples of canned meat products for the purpose of determining whether the products are fit for human food.

The present requirements in § 318.11 (i)(4) seem to be unrealistically broad in that they require incubation periods that appear to be too long for certain meat product samples and too short for others. Currently, information available does not substantiate a need for the present requirement of the regulations for holding in incubation for 30 days, samples of products composed of chunks or patties of meat in a medium or sauce wherein the pH of the meat component and the medium or sauce are significantly different. The proposed regulations would require 20-day incubation periods for these samples. Also, the term "significantly different" which refers to the pH factor noted above would be quantified. The present regulations require a 20-day incubation period for samples of chorizos packed in lard and this requirement would remain unchanged.

All samples of other canned meat products would require 20-day incubation periods, except samples of products which the Administrator determines have satisfactory 250-production day incubation histories. The latter samples would require only 10-day incubation periods. Instead of the present 10-day incubation requirement for certain canned meat products utilizing new or changed processes, the proposed amendment would better assure the safety of such products by requiring 20-day incubation periods until the Administrator has determined that such canned products have satisfactory 250-production day incubation histories. Also, the current meat inspection regulations require 20-day incubation periods for samples of firmly packed products, products with high fat content, and products weighing 3 pounds or more. The necessity for this requirement in all cases, except for chorizos packed in lard, is not substantiated by current technical information.

Accordingly, § 381.149(g) would be amended to read as follows:

§ 381.149 Processing and handling requirements for canned poultry products.

* * * * *

(g)(1) Facilities shall be provided by the operator of the official establishment for incubation of representative samples of fully processed canned poultry products. The incubation shall consist of holding the samples for the periods of time and within the temperatures prescribed in paragraph (g)(2) and (5) of this section.

(2) Incubation tests shall be made to the extent required by the circuit supervisor, but in no case for periods of time less than those specified in paragraph (g)(5) of this section. The extent to which incubation tests shall be required depends on conditions at the official establishment, such as the record of the official establishment in conducting canning operations, the extent to which the establishment furnishes competent supervision and inspection in connection with the canning operations, the kind of equipment used, and the degree of efficiency at which such equipment is maintained.

(3) In the event of failure by an official establishment to provide suitable facilities for incubation of test samples of any lot of fully processed canned poultry products, the circuit supervisor may require holding of the entire lot under such conditions and for such period of time as, in his judgment, will be necessary to ascertain the stability of the product.

(4) The circuit supervisor may permit lots of fully processed canned poultry products to be shipped from the official establishment prior to completion of sample incubation when he has no reason to suspect unsoundness in the particular lots, and under circumstances which will assure the return of the product to the establishment for reinspection should such action be indicated by the incubation results.

(5) Incubation shall consist of holding the samples at 95° F. (±2° F.) for no less than 20 days, except that the incubation period shall be no less than 10 days so long as the incubation tests of samples of the product over the immediately preceding period of 250 days of production show, in the judgment of the Administrator that the method of preparation of the product is adequate to assure that the product is not adulterated. However, this exception shall not apply to: (i) Samples of products composed of poultry packed in a medium or sauce, wherein the pH of the poultry and the pH of the sauce or medium differ by more than 0.7 of a pH unit after processing; or (ii) samples of firmly packed products such as shredded poultry meat.

The first sentence in § 318.11(i)(1), and § 318.11(i)(4), would be amended to read, respectively:

§ 318.11 Canning with heat processing and hermetically sealed containers; cleaning containers; closure; code marking; heat processing; incubation.

* * * * *

(i) * * *

(1) Incubation tests shall be made to the extent required by the officer in charge, but in no case for periods of time less than those specified in paragraph (i)(4) of this section.

* * * * *

(4) Incubation shall consist of holding the samples at 95° F. (±2° F.) for no less than 20 days, except that the incubation period shall be no less than 10 days so long as the incubation tests of samples of the product over the immediately preceding period of 250 days of production show, in the judgment of the Administrator, that the method of preparation of the product is adequate to assure that the product is not adulterated. However, this exception shall not apply to samples of: (i) Chorizos packed in lard or (ii) products composed of chunks or patties of meat packed in a medium or sauce, wherein the pH of the meat and the pH of the sauce or medium differ by more than 0.7 of a pH unit after processing.

Any person who wishes to submit written data, views, or arguments concerning the proposed amendments may do so by filing them, in duplicate, with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by June 15, 1973.

Persons desiring opportunity for oral presentation of views should address such requests to the Technical Services Staffs, meat and poultry inspection program, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, so that arrangements may be made for such views to be presented prior to the date specified in the preceding paragraph. A record will be made of all views orally presented.

All written submissions and records of oral views made pursuant to this notice will be made available for public inspection in the office of the hearing clerk during regular hours of business, unless the person making the submission requests that it be held confidential and a determination is made that a proper showing in support of the request has been made on the grounds that its disclosure could adversely affect such person by disclosing information in the nature of trade secrets or commercial or financial information obtained from any person and privileged or confidential. If it is determined that a proper showing has been made in support of the request, the material will be held confidential; otherwise, notice will be given of denial of such a request and an opportunity afforded for withdrawal of the submission. Requests for confidential treatment will be held confidential (7 CFR 1.27(c)).

Comments on the proposal should bear a reference to the date and page number of this issue of the FEDERAL REGISTER.

Done at Washington, D.C. on April 9, 1973.

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

[FR Doc.73-7350 Filed 4-16-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 73-EA-6]

LYCOMING AIRCRAFT ENGINES

Proposed Airworthiness Directive

The Federal Aviation Administration is proposing to amend § 39.13 of part 39 of the Federal Aviation Regulations so as to issue an airworthiness directive (AD) applicable to Lycoming IGO-540 and IGSO-540 type engines with certain designated exceptions.

There have been reports of connecting rod assembly difficulties on the subject type engine which can be corrected by the replacement of the assembly with a reinforced heavy tongue and grooved connecting rod without phosphate coating on the bearing bore and improved hardness shot peened connecting rod bolts.

Because this deficiency involves air safety, interested parties are invited to participate in the making of the proposed rule by submitting written data and views on or before May 2, 1973. Communications should identify the docket number and be submitted in duplicate to the Office of Regional Counsel, FAA, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430.

All communications received on or before May 2, 1973, will be considered before taking action upon the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Office of Regional Council for examination by interested parties.

In consideration of the foregoing, it is proposed to issue a new AD as hereinafter set forth:

AVCO LYCOMING.—Applies to all IGO-540 series engines except IGO-540 series engines with serials Nos. 411-49 and subsequent; and to all IGSO-540 series engines except IGSO-540 series engines with serials Nos. 2558-50 through 2563-50, 2565-50, through 2582-50, 2584-50 through 2589-50, 2591-50 through 2631-50, 2637-50, 2640-50, 2647-50 through 2652-50, 2657-50 through 2692-50, 2694-50 through 2713-50, 2718-50 through 2727-50, 2730-50 through 2750-50, 2752-50 through 2771-50, 2775-50 through 2780-50, 2782-50 through 2790-50, 2792-50 through 2801-50, 2803-50 through 2812-50, 2814-50 through 2848-50, 2852-50 through 2861-50, 2865-50 through 2874-50, 2877-50 through 2884-50, 2886-50 through 2895-50, 2897-50 through 2906-50, 2910-50 through 2917-50, 2924-50 through 2933-50, 2935-50 through 2944-50, 2948-50, and subsequent; and except all IGO and IGSO-540 series engines overhauled (also known as remanufactured) by Lycoming after October 29, 1970.

Compliance required as indicated after the effective date of this AD, unless already accomplished.

To prevent failures of connecting rod assemblies P/N 72606, P/N 73174, and P/N 75548, accomplish the following:

(a) Engines with connecting rod assemblies that have accumulated 400 hours or more in service since new or overhaul must have the connecting rod assemblies replaced with new connecting rod assembly, P/N 77450, within the next 50 hours in service.

(b) Engines that have connecting rod assemblies with less than 400 hours in service since new or overhauled must have the connecting rod assemblies replaced with new connecting rod assembly, P/N 77450, within the next 100 hours in service.

(c) Upon request, with substantiating data submitted through an FAA maintenance inspector, the compliance time may be increased by the Chief, Engineering and Manufacturing Branch, FAA eastern region.

NOTE.—Lycoming Service Bulletin No. 351 covers this subject.

This amendment is made under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on April 6, 1973.

RORETT. H. STANTON,
Acting Director, Eastern Region.

[FR Doc.73-7337 Filed 4-16-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-EA-22]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending §§ 71.171 and 71.181 of part 71 of the Federal Aviation Regulations so as to alter the Allentown, Pa., control zone (38 FR 353) and transition area (38 FR 438).

There are proposed revisions to the instrument approach and departure procedures to Allentown-Bethlehem-Easton Airport, Allentown, Pa., which will require the proposed alterations of the control zone and transition area so as to provide adequate controlled airspace for aircraft executing the instrument procedures.

Interested parties may submit such 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 May 17, 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 Allentown, Pa., proposes the airspace action hereinafter set forth:

1. Amend § 71.171 of part 71 of the Federal Aviation Regulations by deleting the description of the Allentown, Pa., control zone and by substituting the following in lieu thereof:

Within a 5.5-mile radius of the center 40°39'16" N., 75°26'11" W. of Allentown-Bethlehem-Easton Airport, Allentown, Pa., extending clockwise from a 042° bearing to 103° bearing from the airport; within a 6.5-mile radius of the center of the airport, extending clockwise from a 103° bearing to a 209° bearing from the airport; within a 5.5-mile radius of the center of the airport, extending clockwise from a 209° bearing to a 291° bearing from the airport; within a 6.5-mile radius of the center of the airport, extending clockwise from a 291° bearing to a 042° bearing from the airport; within a 1.5-mile radius of the center 40°34'13" N., 75°29'19" W. of Allentown-Queen City Municipal Airport, Allentown, Pa.; within 2 miles each side of the Allentown-Bethlehem-Easton Airport localizer southwest course extending from the localizer to 1 mile northeast of the OM; within 3 miles each side of the Allentown-Bethlehem-Easton Airport localizer northeast course, extending from the localizer to 12.5 miles northeast of the localizer; within 3.5 miles each side of the Allentown VORTAC 178° and 358° radials, extending from 1 mile south to 5 miles north of the VORTAC.

2. Amend § 71.181 of part 71 of the Federal Aviation Regulations by deleting the description of the Allentown, Pa., transition area and by substituting the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 16.5-mile radius of the center, 40°39'16" N., 75°26'11" W. of Allentown-Bethlehem-Easton Airport, Allentown, Pa., extending clockwise from a 311° bearing to a 028° bearing from the airport; within a 12.5-mile radius of the center of the airport, extending clockwise from a 028° bearing to a 311° bearing from the airport; within a 9-mile radius of the center, 40°34'13" N., 75°29'19" W. of Allentown-Queen City Municipal Airport, Allentown, Pa.; within 3.5 miles each side of the Allentown-Bethlehem-Easton Airport localizer southwest course, extending from the OM to 11 miles southwest of the OM; within 4.5 miles west and 6.5 miles east of the Allentown VORTAC 358° radial extending from the VORTAC to 17.5 miles north of the VORTAC; within 5 miles each side of the East Texas VORTAC 103° and 283° radials, extending from 1 mile east of the VORTAC to 8.5 miles west of the VORTAC; within 5 miles each side of the East Texas VORTAC

095° radial, extending from the 9-mile radius area to the East Texas VORTAC; within a 15-mile radius of the Allentown VORTAC extending clockwise from the Allentown VORTAC 358° radial to the Allentown VORTAC 104° radial; within 5 miles each side of the Allentown-Bethlehem-Easton Airport localizer northeast course, extending from the localizer to 16 miles northeast of the localizer.

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 April 3, 1973.

ROBERT H. STANTON,
Acting Director, Eastern Region.

[FR Doc.73-7338 Filed 4-16-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-GL-20]

VOR FEDERAL AIRWAYS

Proposed Extension

The Federal Aviation Administration (FAA) is considering an amendment to part 71 of the Federal Aviation Regulations that would extend Victor Airway 214 from Richmond, Ind., to Kokomo, Ind., and Victor Airway 221 from Fort Wayne, Ind., to Bible Grove, Ill.

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, Ill. 60018. All communications received on or before May 17, 1973, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The proposed amendment would extend V-214 from Richmond, Ind., via Muncie, Ind.; Marion, Ind.; to Kokomo, Ind. Also, V-221 would be extended from Fort Wayne, Ind., via Muncie, Ind.; Shelbyville, Ind.; Bloomington, Ind.; INT Bloomington 253° T (252° M) and Bible Grove, Ill., 087° T (084° M) radials; to Bible Grove.

At the Muncie Airport, the total number of arrivals and departures have increased to the point that additional airways are needed in order to continue to provide the best possible service to the flying public. Also, the low altitude traffic congestion at Indianapolis Municipal Airport would be relieved with V-221 being used as a bypass for east and westbound traffic.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on April 11, 1973.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73-7341 Filed 4-16-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-NW-12]

CONTROL ZONE

Proposed Alteration

The Federal Aviation Administration is considering an amendment to part 71 of the Federal Aviation Regulations that would alter the description of the Troutdale, Oregon, control zone.

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Operations, Procedures and Airspace Branch, Northwest Region, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108. All communications received on or before May 17, 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, Northwest Region, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Washington 98108.

A review of the Troutdale, Oreg. control zone airspace disclosed that additional controlled airspace is needed to contain the IFR approach procedures at the Portland-Troutdale Airport.

In consideration of the foregoing the FAA proposes to amend part 71 of the Federal Aviation Regulations as hereinafter set forth.

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

TROUTDALE, OREGON

That airspace, bounded on the north by a 5-mile radius are centered on the Portland-Troutdale Airport (lat. 45°33'90" N., long. 122°23'49" W.), on the south and east by a line parellel to and 3 miles southwest and northeast of the 119° bearing from the Lake LOM (lat. 45°32'38" N., long. 122°27'49" W.), extending from the LOM to 8 miles southeast, and on the west by the 154° radial of the Portland VORTAC. This control zone shall be effective from 0700 to 2300 hours, local time daily.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Seattle, Wash., on April 9, 1973.

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

[FR Doc.73-7342 Filed 4-16-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-SW-23]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending part 71 of the Federal Aviation Regulations to designate a 700-foot transition area at Cleveland, Tex.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before May 17, 1973, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Tex. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed to amend part 71 of the Federal Aviation Regulations as hereinafter set forth.

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

CLEVELAND, TEX.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Cleveland Municipal Airport (lat. 30°21'30" N., long. 95°00'29" W.), and within 2.5 miles each side of the Daisetta, Tex., VORTAC 298° T (290° M) radial extending from the 5-mile radius to 19.5 miles northwest of the VORTAC.

The proposed transition area will provide controlled airspace for aircraft executing the proposed VORTAC-A (original) approach procedure at the Cleveland Municipal Airport, Cleveland, Tex.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

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

HENRY L. NEWMAN,
Director, Southwest Region.

[FR Doc.73-7340 Filed 4-16-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-SW-24]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending part 71 of the Federal Aviation Regulations to designate a 700-foot transition area at New Braunfels, Tex.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received on or before May 17, 1973, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Tex. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed to amend part 71 of the Federal Aviation Regulations as hereinafter set forth.

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

NEW BRAUNFELS, TEX.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of New Braunfels Municipal Airport (lat. 29° 42'10" N., long. 98°02'30" W.) and south of a line extending from the 5-mile radius area east along the San Antonio, Tex., VORTAC 070°T (061°M) radial to the 39 nautical mile DME fix and north of a line extending from the 5-mile radius area east along the San Antonio VORTAC 089°T (080°M) radial to the 39 nautical mile DME fix.

The proposed transition area will provide controlled airspace for aircraft executing VORTAC-A (original) standard instrument approaches.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

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

HENRY L. NEWMAN,
Director, Southwest Region.

[FR Doc.73-7339 Filed 4-16-73;8:45 am]

[14 CFR Part 139]

[Docket No. 12750; Notice No. 73-12]

CERTIFICATION AND OPERATIONS OF AIRPORTS SERVING CAB-CERTIFICATED AIR CARRIERS

Notice of Proposed Rulemaking

The Federal Aviation Administration is considering amending part 139 of the Federal Aviation Regulations to make a number of miscellaneous changes or amendments to existing provisions of part 139.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue SW., Washington, D.C. 20591. All communications received on or before June 18, 1973, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Part 139 of the Federal Aviation Regulations was issued June 21, 1972 (37 FR 12278) and was effective July 21, 1972. Since that time the FAA has been working closely with applicants for airport operating certificates in the development of airport operations manuals and in the accomplishment of other eligibility and operations requirements necessary for airport certification under part 139. During the progress of this airport certificaton program a number of provisions requiring change or clarification have become apparent or have been brought to the attention of the FAA. The amendments proposed herein are intended to accomplish those changes and that clarification.

It is proposed that § 139.15(a) be amended by deleting the requirement for listing the airport owner on the airport operating certificate, since references in section 612 of the Federal Aviation Act are to "persons" who operate an airport, and not to "owners."

The definition of "runway safety areas" in § 139.45(b)(1) is proposed to be amended to allow for design and construction differences which previously met FAA airport criteria or standards in effect at the time of construction.

The listing of specific types of approach lighting in § 139.47(a)(4) is proposed to be deleted since the FAA does not believe it necessary or practicable to include a complete listing. The statements regarding "properly aimed" and "proper guidance" would also be deleted as inappropriate to a listing of items, and because these requirements are considered to be included in the statement of requirements (operable condition) contained in paragraph (a) of § 139.47.

To permit index selection, or identification of firefighting and rescue equipment requirements, based on forecasted aircraft activity included in the FAA National Airport System Plan, paragraph (a) and paragraphs (a)(1) and (2) of § 139.49 would be amended to provide for determination of the applicable index, if the applicant elects, based on departures "served or expected to be served" by the airport.

The flush paragraph following paragraph (b)(1) of § 139.49 would be amended to make it clear that the required water is for protein foam production.

Paragraphs (b)(2), (3), (4), and (5) of § 139.49 would be amended by adding the word "protein" to clearly identify the basic type of protein foam production required.

A new provision would be added to § 139.49(c) to provide for the use of other extinguishing agents, acceptable to the Administrator as substitutions for protein based foam, that would provide equivalent firefighting capability.

For clarification, the words "foam type" would be inserted in § 139.49(d) to identify the firefighting and rescue vehicles that must be responsive to the discharge rate specified therein and the requirement has been revised to make it clear that the discharge is applicable to these vehicles only.

For clarification, in paragraphs (e)(1), (2), and (3) of § 139.49, the term "farthest runway serving air carrier users" would be substituted for "furthest runway."

In § 139.49(f), the specification of the color of the flashing beacon is proposed to be deleted since certain State laws permit or require other beacon colors for firefighting vehicles.

Paragraph (g)(2) of § 139.49 would be amended to allow for means to be used other than a firehouse or station to insure vehicle operation and agent discharge under freezing conditions.

Paragraph (g)(3) of § 139.49 would be amended to allow for alerting firefighting and rescue personnel by siren, alarm, or other means satisfactory to the Administrator.

A new paragraph (g)(4) would be added to § 139.49 to require that, at airports with control towers or equipped with radio communications systems used for ground vehicle traffic management, the applicant have the capability to communicate by radio between each required fire fighting and rescue vehicle and the

control tower or other central control point.

Section 139.53 would be amended to indicate that traffic pattern indicators would be required only when traffic patterns are nonstandard.

A new § 139.89(d) would be added to require that the airport operator meet the requirements of the higher index when traffic increases make that higher index applicable.

(Secs. 313(a), 609, 610(a), and 612 of the Federal Aviation Act of 1958; 49 U.S.C. 1354 (a), 1429, 1430; Public Law 91-258, 84 Stat. 234, 235; Public Law 92-174, 85 Stat. 492.)

In consideration of the foregoing, it is proposed to amend part 139 of the Federal Aviation Regulations as follows:

1. By amending paragraph (a) of § 139.15 to read as follows:

§ 139.15 Contents of certificate.

* * * * *

(a) The names of the airport and operator of the airport;

* * * * *

2. By amending paragraph (b) of § 139.45 to read as follows:

§ 139.45 Safety areas.

* * * * *

(b) As used in this section, "safety areas" are the following:

(1) "Runway safety areas."

(i) If constructed before February 18, 1970, a cleared, drained, and graded area, the central portion of which is the usable runway, which extends beyond each end of the runway, and has a width in accordance with FAA criteria in effect at the time of construction.

(ii) If constructed after February 17, 1970, a cleared, drained, and graded area abutting the edges and ends of the usable runway and symmetrically located about the runway, whose outer edges are in accordance with FAA criteria in effect at the time of construction.

(2) "Taxiway safety area"—a cleared, drained, and graded area abutting the edges of the taxiway and symmetrically located about the taxiway in accordance with the FAA criteria in effect at the time of construction of the taxiway.

(3) "Extended runway safety area"—a rectangular area along the extended runway centerline, that begins 200 feet outward from the end of the usable runway and extends in accordance with FAA criteria in effect at the time of construction of the runway.

3. By amending paragraph (a)(4) of § 139.47 to read as follows:

§ 139.47 Marking and lighting runways, thresholds, and taxiways.

(a) * * *

(4) Approach aid lighting owned by the applicant:

* * * * *

§ 139.49 [Amended]

4. By amending § 139.49 as follows:

a. By amending paragraph (a) to read as follows:

* * * * *

(a) The applicant must show that it has at least the required firefighting and rescue equipment assigned to the currently applicable index listed in paragraph (b) of this section or, if the applicant elects, to the index applicable to its airport under the 5-year forecast of aircraft activity reflected in the current FAA National Airport System Plan. The applicable index is determined by the longest large aircraft, operated by an air carrier user, with an average of at least five departures per day, served or expected to be served by the airport. However—

(1) Where the airport serves or is expected to serve an average of at least five scheduled departures per day of large aircraft by air carrier users, but not at least five scheduled departures of any one index large aircraft, the required firefighting and rescue equipment is that assigned to the next index below that applicable to the longest aircraft operated by the air carrier users served by the airport; and

(2) Where the airport serves or is expected to serve an average of fewer than five scheduled departures per day of large aircraft by air carrier users, the required firefighting and rescue equipment is that assigned to index A aircraft.

b. By amending the flush paragraph following paragraph (b)(1) to read as follows:

(b) * * *

(1) * * *

However, when at the time of application the applicant shows that it serves or is expected to serve index B turbine engine powered aircraft under conditions described in paragraph (a)(1) or (2) of this section, a light weight vehicle providing at least 500 gallons of water for protein foam production and 300 pounds of compatible dry chemical is required for index A.

c. By inserting the word "protein" between the words "for" and "foam" in the second sentence in paragraphs (b)(2), (3), (4), and (5).

d. By amending paragraphs (c), (d), (e), and (f) to read as follows:

(c) The quantity of water specified for each index does not include any foam concentrate. One of the following substitutions for protein foam may be made:

* * * * *

(3) Other extinguishing agents acceptable to the Administrator that would provide an equivalent firefighting capability.

(d) Each foam type firefighting and rescue vehicle carrying under 4,000 gallons of water and used under Indexes B through E must be capable of discharging one complete tank capacity with appropriate foam concentrate in not less than 1¾ minutes nor more than 2¼ minutes with all discharge orifices open. Each vehicle carrying 4,000 or more gallons of water must be capable of discharging at a minimum rate of at least 1,800 gallons per minute.

(e) The applicant must show by a demonstration run that—

(1) At least one firefighting and rescue vehicle required by the applicable index can reach the midpoint on the farthest runway serving air carrier users from its assigned post within 3 minutes from the time of alarm to the time of initial agent application;

(2) At least one other firefighting and rescue vehicle required by the applicable index can reach the midpoint on the farthest runway serving air carrier users from its assigned post within 4 minutes from the time of alarm to the time of initial agent application; and

(3) All other firefighting and rescue vehicles required by the applicable index can reach the midpoint on the farthest runway serving air carrier users from their assigned posts within 4½ minutes from the time of alarm to the time of initial agent application.

(f) The applicant must show that each item of required firefighting and rescue equipment has a flashing beacon and is marked to insure rapid and positive identification. The color of each vehicle must insure contrast with the background environment for easy identification.

e. By amending paragraphs (g) (2) and (3), and by adding paragraph (g)(4) to read as follows:

(g) The applicant must show that it has the capability to—

* * * * *

(2) Provide cover or other means to insure vehicle operation and discharge under freezing conditions for all required firefighting and rescue equipment owned by it if the airport is located in a geographical area subject to prolonged temperatures below 35° F.;

(3) Alert firefighting and rescue personnel by siren, alarm, or other means satisfactory to the Administrator, to any existing or impending emergency that requires, or might require their assistance; and

(4) Communicate by radio between each firefighting and rescue vehicle required by indexes A through E and the control tower or other central control point, at airports with control towers or equipped with radio communications systems used for ground vehicle traffic management.

5. By amending paragraph (b) of § 139.53 to read as follows:

§ 139.53 Traffic and wind direction indicators.

* * * * *

(b) Segmented circle, with traffic pattern indicator when appropriate, if the airport has no air traffic control tower.

6. By adding a new paragraph (d) to § 139.89 to read as follows:

§ 139.89 Airport firefighting and rescue equipment and service.

* * * * *

(d) When scheduled air carrier service at an airport is increased either by volume or length of aircraft to the extent that a higher firefighting and rescue equipment index applies, the operator

shall comply with the appropriate index requirements.

Issued in Washington, D.C., on April 9, 1973.

CLYDE W. PACE, Jr.,
Director, Airports Service, AAS–1.

[FR Doc.73-7336 Filed 4-16-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 166]

EXEMPTION OF FEDERAL OR STATE AGENCIES FOR USE OF PESTICIDES UNDER EMERGENCY CONDITIONS

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the authority of section 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 (86 Stat. 997), that it is proposed to issue a new part 166 of title 40, Code of Federal Regulations, to read as set forth below. Any person may file comments on this proposal within 30 days from the date of publication of this notice in the FEDERAL REGISTER. Such comments should be filed in duplicate and addressed to Mrs. Betty J. Billings, hearing clerk, Environmental Protection Agency, room 3902, Waterside Mall, Washington, D.C. 20460. All written submissions filed pursuant to this notice will be available for public inspection at the office of the hearing clerk during regular business hours, 8–4:30 daily.

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 (Public Law 92–516; 86 Stat. 995), authorizes the Administrator to exempt any Federal or State agency from any provision of the act if he determines that emergency conditions exist which require such exemption. The regulations proposed herein set forth the procedures under which an exemption will be granted.

Dated March 27, 1973.

WILLIAM D. RUCKELSHAUS,
Administrator.

It is the view of this Agency that the new pesticides law contemplates that all pesticides used in the United States will comply with the requirements of that law. While public officials engaged in the performance of official duties are exempt from certain penalty provisions of the act, they are nevertheless subject to the penalties for violations of the "use" provisions of the act.

The act, however, also contemplates that certain emergency conditions may arise whereby Federal or State officials may be exempted from the provisions of the act and the Administrator is given authority to grant such exemptions.

These proposed regulations provide a mechanism whereby Federal or State official may apply to this Agency for a specific exemption on a case-by-case basis. The information that must be submitted in support of such an application, as well as the reports that must be made to this Agency, is specifically set forth in the regulations.

It is also recognized that there may be situations where it may be impracticable to obtain a specific exemption, such as in quarantine or public health programs. This Agency does not want to jeopardize such programs. Therefore, provision is made for application for a "quarantine—public health exemption," the purpose of which is to prevent the introduction or spread of foreign pests into or throughout the United States. It is to be understood that if recurrence of such pests may be reasonably expected, the agency involved shall take prompt action to comply with the registration requirements of the act.

Provision is also made for a "crisis exemption." As proposed, a crisis exemption is granted to any Federal or State agency where the time element with respect to the application of the pesticide is so critical that it would not be possible to apply for a specific exemption. Such an exemption will provide for those limited circumstances where immediate action is necessary. However, even under a crisis exemption, no pesticide may be used if the registration of such pesticide has been suspended.

Sec.
166.1 General.
166.2 Types of exemptions.
166.3 Application for specific exemption.
166.4 Application for guarantine—public health exemption.
166.5 Procedure to be followed after application of a pesticide pursuant to specific exemption.
166.6 Procedure to be followed after application of a pesticide pursuant to a guarantine—public health exemption.
166.7 Withdrawal of a specific or guarantine—public health exemption.
166.8 Crisis exemptions—procedures to be followed.
166.9 Withdrawal of the crisis exemption.
166.10 Publication.

AUTHORITY.—Sec. 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 (86 Stat. 997).

§ 166.1 General.

Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 (86 Stat. 995), the Administrator may exempt from the requirements of the act a Federal or State agency if he determines that emergency conditions exist which may require such an exemption. Set forth herein are the procedures that Federal or State agencies must follow in requesting such an exemption.

§ 166.2 Types of exemptions.

Consideration will be given to three types of exemptions.

(a) *Specific exemption.*—Specific exemptions may be issued by the Administrator in a situation involving the predictable or unpredictable outbreak of a pest in the United States. Such exemptions, if granted, are valid only for the specific situation involved and are subject to such restrictions as the Administrator may prescribe in granting the exemption. Such exemptions, if granted, are valid only for the time therein specified but under no circumstances shall be longer than 1 year.

(b) *Quarantine—public health exemption.*—Quarantine or public health exemptions may be issued by the Administrator to cover Federal or State quarantine or public health programs concerned with preventing the introduction or spread of a foreign pest into or throughout the United States. A foreign pest is a pest not known to occur within the United States. If recurrence of said pest can be reasonably expected, such Federal or State agency shall take prompt action to comply with the registration requirements of the act. Such exemptions, if granted, are valid only for the time therein specified but under no circumstances shall be longer than 1 year. The Administrator may, in his discretion, renew such exemption annually upon reapplication.

(c) *Crisis exemption.*—Crisis exemptions are hereby granted to any Federal or State agency in situations involving the unpredictable outbreak of pests in the United States, where the responsible official in authority determines (1) that there is no readily available pesticide registered for the particular use to eradicate or control the pest and (2) that the time element with respect to the application of the pesticide is so critical that there was no time to request a specific exemption and where the other requirements of § 166.8 are met. Crisis exemptions are not available where the Administrator has specifically withdrawn the right to a crisis exemption (4) for the use of a pesticide and (5) by an agency. No pesticide may be used under a crisis exemption if the registration of such pesticide has been suspended by the Administrator.

§ 166.3 Application for specific exemption.

(a) Each specific exemption must be requested in writing, by the head of the Federal agency or the Governor of the State involved, or other official designee, addressed to the Administrator, setting forth the following information:

(1) The nature, scope, and frequency of the emergency.

(2) A description of the pest known to occur, the places or times it may be likely to occur, and the estimated time when treatment must be commenced to be effective.

(3) Whether a pesticide registered for the particular use, or other method of eradicating or controlling the pest, is available to meet the emergency.

(4) A listing of the pesticide or pesticides the agency proposes to use in the event of an outbreak.

(5) Description of the nature of the program for eradication or control. Such description should include:

(i) Quantity of the pesticide expected to be applied;

(ii) Method of application;

(iii) Duration of application;

(iv) Qualifications of personnel involved in such application.

(6) Analysis of possible adverse effects on man and the environment. If an environmental impact statement has been prepared by an agency, in accordance with that agency's regulations implementing the National Environmental Policy Act of 1969, and is relevant to the above, it shall be submitted with the application.

§ 166.4 Application for quarantine—public health exemption.

(a) Quarantine-public health exemptions must be requested in writing, by the head of the Federal agency or the Governor of the State involved, or their official designee, setting forth the following information:

(1) The scope of the quarantine or public health programs concerned and the statutory authorities therefor.

(2) Whether a pesticide registered for the particular use, or other method of eradicating or controlling the pest, is available to implement the quarantine or public health program.

(3) A listing of the pesticide or pesticides the agency proposes to use for such quarantine or public health program.

(4) A description of the nature of the quarantine or public health program for such eradication or control. Such description should include:

(i) Method of application;

(ii) Area or place of application (if possible);

(iii) Duration of application;

(iv) Qualifications of personnel involved in such application.

(5) Statement with respect to possible adverse effects on man and the environment.

§ 166.5 Procedure to be followed after application of a pesticide pursuant to specific exemption.

The Federal or State agency using or applying a pesticide pursuant to a specific exemption shall thereafter:

(a) Immediately inform the Administrator in writing of the time and place of application of such pesticide.

(b) Record the location, quantity, and extent of use of the pesticide involved and furnish such information to the Administrator within 10 days of the termination of said application or use.

(c) Initiate appropriate monitoring activities to determine if such application or use caused any adverse effects on the man or environment, with results thereof being reported to the Administrator as soon as practicable or at the request of the Administrator.

§ 166.6 Procedure to be followed after application of a pesticide pursuant to a quarantine-public health exemption.

The Federal or State agency suing or applying pesticides pursuant to a quarantine-public health exemption shall thereafter:

(a) Maintain records of all such treatments which shall be available to the Administrator. Such records shall include:

(1) Location where treatment was applied;

(2) Pesticide used;

(3) Rate of application; and

(4) Quantity used.

(b) One month after the expiration date of a quarantine-public health exemption, any agency which has availed itself of such exemption, shall file with the Administrator and the hearing clerk of the agency a report listing the number of treatments, the pesticides used for each type of treatment, the steps taken to comply with the registration requirements of the act, and, where repeat treatments have been made, the reasons why applications for registration have not been submitted if such is the case. Copies of such reports filed with the hearing clerk shall be open to the public.

§ 166.7 Withdrawal of a specific or quarantine-public health exemption.

If the Administrator determines that an exempted agency is not complying with any of the requirements set forth in this part or if such action is necessary to protect man or the environment, the exemption shall be immediately withdrawn.

§ 166.8 Crisis exemptions—procedures to be followed.

Whenever a Federal or State agency has availed itself of a crisis exemption (except as prohibited by a withdrawal of the privilege by the Administrator as provided by § 166.9) the head of the Federal agency or the Governor of the State or their designees shall, within 36 hours of initiating the application or use of the pesticide, notify the Administrator by telegram or other writing of the application of the particular pesticide. Within 10 days of such application or use of the pesticide, the head of the Federal agency or the Governor of the State or their designees shall file in writing with the Administrator the following certified information:

(a) The nature and scope of the emergency, including the pest involved;

(b) That no pesticide registered for the particular use to eradicate or control the pest was readily available;

(c) That the time element was so critical that there was no time to request either a specific or quarantine or public health exemption;

(d) The location, quantity, method of application, duration of application and the qualifications of the personnel involved in such application;

(e) Description of steps being taken to reduce possible adverse effects on man and the environment; and

(f) Any other information requested by the Administrator thereafter.

If treatment pursuant to the crisis exemption is expected to continue for more than a total of 15 days, such report shall be accompanied by an application for a specific exemption.

§ 166.9 Withdrawal of the crisis exemption.

At any time that the Administrator determines that an exempted agency is not complying with any of the requirements set forth in this part or if such action is necessary to protect man or the environment, he may (a) withdraw the crisis exemption for the use of any specific pesticide or (b) withdraw from the exempted agency the right to resort to a crisis exemption for any pesticide in the future, in whole or in part.

§ 166.10 Publication.

At any time any exemption is granted by the Administrator, or when the Administrator is notified that a Federal or State agency has availed itself of a crisis exemption and filed the information required by § 166.8, he shall give prompt notice in the FEDERAL REGISTER.

[FR Doc.73-7412 Filed 4-16-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 275]

[Release No. IA-369]

FEE SCHEDULE FOR INVESTMENT ADVISERS

Notice of Proposed Rulemaking

Notice is hereby given that the Securities and Exchange Commission has under consideration a proposal to amend rule 203-3 (17 CFR 275.203-3) under the Investment Advisers Act of 1940 (the Act) relating to the fee schedule for investment advisers. One purpose of the proposed amendment is to comply with the Congressional mandate that Federal agencies review their fee schedules and charges with a view to making increases or adjustments to offset the increasing direct appropriations for agency operating costs. (See S. Rept. No. 1375, 90th Cong., 2d Sess., ——— 3, 1968.) Another purpose of the proposed amendment is to make the fee schedule for investment advisers more equitable to registrants.

In pertinent part, rule 203-3 under the Act requires that an applicant for registration as an investment adviser must pay to the Commission a fee of $150, no part of which shall be refunded. The rule provides further that every registered investment adviser shall pay a $100 assessment annually to the Commission while its registration is effective. Such assessment must be paid by each registrant by January 31 of the year following the end of the calendar year in which the investment adviser has been registered.

Rule 203 presently requires that any investment adviser who is registered on December 31 of any year must pay the annual assessment by January 31 of the following year. On the other hand, an investment adviser who withdraws his registration by December 30 pays no assessment for that year. There is no provision in the rule for reduced assessments for those investment advisers who withdraw their registrations during the year. Moreover, there is no late payment clause in rule 203-3 under the Act for investment advisers who fail to pay the prescribed fee when and as required.

The Commission believes that it should continue to require a fee of $150 from

each applicant, since it has been determined that such amount is a reasonable, fixed cost for processing an application.

The Commission proposes, however, to amend rule 203–3 to provide that any investment adviser who files a notice of withdrawal on or before June 30 of any year should be required to pay one-half (or $50) of the annual assessment before such withdrawal is permitted to become effective. In addition, the Commission proposes to amend rule 203–3 to require that any investment adviser who files a notice of withdrawal on or after July 1, of any year must pay the full annual assessment ($100) before he will be permitted to withdraw.

Further, the Commission proposes to amend rule 203–3 to provide a $100 late payment fee for failing to pay the prescribed assessment as and when required. Such late payment fee would reimburse the Commission for additional expenses incurred in obtaining and processing delinquent payments.

Accordingly, the Commission proposes the following amendments to rule 203–3 under the act:

While the initial application fee and the annual assessment would remain unchanged, investment advisers who withdraw during the year would be required to pay a partial or full assessment, depending upon when such withdrawal becomes effective, and a $100 late filing fee would be imposed on those investment advisers who fail to pay the assessment when and as required.

The Commission also warns all registered investment advisers that the fee schedule as presently in effect and any amendment to such schedule which may be adopted pursuant to this notice will be enforced fully. Each registrant has the responsibility of paying all fees and assessments as and when required whether or not he receives a reminder or notice from the Commission. Appropriate enforcement action will be taken for failure to pay such fees and assessments.

Commission action.—Pursuant to authority in section 203 of the Investment Advisers Act of 1940 and title V of the Independent Offices Appropriations Act of 1952, the Securities and Exchange Commission proposes to amend § 275.203–3 of chapter II of title 17 of the Code of Federal Regulations by redesignating present paragraph (c) thereunder as paragraph (c) thereunder as paragraph (f) and by adding new paragraphs (c), (d), and (e) to read as follows:

§ 275.203–3 Fees for registrants and applicants.

* * * * *

(c) Any registered investment adviser who files a notice of withdrawal on or before June 30 of any year shall pay one-half ($50) of the annual assessment to the Commission before such notice of withdrawal becomes effective. No part of such assessment shall be refunded.

(d) Any registered investment adviser who files a notice of withdrawal on or after July 1, of any year shall pay the full annual assessment ($100) to the Commission before such notice of withdrawal becomes effective. No part of this assessment shall be refunded.

(e) Every registered investment adviser who fails to pay an assessment as and when required by this rule shall pay a late payment fee of $100 to defray the administrative costs incurred as a result of such failure.

* * * * *

All interested persons are invited to submit their views and comments on this proposal in writing to Ronald F. Hunt, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before May 18, 1973.

All such communications should refer to file No. S7–479 and will be available for public inspection.

By the Commission.

RONALD F. HUNT,
Secretary.

APRIL 6, 1973.

[FR Doc.73–7369 Filed 4–16–73;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

Fiscal Service

[Dept. Circ. 570, 1972 Rev., Supp. No. 18]

HOME INDEMNITY COMPANY AND HOME INDEMNITY COMPANY, INC.

Termination as Surety on Federal Bonds and Acceptable Surety on Federal Bonds

The Home Indemnity Company, a New York corporation, which holds a Certificate of Authority as an acceptable surety on Federal bonds (37 FR 13596, July 11, 1972), under Sections 6 to 13 of Title 6 of the United States Code, merged into The Home Insurance Company of New Hampshire, Inc., a New Hampshire corporation, effective December 31, 1972. The latter company simultaneously changed its name to The Home Indemnity Company, Inc., and is the surviving corporation. Confirmation of this action has been received and filed in the Treasury. Both companies have principal offices in New York, New York. The Certificate of Authority held by The Home Indemnity Company, a New York corporation, is hereby terminated effective January 1, 1973.

The surviving corporation has acquired the assets and assumed the liabilities of the merged corporation and has been issued a Certificate of Authority as an acceptable surety on Federal bonds effective January 1, 1973 with an underwriting limitation of $4,277,000 as follows:

Name of company, location of principal executive office, and State in which incorporated:

The Home Indemnity Company, Inc.

New York, New York

New Hampshire

In view of the foregoing, no action need be taken by bond-approving officers by reason of the merger and change of name set forth above with respect to any bond or other obligation in favor of the United States, or in which the United States has an interest direct or indirect issued prior to January 1, 1973 pursuant to the Certificate of Authority issued by the Treasury.

Certificates of Authority expire on June 30 each year, unless sooner revoked and new Certificates are issued on July 1, so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1, in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact fidelity and surety business and other information. Copies of the Circular, when issued, may be obtained from the Treasury Department, Bureau of Accounts, Audit Staff, Washington, D.C. 20226.

Dated April 12, 1973.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

[FR Doc.73-7410 Filed 4-16-73;8:45 am]

Office of the Secretary

DEBT MANAGEMENT ADVISORY COMMITTEES

Notice of Meetings

Notice is hereby given, pursuant to section 10 of Public Law 92-463, that meetings will be held in Washington on April 24 and 25, 1973, of the following debt management advisory committees:

American Bankers Association, Government Borrowing Committee.
Securities Industry Association, Government Securities and Federal Agencies Committee.

The agenda for the meetings will include briefings for the advisory committees by Treasury staff onc urrent debt management problems on April 24, separate deliberations by the two committees on April 24, and separate reports to the Secretary of the Treasury and Treasury staff on the morning of April 25.

A determination as required by section 10(d) of the act has been made that these meetings are concerned with matters listed in section 552(b) of title 5 of the United States Code, and that the meetings will not be open to the public.

[SEAL] PAUL A. VOLCKER,
Under Secretary for Monetary Affairs.

[FR Doc.73-7508 Filed 4-16-73;8:45 am]

DEPARTMENT OF JUSTICE

Bureau of Narcotics and Dangerous Drugs

[Docket No. 72-6]

LEONARD S. COHEN AND SENATE DRUG STORE

Revocation of Certificate of Registration

On September 21, 1972, the Director of the Bureau of Narcotics and Dangerous Drugs issued on order to show cause to Leonard S. Cohen, R.D., Senate Drug Store, 3d and Boas Street, Harrisburg, Pa. 17102, as to why his certificate of registration (BNDD registration No. AC2349909), issued on August 30, 1972, should not be revoked for the reason that on August 21, 1972, the registrant submitted an application for registration, under the Controlled Substances Act, on which he falsely and fraudently stated that as of the aforesaid date he had never "* * * been convicted of a felony under State or Federal law relating to the manufacture, distribution or dispensing of controlled substances;" notwithstanding the fact that on August 10, 1972, in the Court of Common Pleas, County of Dauphin, Commonwealth of Pennsylvania, he was found guilty (a) on two counts of violating section 4(q) of the Pennsylvania Drug, Device, and Cosmetic Act, and (b) on two counts of violating section 4(u) of the Pennsylvania Drug, Device, and Cosmetic Act, each of which are felony violations of the laws of the Commonwealth of Pennsylvania relating to controlled substances, as defined by title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

In addition, and in accordance with the provisions of section 304(d) of the Controlled Substances Act (21 U.S.C. 824(d)), and pursuant to the authority granted to him under § 0.100 of Title 28, Code of Federal Regulations, as amended, the Director coincident with the issuance of this order to show cause, ordered the immediate suspension of the above BNDD registration. This action was taken in view of the serious nature of the aforesaid criminal violations and the material misstatements and falsifications, and therefore, the Director determined that for the respondent to retain his certificate of registration during the pendency of these proceedings would result in imminent danger to the public health and safety.

Thereafter, the respondent requested a hearing in the matter and, on October 26, 1972, that hearing was held before E. Milton Frosburg, administrative law judge. Following that hearing, proposed findings of fact and conclusions of law were submitted to Mr. Frosburg by the Office of Chief Counsel, Bureau of Narcotics and Dangerous Drugs, and J. Thomas Menaker, counsel for the respondent.

On February 1, 1973, Mr. Frosburg filed the following recommended findings of fact and conclusions of law, and his recommended decision with the Bureau of Narcotics and Dangerous Drugs:

Although the Bureau and the respondent submitted recommended findings of fact and conclusions of law, the undersigned administrative law judge, wishes to adopt and recommend the following findings of fact and conclusions of law.

RECOMMENDED FINDINGS OF FACT

1. That the respondent has been a licensed pharmacist in the Commonwealth of Pennsylvania since 1937 and at the time of the present administrative hearing, was the owner and operator of the Senate Drug Store in Harrisburg, Pa.

2. That for many years the respondent has executed applications and/or registration forms for the State Board of Pharmacy, Internal Revenue Service, and the Bureau of Narcotics and Dangerous Drugs. In response to these applications, the respondent has been duly issued proper permits for the operation of his business over the years.

3. That on August 10, 1972, the respondent was found guilty, in a criminal jury trial held in the Court of Common Pleas of Dauphin County, Pennsylvania, of the following felony violations of the laws of the Commonwealth of Pennsylvania regarding controlled substances as dened by the Controlled Substances Act of 1970:

a. One count of unlawful possession, during the period from June 19, 1969, through October 21, 1970, of 1,127 one-fourth grain Morphine Sulfate tablets (schedule II narcotic controlled substances).

b. One count of unlawful dispensing, during the period of September 11, 1969, through August 19, 1970, 1,474 cc. of Demerol (50 mg. per cc.) (schedule II narcotic controlled substances).

c. One count of unlawful dispensing, during the period from September 11, 1969, through August 19, 1970, 460 tablets of H. T. Morphine one-fourth grain (schedule II narcotic controlled substances).

4. That on August 16, 1972, the presdiing judge of the aforesaid criminal trial, signed an order that judgment and sentencing be stayed pending the disposition of the motion for new trial. That as of October 26, 1972, argument for the aforesaid new trial motion had not been heard by the court.

5. That on September 22, 1972, the respondent was, pursuant to provisions of the act, personally served an order to show cause by agents of the Bureau, why his registration AC 2349909 should not be immediately suspended and simultaneously with such serving, the said agents removed a quantity of controlled substances from the respondent's premises.

6. That in accordance with rules and regulations of the act, respondent's attorney requested in writing a hearing in response to the order to show cause and accordingly a hearing was arranged for October 26, 1972, before the undersigned administrative law judge in Washington, D.C., under the provisions of the Administrative Procedure Act.

7. That on August 21, 1972, 11 days after guilty verdicts were rendered in the Commonwealth of Pennsylvania, the respondent executed an application for reregistration under registration number AC 2349909 in conformity with the act and indicated on said application that he had not been convicted of a felony under State or Federal law relating to the manufacture, distribution or dispensing of controlled substances.

8. That, although respondent alleged that he completed said application for reregistration on advice of counsel, the facts revealed that he did not fully advise counsel of the contents of the application and counsel did not have an opportunity to read the application, before advice was given.

RECOMMENDED CONCLUSIONS OF LAW

The first question to be resolved is whether the jury's verdict in the respondent's criminal trial on August 10, 1972, would amount to a conviction under the act and therefore reasonably permit the Bureau to suspend and/or revoke the respondent's certificate of registration in accordance with the applicable provisions of the Controlled Substances Act of 1970.

The undersigned notes that the instant proceeding is an administrative hearing and not a criminal hearing. Therefore, the Bureau would have the burden of proof to substantiate their allegations by substantial evidence. A review of the cases cited show that under an administrative proceeding, as the one at bar, has been convicted, would not require that a conviction be final or that all appeals would be concluded. The governing section 304, of the act, expressly refers in paragraph (f) to the concluding of appeals before disposition of controlled substances under seal and this provision is in marked contrast to paragraph (a) which contains no such requisite in connection with grounds for suspension. Also, it would appear that under an administrative hearing, it is not necessary that sentence be imposed or that judgment on a verdict be rendered to satisfy the requirement of a "conviction". In *Commonwealth* v. *Mackley*, 380 Pa 70 at p. 73, the court stated, "it is true and well settled that the judgment in a criminal case is the sentence, however, the conviction determines the defendant's guilt and is a basic justification for the imposition of sentence." Also in *Commonwealth ex rel. Holly* v. *Ashe*, 368 Pa 211, at p. 218, the court stated, "as is well known, the judgment in a criminal case is the sentence and not the conviction."

In the opinion of the undersigned, the finding by a criminal court jury that the respondent was guilty of a felony or felonies would amount to substantial evidence of a conviction under an administrative proceeding and post-verdict motions and the appellate process should not be used to defeat or frustrate the congressional intent of the Controlled Substances Act passed in 1970. To suggest that the Bureau wait until all motions or appeals have been exhausted and to wait for a final conviction would not be in keeping with the law and if Congress had intended that a final conviction be necessary for the purposes of Title 21, U.S.C. section 824 before suspension or revocation of a registration, it would have said so. Since it did not say so, a suspension of the respondent's registration is authorized by the said act and the nonimposition of sentence or judgment by a criminal court after a guilty verdict by a jury would not prevent the taking effect to the suspension order by the Bureau.

Section 304(d) of the act allows the Director of the Bureau, in his discretion, to suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health and safety. In the instant case, the Director's simultaneous suspension with the institution of the proceedings does not amount to an abuse of this discretion.

The undersigned thus concludes that the respondent has been convicted as far as the administrative proceeding in this matter is concerned.

The second question to be resolved is whether the respondent has materially falsified his application for reregistration for the purposes of 21 U.S.C. 824.

When completing his application for reregistration on August 21, 1972, the respondent answered the following question 4(b) in the negative: "Has the applicant been convicted of a felony under State or Federal law relating to the manufacture, distribution or dispensing of controlled substances?" The undersigned is aware that the claimant testified that he executed the aforesaid application under advice of counsel. The facts, however, would indicate that respondent's counsel did not have an opportunity to read the application or consider all questions on said application and therefore in consideration of all the evidence, the undersigned concludes that the respondent was not candid either with his attorney or with the Bureau when he executed the aforesaid application for reregistration and should have simply attached a letter of explanation along with the application for reregistration to explain the circumstances. Therefore, the undersigned concludes that as far as the instant administrative hearing is concerned, the respondent did materially falsify his application for reregistration when he answered question number 4(b) of said application for reregistration in the negative.

The Administrative Law Judge recommends a conclusion of law to the effect that the respondent's violations were sufficiently flagrant to justify the action taken by the Bureau in suspending respondent's registration AC 2349909 and denying reregistration.

RECOMMENDED DECISION

Based upon the foregoing recommended findings of fact and conclusion of law, the undersigned recommends to the Director of the Bureau of Narcotics and Dangerous Drugs that registration AC 2349909 issued to Leonard S. Cohen, RD, remain suspended and that the Director finalize his order issued against the respondent on September 21, 1972, under the Controlled Substances Act of 1970.

After reviewing the transcript of testimony of the hearing, the exhibits introduced, the findings of fact, conclusions of law, and memoranda of law proposed by counsel for the Government and the Respondent, the Director hereby adopts the recommended decision of the Administrative Law Judge.

Section 303(f) of the Controlled Substances Act (21 U.S.C. 823(f)) provides, in part, that:

> Pharmacies (as distinguished from pharmacists) when engaged in commercial activities shall be registered to dispense controlled substances * * * if they are authorized to dispense under the law of the State in which they regularly conduct business.

Section 304(a) of the Controlled Substances Act (21 U.S.C. 824(a)) permits the Bureau of Narcotics and Dangerous Drugs to revoke or suspend a registration (on the therein enumerated bases) issued pursuant to section 303 of the act.

Therefore, in adopting these recommendations the Director wishes to add and emphasize his judgment on an issue central to this entire matter.

The registrant-applicant herein is a pharmacy—Senate Drug Store. Yet it was not the pharmacy which committed felonies relating to controlled substances nor was it the pharmacy which endeavored to conceal the fact of convictions for these felonies. These acts were committed by an individual "trading as" the pharmacy.

It would seem a sophistry to argue that a pharmacy is innocent because it is its proprietor who violates the law. Lest that argument be made in this or in any future matter, it is the position of the Director that an act violative of laws relating to controlled substances committed by an owner, proprietor, partner, or corporate officer of a pharmacy justifies the denial of an application for registration

or the revocation or suspension of a certificate of registration of the pharmacy.

Therefore, in accordance with the provisions of § 316.66, Title 21, Code of Federal Regulations, and in view of the foregoing, it is the Director's opinion that the respondent-registrant, Leonard S. Cohen t/a Senate Drug Store (1) has materially falsified his application for registration, under the Controlled Substances Act as a retail pharmacy, executed on August 21, 1972, and (2) has been convicted of a felony under the laws of the Commonwealth of Pennsylvania, relating to controlled substances, as defined by the Controlled Substances Act.

Therefore, under the authority vested in the Attorney General by section 304 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 824), and redelegated to the Director of the Bureau of Narcotics and Dangerous Drugs, by § 0.100, Title 28, Code of Federal Regulations, the Director hereby orders that the certificate of registration of Leonard S. Cohen t/a Senate Drug Store (BNDD registration No. AC 2349909), be, and hereby is revoked, effective on April 17, 1973.

Dated April 9, 1973.

JOHN E. INGERSOLL,
Director, Bureau of Narcotics and Dangerous Drugs.

[FR Doc.73-7408 Filed 4-16-73;8:45 am]

MANUFACTURE OF PHOLCODINE

Notice of Application

Pursuant to § 301.43 of title 21 of the Code of Federal Regulations, notice is hereby given that on March 27, 1973, S. B. Pennick & Co., 100 Church Street, New York, N.Y., made application to the Bureau of Narcotics and Dangerous Drugs to be registered as a bulk manufacturer of pholcodine, a basic class controlled substance listed in schedule I.

Section 303(a)(1) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 823(a)(1)) states (emphasis added):

> The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with U.S. obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:
>
> (1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substances in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;

Any person registered to manufacture pholcodine in bulk may, on or before May 17, 1973, file written comments on or objection to the issuance of the proposed registration, and may, at the same time, file a written request for a hearing on the application (stating with particularity the objections or issues, if any, concerning which the person desires to be heard and a brief summary of his position on those objections or issues).

Comments and objections may be addressed to the Hearing Clerk, Office of Chief Counsel, Bureau of Narcotics and Dangerous Drugs, room 611, 1405 Eye Street NW., Washington, D.C. 20537.

Dated April 9, 1973.

JOHN E. INGERSOLL,
Director, Bureau of Narcotics and Dangerous Drugs.

[FR Doc.73-7409 Filed 4-16-73;8:45 am]

[No. 72-4]

MORTON PHARMACEUTICALS, INC.

Denial of Application for Registration

On April 21, 1972, the Director of the Bureau of Narcotics and Dangerous Drugs issued an order to show cause to Morton Pharmaceuticals, Inc., Memphis, Tenn., as to why its application for registration (DO6201300), executed on February 28, 1972, should not be denied for the reason that the applicant failed to establish and maintain effective controls against the diversion of controlled substances into other than legitimate channels, thereby evidencing a direct and continuing violation of the Controlled Substances Act and the administrative regulations promulgated thereunder (21 U.S.C. 801, et seq., and Title 21, Code of Federal Regulations, Part 300, et seq.).

Thereafter, Morton Pharmaceuticals, Inc., on June 5, 1972, requested a hearing in the matter, and, on July 13 and 14, 1972, that hearing was held before H. Stephan Gordon, Chief Administrative Law Judge, U.S. Department of Labor, at Washington, D.C. Following the hearing, the parties submitted briefs and proposed findings of fact and conclusions of law; and on February 9, 1973, Mr. Gordon filed the following findings of fact, conclusions of law, and his recommended decision with the Bureau of Narcotics and Dangerous Drugs:

I. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

On October 27, 1970, the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513) was signed into law. Section 703(a)(1) of this act required that any person who—

> (a) Is engaged in manufacturing, distributing, or dispensing any controlled substance on the day before the effective date of section 302, and
>
> (b) Is registered on such day under section 510 of the Federal Food, Drug, and Cosmetic Act or under Section 4722 of the Internal Revenue Code of 1954, shall, with respect to each establishment for which such registration is in effect under any such section, be deemed to have a provisional registration under section 303 for the manufacture, distribution, or dispensing (as the case may be) of controlled substances.

In the instant case, the respondent was engaged in manufacturing of controlled substances" * * * on the day before the effective date * * *" of the act (May 1, 1971), and was registered for such activity with the Food and Drug Administration and with the Internal Revenue Service. Therefore, on May 1, 1971, the Bureau of Narcotics and Dangerous Drugs registered Morton Pharmaceuticals, Inc., as a manufacturer of controlled substances, listed in schedules II-V, under the Controlled Substances Act of 1970 (title II of the Comprehensive Drug Abuse Prevention and Control Act). The Bureau assigned BNDD registration No. PM0002181 to the respondent, the expiration date of which was January 31, 1972.

On February 28, 1972, the president of the respondent corporation executed an application for registration, under the Controlled Substances Act of 1970, as a manufacturer of controlled substances listed in schedules II-V. (Government's Exhibit No. 4.) This was an application for registration (not reregistration), under the Controlled Substances Act, since the respondent failed to renew its provisional registration prior to the expiration date thereof.

More specifically, the application for registration was filed pursuant to the provisions of 21 U.S.C. 823(a) and 823(d) which provide as follows:

> (a) The Attorney General[1] shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:
>
> (1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;
>
> (2) Compliance with applicable State and local law;
>
> (3) Promotion of technical advances in the art of manufacturing these substances and the development of new substances;
>
> (4) Prior conviction record of applicant under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances;
>
> (5) Past experience in the manufacture of controlled substances, and the existence in the establishment of effective control against diversion; and
>
> (6) Such other factors as may be relevant to and consistent with the public health and safety.
>
> (d) The Attorney General shall register an applicant to manufacture controlled substances in schedule III, IV, or V, unless he

[1] 28 CFR 0.100 provides as follows: Subject to the general supervision of the Attorney General, the exercise of the powers and performance of the functions vested in the Attorney General by the Compenhensive Drug Abuse Prevention and Control Act of 1970 are assigned to, and shall be conducted, handled, or supervised by the Director of the Bureau of Narcotics and Dangerous Drugs.

determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule III, IV, or V, compounded therefrom into other than legitimate medical, scientific, or industrial channels;

(2) Compliance with applicable State and local law;

(3) Promotion of technical advance in the art of manufacturing these substances and the development of new substances;

(4) Prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) Past experience in the manufacture, distribution, and dispensing of controlled substances, and the existence in the establishment of effective controls against diversion; and

(6) Such other factors as may be relevant to and consistent with the public health and safety.

Title 21 U.S.C. 823(a) is unique in that the Attorney General is directed to register these types of applicants only if he determines that such registration is consistent with the public interest. In effect, the Attorney General must make an affirmative finding of compliance with the applicable law. With respect to registration as a manufacturer or distributor in other schedules, that is, schedules III, IV, and V, the Attorney General is directed to register the applicant unless he finds or determines that the issuance of such registration is inconsistent with the public interest.

Moreover, § 301.55 of the Administrative regulations (21 CFR 301.55) directly relates to this precise situation. This regulation is entitled Burden of Proof. Subsection (a) provides that "at any hearing on an application to manufacture any controlled substance listed in schedule I or II, the applicant shall have the burden of proving that the requirements for such registration pursuant to section 303(a) of the act [21 U.S.C. 823 (a)] are satisfied." Conversely, with respect to substances in schedules III, IV, and V, the Attorney General has the burden of proving that the issuance of a registration is inconsistent with the public interest.

On April 21, 1972, the Bureau issued its order to show cause as to why respondent's application for registration under section 303 of the act should not be denied for the reason that respondent had not

* * * established and maintained effective controls against the diversion of controlled substances into other than legitimate channels, to wit:

First, your physical security controls for schedule II nonnarcotic controlled substances are inadequate and in violation of the security requirements set forth in the administrative regulations promulgated under the Controlled Substances Act of 1970;

Second, agents and employees other than those authorized to accordance with the provisions of 21 CFR 301.72(d) have access to the storage areas where controlled substances are located; and

Third, an accountability investigation, conducted on March 21, 1972, revealed frequent, large and excessive purchases of controlled substances by several of your customers, none of such transactions being reported to the Bureau of Narcotics and Dangerous Drugs as required by 21 CFR 301.74 (b).

1. *The security issue.*—The uncontradicted testimony in the instant case discloses that during the period of July 1970 through March 1972, respondent's facilities were subjected by the Bureau to three security investigations, all of which disclosed major deficiencies which were called to respondent's attention.

In July 1970, respondent suffered a severe burglary which resulted in substantial losses of stimulant and depressant drugs. Following this burglary, an accountability investigation was commenced which lasted through August 1970. It is also noteworthy that during this accountability investigation two other burglaries and one apparent attempted burglary occurred on respondent's premises. The investigation at that time also disclosed a serious disregard of even elementary security precautions. Stimulants and depressants were stored in all areas of the plant in contravention and in violation of the then-existing legal security requirements.

The record also contains testimony that in the course of this accountability investigation respondent concealed certain quantities of drugs and surreptitiously moved others around the plant in order to avoid their detection. This particular line of testimony was based on statements obtained by the Bureau in the course of its investigation and was introduced into the record without producing the persons who supplied these statements and ostensibly witnessed or participated in this alleged surreptitious activity. In view of the fact that these persons were not called as witnesses and thus were not made available for direct and cross-examination, and in the absence of any showing that the production of these witnesses would be unduly burdensome or that they were otherwise unavailable, no findings regarding these allegations are made herein, nor is my recommendation based on this line of testimony.

However, the record is replete with admissible, uncontroverted, and often corroborated and admitted evidence that at the time of the 1970 accountability investigation security measures in respondent's facilities were extremely lax. Nor did matters improve significantly by March 1972, the time of the preregistration investigation. While the storage of controlled substances had improved in the sense that they were no longer scattered throughout the plant, such substances were kept in the vault rather than the safe, as required by the Bureau's security provisions. With the exception of adding two watchdogs to its premises, no additional security personnel was added. Despite prior warning in this regard, no written delegation of authority was issued to any employee to observe or monitor respondent's manufacturing area—a room which is easily accessible to other people. Rather, respondent relied on the "conscientious interest" of its employees generally "in maintaining a perfect program."

The vault on respondent's premises clearly is not in compliance with the provisions of 21 CFR 301.72(a)(2). The specifications for such a vault are that it be of "substantial construction with a steel door, combination or key lock, and an alarm system * * *." Respondent's vault was a wooden structure with a wooden door—albeit equipped with an alarm system. While it is quite correct, as respondent argues, 21 CFR 301.71 provides that "* * * materials and construction which will provide a structural equivalent to the physical security controls set forth in §§ 301.72, 301.73, and 301.75 may be used in lieu of the materials and construction described in those sections," it can hardly be contended that a wooden door in a wooden structure is a "structural equivalent" to a steel door. The emphasis which is placed on this type of physical security is emphasized by the detailed and stringent requirements for vaults to be constructed after September 1, 1971 (21 CFR 301.72(3)). The substitution of materials and construction as permitted by § 301.71 from a practical viewpoint appears far more applicable to the manifold and detailed requirements set forth in § 301.72(3), while the requirements of § 301.72(2) appears almost minimal in nature. Moreover, respondent had been on notice through prior investigations that the vault in question did not meet the requirements of the Bureau which, in the final analysis, must determine the security of respondent's facilities. Rather, respondent chose to rely entirely on the fact that it had installed an electric alarm system in the vault which, upon unauthorized entry would transmit a signal directly to the local police. However, it cannot be gainsaid that such an alarm system in and of itself is an adequate substitute for the substantial construction of the vault or for the requirement of a steel door. Obviously the first is designed to notify the authorities that someone had or is about to enter the vault, while the latter has the purpose of preventing or at least delaying entry to the vault. I therefore find that respondent, despite prior warnings, did not meet the security requirements of § 301.72(2) of title 21 CFR.

Aside from the factors outlined above, respondent's lax security measures are further emphasized by its haphazard approach to the sale and distribution of controlled substances. Thus, the uncontroverted evidence in the record discloses that respondent distributed drugs without the receipt of required written order forms executed by the purchasers, or

at least without forwarding a copy of such order forms to the applicable regional office of the Bureau, as required by the act and the Bureau's regulations.

Moreover, the record discloses instances where respondent knowingly distributed controlled substances to purchasers who for one reason or another could not meet the necessary requirements through the expediency of sending and billing these substances to purchasers who could meet the Bureau's requirements. Thus, controlled substances were sent to Parkway Pharmacy of Las Vegas, Nev. for the intended use of a Dr. Wixom. Dr. Wixom could not order these substances directly because he did not have the required schedule II order form and, with respondent's full knowledge, had Parkway Pharmacy place this order for him.

In another instance an order was filled for a Dr. Jim Campbell with instructions to bill Clary Chemical. Despite the unusual nature of such a request, Respondent made no further inquiry to ascertain whether either Dr. Campbell or Clary Pharmacy were authorized to receive these drugs.

In the case of Dr. Noell, whose right to practice medicine had been suspended by the Louisiana State Board of Medical Examiners, respondent, despite warnings by an agent of the Bureau, satisfied itself of Dr. Noell's good standing in the medical profession by phoning Dr. Noell and asking him whether his license to practice medicine had been suspended. Dr. Noell's denial fully satisfied respondent.

Without ruling on the legality of such conduct, these instances are indicative of such laxness, indifference, or naivete that it becomes highly questionable whether respondent should be entrusted with the highly responsible and delicate undertaking of distributing controlled substances.

This laxity and small regard for procedural requirements and niceties is further emphasized by the fact that although respondent's provisional registration which was originally issued on May 1, 1971, expired on January 31, 1972, a new application for registration was not received by the Bureau until March 3, 1972. Respondent testified that he simply was not aware of the date on which his provisional certificate of registration was going to expire. Nor was respondent aware of the fact that it was required to register separately for the distribution and manufacture of controlled substances. While any one of these irregularities, viewed in isolation, might be understandable or excusable, their pattern and consistency are, indeed, indicative of respondent's attitude to, either willingly or negligently, disregard, shortcut and skirt properly promulgated rules and regulations and legal requirements and procedures which are essential in this highly sensitive industry.

2. *Food and Drug Administration recalls.*—In the course of its preregistration investigation, the Bureau conducted a background check with the Food and Drug Administration regarding the violative history of respondent. The investigation disclosed that during the period 1968–70, respondent experienced 28 recalls of drugs, either on a voluntary or involuntary basis. These recalls were for such reasons as subpotency, adulteration, misbranding, or improper packaging. Some of these were controlled substances, others were not. The record also discloses that the Food and Drug Administration engaged in at least two seizures of products either manufactured or distributed by respondent.

Under the subsections of 21 U.S.C. 823, the Bureau had the right and, indeed, the responsibility to make such a background investigation and to take its results in consideration whether or not to grant a registration to respondent. While the record is not clear as to exactly how these recalls and seizures were initiated and whether some of the substances involved were controlled or not, the number of recalls and seizures, when evaluated in the light of the above discussed attitude of respondent toward governmental regulations and requirements, is a relevant factor in the determination of whether a registration should be granted to respondent. While it is true, as respondent argues, that two seizures "are scant evidence of noncompliance with the law," these seizures and recalls are relevant factors to be considered in the total picture of respondent's proclivity to disregard essential rules and regulations. Nor is it valid to infer, as respondent does, that its experience with the Food and Drug Administration is a "remarkable tribute to the firm's compliance policies and practices."

3. *The Excessive purchases issue.*—Section 301.74(b) of the BNDD regulations provides that:

> The registrant shall design and operate a system to disclose to the registrant suspicious orders of controlled substances. The registrant shall inform the regional office of the Bureau in his region of suspicious orders when discovered by the registrant. * * * Suspicious orders include orders of unusual size, orders deviating substantially from a normal pattern and orders of unusual frequency.

One of the questions posed herein is whether several of respondent's customers made such large and excessive purchases of controlled substances as to warrant sufficient concern by Respondent to report such purchases to the Bureau, as required by 21 CFR 301.74(b).

In the course of the preregistrant investigation, the Bureau uncovered evidence of a number of purchases of controlled substances which it considered suspiciously excessive and which, in the opinion of the Bureau's experts, should have been reported. Unfortunately the act does not contain any precise standards of review to determine whether a particular purchase or distribution is suspicious in nature, and, by necessity, a somewhat subjective approach is inevitable. However, the act does spell out some guidelines by calling specific attention to orders of "* * * unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency." The Bureau, through expert testimony established that a number of orders found in its investigation were definitely suspicious, both because of their unusual size and their frequency. Respondent contends to the contrary and maintains that it is not unusual for physicians engaged in certain practices to order in the questioned quantities. Yet no effort was made by respondent to substantiate this contention. Rather, respondent relies on the argument that the questioned sales were not suspicious in nature because they followed a certain pattern and did not deviate substantially from that normal pattern. Respondent's defense is rejected on several grounds.

First, the size of the purchases, in and of themselves, do appear, even to a layman, unusually large. When confronted by the Bureau's expert testimony as against the unsupported testimony of respondent's single witness, a witness, incidentally, whose testimony was so vague, circuitous, evasive and unresponsive that it called for repeated admonition from the bench, great weight must be given to the Bureau's testimony.

Second, respondent's reliance on a theory of normal purchasing patterns is misplaced. The standards of the act are not to be read in the conjunctive. The criteria of substantial deviation from a normal pattern is but a single standard. The standard of "unusual size" is a separate standard, and no convincing argument has been presented that the orders cited by the Bureau were not of unusual size.

Third, even applying respondent's own standard by which it attempts to justify its failure to report these purchases to the Bureau, its argument must fall. Thus the evidence submitted by respondent itself [respondent exhibit 403] reveals some serious deviations from normal purchasing patterns which were not reported to the Bureau. Thus, respondent's records disclose that Dr. Wixom, whose questionable purchases are already discussed in a different context above, purchased 136 30–CC OBEC injections during the calendar year 1970. Yet during 1971 these purchases increased in excess of 100 percent to 284 30–CC OBEC injections; and during the first half of calendar year 1972, approximately the same increased rate is maintained through the purchase of 120 30–CC OBEC injections.

Even more startling is the purchase of Dr. Mueller (respondent's Exhibit 403). Respondent's records show the following purchase pattern:

February 1971:
15,000—OBEC tablets formula B.
March 1971:
3,000—OBEC tablets formula B.
April 1971:
5,000—OBEC tablets formula B.
May 1971:
7,000—OBEC tablets formula B.
June 1971:
13,000—OBEC tablets formula B.
July 1971:
15,000—OBEC tablets formula B.
20,000—OBEC tablets formula A.
August 1971:
6,000—OBEC tablets formula B.
20,000—OBEC tablets formula A.
120—30-day cartons OBEC tablets formula A and B.

October 1971:
6,000—OBEC tablets formula B.
10,000—OBEC tablets formula A.
29—30-day cartons OBEC tablets formula A and B.
November 1971:
12,300—OBEC tablets formula B.
41,000—OBEC tablets formula A.
December 1971:
156,000—OBEC tablets formula B.
521,000—OBEC tablets formula A.
770—30-day cartons OBEC tablets formula A and B.

Respondent contends that these large increases were not extraordinary, because, for reasons of manufacturing economy, it had solicited a large order from Dr. Mueller and that these purchases probably constituted a year's supply. Far from being a defense, it would appear that respondent's admitted business practice of soliciting orders of barbiturates in quantities of not less than 100,000 is hardly in keeping with the tenor of the act or in the public interest. However, even assuming, arguendo, that respondent did solicit orders of not less than 100,000 tablets, the evidence discloses that Dr. Mueller, during calendar year 1971, ordered 705,350 OBEC formula A tablets and 266,350 OBEC formula B tablets—surely an unusual amount even when considered in the light of respondent's business practices. Moreover, these quantities constituted an increase of approximately 100 and 400 percent respectively when compared to the purchases made by the same customer during the entire calendar year of 1971. If purchases in these amounts by a private practitioner and percentage increases in the aforementioned purchases did not arouse respondent's curiosity, then it must be assumed that the statutory requirement was meaningless as far as respondent was concerned. Yet respondent's president testified that he found these purchases "not in the least" suspicious.

Without ruling whether any of these purchases were put to illegal use, I find that respondent did not meet its obligation under 21 CFR 301.74(b).

4. *The quinine hydrochloride issue.*—Quinine hydrochloride is not a controlled drug subject to the jurisdiction of the Bureau. There are no relevant statutory or regulatory requirements concerning its manufacture or sale, and it is not mentioned directly or indirectly in the Order to Show Cause. Quinine hydrochloride was not mentioned in respondent president's direct examination but no objections to questions concerning quinine hydrochloride was raised by respondent's counsel at the hearing. As a matter of fact, not only did respondent's president testify in full as to his past and present knowledge of quinine hydrochloride, but the record was subsequently supplementted by Exhibits 5 and 6 which respondent has offered to document his witness' description of the quinine hydrochloride sales to Russell Pharmacy. Thus, the issue, while not related to controlled substances warrants some discussion, since it touches in a relevant manner on respondent's overall business practices and judgment.

John Richard McHugh, director of professional services for Peoples Drug Stores, Inc., a chain of 250 pharmacies, testified as a witness for the Bureau that the use of quinine hydrochloride is extremely limited that the entire Peoples Drug Stores chain of 250 stores purchased a maximum of only 10 ounces of the substances for an entire year; and that since 1967 he has been aware that this substance was widely used as a cutting agent to dilute heroin in the illegitimate trade.

Moreover, the legislative history of the act is replete with references to the illegitimate heroin trade and with testimony that quinine hydrochloride or sulfate was used for the illegal purpose described by Mr. McHugh.

With this record in mind, it is rather startling to find that respondent, whom its president characterized as a "very, very small firm" sold in a period of less than 1 year approximately 45,000 ounces of quinine hydrochloride to a single neighborhood pharmacy in Memphis, Tenn., at a cost of $88,543.

The explanation for these transactions was explained by respondent's president in the most contradictory terms. Thus, for example, respondent's president testified that he was totally unaware that quinine hydrochloride was ever used for any illegitimate purposes, which in itself is a rather startling admission from a president of a pharmaceutical company. It would appear reasonable that during a period of drug abuse which approaches a national crisis and which has been given the widest national publicity, by the media as well as governmental entities, the president of a drug company would be at least familiar with the legislative history of a law which regulates his enterprise.

In any event, the witness explained this rather bizarre transaction in the following way. Respondent's president testified that when the first order for quinine hydrochloride was received, respondent had never in its experience been asked for this quantity, and since the firm did not want to be involved in any "shady operations," they investigated the matter further. Since Russell Pharmacy, the purchaser, had been a customer of respondent since 1956, and since the then president of respondent had known Mr. Russell, the owner of the pharmacy for many years, respondent contacted Mr. Russell to determine the purpose of the purchase. Mr. Russell said that the quinine hydrochloride was wanted for resale to a paint manufacturer. This did not appear extraordinary to Morton Pharmaceuticals, since they consider Mr. Russell to be an "entrepreneur of sorts," with interests "outside just the drug store." However, since the sale was "somewhat unusual," and respondent did not want to be involved in anything that would bring a bad reputation to the firm, or be involved in anything that was not completely legitimate, Mr. Russell was told that respondent would have to have some assurance that the transaction was legitimate. Mr. Russell allegedly obtained a letter dated May 21, 1969 from F. E. Altman of Custom Color Dispersion Co., of Charlotte, N.C. with two attachments showing formula. This, without any further investigation on respondent's part, sufficed to assuage any suspicions or qualms of respondent, and the sale of quinine hydrochloride commenced in these huge quantities.

Counsel for respondent characterized this testimony as a "forthright description" of the transactions with Russell Pharmacy. I cannot agree. The witness' testimony, aside from being vague, evasive and argumentative, as already noted above, is internally inconsistent. Thus the witness testified that this uncontrolled substance was to his knowledge perfectly legitimate and he was totally unaware that it could be put to any illegitimate use. Yet he also testified that he did not want to be involved in any "shady operations" and expressed considerable concern regarding the "legitimacy" of the transaction. Yet despite these expressed concerns and despite the fact that, according to the witness, Mr. Russell was "very evasive" during the purchase negotiations, all it required was an unsubstantiated letter with some formula and, as in the case of Dr. Noell and Dr. Wixom, described above, the word of Mr. Russell to overcome respondent's apprehensions and scruples.

On the basis of these inconsistencies as well as the witness' demeanor, I cannot credit respondent's version of these transactions, nor do I credit the assertion that respondent was unaware of the potential use of this substance.

As noted above, quinine hydrochloride is not a controlled substance. Yet the inquiry into its sale by respondent is relevant, as conceded by counsel for respondent, since it affects the overall care, sensitivity and judgment of respondent. These are of legitimate concern to the Government before granting a registration for controlled substances to Respondent.

Without making any finding regarding the legitimacy of the use to which the sold quinine hydrochloride was put, I find that the manner of these transactions as well as respondent's professed ignorance of the substance's potential danger, when viewed in context of the already described haphazard operations and the disregard which respondent has demonstrated with respect to the Bureau's regulations and requirements, are relevant factors in finding that respondent should not be entrusted with a Bureau registration for controlled substances.

II. Conclusion and Recommendation

On the basis of the entire record, I find that respondent, over a substantial period of time, has not been in compliance with specific legal requirements pertaining to the manufacture and distribution of controlled substances and that its business operation generally, as discussed in detail above, is such that its continued access to controlled substances is not consistent with the provisions of the act or the deep and intense

concern expressed by the Congress regarding the serious menace of drug abuse.

In this regard I specifically find that the Attorney General, through the Bureau has met its burden of proof with respect to controlled substances in schedules III, IV, and V and that respondent has not met its burden with respect to substances in schedules I and II.

I therefore recommend that respondent's application for registration under the Controlled Substances Act of 1970 be denied.

After reviewing the transcript of testimony of the hearing, the exhibits introduced, the findings of fact, conclusions of law, and briefs proposed and submitted by counsel for the parties hereto, the Director adopts the recommended decision of the administrative law judge. In accordance with the provisions of § 316.66, Title 21, Code of Federal Regulations, and in view of the applicant's inability to establish and maintain effective controls against the diversion of controlled substances into illicit channels, it is the Director's opinion that to permit Morton Pharmaceuticals, Inc., to manufacture, distribute, possess, or otherwise handle controlled substances would not be consistent with the public health and safety.

Therefore, under the authority vested in the Attorney General, by section 304 of the Controlled Substances Act of 1970 (21 U.S.C. 824), and redelegated to the Director, Bureau of Narcotics and Dangerous Drugs, by § 0.100, Title 28, Code of Federal Regulations, the Director hereby orders that the application for registration (D06201300) of Morton Pharmaceuticals, Inc., be denied effective on April 17, 1973.

Dated April 9, 1973.

JOHN E. INGERSOLL,
Director, Bureau of Narcotics and Dangerous Drugs.

[FR Doc.73-7407 Filed 4-16-73;8:45 am]

DEPARTMENT OF THE INTERIOR

National Park Service

COLONIAL NATIONAL HISTORICAL PARK

Notice of Intention To Issue a Concession Permit

Pursuant to the provisions of section 5, of the act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20) public notice is hereby given that on May 17, 1973, the Department of the Interior, through the Superintendent, Colonial National Historical Park, proposes to issue a concession permit to Shirley C. Robertson (Shirley Pewter Shop—Yorktown Pewter, Ltd.), authorizing him to provide concession facilities and services for the public at Colonial National Historical Park for a period of 3 years from January 1, 1973 through December 31, 1975. The foregoing concessioner has performed his obligations under a prior permit to the satisfaction of the National Park Service and, therefore, pursuant to the act cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit. However, under the act cited above, the National Park Service is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted on or before May 17, 1973. Interested parties should contact the Superintendent, Colonial National Historical Park, Yorktown, Va. 23490, for information as to the requirements of the proposed permit.

Dated March 9, 1973.

JAMES R. SULLIVAN,
Superintendent.

[FR Doc.73-7327 Filed 4-16-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

COMMODITY CREDIT CORPORATION ADVISORY BOARD

Notice of Public Meeting

Notice is hereby given that the Commodity Credit Corporation Advisory Board established under section 9(b) of the Commodity Credit Corporation Charter Act of 949 (63 Stat. 154, 155; 15 U.S.C. section 714g(b)), will meet at 8:15 a.m. on Tuesday, April 24, 1973, in room 104-A and Wednesday, April 25, 1973, in room 2-W, of the Administration Building of the U.S. Department of Agriculture, Washington, D.C.

The purpose of this regularly scheduled quarterly meeting of the Advisory Board is to survey the policies of the Commodity Credit Corporation in connection with the purchase, storage and sale of commodities, and the operation of lending and price support programs. The meeting will be open to the public.

The names of the presidential appointees comprising the Advisory Board, agenda, summary of the meeting and other information pertaining to the meeting may be obtained from Mr. Seeley G. Lodwick, Secretary, Commodity Credit Corporation, room 202-W, Administration Building, U.S. Department of Agriculture, Washington, D.C.

Signed at Washington, D.C., on April 12, 1973.

GLENN A. WEIR,
Executive Vice President, Commodity Credit Corporation.

[FR Doc.73-7405 Filed 4-16-73;8:45 am]

[Amdt. 9]

SALES OF CERTAIN COMMODITIES

Monthly Sales List (Fiscal Year Ending June 30, 1973)

The CCC monthly sales list for the fiscal year ending June 30, 1973, published in 37 FR 13352 is amended as follows:

1. The last sentence of section 1(b) entitled "General" published in 37 FR 13352, as amended in 37 FR 22639 and 38 FR 1946 is revised to read as follows:

Interest at 7½ percent will be charged for delinquent payments on consignment and track grain sales from the date of sale to the date payment is received.

2. The fifth sentence of section 1(c) entitled "General" published in 37 FR 13352, as amended in 38 FR 1946 and 38 FR 4423 is revised to read as follows:

Interest to date of payment will be at 7½ percent.

3. Section 42 entitled "Butter—unrestricted use sales" published in 37 FR 13355 is revised to read as follows:

Market price, but not less than 6 cents per pound over CCC's purchase price at each location.

Effective date.—2:30 p.m., e.s.t., March 30, 1973.

Signed at Washington, D.C., on April 11, 1973.

KENNETH E. FRICK,
Executive Vice President, Commodity Credit Corporation.

[FR Doc.73-7402 Filed 4-16-73;8:45 am]

Forest Service

OCHOCO NATIONAL FOREST MULTIPLE USE ADVISORY COMMITTEE

News Release

The annnual meeting of the Ochoco National Forest Advisory Committee will be held on April 20, 1973, at the Empire Room beginning with a no-host luncheon at 12 noon.

The agenda includes discussion of Comprehensive Land Use Planning Areas and examination of National Forest Boundaries and headquarters.

Members of the Forest Supervisor's Advisory Committee are:

Walter Schrock—Rt. 3, Box 1395, Bend, Oreg. 97701.
Millard Rodman—Culver, Oreg. 97734.
Cecil Sly—825 Clifton, Prineville, Oreg. 97754.
Mike Miksche—297 W. 3d, Prineville, Oreg. 97754.
LaSelle Coles—Lamonta Road, Prineville, Oreg. 97754.
Darrell Williams—P.O. Box 688, Prineville, Oreg. 97754.
John Collins—Mitchell, Oreg. 97750.
Carl Mayo—Riley, Oreg. 97758.
Anne McDonald—Prineville, Oreg. 97754.

The Advisory Committee meeting is open to the public. Persons wishing to attend should notify Les Sullivan, Ochoco Forest Supervisor, at 447-6247. Written statements may be filed with the committee either before or after the meeting.

LESLIE J. SULLIVAN,
Forest Supervisor.

APRIL 10, 1973.

[FR Doc.73-7357 Filed 4-16-73;8:45 am]

DEPARTMENT OF COMMERCE

Maritime Administration

TANKER CONSTRUCTION PROGRAM

Supplementary Notice of Hearing on Draft Environmental Impact Statement

On Friday, April 13, 1973, there was published in the FEDERAL REGISTER (38 FR 9331) a notice of public hearing on

the Maritime Administration Tanker Construction-Differential Subsidy Program.

I. *Notice.*—Pursuant to the court-approved stipulation between the parties in Civil Action No. 2164–72, Environmental Defense Fund, Inc. et al., Plaintiffs, v. Peter G. Peterson et al., Defendants, in the U.S. District Court for the District of Columbia, and in conjunction with a draft environmental impact statement, an oral hearing on the Maritime Administration Tanker Construction-Differential Subsidy Program will be held on May 1, 1973.

II. *Place of hearing.*—The hearing will be held in the Departmental Auditorium of the Department of Labor, 14th Street and Constitution Avenue NW., Washington, D.C. 20212, commencing at 10 a.m., May 1, 1973.

III. *Purpose of hearing.*—The purpose of the hearing is to provide interested members of the public with an opportunity to present oral or written comments and views regarding the draft environmental impact statement on the Maritime Administration Tanker Construction-Differential Subsidy Program being prepared in accordance with section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332 (2)(C)). As previously noticed on March 14, 1973, 38 FR 6912 (No. 49), the draft environmental impact statement refers to proposed Government assistance to private industry to aid in the construction in the United States of modern tankers and other oil carrying vessels during the decade of the 1970's. Vessel classes included range from 35,000 deadweight tons to 400,000 deadweight tons. Certain portions of this program are now and were in progress prior to the preparation of the draft environmental impact statement. Copies of the statement are available for public inspection at no charge at the following locations:

Maritime Administration, Office of Public Affairs, room 4889, Department of Commerce (Building), Washington, D.C. 20230.
Maritime Administration, Eastern Regional Office, 26 Federal Plaza, New York, N.Y. 10007.
Maritime Administration, Central Regional Office, 701 Loyola Avenue, New Orleans, La. 70152.
Maritime Administration, Western Regional Office, 450 Golden Gate Avenue, San Francisco, Calif. 94102.

Copies may also be purchased from either the National Technical Information Service, Ordering Department, 5285 Port Royal Road, Springfield, Va. 22151, or at the Environmental Law Institute, Document Service, 1346 Connecticut Avenue NW., Washington, D.C. 20036 (approximately 700 pages, including appendixes) (NTIS order No. EIS 73 0392–D) (ELR order No. 00392).

IV. *Hearing panel.*—The hearing will be held before a panel appointed by the assistant secretary for Science and Technology, Department of Commerce. The presiding officer at the hearing will be Dr. Sidney R. Galler, deputy assistant secretary for environmental affairs, office of the assistant secretary for Science and Technology, Department of Commerce.

V. *Conduct of hearing.*—a. This hearing shall be an oral, informal, nonadversary proceeding at which there will be no formal pleadings or adverse parties.

b. Individuals may submit a written presentation of their views for the record in lieu of or in addition to oral comments. Any person, whether or not present at the hearing, desiring to file written submissions in lieu of or in addition to oral comments at the hearing may do so by presenting such comments at the hearing or filing such comments with Dr. Sidney R. Galler, office of the assistant secretary for Science and Technology, deputy assistant secretary for Environmental Affairs, Department of Commerce, Washington, D.C. 20230, in accordance with the prior notice set forth on March 14, 1973, 38 FR 6912, which invited the submission of written comments from the public until May 15, 1973.

c. The presiding officer and members of the panel shall have the right to question persons presenting matters at this hearing as to their testimony and other matters relating to the proposed program.

d. The presiding officer shall have the right to apportion the time of persons making presentations at the hearing in an equitable manner.

e. The presiding officer has the right to exercise authority necessary to contribute to the equitable and efficient conduct of these hearings and to maintain order at the hearings.

f. Persons desiring to present matters orally at this hearing shall notify Dr. Galler at the above address as promptly as possible, and in any event prior to April 27, 1973, in order that preparation may be made to accommodate any person who desires to appear.

Dated April 13, 1973.

By order of the Assistant Secretary of Commerce for Maritime Affairs.

JAMES S. DAWSON, Jr.,
Secretary,
Maritime Subsidy Board.

[FR Doc.73-7471 Filed 4-16-73;8:45 am]

ATOMIC ENERGY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON ELECTRICAL SYSTEMS, CONTROL AND INSTRUMENTATION

Notice of Meeting

APRIL 13, 1973.

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the advisory committee on reactor safeguards' subcommittee on electrical systems, control and instrumentation will hold a meeting on April 25, 1973, in conference room No. 2 of the New Albany Hotel, 17th and Stout Streets, Denver, Colo. The subject scheduled for discussion is the proposed regulatory guide: "Availability of Electrical Power Sources."

The Subcommittee is meeting to formulate recommendations to the full ACRS regarding the above subject.

I have determined, in accordance with subsection 10(d) of Public Law 92–463, that the meeting will be to discuss a document which falls within exemption (5) of 5 U.S.C. 552(b) and will consist of an exchange of opinions, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b). It is essential to close such a meeting to protect the free interchange of internal views and to avoid undue interference with agency or Committee operations.

JOHN V. VINCIGUERRA,
Advisory Committee
Management Officer.

[FR Doc.73-7487 Filed 4-16-73;8:45 am]

[Docket No. 50-251]

FLORIDA POWER & LIGHT CO.

Notice of Issuance of Facility Operating License

Notice is hereby given that the Atomic Energy Commission (the Commission) has issued facility operating license No. DPR-41 to Florida Power & Light Co. (the licensee) which authorizes the licensee to operate the Turkey Point Nuclear Generating Unit No. 4 at reactor core power levels not in excess of 2,200 megawatts (thermal), in accordance with the provisions of the license and the technical specifications appended thereto. The notice of AEC consideration of issuance of facility operating license was published in the FEDERAL REGISTER on October 30, 1971 (36 FR 20906). The Turkey Point Nuclear Generating Unit No. 4 is a pressurized water nuclear reactor located at the licensee's site in Dade County, Fla.

A notice of hearing encompassing both units 3 and 4 of the Turkey Point facility was published by the Commission in the FEDERAL REGISTER on April 4, 1972 (37 FR 6777). The notice indicated that an Atomic Safety and Licensing Board (Board) would be designated by the Commission to conduct the hearing, provided for intervention by Paul Siegel, and provided an opportunity to make limited appearances to other persons who wished to make a statement in the proceeding but who did not wish to intervene. The notice of hearing also provided that the issue for hearing consideration would be the steam line safety valve header failure of December 2, 1971, as refined through appropriate prehearing procedure, and that, depending on the resolution thereof, authorization for issuance of the license might be granted or denied, or that the license might be authorized as appropriately conditioned. The notice of hearing further provided that an operating license would be issued only after appropriate findings had been made by the Director of Regulation on certain specified matters not embraced by the Board's decision.

On July 10, 1972, after a public hearing held pursuant to the notice of hearing, the Board issued an order resolving issue prescribed for consideration which set forth the Board's conclusion that "the safety valve header system as now constructed and tested can be operated without undue risk to the health and safety of the public." Pursuant to an order from the Atomic Safety and Licensing Board dated July 10, 1972, a license was issued for unit 3 on July 19, 1972.

The Commission's regulatory staff has inspected unit 4 and has determined that for operation as authorized by this license, the facility has been constructed in accordance with the application, as amended, the provisions of provisional construction permit No. CPPR–28, as amended, the Atomic Energy Act of 1954, as amended, and the Commission's regulations. The licensee has submitted proof of financial protection in satisfaction of the requirement of 10 CFR part 140.

In accordance with the notice of hearing, the Director of Regulation has made the findings which are set forth in the license, and has concluded that the application, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR chapter 1, and that the issuance of the license will not be inimical to the common defense and security or the health and safety of the public.

The license is effective as of the date of issuance and shall expire on April 27, 2007, unless extended for good cause shown or upon the earlier issuance of a superseding operating license.

A copy of (1) facility operating license No. DPR–41, complete with technical specifications, (2) the applicant's environmental report dated November 15, 1970, and supplements thereto, dated April 4, 1971; November 8, 1971; and March 16, 1972, respectively, (3) the report of the Advisory Committee on Reactor Safeguards, dated June 18, 1971, (4) the "Safety Evaluation by the Division of Reactor Licensing [now the Directorate of Licensing], U.S. Atomic Energy Commission, in the Matter of the Florida Power & Light Co., Turkey Point Plant, Units 3 and 4," dated March 15, 1972, (5) the final safety analysis report and amendments thereto, (6) the draft statement on environmental considerations dated February 11, 1972, and (7) the final detailed environmental statement dated July 1972, are available for public inspection at the Commission's public document room at 1717 H Street NW., Washington, D.C. Copies of these documents will also be made available at the Lily Lawrence Row Public Library, 212 Northwest, First Avenue, Homestead, Fla. 33030, for inspection by members of the public between the hours of 10 a.m. to 8 p.m. on Monday and 10 a.m. to 5:30 p.m. on Tuesday through Saturday. Copies of items (1), (4), and (7) may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Md., this 10th day of April 1973.

For the Atomic Energy Commission.

KARL KNIEL,
Chief, Pressurized Water Reactors Branch No. 2, Directorate of Licensing.

[FR Doc.73-7382 Filed 4-16-73;8:45 am]

[Docket No. 50-20]

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

Notice of Issuance of Construction Permit

No request for a hearing or petition for leave to intervene having been filed following publication of the notice of proposed action in the FEDERAL REGISTER on March 6, 1973 (38 FR 6096), the Atomic Energy Commission ("the Commission") has issued construction permit No. CPRR–118 to the Massachusetts Institute of Technology (MIT) as proposed in that notice. The construction permit authorizes MIT to make certain modifications to its existing 5 megawatt research reactor located on its campus in Cambridge, Mass., to convert the reactor to a light water-cooled, heavy water reflected reactor, in accordance with MIT's application dated November 18, 1970, as amended. The reactor being modified is a heavy water-moderated and cooled facility which is currently authorized by Commission facility license No. R–37 issued to MIT in 1958.

The Commission has found that the application for the construction permit complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations published in 10 CFR Ch. I. The Commission has made the remainder of the findings required by the Act and the Commission's regulations, which are set forth in the construction permit, and has concluded that the issuance of the construction permit will not be inimical to the common defense and security or to the health and safety of the public.

A copy of the construction permit and a copy of the safety evaluation dated February 23, 1973, are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., or may be obtained upon request sent to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Director of Licensing.

Dated at Bethesda, Md., this ninth day of April 1973.

For the Atomic Energy Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch #2 Directorate of Licensing.

[FR Doc.73-738 Filed 4-16-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 24779]

INTERSTATE AND INTRASTATE FARES IN CALIFORNIA AND TEXAS MARKETS

Notice Postponing Prehearing Conference

Pursuant to the request of Counsel for the Texas Aeronautics Commission the Prehearing Conference in this proceeding originally set for April 17, 1973 (38 FR 4435, Feb. 14, 1973), is hereby postponed and will be convened on April 25, 1973, at 10 a.m., local time, in room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the undersigned.

Dated at Washington, D.C., April 11, 1973.

[SEAL] ROBERT M. JOHNSON,
Administrative Law Judge.

[FR Doc.73-7400 Filed 4-16-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

CABLE TELEVISION TECHNICAL ADVISORY COMMITTEE

Agenda and Notice of Meeting

APRIL 10, 1973.

Panel 3 (receivers—Mr. Loughlin) of the Cable Television Technical Advisory Committee will hold an open meeting on Wednesday, April 25, 1973, at 9:30 a.m. The meeting will be held at O'Hare International Tower, O'Hare Airport, Chicago (room to be posted).

The agenda of the meeting will include: (1) Steering committee direction; (2) EIA—R 4.2—plans, objectives and tentative deadlines; (3) review of final draft on local oscillator voltage measurements; (4) adjacent channel rejection: (a) Objective measurements, (b) specifications for good performance, (c) position regarding proposals; (5) proposal regarding spurious responses and tweets; (6) new plans in view of item No. 1.

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

[FR Doc.73-7390 Filed 4-16-73;8:45 am]

MILTON BROADCASTING CO.

[FCC 73-389]

Standard Broadcast Applications Ready and Available for Processing

APRIL 11, 1973.

The following applications seeking the facilities of station WEBY, Milton, Fla., have been tendered. An application for renewal of the license of WEBY has been denied by the Commission, and the station ceased operation on March 30, 1973. Milton Broadcasting Company, 34 F.C.C. 2d 1036, 24 R.R. 2d 369 (1972). Accordingly, we have accepted these applications for filing. Similarly, we will accept other applications for consolidation which propose essentially the same facilities.

NEW, Milton, Fla., Jimmie H. Howell, request: 1330 kHz, 5 kW, day.

NEW, Milton, Fla., H. Byrd Mapoles, trading as Mapoles Broadcasting Co., request: 1330 kHz, 5 kW, day.

Pursuant to the provisions of §§ 1.227 (b)(1) and 1.591(b) of the Commission's rules, an application, in order to be considered with these applications must be tendered no later than May 25, 1973.

The attention of any party in interest desiring to file pleadings concerning these applications, pursuant to section 309 (d) (1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's rules for the provisions governing the time of filing and other requirements relating to such pleadings.

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

[FR Doc.73-7388 Filed 4-16-73;8:45 am]

[FCC 73-355]

NEW YORK CITY OFF-TRACK BETTING CORPORATION

Broadcasting of Information Concerning Horse Races

MEMORANDUM OPINION AND ORDER.—1. The Commission has before it a petition filed on February 18, 1972, by the New York City Off-Track Betting Corp. (OTB), asking the Commission to reconsider its declaratory ruling of December 17, 1971, "In the Matter of Broadcasting of Information Concerning Horse Races".[1] The petition asks the Commission to set aside its ruling that broadcast licensees may accept no advertising from OTB except "institutional advertising" and to rule instead that licensees may accept any OTB advertisements which do not contain timely information about particular races. For reasons stated below, we grant the petition for reconsideration and modify the declaratory ruling as to advertisements. We do not adopt the language suggested by the petitioner, however; and we emphasize that this ruling is subject to further modification if it should appear in practical effect to benefit illegal gambling interests.

2. The limitation on advertisements was contained in a declaratory ruling the Commission issued in response to OTB's request for rulings on specific proposals for a promotional campaign. Among the proposals was the following:

(5) Advertisements of OTB, including the promotion of legal off-track pari-mutuel wagering and explanations as to how OTB's facilities may be utilized.

The Commission responded by invoking its 1964 policy statement on the broadcast of horse racing information.[2] The ruling on the advertising proposal was as follows:

Request No. 5—While OTB betting activities are legal in the State of New York, it would appear that the use of broadcast facilities to promote such legal activities would also serve to promote private and still illegal gambling in that State as well as promoting gambling activities in neighboring States where it is still illegal. The broadcast of such programs would therefore be contrary to our 1964 policy statement. The extent of allowable advertising would be limited to "institutional advertisements" i.e., in much the same manner as the racetracks currently advertise "come to XYZ race track".

3. The Petitioner's arguments can be summarized as follows: (1) The Commission's ruling "violates the First Amendment and precepts of due process and equal protection"; (2) OTB's advertising campaign is "crucial to its viability"; (3) advertisements promoting OTB would not aid illegal gambling, and, therefore, are not contrary to the 1964 policy statement; (4) even if some OTB advertisements would aid illegal gambling, the restriction to "institutional advertisements" goes beyond the 1964 policy statement and bars some material that would serve a legitimate public need; and (5) the Commission has not set forth "parameters" of the term "institutional advertisements," with the result that broadcasters do not fully understand their obligation under the ruling.

4. We do not find it necessary to consider the constitutional questions in view of our decision on other grounds to reconsider the ruling. We also do not discuss at length the second and third arguments, which were considered and rejected in the Commission's ruling on OTB's initial petition, on grounds that remain valid. The Commission concluded at that time that at least some advertisements promoting legalized betting "would serve to promote private and still illegal gambling * * *." This conclusion required the Commission to reject those advertisements as contrary to the public interest, regardless of how important they might be to OTB's viability." The difficult task for the Commission at that point was to draft a ruling that would forbid only those advertisements which, in the language of the 1964 policy statement, "were most likely to aid illegal gambling and which did not appear to serve a legitimate public need."[4]

5. We are persuaded by the Petitioner's fourth argument that the Commission failed to give sufficient weight to the second part of this formula (i.e., service to a legitimate public need), and that the ruling does, indeed, go beyond the 1964 policy statement. Furthermore, as the petitioner contends in his fifth argument, the term "institutional advertisements" lends itself to narrow construction by licensees, who may interpret it to bar advertisements that the Commission had no intention to bar.[4] The practical result of the ruling, according to the petitioner, has been "to preclude OTB from any effective advertising on radio or television * * *." These considerations are the basis for our decision to grant the petition for reconsideration and to revise the ruling on advertisements.

6. The Commission's 1964 policy statement grew out of a rulemaking proceeding that was intended to formulate regulations governing the broadcast of horseracing information. The Commission said in its "Notice of Proposed Rulemaking"[5] that its primary purpose was to assure that broadcast stations were not used in such a way as to assist illegal gambling activities. An important secondary purpose was to eliminate "uncertainty concerning the Commission's policies in this area * * *." With this second purpose in mind, the Commission drafted the proposed rules "in the most specific possible terms."

7. At the end of the rulemaking proceeding, however, the Commission decided that it could not adopt specific rules "with the assurance that they would not impede the legitimate broadcast of racing news and information."[6] The Commission instead issued a policy statement in general terms directed against practices which would give aid to illegal gambling. The statement provided guidance; but it left the licensees with broad discretion, concluding that "what is called for is a good-faith, commonsense judgment on the particular facts."[7]

8. Before the Off-Track Betting Corporation went into business in 1971, its officials envisioned a massive promotion campaign that would include the use of radio and television. Mindful of the problems legalized lotteries in several States had encountered in attempting to use broadcast promotional schemes,[8] OTB asked the Commission for a declaratory ruling that certain broadcast activities were permissible. The Commission's response, which included the advertising ruling that is the subject of this petition, was an attempt to apply the principles of the 1964 policy statement to a situation that did not exist when that statement was adopted—legalized off-track betting in New York.[9]

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[1] Action by the Commission Apr. 11, 1973. Commissioners Burch (Chairman), H. Rex Lee, Reid, and Hooks, with Commissioners Johnson and Wiley concurring.

[1] 32 F.C.C. 2d 705.

[2] 36 F.C.C. 1571.

[3] 36 F.C.C. 1573.

[4] The National Association of Broadcasters, however, apparently believes that its members understand the term "institutional advertising." The NAB has imposed a similar restriction on radio advertising for legalized gambling through its radio code, which limits subscribing stations to "institutional type advertising which does not exhort the public to bet." Radio code, 17th edition, Apr. 1972, at 13. The radio code provision was based on the language of the declaratory ruling now under attack. The NAB has gone even farther in restricting OTB ads on television. Its television board of directors has ruled that subscribing stations may not carry any OTB advertisements at all. Subscription to the NAB codes is voluntary, however, and the restrictions they impose do not arise from governmental authority.

[5] "In the Matter of Amendment to Part 3 of the Commission's Rules to regulate the Broadcast of Horse Racing Information, Notice of Propose Rulemaking," *F.C.C. 63-342, docket No. 15040.*

[6] *36 F.C.C. 1574.*

[7] Id., 1575.

[8] See, e.g., *New York State Broadcasters Association* v. *United States*, 414 F. 2d 990 (2d Cir. 1969); "In the Matter of Jersey Cape Broadcasting Corp., Declaratory Ruling," *30 F.C.C. 2d 794 (1971)*. The lottery cases arose under a statute, 18 U.S.C. 1304, which prohibits the broadcast of lottery information. The Commission's authority with regard to broadcast of gambling information, by contrast, derives from its statutory mandate to regulate broadcast licensees in the public interest.)

[9] Nevada had legalized off-track betting before 1964, but the statement did not address itself to that unique situation.

9. After conferring with the Justice Department—as it had done in cases of this kind since before issuance of the 1964 statement—the Commission settled on the ruling that limited OTB commercials to "institutional advertisements." Recognizing that illegal gambling interests might benefit from an advertising campaign designed to encourage people to bet on the horses, the Commission sought to impose the minimum restrictions necessary to implement the Government policy of denying communications facilities to those illegal interests.[9] The Commission did not want to impede the flow of legitimate information or to frustrate New York's legislative decision to establish off-track betting. The Commission concluded that institutional advertisements—designed to improve the image of the advertiser or the climate in which he operates, but not to influence consumers to buy a specific product or service—were a sound basis for compromise.

10. On reconsideration, we conclude that the December 17 ruling on advertising has the potential of impeding the broadcast of legitimate information about the services OTB provides and general information about the sport of horseracing. While we remain convinced that virtually any inducement to bet may cater generally to the gambling spirit, we conclude now that our ruling paid insufficient attention to New York's legislative determination that legal off-track betting would serve public needs.

11. The 1964 policy statement clearly was directed against broadcasts which would aid illegal off-track gambling and which would not serve legitimate public needs as determined by local governments. Thus, the statement recognized the "considerable significance" of the revenues that many States derive from parimutuel betting and disclaimed any intention "to inhibit the broadcasting of appropriate news, publicity, and advertising concerning horseracing."[11] The statement did not advert to legalized off-track betting, but its principles were articulated broadly enough to provide guidance.

12. When the New York legislature approved off-track betting, it determined that two public needs would be served; the raising of revenues and the suppression of illegal gambling.[12] The legislature thus gave that activity a status similar to legalized on-track betting. We see no reason to revise our 1964 policy statement; however, we also are not in a position to go behind the legislature's judgment that off-track betting serves legitimate public needs in New York State. To accommodate both our established policy and the State's policy, we now conclude that appropriate advertisements in support of OTB should not be prohibited. We are, therefore, adopting a different response to OTB's inquiry.

13. The revised ruling forbids advertising which directly aids or encourages illegal gambling. It permits advertisements which only induce people to follow the State's legalized betting course. To insure that broadcasters remain on guard against material which can substantially benefit illegal gambling, the revised ruling requires commercial promoting OTB to be consistent with the State's avowed aim suppressing illegal gambling.[13] We reaffirm also the responsibility of licensees to make the difficult judgments on whether to accept particular commercials for broadcast. As we said in the 1964 policy statement, "[W]e wish to stress that we expect licensees to make a bona fide effort to carry out their responsibilities to serve the public interest, and to avoid giving assistance to illegal gambling interests."[14]

14. *Accordingly, it is ordered*, That the "Petition for Reconsideration" filed by the Off-Track Betting Corp. is granted.

It is further ordered, That the declaratory ruling of December 17, 1971, "In the Matter of Broadcasting of Information Concerning Horse Racing," is revised so that the Commission's response to request No. 5 reads as follows:

Request No. 5—To be acceptable under the Commission's 1964 policy statement, advertisements promoting OTB may not directly aid or encourage illegal gambling. Broadcast licensees should avoid giving assistance to illegal gambling interests in advertising as well as in other programing contexts. The race information suggested for presentation in request No. 2, for example, and rejected in our response to that request,[15] would be equally unacceptable in an advertisement. At the same time, licensees should serve the legitimate needs and interests of their communities. Where the State has established a betting operation for the purpose of raising revenues and combatting illegal gambling—as New York has done—licensees may broadcast appropriate advertisements to promote that operation. "Appropriate advertisements" would include those which encourage people to patronize the State-operated off-track organization and which explain how to use OTB's facilities. We require, however, that these advertisements be consistent with both purposes of New York's program of legalized betting; the raising of revenues and the suppression of illegal gambling. In summary, the licensee's duty, in the language of the 1964 policy statement, is twofold: "to serve the legitimate needs and interests of his area, and to avoid giving aid to illegal gambling."[16]

Adopted March 29, 1973.

Released April 3, 1973.

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

[FR Doc.73-7389 Filed 4-16-73;8:45 am]

[9] A criminal statute (75 Stat. 491, 18 U.S.C. 1084) forbids the use of interstate wire communications to transmit illegal wagering information. Congress did not make the statute applicable to radio and television because the Judiciary Committees had concluded that this Commission already had adequate authority to deal with that problem administratively. See S. Rept. No. 588, 87th Cong., 1st sess. (1961); H. Rept. No. 967, 87th Cong., 1st sess. (1961).

[11] *36 F.C.C. 1573.*

[12] Unconsolidated Laws, section 8-36(1), McKinney supplement.

[13] This does not mean that each OTB commercial must contain an attack on illegal gambling. It does require broadcast licensees to insure that OTB commercials do not focus on revenue raising to the extent of encouraging gambling for the sake of gambling—legal or otherwise. This requirement both implements the Commission's policy in this area and reinforces the stated objectives of New York's off-track betting operation.

[14] *36 F.C.C. 1575.*

[15] The second proposal in OTB's request for a declaratory ruling was as follows:

"(2) OTB produced race information programs, which would include some or all of the following: the results of all races (in and/or out of State) as to which OTB has accepted parimutuel wagers from City or State of New York bettors; the parimutuel prices paid on all such races; scratches, post-time changes, weights, jockeys, odds, and track conditions as they concern future races * * *."

The Commission's ruling on that proposal was as follows:

"Request No. 2—The request is clearly inconsistent with the Commission's 1964 policy statement, and we rule against it for our licensees."

[16] 36 F.C.C. 1575.

FEDERAL POWER COMMISSION

[Docket No. G-4075, etc.]

AMOCO PRODUCTION CO. ET AL.

Findings and Order After Statutory Hearing Concerning Certificates of Public Convenience and Necessity

APRIL 5, 1973.

Each applicant herein has filed an application pursuant to section 7 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 or for permission and approval to abandon service or a petition to amend an order issuing a certificate, all as more fully set forth in the applications and petitions to amend.

Applicants have filed FPC gas rate schedules or supplements to rate schedules on file with the Commission and propose to initiate, abandon, or add natural gas service in interstate commerce as indicated in the tabulation herein.

After due notice by publication in the FEDERAL REGISTER, a petition for leave to intervene and a request for a formal hearing was filed and withdrawn by Warren Petroleum Co. in docket No. CI72-767 and a notice of intervention was filed and withdrawn by the Public Service Commission of the State of California and the Public Utilities Commission of the State of California in docket No. CI-73-185. No further notices of intervention, protests to the granting of the applications and petitions to amend, or further petitions to intervene have been filed.

At a hearing held on April 3, 1973, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and petitions and exhibits

thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Each applicant herein is a "natural gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission or will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and will, therefore, be a "natural gas company" within the meaning of the Natural Gas Act upon the commencement of service under the authorizations hereinafter granted.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications in this proceeding, will be made in interstate commerce subject to the jurisdiction of the Commission; and such sales by applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The sales of natural gas by applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity; and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the orders issuing certificates of public convenience and necessity in various dockets involved herein should be amended as hereinafter ordered.

(6) The sales of natural gas proposed to be abandoned, as hereinbefore described and as more fully described in the applications and in the tabulation herein, are subject to the requirements of subsection (b) of section 7 of the Natural Gas Act.

(7) The abandonments proposed by applicants herein are permitted by the public convenience and necessity and should be approved as hereinafter ordered and the certificates issued to certain of said applicants should be terminated.

(8) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that certain successors in interest, who are herein authorized to continue sales of natural gas in interstate commerce, should be made corespondents in their predecessors' rate proceedings.

(9) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the FPC gas rate schedules and supplements related to the authorizations hereinafter granted should be accepted for filing.

(10) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the orders issuing certificates, for sales authorized herein to be continued under new or amended certificates, should be amended by deleting therefrom authorization to sell gas.

(11) Predecessor of applicant in docket No. CI73–248 has collected no amounts subject to refund in docket No. RI71–638 in excess of the area ceiling rate.

The Commission orders:

(A) Certificates of public convenience and necessity are issued upon the terms and conditions of this order authorizing sales by applicants of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the applications and in the tabulation herein.

(B) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

(C) The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of section 7 of the Natural Gas Act or of part 154 or part 157 of the Commission's regulations thereunder and is without prejudice to any findings or orders which have been or which may hereafter be made by the Commission in any proceedings now pending or hereafter instituted by or against applicants. Further, our action in this proceeding shall not foreclose or prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. The grant of the certificates aforesaid for service to the particular customers involved does not imply approval of all of the terms of the contracts, particularly as to the cessation of the service upon termination of said contracts as provided by section 7(b) of the Natural Gas Act. The grant of the certificates aforesaid shall not be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(D) The orders issuing certificates of public convenience and necessity in various dockets are amended by adding thereto authorization to sell natural gas or by substituting successors in interest as certificate holders as more fully described in the applications and in the tabulation herein. In all other respects said orders shall remain in full force and effect.

(E) Applicants in the dockets indicated shall charge and collect the following rates, subject to British thermal unit adjustment where applicable:

Docket No.	Rate (cents per M ft³)	Pressure base lb/in² a)
CI73–67	20.3	14.65
CI73–104	25.875	15.025
CI73–185	27.0	14.65
CI73–206	32.0	15.325
CI73–247	[1] 12.2295	15.025
CI73–247	[2] 13.2486	15.025
CI73–247	[3] 21.33	15.025

[1] From Oct. 9, 1967, to June 1, 1969, subject to refund in docket No. RI64–533.
[2] From June 1, 1969, to Mar. 5, 1972, subject to refund in docket No. RI69–374.
[3] From Mar. 5, 1972, subject to refund in docket No. RI72–170.

(F) Within 90 days from the date of initial delivery, applicants in dockets Nos. G–4075, CI67–96, CI73–67, CI73–104, CI73–147, CI73–152, CI73–185, CI73–248, CI73–249, and CI73–251 shall each file three copies of a rate schedule-quality statement in the form prescribed in opinions Nos. 468–A, 586, 595, 598, or 607, as applicable.

(G) The certificates and certificates authorization granted in dockets Nos. G–4075, CI67–96, CI73–67, CI73–104, CI73–147, CI73–152, CI73–185, CI73–248, CI73–249, and CI73–251 are subject to the Commission's findings and orders accompanying opinions Nos. 468, 468–A, 586, 586–A, 595, 595–A, 598, 598–A, 607, and 607–A, as applicable. If the quality of the gas deviates at any time from the quality standards set forth in the regulations under the Natural Gas Act so as to require a downward adjustment of the existing rates, notices of changes in rate shall be filed pursuant to section 4 of the Natural Gas Act; *provided, however,* That adjustments reflecting changes in British thermal unit content of the gas shall be computed by the applicable formula and charged without the filing of notices of changes in rate.

(H) The proceeding pending in docket No. RI71–638 is terminated.

(I) The order issuing a certificate in docket No. G–4579 is amended by deleting therefrom authorization to make the sale permitted to be abandoned in docket No. CI72–767.

(J) Applicants in the following dockets are made corespondents in their predecessors' rate proceedings and said proceedings are redesignated accordingly:

Successor's certificate docket No.:	*Rate proceeding docket No.*
CI73–246	RI69–374
	RI70–171
CI73–247	RI64–533
	RI69–374
	RI72–170
CI73–251	RI70–90

Applicants shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(K) The rate schedules and rate schedule supplements related to the authorizations granted herein are accepted for filing or are redesignated, all as set forth in the tabulation herein. Where the effective date is the date of initial

delivery, Applicant shall advise the Commission of said date within 10 days thereof.

(L) Permission for an approval of the abandonment of service by applicants, as hereinbefore described and as more fully described in the applications and in the tabulation herein, are granted.

(M) The orders issuing certificates to predecessors in interest are amended by deleting therefrom authorization to sell gas from interests assigned to their successors, as follows:

Successor's certificate docket No.:	*Predecessor's certificate docket No.*
CI73-67	CI71-27
CI73-245	CI61-74
CI73-247	G-12273
CI73-248	G-17574
CI73-249	CI61-313
CI73-251	G-15380

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

Docket No. and date filed	Applicant	Purchaser and location	FPC gas rate schedule [1]		
			Description and date of document	No.	Supp.
G-6975..... C 6-19-72 [2]	Amoco Production Co. (Operator) et al.	Tennessee Gas Pipeline Co., a division of Tenneco Inc., La Sal Viejo, Willacy County, Tex.	Letter agreement 5-5-72....	12	10
CI64-804..... E 10-10-72	Sanford P. Fagadau.....	Lone Star Gas Co., Blue Grove Field, Clay County, Tex.	Lone Star Producing Co., FPC gas rate schedule No. 76 and supplement Nos. 1 and 2.	3	1-2
			Notice of succession 10-3-72.		
			Assignment 7-19-72 [3].....	3	3
			Effective date: 6-1-72 [4].....		
CI67-96..... C 9-7-72	Texaco, Inc.....	Tennessee Gas Pipeline Co., a division of Tenneco Inc., West Jennings Field, Zapata County, Tex.	Amendment 7-15-72.....	373	8
CI70-894..... E 10-10-72	Dale V. Steele, d.b.a. Steel Oil Field Service.	Kansas-Nebraska Natural Gas Co., Inc., Cheyenne County, Nebr.	Howard W. Kaler, FPC gas rate schedule No. 1.	1	.....
			Notice of succession 10-5-72.		
			Assignment 8-31-72 [5].....	1	1
			Effective date: 8-1-72 [6].....		
CI72-767..... B 8-22-72	Wolfson Oil Co.....	Warren Petroleum Co., Eunice-Monument Pool, Lea County, N. Mex.	(17)		
			Effective date: The date of this order.		
CI73-16..... A 7-10-72	Gulf Oil Corp.....	Florida Gas Transmission Co., Flomaton Field, Escambia County, Ala.	Contract 4-10-72.....	537	.....
CI73-67..... F 7-24-72 [7]	Arthur Lipper III.....	Northern Natural Gas Co., Ellis County, Okla.	Contract 6-4-70.....	1	.....
			Assignment 9-29-70 [8].....	1	1
			Effective date: 9-29-70 [6].....		
CI73-104..... A 8-14-72	Amoco Production Co.....	Arkansas Louisiana Gas Co., Carterville Field, Webster Parish, La.	Contract 4-18-72.....	590	.....
CI73-147..... A 8-29-72	LVO Corp.....	Florida Gas Transmission Co., Northwest Bayou Choctaw Field, Iberville Parish, La.	Contract 6-15-72.....	46	.....
CI73-152..... A 8-30-72	Coastal States Gas Producing Co.	.....do.....	Contract 6-15-72.....	87	.....
CI73-185..... A 9-11-72	Texas Oil & Gas Corp.....	El Paso Natural Gas Co., Yucca Butte Field, Terrell County, Tex.	Contract 8-29-72.....	103	.....
CI73-206..... A 9-21-72 [9]	Cities Service Oil Co.....	Consolidated Gas Supply Corp., acreage in Big Creek District, McDowell County, W. Va.	Contract 8-3-72 [10].....	394	.....

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.
See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser and location	FPC gas rate schedule [1]		
			Description and date of document	No.	Supp.
CI73-246..... F 10-6-72	Clinton Oil Co.....	Mountain Fuel Supply Co., Pioneer Unit Field, Sweetwater County, Wyo.	Contract 3-15-56 [11].....	113	.....
			Amendatory Agreement 9-22-56.	113	1
			Amendatory Agreement 2-18-60.	113	2
			Assignment 12-31-69 [12].....	113	3
			Effective date: 12-31-69 [6].....		
CI73-247..... F 9-28-72	Continental Oil Co.....	El Paso Natural Gas Co., Blanco Field, San Juan County, N. Mex.	Contract 3-13-57 [13].....	389	.....
			Letter agreement 7-25-58..	389	1
			Assignment 10-9-67 [12].....	389	2
			Effective date: 10-9-67 [6].....		
CI73-248..... F 10-6-72	Clinton Oil Co.....	Texas Gas Transmission Corp., Jefferson Island Field, Iberia and Vermilion Parishes, La.	Contract 12-16-58 [14].....	115	.....
			Supplemental agreement 6-19-59.	115	1
			Assignment 12-10-68.....	115	2
			Assignment 12-31-69 [12].....	115	3
			Quality statement 10-6-71..	115	4
			Effective date: 12-31-69 [6].....		
CI73-249..... F 10-6-72	.....do.....	Transcontinental Gas Pipe Line Corp., Cooke Field, La Salle County, Tex.	Contract 7-28-60 [15].....	116	.....
			Letter agreement 4-26-63..	116	1
			Amendatory agreement 5-16-66.	116	2
			Letter 6-22-66.....	116	3
			Assignment 12-31-69 [12].....	116	4
			Quality statement 5-26-72..	116	5
			Effective date: 12-31-69 [6].....		
CI73-251..... F 10-6-72	.....do.....	Westlake Natural Gasoline Co. and Atlantic Richfield Co., Lake Trammell et al fields, Nolan County, Tex.	Contract 3-6-56 [16].....	114	.....
			Assignment 4-10-57.....	114	1
			Supplemental agreement 5-4-61.	114	2
			Supplemental agreement 12-29-67.	114	3
			Amendatory agreement 6-15-70.	114	4
			Assignment 12-31-69 [12].....	114	5
			Effective date: 12-31-69 [6].....		

[1] Application to amend certificate to include up to 2,000 M ft³ per day of low pressure gas previously sold under expired intrastate contract.
[2] Where no effective date is shown, it is the date of initial delivery.
[3] Assigns interest from Lone Star to Sanford P. Fagadau effective on June 1, 1972.
[4] Effective date of transfer of producing properties.
[5] From Howard W. Kaler to applicant.
[6] No rate filing submitted. 18 CFR 154.91(e).
[7] Well has been reclassified from an oil well to a gas well. Wolfson sold only casinghead gas to Warren.
[8] By letter dated Oct. 17, 1972, applicant corrected its application to reflect a proposed rate of 20.3 cents in lieu of 21 cents.
[9] Acreage formerly covered by King Resources Co. FPC gas rate schedule No. 32.
[10] By letter filed Oct. 24, 1972, applicant agreed to accept permanent certificate at 32 cents.
[11] Limited to gas produced from formations above the base of the Berea Sandstone.
[12] Also on file as Amoco Production Co. FPC gas rate schedule No. 281.
[13] Assigns certain acreage to applicant.
[14] On file as Amoco Production Co. (Operator) et al., FPC gas rate schedule No. 195.
[15] From Pan American (now Amoco) to applicant.
[16] Also on file as Amoco Production Co. FPC gas rate schedule No. 266.
[17] Also on file as Amoco Production Co. FPC gas rate schedule No. 286.
[18] Also on file as Amoco Production Co. FPC gas rate schedule No. 318.

[FR Doc.73-7121 Filed 4-16-73;8:45 am]

[Docket No. CI73-657]

GOLDKING PRODUCTION CO.

Notice of Application

APRIL 10, 1973.

Take notice that on April 2, 1973, Goldking Production Co. (Applicant), 538 The Main Building, Houston, Tex. 77002, filed in docket No. CI73-657 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Texas Gas Transmission Corp. from the Savoy Field, St. Landry Parish, La., all as more fully set forth in the applica-

tion which is on file with the Commission and open to public inspection.

Applicant proposes to sell approximately 5,000 M ft³ of gas per day until February 1, 1974, at 40 cents per M ft³ at 15.025 lb/in²a, subject to downward Btu adjustment, within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70).

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before April 27, 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.73-7379 Filed 4-16-73;8:45 am]

[Docket No. CI73-658]

GULF OIL CORP.

Notice of Application

APRIL 10, 1973.

Take notice that on April 2, 1973, Gulf Oil Corp. (Applicant), P.O. Box 1589, Tulsa, Okla. 74102, filed in docket No. CI73-658 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 Transwestern Pipeline Co. from the South Carlsbad (Morrow) Field, Eddy County, N. Mex., 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 intends 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 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 30,000 M ft³ of gas per month at 45 cents per million Btu.

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 April 27, 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.73-7381 Filed 4-16-73;8:45 am]

[Docket No. CI73-659]

MARSHALL EXPLORATION, INC.

Notice of Application

APRIL 10, 1973.

Take notice that on April 2, 1973, Marshall Exploration, Inc. (applicant), P.O. Box 729, Marshall, Tex. 75670, filed in Docket No. CI73-659 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 William Smith Survey, Harrison County, Tex., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant commenced the sale of natural gas on April 7, 1973, within the contemplation of section 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and 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 15,000 M ft³ of gas per month at 45 cents per M ft³ at 14.65 lb/in²a.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for 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 April 27, 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 Commisson'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.73-7380 Filed 4-16-73;8:45 am]

[Project No. 516—South Carolina]

SOUTH CAROLINA ELECTRIC & GAS CO.

Notice of Availability of Environmental Statement for Inspection

APRIL 11, 1973.

Notice is hereby given that on April 18, 1973, as required by the Commission rules and regulations under Order 415–C, issued December 18, 1972, a final environmental statement prepared by the Commission's staff pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969 (Public Law 91–100) was placed in the public files of the Federal Power Commission. This statement deals with an application filed by the South Carolina Electric & Gas Co., licensee for the Saluda project No. 516, for approval of easements on project lands in Lexington County, S.C.

This statement is available for public inspection in the Commission's Office of Public Information, room 2523, General Accounting Office, 441 G Street NW., Washington, D.C. and its Atlanta Regional Office. Copies will be available from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151.

Approval of the easements is for the proposed construction on project lands of nonproject facilities comprising causeways, a bridge, and a pipe for the discharge of treated domestic waste effluent to be constructed as part of the planned community development known as Watergate.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73–7378 Filed 4–16–73;8:45 am]

FEDERAL RESERVE SYSTEM

FIRST & MERCHANTS CORP.

Acquisition of Bank

First & Merchants Corp., Richmond, Va., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of the successor by merger to Mountain Trust Bank, Roanoke, Va. The factors that are considered in acting on the application are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Richmond. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 7, 1973.

Board of Governors of the Federal Reserve System, April 9, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73–7375 Filed 4–16–73;8:45 am]

FORT WORTH NATIONAL CORP.

Retention of Banks

The Fort Worth National Corp., Fort Worth, Tex., has applied in two separate applications as set forth below for the Board's approval under section 3(a) of the Bank Holding Company Act (12 U.S.C. 1842(a)):

1. To retain indirect ownership (with sole discretionary voting authority) of 691 of the voting shares of Bank of Fort Worth (formerly West Side State Bank), Fort Worth, Tex., which were acquired between April 1, 1971, and October 8, 1971, without the prior approval of the Board. Applicant, which now directly and indirectly controls 30.01 percent of the outstanding shares of said bank, states that the acquisition was made directly by the trust department of The Fort Worth National Bank, Fort Worth, Tex., a wholly owned banking subsidiary of applicant; and

2. To retain indirect ownership (with sole discretionary voting authority) of 1,010 of the voting shares of Riverside State Bank, Fort Worth, Tex., which were acquired between April 1, 1971, and May 19, 1972, without the prior approval of the Board. Applicant, which now directly and indirectly controls 28.36 percent of the outstanding shares of said bank, states that the acquisition was also made directly by the trust department of The Fort Worth National Bank, Fort Worth, Tex.

By virtue of section 2(g)(1) of the act (12 U.S.C. 1841(g)(1)), shares held, owned or controlled by applicant's subsidiary are deemed to be indirectly owned or controlled by applicant. Applicant states that it was unaware at the time of the acquisition that prior approval from the Board would be necessary to acquire such shares in Bank of Fort Worth and Riverside State Bank.

The factors that are considered in acting on the applications are set forth in section 3(c) of the act (12 U.S.C. 1842(c)). The applications 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 applications 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 May 7, 1973.

Board of Governors of the Federal Reserve System, April 10, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73–7377 Filed 4–16–73;8:45 am]

SOUTHEAST BANKING CORP.

Acquisition of Bank

Southeast Banking Corporation, Miami, Fla., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Peoples Bank of Venice, Venice, Fla. The factors that are considered in acting on the application are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

The application may be inspected at the Office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 7, 1973.

Board of Governors of the Federal Reserve System, April 10, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73–7376 Filed 4–16–73;8:45 am]

U.N. BANCSHARES, INC.

Acquisition of Bank

U.N. Bancshares, Inc., Springfield, Mo., 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 90 percent or more of the voting shares of Bank of Taney County, Forsyth, Mo. 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 St. Louis. 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 May 7, 1973.

Board of Governors of the Federal Reserve System, April 9, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73–7374 Filed 4–16–73;8:45 am]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regs. Temporary Reg. F–175]

SECRETARY OF HEALTH, EDUCATION, AND WELFARE

Delegation of Authority

1. *Purpose.*—This regulation delegates authority to the Secretary of Health, Education, and Welfare to procure, operate, and manage the Social Security Administration Data Acquisition and Response System (SSADARS), a subsystem of the Federal Telecommunications System.

2. *Effective date.*—This delegation of authority is effective immediately.

3. *Delegation.*—a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of

1949, 63 Stat. 377, as amended, particularly section 205(d) (40 U.S.C. 486), authority as hereby delegated to the Secretary of Health, Education and Welfare to procure, operate, and manage the Social Security Administration Data Acquisition and Response System (SSA DARS) in accordance with the provisions of an interagency agreement between the General Services Administration and the Department of Health, Education, and Welfare.

b. The Secretary of Health, Education, and Welfare may redelegate this authority to any officer, official, or employee of the Department of Health, Education, and Welfare.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration and, further, shall be exercised in cooperation with the responsible offices, officials, and employees thereof.

ARTHUR F. SAMPSON,
Acting Administrator of General Services.

APRIL 10, 1973.

[FR Doc.73-7359 Filed 4-16-73;8:45 am]

NATIONAL LABOR RELATIONS BOARD

HORSERACING AND DOGRACING INDUSTRIES

Declination of Assertion of Jurisdiction

On July 18, 1972, the Board published in the FEDERAL REGISTER a notice of proposed rulemaking which invited interested parties to submit to it (1) data relevant to defining the extent to which the horseracing and dogracing industries 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 industries, (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 industries. The Board received 96 responses to the notice. After careful consideration of all the responses, the Board has concluded that it will not assert jurisdiction over the horseracing and dogracing industries. A rule declining to assert such jurisdiction has been issued concurrently with the publication of this notice.[1]

The jurisdiction of the National Labor Relations Board under section 9 of the National Labor Relations Act, as amended,[2] to determine questions concerning representation, and under section 10 of the act to prevent unfair labor practices, extends to all such matters which "affect Commerce" as defined in section 2(7) of the act.[3] Under section 14(c) of the act,[4] the Board in its discretion may decline to assert jurisdiction over labor disputes involving any class or category of employers if such labor disputes will not have a substantial impact in commerce and provided that it had not asserted jurisdiction over such class or category prior to August 1, 1959. The Board has consistently declined to assert jurisdiction over labor disputes in the horseracing and dogracing industries[5] as well as over labor disputes involving employers whose operations are an integral part of these racing industries.[6] After carefully considering the responses, the Board has decided not to alter its position with respect to the horseracing and dogracing industries and has concluded that it will continue to decline to assert jurisdiction over labor disputes in these industries.

In prior decisions, the Board declined to assert jurisdiction over these industries noting, inter alia, the extensive State control over the industries. It appears that State law sets racing dates of the tracks; State law determines the percentage share of the gross wagers that goes to the State; and State law determines the percentage of gross wagers to be retained by the track. In addition, the State licenses employees, exercises close supervision over the industries through State racing commissions, and in many States retains the right to effect the discharge of employees whose conduct jeopardizes the "integrity" of the industry. As the industries constitute a substantial source of revenue to the States, a unique and special relationship has developed between the States and these industries which is reflected by the States continuing interest in and supervision over the industries.

In addition, the sporadic nature of the employment in these industries encourages a high percentage of temporary part-time workers and results in a high turnover of employees and a relatively unstable work force. This is further evidenced by a pattern of short workhours and sporadic and short periods of active employment with any given employer.

Besides minimizing the impact on commerce of the industries, this pattern of short-term employment also gives us pause with respect to the effectiveness of any proposed exercise of our jurisdiction in view of the serious administrative problems which would be posed both by attempts to conduct elections and to make effective any remedies for alleged violations of the act within the highly compressed timespan of active employment which is characteristic of the industries.

Thus, we have concluded that the operations of these industries continue to be peculiarly related to, and regulated by, local governments and, further, that our exercise of jurisdiction would not substantially contribute to stability in labor relations. We are also not unmindful of the fact that relatively few labor disputes have occurred in these industries in recent years, thus reaffirming the Board's earlier assessment that the impact of labor disputes in these industries is insubstantial and does not warrant the Board's exercise of jurisdiction.[7]

Accordingly, for the above reasons, the Board[8] reaffirms its earlier conclusion and declines to assert jurisdiction over these industries.

Member Fanning does not join in the Board's conclusion to decline to assert its jurisdiction over the said industries, based on the reasons spelled out in his dissenting position in Centennial Turf Club Inc., 192 NLRB No. 97.

[SEAL] JOHN C. TRUESDALE,
Executive Secretary.

[FR Doc.73-7361 Filed 4-16-73;8:45 am]

[1] See title 29, ch. I, pt. 103, supra.

[2] 61 Stat. 140, 143, 146, 29 U.S.C. secs. 158, 159, 160.

[3] 61 Stat. 137, 29 U.S.C. sec. 152(7). See *N.L.R.B. v. Fainblatt, et al.*, 306 U.S. 601.

[4] 29 U.S.C. sec. 164.

[5] *Los Angeles Turf Club, Inc.*, 90 NLRB 20 (horseracing track); *Jefferson Downs, Inc.*, 125 NLRB 386 (horseracing track); *Meadow Stud, Inc.*, 130 NLRB 1202 (horse owner/breeder); *Hialeah Race Course, Inc.*, 125 NLRB 388 (horseracing track); *Walter A. Kelley*, 139 NLRB 744 (horse owners/breeders); *Centennial Turf Club, Inc.*, 192 NLRB No. 97 (horseracing track); *Yonkers Raceway, Inc.*, 196 NLRB No. 81 (horseracing track); *Jacksonville Kennel Club*, Case 12-RC-3815, May 5, 1971 (dogracing track) (not reported in NLRB volumes).

[6] *Pinkerton's National Detective Agency*, 114 NLRB 1363; *Hotel & Restaurant Employees & Bartenders International Union, Local 343 (Resort Concessions, Inc.)*, 148 NLRB 208.

[7] Walter A. Kelley, supra.

[8] Chairman Miller and members Jenkins, Kennedy, and Penello.

SECURITIES AND EXCHANGE COMMISSION

[811-1572]

DIKEWOOD FUND, INC.

Notice of Filing of Application

APRIL 10, 1973.

Notice is hereby given that the Dikewood Fund, Inc. (Applicant), 1420 Carlisle NE., Albuquerque, N. Mex., a Delaware corporation registered as a nondiversified, open-end management investment company under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations set forth therein, which are summarized below.

On January 26, 1968, Applicant filed a notification of registration pursuant to section 8(a) of the Act and subsequently filed registration statements pursuant to section 8(b) of the Act, and section 5 of the Securities Act of 1933 (1933 Act). Applicant's registration statement under the 1933 Act became effective on August 12, 1968.

At a special meeting held on December 15, 1972, the board of directors of Applicant unanimously agreed that the Applicant should cease offering its shares for sale to the public, effective January 1,

1973, but continue to redeem its shares at the request of its shareholders at the net asset value as had theretofore been its policy.

Between December 15, 1972, and January 1, 1973, shares of the fund in the amount of $2,500 were sold. These sales have been rescinded with no loss to the fund. On January 2, 1973, Applicant's securities were owned by less than 100 persons. Applicant represents that it has no present intention of making a further public offering of its securities.

Section 3(c)(1) of the Act excepts from the definition of an investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not propose to make a public offering of its securities.

Section 8(f) of the Act provides, in pertinent parts, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than May 4, 1973, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

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

[FR Doc.73-7365 Filed 4-16-73;8:45 am]

[812-3441]

EQUITY FUNDING CORPORATION OF AMERICA, ET AL.

Notice of Filing of Application

APRIL 9, 1973.

Notice is hereby given that Equity Funding Corporation of America (EFCA), EFC Management Corp. (EFC Management), EFC Distributors Corp. (EFC Distributors), and EFC Sponsors Corp. (EFC Sponsors), 1900 Avenue of the Stars, Los Angeles, Calif. 90067, referred to collectively as Applicants, have filed an application pursuant to section 9(c) of the Investment Company Act of 1940 (Act) for an order exempting Applicants from the provisions of section 9(a) of the Act to the extent that section 9(a) is applicable by virtue of a final judgment of permanent injunction (injunction) entered against EFCA in an action entitled *Securities and Exchange Commission* v. *Equity Funding Corporation of America* (USDC, Central District Calif., civil action No. 73-7 14-HP).

EFC Management further requests an order of the Commission temporarily exempting EFC Management, as of the date of the injunction, from the provisions of section 9(a) of the Act with respect to its acting as investment adviser for investment companies presently under its management pending final determination of the foregoing request for exemption or, upon notice, until the Commission, at such earlier time as it in its sole discretion deems necessary and appropriate under the circumstances for the protection of such investment companies, notifies EFC Management that the temporary exemption is withdrawn.

EFC Sponsors also requests a similar order of the Commission temporarily exempting EFC Sponsors from the provisions of section 9(a) of the Act with respect to its acting as sponsor-depositor, but not as principal underwriter of existing accumulation plans of five unit investment trusts presently under its sponsorship.

All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

EFCA is an integrated financial service organization whose common stock is listed on the New York Stock Exchange. The greatest part of EFCA's income has been derived through the sale of life insurance policies and mutual fund shares, either separately or in coordinated acquisition programs.

EFC Management, a wholly owned subsidiary of EFCA is a registered investment adviser and the investment adviser for three registered open-end investment companies (the Funds): Equity Growth Fund of America, Inc.; Equity Progress Fund, Inc.; and Fund of America, Inc. The Funds have net assets of more than $200 million and more than 65,000 shareholders.

EFC Sponsors, a wholly owned subsidiary of EFCA, is a registered broker-dealer and the sponsor-depositor for five registered unit investment trusts having periodic payment plans outstanding for the accumulation of shares of Axe-Houghton Fund, Inc.; Axe Science Corp.; Equity Progress Fund, Inc.; Fund of America, Inc.; and National Investors Corp. These unit investment trusts have an aggregate face amount of approximately $586.6 million and over 138,000 planholders. EFC Sponsors also serves as principal underwriter for the plans for the accumulation of shares of Fund of America, Inc., and National Investors Corp.

EFC Distributors, also a wholly owned subsidiary of EFCA is a registered broker-dealer and serves as principal underwriter for the investment companies advised by EFC Management.

On April 3, 1973, the Commission filed the above-mentioned injunctive action in the U.S. District Court of the central district of California. Shortly thereafter, on April 3, EFCA consented without admitting or denying the allegations on the Commission's complaint, to the entry of a final judgment of permanent injunction. On the same day the court issued an order, as relevant here, enjoining EFCA from engaging in fraudulent activities in connection with proxy statements, filings with the Commission, and the purchase and sale of securities. The order also made provisions for the appointment of a special investigator and a new interim independent board of directors.

Section 9(a) of the Act, insofar as is pertinent here, makes it unlawful for any person, or any company with which such person is affiliated, to act in the capacity of investment adviser, principal underwriter or depositor of any registered investment company if such person is by reason of any misconduct enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.

Section 9(c) provides that upon application the Commission shall grant an exemption from the provisions of section 9(a) either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to the applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

EFCA is rendered ineligible under section 9(a) because of it being directly enjoined. EFC Management, EFC Sponsors, EFC Distributors are also rendered ineligible under section 9(a) because they are subsidiaries of EFCA and thus are deemed affiliated persons of EFCA within the meaning of section 2(a)(3) of the Act.

Applicants contend that the standards for exemption, specified in section 9(c) of the Act, are satisfied by the facts in this case.

Applicants represent that the Commission's complaint did not name EFC Management, EFC Sponsors, EFC Distributors and the terms of the complaint and the judgment did not reflect any misconduct in EFCA's investment advisory, distributing and sponsorship business.

Applicants represent further that certain officers and directors of EFCA have resigned and that provision has been made for appointment of a new independent board of directors.

Applicants represent further that they have never been required to apply for an exemption from section 9(a) of the Act or been the subject of any injunctions.

Applicants also represent that the prohibitions of section 9(a) would in effect orphan the Funds and the plans, and it would interfere with the continuity of essential operations by the Funds and plans.

The Commission has considered the matter and, upon the basis of information available at this time, finds that:

1. The conduct of EFC Management has been such as not to make it against the public interest or protection of investors to grant the application of EFC Management temporarily exempting EFC Management from the provisions of section 9(a) of the act with respect to its acting as investment adviser for investment companies presently under its management pending final determination of EFC Management's request for exemption or upon notice, until the Commission, at such earlier time as it, in its sole discretion deems reasonable and appropriate under the circumstances, notifies applicants that the temporary exemption is withdrawn.

2. The conduct of EFC Sponsors has been such as not to make it against the public interest or protection of investors to grant the application of EFC Sponsors temporarily exempting EFC Sponsors from the provisions of section 9(a) of the act with respect to its acting as sponsor-depositor, but not distributor or principal underwriter, for existing accumulation plans of five unit investment trusts presently under its sponsorship pending final determination of EFC Sponsor's request for exemption or upon notice, until the Commission, at such earlier time as it, in its sole discretion deems reasonable and appropriate under the circumstances, notifies applicants that the temporary exemption is withdrawn:

3. In order to maintain uninterrupted management of the investment companies under the management of EFC Management and the uninterrupted sponsor-depositorship of the unit investment trusts sponsored by EFC sponsors, it is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act that the temporary order of exemption be issued as of the issuance of the above-mentioned injunction.

Accordingly, it is ordered, Pursuant to section 9(c) of the Act that EFC Management and EFC Sponsors, subject to the limitations stated in paragraphs 1 and 2 above, be and they hereby are temporarily exempted from the provisions of section 9(a) of the Act, operative as a result of the entry of the injunction against EFCA in *Securities and Exchange Commission* v. *Equity Funding Corp. of America.*

This order is to be deemed issued as of the issuance of said injunction.

Notice is further given that any interested person may, not later than May 15, 1973 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such a request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the addresses set forth above. Proof of such service (by affidavit or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided in rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commisison upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-7366 Filed 4-16-73;8:45 am]

[812-3396]

HOME LIFE SEPARATE ACCOUNT D AND HOME LIFE INSURANCE CO.

Notice of Filing of Application

APRIL 10, 1973.

Notice is hereby given that Home Life Separate Account D (Account D), registered under the Investment Company of 1940 (Act) as a unit investment trust, and Home Life Insurance Co. (Home Life) 253 Broadway, New York, N.Y. 10007, a mutual life insurance company incorporated under the laws of New York, (hereinafter collectively called Applicants) have filed an application pursuant to section 6(c) of the Act for an order exempting Applicants from the provisions of section 22(d) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Account D is a separate account of Home Life established as the facility for issuing certain variable annuity contracts (Contracts). All amounts credited to Account D pursuant to the Contracts will be invested in shares of Home Life Equity Fund, Inc., a diversified open-end investment company registered under the Act. Home Life is a registered broker-dealer under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc., and is the principal underwriter of the Contracts participating in Account D. Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter for such company shall sell any redeemable security to the public except at a current public offering price described in the prospectus.

From each purchase payment made under the single payment immediate Contracts participating in Account D, Home Life deducts a sales charge of 4¼ percent of each payment and an administration charge of either 2 or 1 percent depending upon the size of the single payment. Applicants request an exemption from section 22(d) to permit Home Life to eliminate such sales and administration charges on amounts derived from values accumulated under other insurance policies or annuity contracts previously issued by Home Life or from death benefits payable under such previously issued insurance policies or annuity contracts, which amounts are used to purchase a single payment immediate Contract.

Applicants state that the elimination of sales and administrative charges on amounts transferred from other Home Life insurance policies or annuity contracts is consistent with the protection of investors since such charges have been previously paid on such other policies or contracts. The elimination of such charges would avoid unnecessary duplication of charges, and, under these circumstances, will not arbitrarily or unfairly discriminate between different categories of investors.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons or transactions from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than May 4, 1973 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of service (by affidavit, or in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after such date, as provided by rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the

matter herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

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

[FR Doc.73-7367 Filed 4-16-73;8:45 am]

BROKER DEALER MODEL COMPLIANCE PROGRAM ADVISORY COMMITTEE

Notice of Public Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770, the Securities and Exchange Commission announced the following public advisory committee meetings.

The Commission's Advisory Committee on a model compliance program for broker-dealers, established on October 25, 1972 (Securities Exchange Act Release No. 9835), will hold meetings open to the public at the Palmer House, State and Monroe Streets, Chicago, Ill., at 9 a.m., local time, May 1-2, 1973.

This Advisory Committee was formed to assist the Commission in developing a model compliance program to serve as an industry guide for the broker-dealer community. Assisted by this Committee's work the Commission plans to publish a guide to broker-dealer compliance under the securities acts in order to advise broker-dealers of the standards to which they should adhere if investor confidence in the fairness of the market place is to be warranted and sustained. The Committee's recommendations are not intended to result in the expansion of Commission rules governing broker-dealers, but to inform broker-dealers as to the existing requirements and how they may comply with them.

The Committee's scheduled meetings will be for the purpose of reviewing drafts and proposals concerning the Committee's proposed report to the Commission on these compliance guidelines for broker-dealers.

These meetings are open to the public. Any interested person may attend and appear before or file statements with the Advisory Committee—which statements, if in written form, may be filed before or after the meeting or, if oral, at the time and in the manner and extent permitted by the Advisory Committee.

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

APRIL 10, 1973.

[FR Doc.73-7364 Filed 4-16-73;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DISTRICT OF COLUMBIA DEVELOPMENTAL PLAN

Notice of Informal Hearing

On March 2, 1973 (38 FR 5702), notice was published of the submission, pursuant to section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) and 29 CFR 1902.11, and availability for public comment of the Occupational Safety and Health Plan for the District of Columbia. An initial examination of the plan, indicates it proposes approaches to meeting the standards of section 18(c) of the act and 29 CFR 1902 differing procedurally from the Federal enforcement provisions of the act.

In view of the widespread implication of a decision on whether such different procedures are or are not at least as effective as the Federal procedures under the requirements of section 18(c)(2) of the act, as implemented in part 1902, the Assistant Secretary for Occupational Safety and Health, on his own initiative pursuant to the provisions of 29 CFR 1902.11(e) hereby gives notice that an informal hearing will be held on the plan on May 9, 1973. Interested persons are invited to present orally data, views, or arguments concerning the plan and the issues presented thereby at the informal hearing. The informal hearing will be held in conference room A, Interstate Commerce Commission Building, First Floor, 12th and Constitution Avenue NW., Washington, D.C. 20210.

Beginning at 9:30 a.m. on May 9, 1973, the administrative law judge will hold a brief prehearing conference in order to establish the order and time for the presentation of statements and settle any other matters which may be relevant to the disposition of the hearing. The informal hearing will begin at the close of the prehearing conference.

Interested persons desiring to appear at the informal hearing shall file a notice of intention to appear in writing with the Director of Federal and State Operations, room 305, Railway Labor Building, 400 First Street NW., Washington, D.C. 20210. The notice of intention to appear (original and two copies) must be filed no later than April 26, 1973. The notice must state the name and address of the person to appear, and the approximate amount of time required for his presentation. The notice must also include, or be accompanied by, a statement of the position to be taken with regard to the plan and of the evidence to be adduced in support of the position. The use of prepared statements by witnesses is encouraged. All documents intended to be submitted for the record at the hearing should be submitted in duplicate.

The informal hearing will be conducted in accordance with 5 U.S.C. 556 and 557 by an administrative law judge to be appointed pursuant to (5 U.S.C. 3105). The presiding administrative law judge is empowered to:

(1) Rule upon procedural requests, objections, and other procedural matters;

(2) Regulate the course of the hearing and the presentation of oral data, views or arguments concerning the plan.

The hearing will be reported verbatim, and transcripts will be available for inspection to any interested person on such conditions as the presiding administrative law judge may prescribe. The judge will have discretion to keep the record of the hearing open for a reasonable stated time to receive written recommendations, and additional data, views, and arguments from any person who has participated in the oral proceeding. Within a reasonable time following the close of the record, the presiding administrative law judge shall certify the complete record, including the transcript of the hearing, all exhibits filed during the hearing, all written submissions on the proposed rules, and any posthearing presentations to the Assistant Secretary of Labor for Occupational Safety and Health for his decision.

The Assistant Secretary of Labor for Occupational Safety and Health shall thereafter consider all relevant comments and arguments presented and issue his decision on the Plan. Signed at Washington, D.C., this 11th day of April 1973.

CHAIN ROBBINS, *Deputy Assistant Secretary of Labor.*

[FR Doc.73-7355 Filed 4-16-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Ex Parte MC-43]

A. A. RABALAIS, INC., AND C & D TRANSPORTATION CO., INC.

Lease and Interchange of Vehicles by Motor Carriers

Order. At a session of the Interstate Commerce Commission, Motor Carrier Leasing Board, held at its office in Washington, D.C., on the 23d day of March 1973.

It appearing, that a petition has been filed by A. A. Rabalais, Inc. (permit MC-68997 and various subs) and C & D Transportation Co., Inc. (MC-109236 and various subs), commonly controlled, for waiver of § 1057.4 of the lease and interchange of vehicles regulations (49 CFR . 1057), concerning equipment leased between petitioners;

It further appearing, that petitioners cooperatively and jointly apply the same standards of inspection and maintenance to equipment in accordance with the motor carrier safety regulations of the U.S. Department of Transportation;

And it further appearing, that the U.S. Department of Transportation reports that the safety records of petitioners are absent any substantial negative showing and that therefore that department offers no objection to petition for waiver of § 1057.4(c);

And it further appearing, that waiver of § 1057.4(a)(3) would provide for more

economical and efficient operations resulting in a beneficial improvement of service;

It is ordered, That waiver of the requirements of paragraphs (a) (3) and (c) of § 1057.4 as set forth in the first paragraph of this order be, and it is hereby granted, provided that the equipment is inspected on the day it is to be leased and found to meet the requirements of the safety regulations of the U.S. Department of Transportation and that the petitioners remain in satisfactory compliance with those regulations and under common control;

It is further ordered, That the petition, except to the extent granted above, be, and it is hereby denied because no further relief has been found to be justified.

By the Commission, Motor Carrier Leasing Board.

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

[FR Doc.73-7394 Filed 4-16-73;8:45 am]

[Notice 221]

ASSIGNMENT OF HEARINGS

APRIL 12, 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-124211 Sub 2181, Hilt Truck Line, Inc., MC-135874 Sub-1, LTL Perishables, Inc., now assigned June 4, 1973 (2 weeks), at Omaha, Nebr., is postponed to June 18, 1973 (6 days), at Omaha, Nebr., in a hearing room to be later designated.

MC-C-7964, River Trails Transit Lines, Inc.—investigation and revocation of certificate—now assigned May 10, 1973, at Chicago, Ill., is canceled.

MC-C-7937, Arne R. Hansen, doing business as Arne R. Hansen Van & Storage, John F. Ivory Storage Co., Inc., Pan American Van Lines, Inc., and Burnham Van Service, Inc.—investigation of operations—now assigned May 17, 1973, at Kansas City, Mo., is canceled.

MC 136537, D. M. T. Trucking, Inc., contract carrier application, now being assigned June 5, 1973, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 135234 Sub 9, Commercial Cartage, Inc., now being assigned June 6, 1973, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 138212, Harvey R. Shipley & Sons, Inc., now being assigned June 7, 1973, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 134922 Sub 37, B. J. McAdams, Inc., now being assigned June 12, 1973, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC-F-11725, Three "T" Consultants & Transportation, Inc., doing business as Three "T" Transportation, Inc.—Lease—Trans-World Movers, Inc., now being assigned June 13, 1973, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 138341, Northwest Auto Transport Co., application dismissed.

MC-F-11023, Dundee Truck Line, Inc.—control—Modern Motor Express, Inc., MC-100914 Sub 27, Dundee Truck Line, Inc., MC-F-11504, Indianhead Truck Line, Inc.—control and merger—Dundee Truck Line, Inc., et al., FD-27255, Indianhead Truck Line, Inc., notes, now being assigned continued hearing May 16, 1973, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 136597, West Kentucky Motor Express, Inc., continued to June 19, 1973, at the Ramada Inn, 1380 South Beltline Highway, Paducah, Ky.

AB 5 Sub 116, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., trustees of the property of Penn Central Transportation Co., debtor, abandonment Ida branch between Lenawee Junction and Ida, Lenawee, and Monroe Counties, Mich., now assigned May 21, 1973, will be held at the Monroe County Road Commission Building, 840 South Telegraph Road, Monroe, Mich.

MC 119632 Sub 56, Reed Lines, Inc., now assigned May 23, 1973, will be held in room 225, Federal Office Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio.

MC 126625 Sub 11, Murphy Surf-Air Trucking Co., Inc., now assigned May 24, 1973, will be held in room 2, State Office Building, 65 South Front Street, Columbus, Ohio.

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

[FR Doc.73-7392 Filed 4-16-73;8:45 am]

[Ex Parte No. MC-43]

EAGLE TRUCKING CO.

Lease and Interchange of Vehicles by Motor Carriers

At a session of the Interstate Commerce Commission, Motor Carrier Leasing Board, held at its office in Washington, D.C., on the 23d day of March 1973.

It appearing that a petition has been filed by Eagle Trucking Co. (MC-119774) and Cox and Shay, Inc. (MC-136828 and various subs), under common control, for waiver of paragraphs (a) (3) and (c) of § 1057.4 of the lease and interchange of vehicles regulations (49 CFR 1057) concerning equipment leased between petitioners;

It further appearing that the safety record of petitioner Eagle Transportation Co. as reported by the U.S. Department of Transportation is such that relaxation of the above paragraphs of the leasing regulations is not warranted;

It is ordered, That the petition for waiver of paragraphs (a) (3) and (c) of § 1057.4 as set forth in the first paragraph of this order, be, and it is hereby denied.

By the Commission, Motor Carrier Leasing Board.

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

[FR Doc.73-7393 Filed 4-16-73;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

APRIL 12, 1973.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed May 17, 1973.

FSA No. 42660—*Acetic acid to Cape Fear, N.C.* Filed by Southwestern Freight Bureau, agent (No. B-408), for interested rail carriers. Rates on acetic acid, in tank-car loads, as described in the application, from Bayport, Brownsville, and Texas City, Tex., to Cape Fear, N.C.

Grounds for relief—Market competition and rate relationship.

Tariff—Supplement 19 to Southwestern Freight Bureau, agent, tariff No. 11-E, ICC 5002. Rates are published to become effective on May 12, 1973.

By the Commission.

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

[FR Doc.73-7395 Filed 4-16-73;8:45 am]

[Notice 254]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b) and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before May 7, 1973. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-74279. By order of March 30, 1973, the Motor Carrier Board approved the transfer to J. V. Taylor, Inc.,

Wyalusing, Pa., of that portion of the operating rights in certificate No. MC-2871 issued December 3, 1969, to Carlton Repsher, Laceyville, Pa., authorizing the transportation of livestock, from points in Bradford, Tioga, Wyoming, Susquehanna, and Sullivan Counties, Pa., to New York, N.Y., and Newark and Jersey City, N.J. Kenneth R. Davis, 999 Union Street, Taylor, Pa. 18517, registered practitioner for applicants.

No. MC-FC-74295. By order of March 4, 1973, the Motor Carrier Board approved the transfer to Central & Southern Truck Lines, Inc., a Tennessee corporation, Memphis, Tenn., of the operating rights in certificate No. MC-113267 and subs thereunder issued various dates from 1960 through 1973 to Central & Southern Truck Lines, Inc., an Illinois corporation, Caseyville, Ill., authorizing the transportation of various commodities from, to and between specified points and areas in the United States, except Alaska and Hawaii. Marvin Goldenhersh, 101 South High Street, Belleville, Ill., 62220, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-7398 Filed 4-16-73;8:45 am]

[Notice 45]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

APRIL 10, 1973.

The following are notices of filing of applications[1] for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex parte No. MC-67 (49 CFR 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the Service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 491 (sub-No. 1 TA) (Correction), filed March 1, 1973, published in the FEDERAL REGISTER issue of March 19, 1973, and republished as corrected this issue. Applicant: MARSH EXPRESS, INC., P.O. Box 447, Glassboro, N.J. 08028. Applicant's representative: Jacob P. Billig, 1108 16th Street NW., Washington, D.C. 20036.

NOTE.—The purpose of this partial republication is to add the tacking information, which was omitted in error. The tacking information should read: Applicant intends to utilize the temporary authority sought, in part, for the purpose of interlining at Philadelphia, Pa., with other motor common carriers in the performance of a joint-line through transportation service. The rest of the application remains as previously published.

No. MC 16634 (sub-No. 18 TA), filed March 30, 1973. Applicant: STRANG TRANSPORTATION, INC., Center and Elmer Streets, Elmer, N.J. 08318. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared animal and poultry feeds*, in bulk, in compartmentized equipment of not less than three compartments, from the plantsite of Ralston Purina Co., Hampden Township (Camp Hill), Pa., to points in New Jersey, for 180 days. Supporting shipper: Ralston Purina Co., Chow Division, P.O. Box 248, Camp Hill, Pa. 17011. Send protests to: Richard M. Regan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 428 East State Street, room 204, Trenton, N.J. 08608.

No. MC 16903 (sub-No. 34 TA) filed March 28, 1973. Applicant: MOON FREIGHT LINES, INC., 120 West Grimes Lane, P.O. Box 1275, Bloomington, Ind. 47401. Applicant's representative: Ferdinand Born, 601 Chamber of Commerce Building, Indianapolis, Ind. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials, gypsum and gypsum products and materials and supplies* (except commodities in bulk) used in the installation or distribution of such commodities, from the plantsite of United States Gypsum Co., Martin County, Ind. to points in Illinois, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, Tennessee, and West Virginia; for 180 days. Supporting shipper: U.S. Gypsum Co., 101 South Wacker Drive, Chicago, Ill. 60604. Send protests to: District Supervisor James W. Habermehl, Interstate Commerce Commission, Bureau of Operations, 802 Century Building, 36 South Pennsylvania Street, Indianapolis, Ind. 46204.

No. MC 20861 (sub-No. 3 TA), filed March 30, 1973. Applicant: FROZEN FOOD DELIVERY SERVICE, INC., 300 West Street, Berlin, Mass. 01503. Applicant's representative: Frank J. Weiner, 15 Court Street, Boston, Mass. 02108. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruit juice concentrates*, from Taunton and Southborough, Mass., to points in New York, New Jersey, Pennsylvania, Vermont, Maryland, Connecticut, Rhode Island, New Hampshire, Maine, and the District of Columbia, for 180 days. Restriction: Restricted to a contract or continuing contract with Newton Foods, Inc. of Taunton, Mass. Supporting shipper: Newton Foods, Inc., 81 Ingell Street, Taunton, Mass. Send protests to: District Supervisor Joseph W. Balin, Bureau of Operations, Interstate Commerce Commission, 338 Federal Building and U.S. Courthouse, 436 Dwight Street, Springfield, Mass. 01103.

No. MC 61396 (sub-No. 244 TA), filed March 30, 1973. Applicant: HERMAN BROS., INC., 2501 North 11th Street, P.O. Box 189 (Box Zip 68101), Omaha, Nebr. 68110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, in bulk, in tank, or hopper type vehicles, from Kirkwood, Mo. and points in Missouri within 10 miles of Kirkwood, Mo., to Lincoln, Nebr., for 180 days. Supporting shipper: Ready Mixed Concrete Co., P.O. Box 80268, Lincoln, Nebr. 68501. Send protests to: Carroll Russell, district supervisor, Bureau of Operations, Interstate Commerce Commission, 711 Federal Office Building, Omaha, Nebr. 68102.

No. MC 66121 (Sub-No. 29 TA), filed March 30, 1973. Applicant: INDIAN BOW TRUCK LINES, LTD., 225 Marcus Boulevard, Deer Park, N.Y. 11729. Applicant's representative: Bert Collins, 140 Cedar Street, New York, N.Y. 10006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, on flatbed or open top equipment, from Bethlehem Steel Corp. plant in Lackawanna, N.Y., to points in Illinois, Indiana, and Michigan, for 180 days. Supporting shipper: Bethlehem Steel Corp., Bethlehem, Pa. 18016. Send protests to: Anthony D. Giaimo, district supervisor, Bureau of Operations, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 88300 (sub-No. 31 TA), filed March 30, 1973. Applicant: DIXIE TRANSPORT CO., P.O. Box 395, Chicago Heights, Ill. 60411. Applicant's representative: Charles W. Singer, 327 South LaSalle Street, Chicago, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automobiles*, in initial movement, in truckaway service, from West Palm Beach, Fla., to Northbrook, Ill., for 180 days. Supporting shipper: Steven-Rand Corp., suite 925, 134 North LaSalle Street, Chicago, Ill. Send protests to: Robert G. Anderson, district supervisor, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 South Dearborn Street, room 1086, Chicago, Ill. 60604.

No. MC 102567 (sub-No. 162 TA), filed March 30, 1973. Applicant: EARL GIBBON TRANSPORT, INC., a corporation, 4295 Meadow Lane, Bossier City, La. 71010. Authority sought to operate as a *common carrier*, by motor vehicle, over

[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.

irregular routes, transporting: *Gasoline*, in bulk, in tank vehicles, from Egan, La., to points in Arkansas, for 180 days. Supporting shipper: Triangle Refineries, Inc., P.O. Box 3367, Houston, Tex. 77001 (Mr. W. E. Harris, assistant manager). Send protests to: Paul D. Collins, district supervisor, Bureau of Operations, Interstate Commerce Commission, room T-9038, U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, La. 70113.

No. MC 105925 (sub-No. 4 TA), filed March 29, 1973. Applicant: PLAINFIELD TRANSPORTATION CO., INC., a corporation, Federal Road, Danbury, Conn. 06810. Applicant's representative: Thomas W. Murrett, 342 North Main Street, West Hartford, Conn. 06117. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Horsemeat*, fresh, in refrigerated vehicles, from Plainfield, Conn., to Logan International Airport, Boston, Mass., restricted to shipments having a subsequent movement by air, for 180 days. Supporting shipper: Plainfield Packing Co., Gendron Road, Plainfield, Conn. Send protests to: David J. Kiernan, district supervisor, Interstate Commerce Commission, Bureau of Operations, 324 U.S. Post Office Building, 135 High Street, Hartford, Conn. 06101.

No. MC 107496 (sub-No. 886 TA), filed March 30, 1973. Applicant: RUAN TRANSPORT CORP., Third and Keosauqua Way, P.O. Box 855 (Box ZIP 50304), Des Moines, Iowa 50309. Applicant's representative: E. Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lead oxide*, in bulk, in tank vehicles, from Indianapolis, Ind., to Kankakee, Ill. and Cleveland, Ohio, for 150 days. Supporting shipper: Quemetco, Inc., R.S.R. Corp., P.O. Box 41727, Indianapolis, Ind. 46241. Send protests to: Herbert W. Allen, tansportation specialist, Bureau of Operations, Interstate Commerce Commission, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 111170 (sub-No. 201 TA), filed April 2, 1973. Applicant: WHEELING PIPE LINE, INC., P.O. Box 1718, 2811 North West Avenue, El Dorado, Ark. 71730. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Dibromopropanol, in bulk, from El Dorado, Ark., to Fords, N.J., for 180 days. Supporting shipper: Great Lakes Chemical Corp., P.O. Box 1878, El Dorado, Ark. 71730. Send protests to: District Supervisor William H. Land, Jr., Bureau of Operations, Interstate Commerce Commission, 2519 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 111729 (sub-No. 380 TA), filed March 28, 1973. Applicant: PUROLATOR COURIER CORP., 2 Nevada Drive, Lake Success, (NHP–PO) N.Y. 11040. Applicant's representative: John M. Delany (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) *Business papers, records, audit and accounting media of all kinds, and advertising material moving therewith*, between Newark, Del., on the one hand, and, on the other, Baltimore, Md.; Washington, D.C.; points in Delaware, Montgomery, and Philadelphia Counties, Pa.; Essex and Morris Counties, N.J.; Arlington, Fairfax, Loudoun, and Prince William Counties, Va.; (B) *Business papers, records, audit and accounting media of all kinds, engineering drawings, and specifications, and small industrial parts moving therewith*, restricted against the transportation of packages or articles weighing in the aggregate more than 50 lbs. from one consignor to one consignee on any one day, between Angola, Ind., on the one hand, and, on the other, Cleveland, Milan, and Napoleon, Ohio; Detroit, Mich.; and Chicago, Ill.; and (C) *Business papers, records, audit and accounting media of all kinds, and business machines, office equipment and accessories thereto*, limited to articles and packages not to exceed 50 lbs., from one consignor to one consignee on any one day, between Fort Wayne, Ind., on the one hand, and, on the other, Quincy, Mich., and St. Louis, Mo., for 180 days. Supporting shippers: 1. Avon Products, Inc., 2100 Ogletown Road, Newark, Del. 19711; 2. Gould, Inc., Angola Weatherhead Street, Angola, Ind. 46703, and 3. Peter Eckrich and Sons, Inc., P.O. Box 388, Fort Wayne, Ind. 46801. Send protests to: Anthony D. Giaimo, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 112750 (sub-No. 293 TA), filed April 2, 1973. Applicant: PUROLATOR COURIER CORP., 2 Nevada Drive, Lake Success, N.Y. 11040. Applicant's representative: John M. Delany (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commercial papers, documents, written instruments and business records* (except currency and negotiable securities) as are used in the business of banks and banking institutions, between Berne, Ind., and Cleveland, Ohio, for 180 days. Supporting shipper: First Bank of Berne, Berne, Ind. 46711. Send protests to: Anthony D. Giaimo, district supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 113434 (sub-No. 56 TA), filed March 29, 1973. Applicant: GRA-BELL TRUCK LINE, INC., 679 Lincoln Avenue, Holland, Mich. 49423. Applicant's representative: Roger Van Wyk (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), and *advertising matter, display racks and premiums* when moving at the same time and in the same vehicle with foodstuffs, from the facilities of American Home Foods Division of American Home Products Corp., at LaPorte, Ind., to points in Kentucky, for 180 days. Supporting shipper: Harry Menaker, American Home Foods, 685 Third Avenue, New York, N.Y. 10017. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 225 Federal Building, Lansing, Mich. 48933.

No. MC 115331 (sub-No. 343 TA), filed March 27, 1973. Applicant: TRUCK TRANSPORT, INCORPORATED, 1931 North Geyer Road, St. Louis, Mo. 63101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Nitro-Carbo-Nitrate*, in containers, and *Class C Explosives*, in containers, when moving in mixed shipments with Nitro-Carbo-Nitrate, from Monsanto plantsite at or near Central City, Ky., to points in Lee, Wise, Buchanan, Dickenson, and Scott Counties, Va., and points in Morgan and Anderson Counties, Tenn., for 180 days. Supporting shipper: Monsanto Co., 800 North Lindbergh Boulevard, St. Louis, Mo. 63166. 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 115931 (sub-No. 27 TA), filed March 26, 1973. Applicant: BEE LINE TRANSPORTATION, INC., a corporation, P.O. Box 925, Baker, Mont. 59313. Applicant's representative: Robert Loveless (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, from Montana to points in North Dakota, Kansas, Missouri, Indiana, Michigan, and Ohio, for 180 days. Supporting shippers: There are approximately 10 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, room 222, U.S. P.O. Building, Billings, Mont. 59101.

No. MC 116300 (sub-No. 11 TA), filed April 2, 1973. Applicant: NANCE AND COLLUMS, INC., Post Office Drawer J, Fernwood, Miss. 39635. Applicant's representative: Harold D. Miller, Jr., P.O. Box 22567, Jackson, Miss. 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products*, from Avery Island, Anse LaButte, and Baldwin, La., to points in that part of Florida on and west of a line formed by the Chattahoochee and Apalachicola Rivers, for 180 days. Supporting shippers: Cargill, Inc., Cargill Building, Minneapolis, Minn., and International Salt Co., 228 St. Charles Street, New Orleans, La. 70130. Send protests to: Alan C. Tarrant, district supervisor, Interstate Commerce Commission, Bureau of Operations, room 212, 145 East Amite Building, Jackson, Miss. 39201.

No. MC 119789 (sub-No. 154 TA), filed March 29, 1973. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O.

Box 6188, Dallas, Tex. 75222. Applicant's representative: James K. Newbold, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared animal food* (except in bulk) from the plantsite and/or warehouse facilities of Lipton Pet Foods, Inc., at or near Golden Meadow, La., to points in Michigan and Ohio; and Pittsburgh and Belle Vernon, Pa., for 180 days. NOTE: Carrier does not intend to tack authority. Supporting shipper: Lipton Pet Foods, Inc., Box 89, 209 New Boston Street, Woburn, Mass. 01801. Send protests to: District Supervisor E. K. Willis, Jr., Interstate Commerce Commission, Bureau of Operations, 1100 Commerce Street, room 13C12, Dallas, Tex. 75202.

No. MC 121306 (sub-No. 8 TA), filed April 2, 1973. Applicant: SUPERIOR MOTOR EXPRESS, INC., P.O. Box 98, Gold Hill, N.C. 28071. Applicant's representative: Francis J. Ortman, 1100 17th Street NW., Suite 613, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel bars*, from Newark, N.J., to Sumter, Easley, Lake City, and Marion, S.C., for 180 days. Supporting shipper: Wyckoff Steel, Division of Ampco-Pittsburgh Corp., 722 Frelinghuysen Avenue, Newark, N.J. 07114. Send protests to: Terrell Price, Bureau of Operations, Interstate Commerce Commission, 800 Brair Creek Road, room CC516, Mart Office Building, Charlotte, N.C. 28205.

No. MC 123048 (sub-No. 248 TA), filed March 28, 1973. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 1919 Hamilton Avenue, P.O. Box A (Box ZIP 53401), Racine, Wis. 53403. Applicant's representative: Paul Martinson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum castings* (unfiinished), from Milwaukee, Wis., to points in Montgomery County, Va., for 180 days. Supporting shipper: Aluminum Castings & Engineering Co., 2039 South Lenox Street, Milwaukee, Wis. 53207. Send protests to: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, room 807, Milwaukee, Wis. 53203.

No. MC 123048 (sub-No. 249 TA), filed March 28, 1973. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 1919 Hamilton Avenue, Racine, Wis. 53401. Applicant's representative: Paul Martinson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crawler excavators*, from New Berlin, Wis., to ports of entry on the United States-Canada boundary line at Detroit, Mich., restricted to shipments moving to Ontario and Quebec, for 180 days. Supporting shipper: Unit Crane & Shovel Corp., 1915 South Moorland Road, New Berlin, Wis. 53151 (George J. Frank, Manager, Internal Sales Operations). Send protests to: District Supervisor, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, room 807, Milwaukee, Wis. 53203.

No. MC 123885 (sub-No. 12 TA), filed March 28, 1973. Applicant: C AND R TRANSFER CO., 1315 West Blackhawk Street, Sioux Falls, S. Dak. 57104. Applicant's representative: James W. Olson, 506 West Boulevard, Rapid City, S. Dak. 57701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bags and in bulk, from points in Pennington County, S. Dak., to points in North Dakota, for 180 days. Supporting shipper: South Dakota State Cement Plant, Rapid City, S. Dak. 57701 (John E. Doane, Director of Transportation). Send protests to: J. L. Hammond, District Supervisor, Bureau of Operations, Interstate Commerce Commission, room 369, Federal Building, Pierre, S. Dak. 57501.

No. MC 124078 (sub-No. 542 TA), filed March 27, 1973. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, Wis. 53215. Applicant's representative: Richard H. Prevette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals and wax emulsion*, from Vienna, Ga., to points in Alabama, Florida, Georgia, and Mississippi, for 180 days. Supporting shipper: Georgia-Pacific Corp., Southern Division, P.O. Box 909, Augusta Ga. 30903 (M. B. Jones, Traffic Manager, Southern Division). Send protests to: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, room 807, Milwaukee, Wis. 53203.

No. MC 124083 (sub-No. 47 TA), filed March 28, 1973. Applicant: SKINNER MOTOR EXPRESS, INC., 1035 South Keystone, Indianapolis, Ind. 46203. Applicant's representative: James W. Kiesle, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soda ash*, in bulk, from Wyandotte, Mich., to Gas City and Indianapolis, Ind., for 180 days. Supporting shipper: Glass Containers Corp., 114 Penn Avenue, Knox, Pa. 16232. Send protests to: District Supervisor James W. Habermehl, Bureau of Operations, Interstate Commerce Commission, 802 Century Building, 36 South Pennsylvania Street, Indianapolis, Ind. 46204.

No. MC 125650 (sub-No. 9 TA), filed March 29, 1973. Applicant: MOUNTAIN PACIFIC TRUCKING CORP., Route 2, Missoula, Mont. 59801. Applicant's representative: Joseph O. Earp, 411 Lyon Building, Seattle, Wash. 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen pies, cakes and rolls*, from McMinnville, Oreg., to points in Montana, for 180 days. Supporting shipper: Mrs. Smith's West Coast Pie Co., P.O. Box 89, McMinnville, Oreg. 97128. 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 126276 (sub-No. 77 TA), filed March 30, 1973. Applicant: FAST MOTOR SERVICE, INC., 12855 Ponderosa Drive, Palos Heights, Ill. 60463. Aplicant's representative: James C. Hardman, 127 North Dearborn Street, room 1133, Chicago, Ill. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic containers and parts related thereto*, from Burlington, Wis., to Rockford, Ill., under contract to Continental Can Co., Inc., for 180 days. Supporting shipper: Continental Can Co., Inc., 150 South Wacker Drive, Chicago, Ill. 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, Ill. 60604.

No. MC 128217 (sub-No. 8 TA), filed March 29, 1973. Applicant: REINHART MAYER, doing business as MAYER TRUCK LINE, 1203 South Riverside Drive, Jamestown, N. Dak. 58401. Applicant's representative: James B. Hovland, 425 Gate City Building, Fargo, N. Dak. 58102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Treated poles* for the account of LeFevre Sales, Inc., Jamestown, N. Dak., from Columbia Falls, Mont., to points in North Dakota and South Dakota, for 180 days. Supporting Shipper: Lefevre Sales, Inc., P.O. Box 1708, Jamestown, N. Dak. 58401. Send protests to: J. H. Ambs, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, N. Dak. 58102.

No. MC 128375 (sub-No. 92 TA), filed April 2, 1973. Applicant: CRETE CARRIER CORP., 1444 Main, Box 249, Crete, Nebr. 68333. Applicant's representative: Ken Adams (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle over irregular routes, transporting: *Automotive replacement parts, automotive accessories, and related equipment and materials* (except in bulk): (a) From the distribution center facilities of the Maremont Corp. located at Bayonne, N.J., to points in Maine, New Hampshire, New York, Vermont, Massachusetts, Connecticut, Rhode Island, New Jersey, Pennsylvania, Virginia, West Virginia, Delaware, Illinois, Ohio, Georgia, Indiana, Tennessee, North Carolina, Maryland, and the District of Columbia; (b) from the distribution center and facilities of the Maremont Corp. located in Los Angeles County, Calif., to points in Washington, Oregon, Idaho, Utah, Arizona, New Mexico, Texas, and Colorado; (c) from Harvey, Ill., to points in Los Angeles County, Calif.; and (d) from points in Ohio, Rhode Island, and Connecticut to Lawrenceburg, Tenn., for 180 days. Restrictions: Restricted under continuing contract with the Maremont Corp. Supporting shipper: Edward A. Coxhead, Maremont Corp., 168 North Michigan

Avenue, Chicago, Ill. 60601. Send protests to: Max H. Johnston, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 320 Federal Building and Courthouse, Lincoln, Nebr. 68508.

No. MC 129068 (Sub-No. 20 TA), filed March 29, 1973. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Boulevard, Oklahoma City, Okla. 73150. Applicant's representative: Jack L. Griffin, (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, in initial movement, from Lawton, Okla., to points in Texas, New Mexico, Arizona, Colorado, Kansas, Missouri, Arkansas, Louisiana, and Illinois, for 180 days. Supporting shipper: Town and Country Mobile Homes, Inc., A. T. Lindsay, General Manager, 502 Douglas, Lawton, Okla. 73501. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, room 240, Old Post Office Building, 215 Northwest Third, Oklahoma City, Okla. 73102.

No. MC 129159 (sub-No. 2 TA) filed March 29, 1973. Applicant: A. T. PINTO, INC., 3300 South Third Street, Philadelphia, Pa. 19148. Applicant's representative: V. Baker Smith, 123 South Broad Street, Philadelphia, Pa. 19109. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe conduit, couplings, and accessories* necessary for the installation thereof (except commodities in bulk), from the plantsite and storage facilities of Certain-Teed Products Corp., Ambler, Pa., to points in Connecticut, Delaware, Maine, New Hampshire, New Jersey, New York, Maryland, Massachusetts, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia, for 180 days. Supporting shipper: Certain-Teed Products Corp., Valley Forge, Pa. 19481. Send protests to: Peter R. Guman, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 1518 Walnut Street, Room 1600, Philadelphia, Pa. 19102.

No. MC 134404 (sub-No. 7 TA), filed March 27, 1973. Applicant: AMERICAN TRANS-FREIGHT, INC., P.O. Box 499, South Bound Brook, N.J. 08880. Applicant's representative: Bert Collins, 140 Cedar Street, New York, N.Y. 10006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper bags*, paper boxes and wrapping paper, between Long Island City, N.Y.; Moonachie, N.J.; and Northern Kentucky Industrial Foundation site near Florence, Ky., for 180 days. Restriction: Service to be performed under contract with Equitable Bag Co., Inc. Supporting shipper: Equitable Bag Co., Inc., 45–50 Van Dam Street, Long Island City, N.Y. 11101. Send protests to: District Supervisor Robert S. H. Vance, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, N.J. 07102.

No. MC 135653 (sub-No. 3 TA), (Correction), filed March 1, 1973, published in the FEDERAL REGISTER issue of March 19, 1973, and republication as corrected this issue. Applicant: GLENN TRIPP, doing business as, SPECIAL SERVICE, 760 Lindenwood Lane, Medina, Ohio 44256. Applicant's representative: Paul F. Beery, 88 East Broad Street, Columbus, Ohio 43215.

NOTE.—The purpose of this partial republication is to show that applicant now seeks to operate as a *common carrier* in lieu of contract carrier, which was published in error. The rest of the application remains the same.

No. MC 136343 (sub-No. 9 TA), filed March 30, 1973. Applicant: MILTON TRANSPORTATION, INC., Rural Delivery 1, P.O. Box 207, Milton, Pa. 17847. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paradichlorobenzene; insecticides*, other than agricultural; napthalene (except commodities in bulk), between the facilities of Standard Chlorine of Delaware, Inc., at Delaware City, Del., Standard Chlorine Chemical Co., Inc., Kearny, N.J., and Boston and Woburn, Mass., for 180 days. Supporting shipper: Standard Chlorine Chemical Co., Inc., 1035 Belleville Turnpike, Kearny, N.J. 07032. Send protests to: Robert W. Ritenour, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 508 Federal Building, P.O. Box 869, Harrisburg, Pa. 17108.

No. MC 136557 (sub-No. 1 TA), filed March 30, 1973. Applicant: HONEG TRUCKING, INC., Box 92, Eureka, Ill. 61530. Applicant's representative: Samuel Harrod, 107 East Eureka Avenue, Eureka, Ill. 61530. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic bottles*, from the plantsite of Continental Can Co., Inc. at Burlington, Wis., to the plantsite and warehouse of Hiram Walker & Sons, Inc., at Peoria, Ill., and Delevan, Ill., for 180 days. Supporting shipper: Hiram Walker & Sons, Inc., Peoria, Ill. Send protests to: District Supervisor Richard K. Shullaw, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, Ill. 60604.

No. MC 138000 (sub-No. 8 TA), filed April 3, 1973. Applicant: ARTHUR H. FULTON, rural free delivery, Stephens City, Va. 22655. Applicant's representative: Charles E. Creager, suite 523, 816 Easley Street, Silver Spring, Md. 20910. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from points in Houston County, Ga., to Lynchburg, Va., for 180 days. Supporting shipper: Callaham Grocery and Produce, Inc., 924 Commerce Street, Lynchburg, Va. 24504. Send protests to: Robert D. Caldwell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 12th Street and Constitution Avenue NW., Washington, D.C. 20423.

No. MC 138407 (sub-No. 1 TA), filed March 23, 1973. Applicant: LAHMANN INTERNATIONAL CORP., 214 West Elder Street, Cincinnati, Ohio 45210. Applicant's representative: Lawrence J. Lahmann (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, having prior or subsequent movement by air, between Cincinnati and Dayton, Ohio, and Detroit, Mich., for 180 days. Supporting shippers: British Overseas Airways Corp., 240 Hanna Building, Euclid Avenue, Cleveland, Ohio 44115; Seaboard World Airlines, P.O. Box 81222, Cleveland Hopkins International Airport, Cleveland, Ohio 44181; Pan American World Airways, P.O. Box 75105, Greater Cincinnati Airport, Cincinnati, Ohio 45275; and Henry A. Wess, Inc., Gwynne Building, 602 Main Street, Cincinnati, Ohio 45202. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514–B Federal Building, 550 Main Street, Cincinnati, Ohio 45202.

No. MC 138450 TA (correction), filed February 23, 1973, published in the FEDERAL REGISTER issue of March 19, 1973, and republished as corrected this issue. Applicant: GEORGE WILKINSON, doing business as WILKINSON TRUCKING CO., Route 1, Box 565, Mulino, Oreg. 97042. Applicant's representative: Ben R. Swinford, 3076 East Burnside Street, Portland, Oreg. 97214. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (A) *Lamb*, in carcasses and packages, from Sherwood, Oreg., to Chicago, Ill.; Detroit, Mich. and points in California, Washington, New York, New Jersey, Connecticut, Maryland, and Massachusetts; (B) *Hides*, from Sherwood, Oreg., to points in Los Angeles County, Calif.; and (C) *Salt*, from San Francisco, Calif. to Sherwood, Oreg., for 180 days. Supporting Shipper: Lamb Specialties, Inc., 21100 Southwest 120th Avenue, Sherwood, Oreg. 97140. Send protests to: A. E. Odoms, District Supervisory, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Building, 319 Southwest Pine Street, Portland, Oreg. 97204.

NOTE.—The purpose of this republication is add "from Sherwood, Oreg." as an origin State in part (A) of the application.

No. MC 138532 (sub-No. 1 TA), filed March 30, 1973. Applicant: COUNCIL TRUCKING SERVICE, INC., 802 West Bridge Street, Streator, Ill. 61364. Applicant's representative: James R. Madler, Chicago, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers and closures therefore* and *materials, equipment, and supplies* used in the manufacture and distribution of glass containers, from the plant and warehouse sites of Midland Glass Company, Inc., Terre Haute, Ind.,

to the plant and warehouse sites of Pabst Brewing Company, Peoria, Ill., for 180 days. Supporting shipper: Midland Glass Co., Inc., P.O. Box 557, Cliffwood, N.J. 07721. Send protests to: District Supervisor William J. Gray, Jr., Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 South Dearborn Street, room 1086, Chicago, Ill. 60604.

By the Commission.

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

[FR Doc.73-7396 Filed 4-16-73;8:45 am]

[Notice 46]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

APRIL 11, 1973.

The following are notices of filing of applications[1] for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of ex parte No. MC-67 (49 CFR 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 1977 (sub-No. 17 TA), filed April 2, 1973. Applicant: NORTHWEST TRANSPORT SERVICE, INC., 5231 Monroe Street, Denver, Colo. 80216. Applicant's representative: Ira Neal (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 defined by the Commission, petroleum products in bulk and commodities requiring the use of special equipment), between Salt Lake City, Utah, and its commercial zone and Denver, Colo., and its commercial zone, serving no intermediate points; (A) from Denver north over Interstate Highway 25 to junction Colorado Highway 14, thence west on Colorado Highway 14 to junction U.S. Highway 287, thence north on U.S. Highway 287 to junction Interstate Highway 80, thence west on Interstate Highway 80 to Salt Lake City and return over the same routes; including the right to use highways generally paralleling the specified interstate highways where the designated interstate highways are not completed and (B) from Denver west over Interstate Highway 70 to Green River, Utah, thence north on U.S. Highways 6 and 50 to junction U.S. Highway 89, thence north on U.S. Highway 89 to Provo, Utah, thence north on Interstate Highway 15 to Salt Lake City and return over the same routes; including the right to use highways generally paralleling to specified interstate highways where the designated interstate highways are not completed, for 180 days.

NOTE.—Applicant intends to interline points in Denver and Salt Lake City and tack Denver with MC 1977 (sub-No. 12).

Supporting shippers: There are approximately 54 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor Roger L. Buchanan, Interstate Commerce Commission, Bureau of Operations, 2022 Federal Building, Denver, Colo. 80202.

No. MC 11207 (sub-No. 327 TA), filed April 2, 1973. Applicant: DEATON, INC., P.O. Box 938, 317 Avenue W, Birmingham, Ala. 35201. Applicant's representative: C. N. Knox (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Brass, bronze, or copper pipe or tubing, fittings, rods, and castings*, from the facilities of Mueller Brass Co. at Fulton, Miss., to Mobile, Ala.; Batesville, Fayetteville, and Little Rock, Ark.; points in Florida; Monroe and New Orleans, La.; Charlotte, N.C.; and Dallas, Houston, and Texarkana, Tex.; (2) *Brass, bronze, or copper scrap*, from the destinations named in (1) above to the facilities of Mueller Brass Co. at Fulton, Miss.; and (3) *Brass, bronze, or copper castings, cathodes, fittings, and rods*, from Mobile, Ala.; New Orleans, La.; and Charlotte, N.C., to the facilities of Mueller Brass Co. at Fulton, Miss., for 180 days. Supporting shipper: Federal Pacific Electric Co., P.O. Box 21102, Charlotte, N.C. 28206. Send protests to: Clifford W. White, district supervisor, Bureau of Operations, Interstate Commerce Commission, room 814, 2121 Building, Birmingham, Ala. 35203.

No. MC 61396 (sub-No. 245 TA), filed March 30, 1973. Applicant: HERMAN BROS., INC., 2501 North 11th Street, P.O. Box 189, Downtown Station, Omaha, Nebr. 68101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer*, dry, and *fertilizer materials*, dry, in bulk, in tank vehicles, from the plantsite of USS Agrichem Division of U.S. Steel at or near Memphis, Tenn., to points in Arkansas, Louisiana, Mississippi, and Missouri, for 180 days. Supporting shipper: USS Agri-Chemicals, division of United States Steel Corp., 30 Pryor Street SW., P.O. Box 1685, Atlanta, Ga. 30301. Send protests to: Carroll Russell, district supervisor, Bureau of Operations, Interstate Commerce Commission, 711 Federal Office Building, Omaha, Nebr. 68102.

No. MC 95304 (sub-No. 18 TA), March 26, 1973. Applicant: NORTHERN NECK TRANSFER, INC., Montross, Va. 22520. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Treated lumber poles, and posts*, from the facilities of Virginia Wood Preserving Corp., at or near Laurel, Va., to points in Connecticut, Massachusetts, and New Hampshire, for 180 days. Supporting shipper: Payne & Gunderson Lumber Co., Inc., 20 East Tabb Street, P.O. Box 1149, Petersburg, Va. 23803. Send protests to: Robert W. Waldron, district supervisor, Interstate Commerce Commission, Bureau of Operations, 10-502 Federal Building, 400 North Eighth Street, Richmond, Va. 23240.

No. MC 66124 (sub-No. 7 TA), filed April 3, 1973. Applicant: PACIFIC NORTHWEST MOTOR FREIGHT LINES, INC., 600 South Edmunds Street, Seattle, Wash. 98108. Applicant's representative: Donald McWilliams (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, in cargo containers and/or cargo vans and empty cargo containers and empty cargo vans, between points in Washington, Oregon, Idaho, and Montana, on the one hand, and points within each State, for 180 days. Supporting shippers: Pacific International Freightliners (Washington), Inc., Norton Building, Seattle, Wash. 98104; American Mail Line, 1010 Washington Building, Seattle, Wash. 98101; J. T. Steeb & Co., Inc., Colman Building, Seattle, Wash. 98104; Geo. S. Bush & Co., Inc., 259 Colman Building, Seattle, Wash. 98104; and Freighters Co., Norton Building, Seattle, Wash. 98104. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 6049 Federal Office Building, Seattle, Wash. 98104.

No. MC 104523 (Sub-No. 54 TA), filed April 3, 1973. Applicant: HUSTON TRUCK LINE, INC., P.O. Box 17, Friend, Nebr. 68359. Applicant's representative: David R. Parker, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Bags, containers, and wrappers*, from Quincy, Ill., to Columbus, Nebr. and Comanche and Hereford, Tex., and (2) *Dry animal and poultry feed, dry animal and poultry mineral mixtures, animal and poultry tonics, insecticides* (other than agricultural), *livestock and poultry*

[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.

feeders and equipment, and premiums and advertising matters relating to such products, from Quincy, Ill., to points in Kansas, for 180 days. Restriction: All shipments to either originate or be destined to the plantsites and facilities of Moorman Manufacturing Co. Supporting shipper: Roger G. Hagerbaumer, Manager, Traffic Operations, Moorman Manufacturing Co., 1000 North 30th Street, Quincy, Ill. 62301. Send protests to: Max H. Johnston, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 320 Federal Building and Court House, Lincoln, Nebr. 68508.

No. MC 107002 (sub-No. 431 TA), filed April 3, 1973. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, U.S. Highway 80 West, Jackson, Miss. 39205. Applicant's representative: John J. Borth (same address as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Corn starch,* in bulk, in tank vehicles, from Memphis, Tenn., to Magnolia, Miss., for 180 days. Supporting shipper: Clinton Corn Processing Co., Clinton, Iowa 52732. Send protests to: Alan C. Tarrant, District Supervisor, Bureau of Operations, Interstate Commerce Commission, room 212, 145 East Amite Building, Jackson, Miss. 39201.

No. MC 107403 (sub-No. 844 TA), filed March 30, 1973. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same address as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Corn products and blends thereof,* in bulk, in tank vehicles, from Dayton, Ohio, to points in Alabama, on and north of U.S. Route 78; points in Delaware; Georgia, on and north of U.S. Route 78, also Augusta, Ga.; Indiana, on and east of U.S. Route 31; Kentucky, on and east of Interstate Route 65, also Bowling Green, Ky.; Maryland, Michigan, on and east of U.S. Route 66; New Jersey, New York, North Carolina, Pennsylvania, South Carolina, on and north of U.S. Route 1, Tennessee, on and east of Interstate Route 65; Virginia and West Virginia, for 180 days. Supporting shipper: Cargill, Inc., 3201 Needmore Road, P.O. Box 1400 A, Dayton, Ohio 45414. Send protests to: Ross A. Davis, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 1518 Walnut Street, room 1600, Philadelphia, Pa. 19102.

No. MC 109689 (sub-No. 247 TA), filed March 30, 1973. Applicant: W. S. HATCH CO., 643 South 800 West, Woods Cross, Utah 84087, and Mail: P.O. Box 1825, Salt Lake City, Utah 84110. Applicant's representative: Mark K. Boyle, 345 South State Street, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products,* in bulk, from points in Coconino County, Ariz., to points in Arizona, Nevada, Utah, and Colorado for 180 days. Supporting shipper: Arizona Fuels Corporation, Fredonia, Ariz. (Eugene Dalton, President). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5239 Federal Building, 125 South State Street, Salt Lake City, Utah 84111.

No. MC 110420 (sub-No. 677 TA), filed March 30, 1973. Applicant: QUALITY CARRIERS, INC., Mail: P.O. Box 186, Pleasant Prairie, Wis. 53158, and Office: I–94 County Highway C, Kenosha County, Wis. 53104. Applicant's representative: Fred H. Figge (same address as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Corn products and blends,* in bulk, from Lafayette, Ind., to points in the United States (except Alaska and Hawaii); restricted to traffic originating at the plantsite and/or warehouse facilities of Anheuser-Busch, Inc., at Lafayette, Ind., for 180 days. Supporting shipper: Anheuser-Busch, Inc., 721 Pestalozzi Street, St. Louis, Mo. (Raymond J. Hellwig, Assistant General Traffic Manager). Send protests to: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, room 807, Milwaukee, Wis. 53203.

No. MC 111045 (sub-No. 99 TA), filed March 30, 1973. Applicant: REDWING CARRIERS, INC., 7809 Palm River Road, P.O. Box 426, Tampa, Fla. 33601. Applicant's representative: J. V. McCoy (same address as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Formaldehyde,* in bulk, in tank vehicles, from Winnfield, La., to River Falls, Ala., for 180 days. Supporting shipper: Chembond Corp., P.O. Box 1377, Andalusia, Ala. 36420. Send protests to: District Supervisor Joseph B. Tiechert, Interstate Commerce Commission, Bureau of Operations, 5720 Southwest 17th Street, room 105, Miami, Fla. 33155.

No. MC 116763 (sub-No. 248 TA), filed March 28, 1973. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, Ohio 45380. Applicant's representative H. M. Richters (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Tires, tubes and flaps,* from Oklahoma City, Okla., to points in Alabama and Georgia, for 180 days. Supporting shipper: The Dayton Tire & Rubber Co., P.O. Box 1026, Dayton, Ohio 54401. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514–B Federal Building, 550 Main Street, Cincinnati Ohio 45202.

No. MC 117565 (sub-No. 89 TA), filed April 3, 1973. Applicant: MOTOR SERVICE CO., INC., P.O. Box 448, Office: Route 3, Coshocton, Ohio 43812. Applicant's representative: John R. Hafner (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Bins, dryers, tanks, fans, air moving equipment, heaters, vaporizers, ladders, steps* and (2) *hardware, supplies, parts, accessories, and tools* used in the installation, operation, and maintenance of items named in (1) above, from the plantsite and warehouse facilities of Chicago Eastern Corporation at or near Marengo, Ill., to points in the United States (except Alaska and Hawaii), for 180 days. Supporting shipper: Chicago Eastern Corp., 200 North Prospect Street, Marengo, Ill. 60152. 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, Ohio 43215.

No. MC 117799 (sub-No. 52 TA), filed April 3, 1973. Applicant: BEST WAY FROZEN EXPRESS, INC., Room 205, 3033 Excelsior Boulevard, Minneapolis, Minn. 55416. Applicant's representative: K. O. Petrick (same address as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Agricultural fermentation compounds and ingredients thereof;* (2) *fertilizers and ingredients thereof;* (3) *animal minerals and vitamins;* and (4) *supplies, signs and advertising materials* used in the sale of (1), (2), and (3) (except commodities in bulk), from the plantsite and warehouse facilities of Custom Services, Inc., at or near Carson City, Nev., to points in Illinois, Indiana, Ohio, Michigan, Pennsylvania, West Virginia, Wisconsin, Delaware, Maine, Maryland, New Jersey, New York and Virginia, for 180 days. Supporting shipper: Im-Pruv-All Agriculture, Inc., 93–2021 Vera Cruz Drive, Modesto, Calif. 95350. 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, Minn. 55401.

No. MC 124078 (sub-No. 543 TA), filed April 2, 1973. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, Wis. 53215. Applicant's representative: Richard Prevette (same address as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Cement,* in bulk, from Universal, Pa., to Fredericksburg, Va., for 180 days. Supporting shipper: U.S. Steel Corp., 600 Grant Street, room 6082, Pittsburgh, Pa. 15230 (Wayne L. Emery, general attorney). Send protests to: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, room 807, Milwaukee, Wis. 53203.

No. MC 127705 (sub-No. 37 TA), filed April 2, 1973. Applicant: KREVDA BROS. EXPRESS, INC., 501 South Broadway, Gas City, Ind. 46933. Mail: Drawer J, Knox, Pa. 16232. 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: *Glass containers and closures therefor,* from the

plantsite of Glass Containers Corp. at Indianapolis, Ind., to points in Tennessee, for 180 days. Supporting shipper: Glass Containers Corp., 114 Penn Avenue, Knox, Pa. 16232. Send protests to: District Supervisor J. H. Gray, Bureau of Operations, Interstate Commerce Commission, 345 West Wayne Street, room 204, Fort Wayne, Ind. 46802.

No. MC 128007 (sub-No. 48 TA), filed March 30, 1973. Applicant: HOFER, INC., P.O. Box 583, 4032 Parkview Drive, Pittsburg, Kans. 66762. Applicant's representative: John E. Jandera, 641 Harrison, Topeka, Kans., 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fabricated concrete reinforcing materials and joints*, from Parsons, Kans., to points in New York, Pennsylvania, and Alabama, for 180 days. Supporting shipper: Superior Concrete Accessories, Inc., Parsons, Kans. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 501 Petroleum Building, Wichita, Kans. 67202.

No. MC 134370 (sub-No. 9 TA), filed April 3, 1973. Applicant: OSBORNE TRUCKING CO., INC., 1008 Sierra Drive, Riverton, Wyo. 82501. Applicant's representative: Robert S. Stauffer, 3539 Boston Road, Cheyenne, Wyo. 82001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and building materials*, from Denver, Colo., to points in Wyoming, for 180 days. Supporting shipper: GAF Corp., South Bound Brook, N.J. 08880. Send protests to: District Supervisor Paul A. Naughton, Bureau of Operations, Interstate Commerce Commission, room 1006, Federal Building and Post Office, 100 East B Street, Casper, Wyo. 82601.

No. MC 134599 (sub-No. 77 TA), filed April 2, 1973. Applicant: INTERSTATE CONTRACT CARRIER CORP., P.O. Box 748 (Box ZIP 84110), Office: 265 West 2700 South, Salt Lake City, Utah 84115. Applicant's representative: Richard A. Peterson, P.O. Box 80806, Lincoln, Nebr. 68501. Authority sought to operates as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Crated office furniture and related advertising, sales and promotional materials:* (1) From Grand Rapids, Mich., to San Francisco, Calif., and its commercial zone and (2) from Tustin, Calif., to Portland, Oreg. and Seattle, Wash. and their commercial zones, for 180 days. Supporting shipper: Steelcase Inc., 1120 36th Street SE. (Box 1967, Grand Rapids, Mich. 49508 (Phillip T. Catalano, manager, Traffic Department). Send protests to: District Supervisor Lyle D. Helfer, Bureau of Operations, Interstate Commerce Commission, 5239 Federal Building, 125 South State Street, Salt Lake City, Utah 84111.

No. MC 136318 (sub-No. 6 TA), filed March 30, 1973. Applicant: COYOTE TRUCK LINE, INC., 395½ B West Fleming Drive, Morganton, N.C. 28655. Applicant's representative: William C. Snelson (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from High Point, Morganton, Marion, and Spruce Pine, N.C., to points in California, for 180 days. Supporting shipper: Henredon Furniture Industries, Inc., Morganton, N.C. Send protests to: Terrell Price, district supervisor, Bureau of Operations, Interstate Commerce Commission, 800 Briar Creek Road, room CC516, Charlotte, N.C. 28202.

No. MC 138296 (sub-No. 1 TA) (Correction), filed March 19, 1973, published in the FEDERAL REGISTER issue of April 6, 1973, and republished as corrected this issue. Applicant: VANGUARD OFFICE FURNITURE DELIVERY INC., 10 Java Street, Brooklyn, N.Y. 11222. Applicant's representative Arthur J. Piken, 1 Lefrak City Plaza, Flushing, N.Y. 11368. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New office furniture*, from the facilities of Vanguard Diversified, Inc., its divisions and subsidiaries in New York, N.Y., to points in Florida, Alabama, Arizona, Arkansas, California, Colorado, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, New York, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the District of Columbia, and for return of refused and rejected shipments, for 180 days. Supporting shipper: Vanguard Diversified Inc., 10 Java Street, Brooklyn, N.Y. 11222. Send protests to: Marvin Kampel, district supervisor, Bureau of Operations, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

NOTE.—The purpose of this republication is to correct the commodities proposed to be transported and to show that the movement is from and to rather than a between movement.

No. MC 138558 TA, filed April 2, 1973. Applicant: ROY ZENERE TRUCKING & EXCAVATING, INC., 321 Margaret Street, Thornton, Ill. 60476. Applicant's representative: Roy Zenere (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, between points in Illinois and Indiana within a 100-mile radius of Thornton, Ill., for 180 days. Supporting shippers: There are approximately 10 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor Robert G. Anderson, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 South Dearborn Street, room 1086, Chicago, Ill. 60604.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-7397 Filed 4-16-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[FAP 2B2761]

AQUITAINE CHEMICAL, INC.

Notice of 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), Aquitaine Chemical, Inc., 139 Harristown Road, Glen Rock, N.J. 07452, has withdrawn its petition (FAP 2B2761), notice of which was published in the FEDERAL REGISTER of March 16, 1972 (37 FR 5516), proposing the issuance of a food additive regulation to provide for the safe use of nylon 6/11 resins, manufactured by the polycondensation of mixtures of epsilon-caprolactam and amino-undecanois acid, in articles intended for food-contact use.

Dated April 10, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73-7372 Filed 4-16-73;8:45 am]

[FAP 3A2885]

G. D. SEARLE & CO.

Filing of Amended Petition for Food Additive

Notice was given in the FEDERAL REGISTER of March 5, 1973 (38 FR 5921), that a petition (FAP 3A2885) had been filed by G. D. Searle & Co., Box 5110, Chicago, Ill. 60680, proposing the issuance of a food additive regulation (21 CFR part 121) to provide for the safe use of aspartame (L-aspartyl-L-phenylalanine methyl ester) in foods as a nutritive substance with intense sweetness and with flavor-enhancing properties.

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that said petition has been amended to propose additionally the safe use of L-leucine, for technological purposes, in tablets containing aspartame.

Dated April 9, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73-7373 Filed 4-16-73;8:45 am]

National Institute of Education

AD HOC PROPOSAL REVIEW PANELS

Notice of Formation

On April 12, 1973, after consultation with the Director, Office of Management and Budget, the Secretary of Health, Education, and Welfare certified that the formation of the following ad hoc proposal review panels is in the public interest in connection with the performance of duties imposed on the Department by law and that such duties can best be performed through the advice and counsel of such a group:

a. Learning and Instruction Ad Hoc Proposal Review Panel.
b. Human Development Ad Hoc Proposal Review Panel.
c. Objectives, Measurement, Evaluation and Research Methodology Ad Hoc Proposal Review Panel.
d. Social Thought and Processes Ad Hoc Proposal Review Panel.
e. Organization and Administration Ad Hoc Proposal Review Panel.
f. Anthropology Ad Hoc Proposal Review Panel.
g. Economics Ad Hoc Proposal Review Panel.
h. Political Science and Legal Research Ad Hoc Proposal Review Panel.
i. Small Grant Ad Hoc Proposal Review Panel.

These panels will be utilized to review, discuss, evaluate, and rank proposals submitted in response to the Institute's announcement of the field initiated studies program appearing in the FEDERAL REGISTER, Vol. 38, No. 18 at page 2710, January 29, 1973. Meeting dates for each panel will be announced in the FEDERAL REGISTER.

Dated April 13, 1973.

THOMAS K. GLENNAN, Jr.,
Director,
National Institute of Education.

[FR Doc.73-7458 Filed 4-16-73;8:45 am]

FIELD INITIATED STUDIES AD HOC PROPOSAL REVIEW PANELS

Notice of Meetings

Pursuant to Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that the Field Initiated Studies Ad Hoc Proposal Review Panels will meet April 18, 19, 20, 24, and 25, 1973, in the Skyline Inn, South Capitol and I Streets SW., Washington, D.C. The panels will review, discuss, evaluate, and rank proposals received in response to the NIE announcement appearing in volume 33, No. 18, of the FEDERAL REGISTER of Monday, January 29, 1973. The meetings on April 18 and 24 will be from 9 a.m. to 5 p.m. The meetings on April 19, 20, and 25 will be from 8 a.m. to 5 p.m. The public portions of the meetings on April 18 and April 24 will be held in the Hall of States Conference Room from 9 a.m. to 12 p.m. The individual panel sessions for the balance of April 18 and 24 plus all of April 19, 20, and 25 will be closed to the public under 5 U.S.C. 552 (b)(4) in that the documents to be discussed contain trade secrets and commercial or financial information obtained from a person and considered privileged or confidential.

The individual panels will meet as follows. Further information can be obtained by writing or calling each designated panel officer at:

National Institute of Education, Code 600, Washington, D.C. 20202.

or calling the numbers noted below.

Panel	Place of meeting	Contact and type of meeting
Learning and Instruction Ad Hoc Proposal Review Panel.	Skyline Inn, South Capitol and Eye Sts., Washington, D.C.	Open—April 18, 9 a.m.–12 p.m. Closed—April 18, 12–5 p.m., April 19, 20, 8 a.m.–5 p.m., Panel Officer: Dr. Lawrence Goebel, 202-755-7940.
Human Development Ad Hoc Proposal Review Panel.	....do....	Open—April 18, 9 a.m.–12 p.m. Closed—April 18, 12–5 p.m., April 19, 20, 8 a.m.–5 p.m., Panel Officer: Dr. Suzanne Brainard, 202-755-7940.
Objectives, Measurement, Evaluation and Research Methodology Ad Hoc Proposal Review Panel.	....do....	Open—April 18, 9 a.m.–12 p.m. Closed—April 18, 12–5 p.m., April 19, 20, 8 a.m.–5 p.m., Panel Officer: Dr. Ronald Beezer, 202-755-7940.
Social Thought and Processes Ad Hoc Proposal Review Panel.	....do....	Open—April 18, 9 a.m.–12 p.m. Closed—April 18, 12–5 p.m., April 19, 20, 8 a.m.–5 p.m., Panel Officer: Mr. Monte Penney, 202-755-7940.
Organization and Administration Ad Hoc, Proposal Review Panel.	....do....	Open—April 18, 9 a.m.–12 p.m. Closed—April 18 12–5 p.m., April 19, 20, 8 a.m.–5 p.m., Panel Officer: Mr. Robert Pruitt, 202-755-7985.
Small Grants Ad Hoc, Proposal Review Panel.	....do....	Open—April 18, 9 a.m.–12 p.m. Closed—April 18 12–5 p.m., April 19, 20, 8 a.m.–5 p.m., Panel Officer: Miss Ursula Wagener, 202-755-7985.
Anthropology Ad Hoc, Proposal Review Panel.	....do....	Open—April 24, 9 a.m.–12 p.m. Closed—April 24, 12–5 p.m., April 25, 8 a.m.–5 p.m., Panel Officer: Dr. Sandy Pemberton, 202-755-7940.
Economics Ad Hoc, Proposal Review Panel.	....do....	Open—April 24, 9 a.m.–12 p.m. Closed—April 24, 12–5 p.m., April 25, 8 a.m.–5 p.m., Panel Officer: Mrs. Pat Koshel, 202-755-7985.
Political Science and Legal Research Ad Hoc, Proposal Review Panel.	....do....	Open—April 24, 9 a.m.–12 p.m. Closed—April 24, 12–5 p.m., April 25, 8 a.m.–5 p.m., Panel Officer: Dr. Cornelius Butler, 202-755-7985.

A summary of the proceedings of the meetings may be obtained from the Office of Public Information, room 628, National Institute of Education, Code 600, Washington, D.C. 20202, telephone number 202-755-3507.

Dated April 16, 1973.

THOMAS K. GLENNAN, Jr.,
Director,
National Institute of Education.

[FR Doc.73-7474 Filed 4-16-73; 9:50 am]

Office of the Secretary

EMERGENCY SCHOOL AID

Notice of Public Meeting

Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), that the third meeting of the National Advisory Council on Equality of Educational Opportunity will be held from 9 a.m. until 4 p.m. Friday, April 27, 1973, at the Adult Education Center, testing room, 2309 Mitchell Avenue, Tampa, Fla.

The National Advisory Council on Equality of Educational Opportunity is established under section 716 of the Emergency School Aid Act (Public Law 92-318, title VII). The Council is established to advise the Assistant Secretary for Education with respect to the operation of programs under the act, and to review the operation of such programs.

The meeting of the Council shall be open to the public. The proposed agenda includes consideration of the general scope of work of the Council and of the function and scope of work of proposed subcommittees; report from Office of Education as to the status of the Emergency School Aid Act proposals funded, and an overview of the activities of the Atlanta regional office (region IV, DHEW) with respect to applicant school districts. Records shall be kept of all proceedings, and shall be available for public inspection at the Office of Education, Bureau of Equal Educational Opportunity, Room 2029, 400 Maryland Avenue SW., Washington, D.C. and the U.S. Court House, 620 SW. Main, Portland, Oregon.

Signed at Washington, D.C., on April 13, 1973.

HERMAN R. GOLDBERG,
Associate Commissioner, Bureau of Equal Educational Opportunity.

[FR Doc.73-7431 Filed 4-16-73;8:45 am]

[Docket No. CC-7]

HARRY MYHRE, INC.

Notice of Hearing

Compliance proceeding pursuant to Executive Order 11246 and implementing rules, regulations and orders issued thereunder.

Pursuant to sections 208 and 209 of Federal Executive Order 11246 and 41 CFR § 60-1.26, notice is hereby given that Respondent Harry Myhre, Inc., will be given an opportunity to be heard on the allegations set forth below. A copy of Executive Order 11246, a copy of the

Regulation of the Office of Federal Contract Compliance, a copy of the Department's Procedural Rules for Proceedings under Executive Order 11246, and copies of the Philadelphia Plan Orders and Appendices of June 27 and September 23, 1969, are attached.

Within fourteen (14) days from receipt of this notice, respondent may file an answer to this notice and may request a hearing. The request for hearing shall be included as a separate paragraph of the answer. The answer shall admit or deny specifically and in detail the matters set forth in each allegation of the notice unless respondent is without knowledge, in which case the answer shall so state, and the statement shall be deemed a denial. Matters alleged as affirmative defenses shall be separately stated and numbered. If respondent fails to file an answer, request a hearing, or otherwise informally contest the allegations in this notice within the 14-day period following receipt hereof the matters alleged herein are deemed admitted and respondent's opportunity for hearing is deemed waived. The Director, Office for Civil Rights, may then cancel, suspend, or terminate any one or more federally assisted contracts or subcontracts, or parts thereof, held by respondent, or enter an order declaring respondent ineligible for further contracts, subcontracts, or extensions or other modification of existing contracts, until the respondent has satisfied the Secretary of Labor that it has established and will carry out personnel and employment policies and practices in compliance with the order.

The answer, request for hearing, and all other documents permitted to be submitted by respondent in this proceeding must be mailed or delivered to the Civil Rights Hearing Clerk, Department of Health, Education, and Welfare, room 4519, North Building, 330 Independence Avenue SW., Washington, D.C. 20201. An original and two copies should be filed and an additional copy should be mailed or delivered to the attorney in the Office of the General Counsel whose address is indicated below his signature hereon.

ALLEGATIONS

The general counsel of the Department of Health, Education, and Welfare (hereinafter, "Department"), acting on behalf of the Department alleges as follows:

I. STATEMENT OF JURISDICTION.—1. On or about March 4, 1970, construction bids for the construction of a new classroom facility for the Temple Tyler School of Art (hereinafter referred to as "the project") were received by the General State Authority of Pennsylvania (GSA).

2. On or about April 17, 1970, the general contract for the construction of the project was awarded to Somers Construction Co., Inc., Union Avenue and Cynwyd Road, Bala Cynwyd, Pa.

3. The project, Federal project No. 4-2-00374, is located in Montgomery County, Pa., and was partially financed by the Department of Health, Education, and Welfare under title I of the Higher Education Facilities Act of 1963 in the amount of approximately $740,000.00.

4. The total estimated cost of construction of the project was greater than $500,000.00.

5. On or about May 14, 1970, Somers Construction Co., Inc. subcontracted the installation of all precast concrete for the project to Beavertown Cast Stone, Inc., a corporation located at RD No. 1, Middleberg, Pa. Included as a condition of that subcontract was the following condition "J":

The affirmative action plan to insure equal employment opportunity as required, submitted, and incorporated as a part of the agreement between owner and contractor is hereby adopted and made a part of this agreement between contractor and subcontractor. Subcontractor hereby agrees and covenants to be bound by, as though he were the prime contractor, the goals and requirements of such affirmative action plan for those trades which he directly employs.

6. On or about May 19, 1970, Beavertown Cast Stone, Inc. subcontracted to respondent by purchase order for the erection of the precast concrete on the project in an amount greater than $10,000.

Wherefore, for the foregoing reasons, respondent's contract meets the criteria for applicability of Executive Order 11246, 41 CFR § 60-1.5, and for applicability of the Revised Philadelphia Plan. ("Philadelphia Plan Order" of June 27, 1969, Paragraph 2, page 1).

II. Applicable law and regulations. The following applicable law and regulations provide a basis for the proposed enforcement action:

7. Section 301 of Executive Order 11246 provides that applicants for Federal financial assistance for construction shall agree to incorporate the standard equal employment opportunity provisions set forth in section 202 of Executive Order 11246 in all construction contracts and subcontracts paid for in whole or in part with the Federal financial assistance, "together with such additional provisions as the Secretary [of Labor] deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations [standard equal employment opportunity provisions]."

8. Pursuant to this latter provision of section 301, and in exercise of its overall responsibility for enforcement of Executive Order 11246, the U.S. Department of Labor issued to heads of all Federal agencies the "Revised Philadelphia Plan" orders of June 27, 1969, and September 23, 1969. These orders require that on each applicable federally assisted construction project, the invitation for bids shall incorporate specific manpower standards for minority employment in certain trades, and that no prime contract shall be awarded to a bidder on such project unless the bidder's affirmative action program contains specific numerical minority utilization goals which meet the standards for the trades to be used in performing the contract. If the goals submitted are not met during the performance on the project, the contractor has the opportunity to demonstrate that he made every good faith effort to attempt to meet them under section 8 of the June 27, 1969 order, "Revised Philadelphia Plan."

9. Section 208(b) of the Executive order provides that a hearing may be held before sanctions or penalties may be imposed under the Executive order. Under this section no order for debarment of a contractor from further Government contracts under section 209(a)(6) of the order shall be made without affording an opportunity for a hearing.

10. 41 CFR 60-1.6 provides that each Federal agency shall be responsible for obtaining compliance with the equal employment opportunity clause and with orders issued pursuant to the Executive order.

11. Pursuant to the revised Philadelphia Plan orders, the invitation for bids for the project specified that an acceptable affirmative action program for the ironworking trade would result in minority manpower utilization on the project of between 5 and 9 percent in 1970 and between 11 and 15 percent in 1971.

III. STATEMENT OF MATERIAL FACTS FURNISHING A BASIS FOR THE IMPOSITION OF SANCTIONS

12. In response to the invitation for bids, Somers Construction Co., Inc., the prime contractor, submitted with its bid a goal of between 5 and 9 percent minority manpower utilization to be achieved in ironworking in 1970 and between 11 percent and 15 percent minority manpower utilization to be achieved in ironworking to be carried out under its prime contract in 1971. This minority employment goal for ironworking was included in respondent's subcontract (purchase order) for the installation of the precast concrete units on the project.[1]

13. Respondent also contracted to make every good faith effort to meet the goals which had been established. These requirements were included in respondent's subcontract for its work on the project.

14. Respondent performed structural ironwork on the project, consisting of the installation of the precast concrete units for a period of approximately January 13, 1971, through approximately December 10, 1971.

15. Respondent performed approximately 2,568 man-hours in ironworking on the project, none of which were minority man-hours.

16. During respondent's work on the project a total of 10 new ironworkers were hired by the respondent for performance on the project.

17. Respondent has failed to achieve its goal of between 11 percent and 15 percent of minority man-hour utilization in ironworking on the project in 1971 as required under the Philadelphia Plan in that no minority man-hours in ironworking were utilized by respondent during its work on the project.

18. Respondent has not made every good faith effort to meet the goals of the revised Philadelphia Plan orders in its work on the project.

Among other things:

a. Respondent did not notify community organizations, government, private training and worker referral agencies, of its employment opportunities during the performance on the project, nor did it submit evidence of responses of such organizations and agencies to such contacts.

b' Respondent did not maintain a file in which it recorded for use in securing minority-group workers, the names and addresses of, and other information regarding minority group workers referred to it.

c. Respondent did not avail itself of training programs in the Philadelphia, Pa., area during its performance on the project.

d. During its term on the project, respondent secured its ironworkers through Local Union No. 401, Philadelphia, Pa., International Association of Bridge, Structural and Ornamental Ironworkers AFL-CIO. Respondent, notwithstanding its belief that this union has impeded it in achieving its goals of minority manpower utilization on the project, has failed to notify the Area Coordinator, Office of Federal Contract Compliance, Department of Labor, that it has been so impeded.

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[1] The Philadelphia Plan goals requirement has been amended since the beginning of the project to apply to the total work force. Such amendment, however, is not retroactively applicable to the respondent's performance during the term of the project.

19. Respondent did not take adequate and reasonable affirmative steps to assure nondiscrimination in employment in the work it performed on the project, nor did it maintain nondiscriminatory employment in the trade of ironworking in its entire workforce during the term of its performance on the project.

20. Respondent has refused on several occasions to furnish the Department with information which had been requested to enable the Department to evaluate respondent's compliance status.

21. Adequate efforts were made by this Department to achieve respondent's voluntary compliance with the federally-established equal employment opportunity requirements in its contract, but such efforts were unsuccessful in securing respondent's compliance.

Wherefore, for the foregoing reasons, respondent has failed to comply with the provisions of its federally-assisted subcontract embodying the "Revised Philadelphia Plan," with sections (1), (4), and (5) of the Equal Opportunity Clause of its subcontract as prescribed by the Office of Federal Contract Compliance Regulations (see 41 CFR 60–1.4 (b) and (c)), and as prescribed by Federal Executive Order 11246 (sections 202 and 301), and with 41 CFR 1.7(a)(3).

22. The Philadelphia Plan is a means of implementing Executive Order 11246 and has been held legally valid in Contractors Association of Eastern Pennsylvania v. Secretary of Labor, 442 F. 2d 159 (3d Cir. 1971).

23. Respondent failed to meet its goal of between 11 percent and 15 percent in ironworking on the project in 1971.

24. Respondent did not exert every good faith effort to employ minority ironworkers on the project.

25. Respondent has refused to furnish information requested by the Department in order to determine respondent's compliance posture.

26. The Department made adequate efforts to achieve respondent's voluntary compliance on the project.

Wherefore, the General Counsel requests that the Hearing Officer recommend that an order be entered, pursuant to 41 CFR 60–1.26(b)(2)(vi):

1. Finding that respondent failed to comply with Executive Order 11246, and the rules, regulations, and orders issued and promulgated thereunder, as well as its subcontract, in the trade of ironworking, during the term of its performance on the project in 1971;

2. Finding that the Department has been unable to achieve the voluntary compliance of respondent through informal means;

3. Providing that currently existing contracts or subcontracts funded in whole or in part with Federal funds, be canceled and terminated; and

4. Providing that respondent shall be ineligible for the award of any contracts or subcontracts funded in whole or in part with Federal funds and shall be ineligible for extension or other modifications of any existing contracts, until respondent has satisfied the Secretary of Labor that respondent has established and will carry out personnel and employment policies in compliance with the provisions of Executive Order 11246, and the rules, regulations, and orders issued thereunder.

Respectfully submitted, for the General Counsel, Department of Health, Education, and Welfare.

DONALD A. GONYA,
Regional Attorney.

Dated February 2, 1973.

JOHN W. BEHAN,
Assistant Regional Attorney, Office of the General Counsel, Department of Health, Education, and Welfare, 3535 Market Street, Philadelphia, Pa. 19101.

Dated April 9, 1973.

PATRICIA A. KING,
Acting Director,
Office for Civil Rights.

[FR Doc.73-7367 Filed 4-16-73;8:45 am]

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federal register

TUESDAY, APRIL 17, 1973

WASHINGTON, D.C.

Volume 38 ■ Number 73

PART II

ENVIRONMENTAL PROTECTION AGENCY

■

Employee Responsibilities and Conduct

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER A—GENERAL

PART 3—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Part 3, "Employee Responsibilities and Conduct," is revised in its entirety for the purpose of setting forth comprehensive standards of conduct for officers and employees of the Environmental Protection Agency. These regulations were approved by the U.S. Civil Service Commission on December 18, 1972, and are pursuant to and in accordance with sections 201 through 209 of title 18 of the United States Code, Executive Order No. 11222 of May 8, 1965, and title 5, chapter I, part 735, of the Code of Federal Regulations.

Due to the internal nature of these regulations, I have found good cause that notice of proposed rulemaking and public procedure are impracticable and unnecessary.

Effective date.—These regulations are effective on April 17, 1973.

Dated April 10, 1973.

WILLIAM D. RUCKELSHAUS,
Administrator.

Subpart A—General Provisions

Subpart B—Advisory Service and Enforcement

Subpart C—Financial Interests and Investments

Subpart D—Acceptance of Gifts, Gratuities, or Entertainment

Subpart E—Outside Employment

Subpart F—Standards of Conduct for Special Government Employees

AUTHORITY.—Executive Order 11222, 30 FR 6460, 3 CFR, 1964–1965 Comp., p. 306; 5 CFR 735.101 et seq.

Subpart A—General Provisions

§ 3.100 Purpose.

The regulations prescribed in this part set forth the high ethical standards of conduct required of each Environmental Protection Agency (hereinafter "EPA") employee, including both regular and special Government employees as they are covered by these regulations, in carrying out their duties and responsibilities.

§ 3.101 Coverage.

(a) The provisions of subparts A, B, C, D, and E of this part apply to all regular employees of EPA including Public Health Service commissioned officers assigned to EPA, employees detailed to EPA from other agencies, and other employees working for EPA through special arrangements except for special Government employees as defined in § 3.102(c).

(b) The provisions of subpart F of this part are applicable only to special Government employees as defined in § 3.102(c).

§ 3.102 Definitions.

(a) "Agency" means the Environmental Protection Agency.

(b) "Employee" means any officer or employee of the Environmental Protection Agency other than a special Government employee.

(c) "Special Government employee" as defined under section 202 of Title 18, United States Code, means an officer or employee of the Environmental Protection Agency who is retained, designated, appointed, or employed to perform with or without compensation, temporary duties either on a full-time or intermittent basis, for not to exceed 130 days during any period of 365 consecutive days.

(d) "Former employee" means a former Environmental Protection Agency employee or former special Government employee as defined under paragraph (c) of this section.

§ 3.103 Ethical standards of conduct for employees.

Each employee shall refrain from any use of his official position which is motivated by, or has the appearance of being motivated by, the desire for private gain for himself or other persons. He shall conduct himself in such a manner that there is not the slightest suggestion of the extracting of private advantage from his Government employment. Pursuant to this policy, each employee will observe the following standards of conduct:

(a) He shall not as a result of, or on the basis of, any information derived from his official position or from the official position of other employees with them whom he associates, engage, directly or indirectly, in any business transaction or arrangement, including the buying or selling of securities or recommending the purchase or sale of securities to other persons.

(b) He shall exercise care in his personal financial activities to avoid any appearance of acting on the basis of information obtained in the course of performing his Government duties.

(c) If he acquires information in the course of performing his Government duties that is not generally available to those outside the Government, he shall not use this information to further a private interest or for the special benefit of a business or other entity in which he has a financial or other interest.

(d) He shall not use his Government position in anyway to coerce, or give the appearance of coercing, another person to provide any financial benefit to him or to other persons.

(e) He shall avoid any action, whether or not specifically prohibited by law or regulation (including the provisions of this part), which might result in, or create the appearance of:

(1) Using his public office for private gain;

(2) Giving preferential treatment to any organization or person;

(3) Impeding Government efficiency or economy;

(4) Losing his independence or impartiality of action;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

§ 3.104 Other general standards of conduct.

(a) *Use of Government property.*—An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, includ-

ing equipment, supplies, and other property entrusted or issued to him.

(b) *Indebtedness.*—The indebtedness of EPA employees is considered to be essentially a matter of their own concern. EPA shall not be placed in the position of acting as a collection agency or of determining the validity or amount of contested debts. Employees are expected, however, to honor in a proper and timely manner all just financial obligations, especially those imposed by law such as Federal, State, or local taxes. For purposes of this section a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as his employer.

(c) *Gambling, betting, and lotteries.*—While on Government-owned or leased property, or while on duty for the Government, employees shall not participate in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in participating in a game for money or property, or in selling or purchasing a numbers slip or ticket. Participation in federally sponsored fund-raising activities conducted under section 3 of Executive Order No. 10927 of March 18, 1961, or in similar EPA-approved activities, is not precluded.

(d) *General conduct prejudicial to the Government.*—Employees shall not engage in criminal, infamous, dishonest, immoral, or disgraceful conduct, or any other conduct prejudicial to the Government.

(e) *Statutory prohibitions relating to gifts and decorations.*—(1) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift presented as a contribution from an employee receiving less salary than himself (5 U.S.C. 7351). This includes service, merchandise, loan, or other thing of value. However, this paragraph (e) does not prohibit a voluntary gift of nominal value or a donation in a nominal amount made on a special occasion such as marriage, illness or death, or retirement.

(2) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and section 7342 of Title 5, United States Code.

(3) Subpart D of this part contains further information regarding acceptance of gifts, gratuities, or entertainment.

(f) *Disqualification of former employees in matters connected with former duties or official responsibilities and disqualification of partners.*—(1) No individual who has been an employee shall, after his employment has ceased, knowingly act as agent or attorney for anyone other than the United States, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy charge, accusation, or other particular matter involving a specific party, or parties in which the United States is a party or has a direct or substantial interest and in which he participated personally and substantially as an employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed.

(2) No individual who has been an employee shall, within 1 year after his employment has ceased, appear personally before any court or department or agency of the Government as agent, or attorney for anyone other than the United States in connection with any matter enumerated and described in paragraph (f)(1) of this section which was under his official responsibility as an employee of the Government at any time within a period of 1 year prior to the termination of such responsibility.

(3) No partner of an employee shall act as agent or attorney for anyone other than the United States in connection with any matter enumerated and described in paragraph (f)(1) of this section in which such Government employee is participating or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility.

§ 3.105 Statutes relating to employee conduct.

Each employee should be aware of the statutory provisions that relate to his ethical and other conduct. Appendix A of this subpart provides the full text of the "conflict of interest" statutes. Appendix B to this subpart cites other statutory provisions which are particularly relevant to employee conduct. These statutes are available for review in the EPA Office of General Counsel.

APPENDIX A—CONFLICT OF INTEREST STATUTES
(SEE §§ 3.105 AND 3.606)

18 U.S.C. 203

Compensation to Members of Congress, officers, and others in matters affecting the Government.

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for services rendered or to be rendered either by himself or another—

(1) At a time when he is a Member of Congress, Member of Congress-elect, Resident Commissioner, or Resident Commissioner-elect; or

(2) At a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States including the District of Columbia—in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party of has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission, or

(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Commissioner, officer, or employee—

Shall be fined not more than $10,000, or imprisoned for not more than 2 years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

(c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than 60 days during the immediately preceding period of 365 consecutive days.

18 U.S.C. 205

Activities of officers and employees in claims against and other matters affecting the Government. Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

(1) Acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

(2) Acts as agent or attorney for anyone before any department, agency, court, court-martial, of officer, or any civil, military, or naval commission in connection with any proceeding ,application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

Shall be fined not more than $10,000, or imprisoned for not more than 2 years, or both.

A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter involving specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than 60 days during the immediately preceding period of 365 consecutive days.

Nothing herein prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or

any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility: *Provided*, That the Government official responsible for appointment to his position approves.

Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States: *Provided*, That the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires.

Such certification shall be published in the FEDERAL REGISTER.

Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

18 U.S.C. 207

Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners.

(a) Whoever, having been an officer or employee of the executive branch of the U.S. Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

(b) Whoever, having been so employed, within 1 year after his employment has ceased, appears personally before any court or department or agency of the Government as agent or attorney for anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of 1 year prior to the termination of such responsibility—

Shall be fined not more than $10,000, or imprisoned for not more than 2 years, or both: *Provided*, That nothing in subsection (a) or (b) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from acting as attorney or agent or appearing personally in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the FEDERAL REGISTER, that the national interest would be served by such action or appearance by the former officer or employee.

(c) Whoever, being a partner of an officer or employee of the executive branch of the U.S. Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States, in connection with any judicial or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which such an officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility—

Shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

A partner of a present or former officer or employee of the executive branch of the U.S. Government, of any independent agency of the United States, or of the District of Columbia, or of a present or former special Government employee shall as such be subject to the provisions of sections 203, 205, and 207 of this title only as expressly provided in subsection (c) of this section.

18 U.S.C. 208

Acts affecting a personal financial interest.

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the U.S. Government, or any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than $10,000, or imprisoned not more than 2 years, or both.

(b) Subsection (a) hereof shall not apply, (1), if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2), if, by general rule or regulation published in the FEDERAL REGISTER, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services.

APPENDIX B.—MISCELLANEOUS STATUTES (SEE §§ 3.105 AND 3.607)

1. House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service."

2. Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interests, as appropriate to the employees concerned.

3. The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

4. The prohibitions against disloyalty and striking (5 U.S.C. 7311; 18 U.S.C. 1918).

5. The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

6. The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

7. The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

8. The prohibition against the misuse of a Government motor vehicle or aircraft (31 U.S.C. 638a(c)).

9. The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

10. The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

11. The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

12. The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

13. The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

14. The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

15. The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

16. The prohibition against proscribed political activities (The Hatch Act—5 U.S.C. 7324–7327; 18 U.S.C. 602, 603, 607, and 608).

17. The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Subpart B—Advisory Service and Enforcement

§ 3.200 Purpose.

This subpart establishes an advisory service for employees for the purpose of furnishing interpretations and advising on questions arising concerning standards of conduct and prescribes the types of remedial and disciplinary actions which may be taken to enforce the requirements of subparts A, C, D, and E of this part.

§ 3.201 Use of advisory service.

When questions or problems arise concerning matters covered by this part, EPA employees shall seek the advice and consultative services of the counselors designated in § 3.202 below.

§ 3.202 Designation of counselors and statement of functions.

(a) The Deputy General Counsel is designated as the Agency Counselor. His functions consist of the following:

(1) Acts as the principal point of contact with the Civil Service Commission on matters covered in these regulations.

(2) Provides general guidance to Deputy Counselors for the purpose of achieving uniform interpretation of these regulations.

(3) Coordinates EPA's services for counseling personnel on questions of conflict of interest.

(b) Deputy Counselors:

(1) The following officials are designated as Deputy Counselors under this part:

(i) Assistant Administrators.

(ii) Deputy Assistant Administrators.

(iii) Heads of Staff Offices reporting directly to the Administrator or Deputy Administrator.

(iv) Regional Administrators.

(v) Directors of National Environmental Research Centers.

(2) Functions of the Deputy Counselors:

Deputy Counselors shall be responsible for—

(i) Counseling employees on all problems and questions arising under the regulations set forth in this subpart.

(ii) Reviewing and maintaining custody of statements of employment and financial interests, filed pursuant to the provisions of subpart C of this part.

(iii) Making determinations on requests from employees for approval for outside employment or other outside activity pursuant to the provisions of subpart E of this part.

(iv) Consulting, as necessary, with the Agency Counselor on questions and problems arising under regulations.

§ 3.203 Review, enforcement, reporting, and investigating.

(a) Each statement, and supplementary statement, of employment and financial interests submitted under subpart C of this part shall be reviewed by the appropriate Deputy Counselor or by the Agency Counselor. If that review discloses a conflict of interest or apparent conflict of interest, the employee shall be given an opportunity to explain the conflict or apparent conflict, and every effort shall be made to resolve the matter. If the matter cannot be resolved by the Deputy Counselor, it shall be referred to the Agency Counselor, and if it cannot be resolved by the Agency Counselor, it shall be reported to the Administrator.

(b) Employees shall consult with their Deputy Counselors with regard to any questions concerning these regulations. Resolution of problems disclosed by such consultations shall be accomplished at the lowest possible supervisory level in the agency through counseling or by taking administrative action to eliminate real or apparent conflicts of interest. The Director, Security and Inspection Staff, shall be requested by the Deputy Counselor, when necessary, to conduct investigations to ascertain all relevant facts.

(c) Any employee receiving an allegation of a possible violation of the provisions of this subpart by any other employee (including personnel or other Government agencies detailed to EPA) shall promptly report it directly to the appropriate Counselor or Deputy Counselor. If the Counselor or Deputy Counselor deems that an investigation is necessary, he shall request the Director, Security and Inspection Staff, to conduct the investigation.

(d) A violation of the regulations in this subpart may be cause for disciplinary action. All disciplinary or remedial action taken hereunder shall be in conformance with applicable laws, Executive orders, Civil Service Commission regulations, and EPA regulations. Disciplinary or remedial action includes, but is not limited to, divestiture by the employee of his conflicting interest, disqualification for particular assignments, reassignment, or other disciplinary action.

(e) The employee concerned shall have a reasonable opportunity during any investigation and at all levels of consideration of his problems to present in person and through documents his position on the matter.

Subpart C—Financial Interests and Investments

§ 3.300 Purpose.

This subpart prescribes policies and procedures for the avoidance of conflicting financial interests in connection with an employee's Government position or in the discharge of his official responsibilities, and sets out the requirements for reporting financial interests and outside employment.

§ 3.301 General.

(a) Employees are subject to two types of controls in connection with apparent or actual conflicting financial interests. One is a criminal statute, 18 U.S.C. 208, which by its terms prohibits an employee's participation in certain official activities where he has a conflicting personal financial interest. The other is a requirement under Executive Order No. 11222 of May 8, 1965, and Civil Service Commission regulations that employees occupying certain Government positions shall report all personal financial interests and outside employment by filing a statement of employment and financial interests. The statute and the statement of employment and financial interests have the common objective of deterring the occurrence of conflicting financial interest situations. The statute prohibits and punishes while the statement of employment and financial interests is intended to aid the employee and those who review his statement in identifying and avoiding situations that present conflicts of interest.

(b) The statement of employment and financial interests for regular Government employees, referred to in paragraph (a) of this section shall be filed in accordance with the procedures set forth in appendix A to this subpart, and shall include all personal financial interests of the reporting employee, except those exempted from the reporting requirements of this subpart by virtue of the first paragraph of appendix C of this subpart. The submission of a statement or supplementary statement by an employee does not permit him or any other person to act in a manner prohibited by law, order, or regulation. Procedures for obtaining waivers of the prohibitions of section 208(a) of Title 18, United States Code, are set forth in § 3.303.

(c) All employees whether or not they are required to file a statement of employment and financial interests, and an annual supplement thereto, shall avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of section 208(a) of Title 18, United States Code, or of this subpart.

§ 3.302 Statutory prohibitions against acts affecting a personal financial interest.

(a) The provisions of section 208(a) of Title 18, United States Code, prohibit any employee from participating personally and substantially in the course of his Government duties in any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in relation to which matter, to his knowledge, the following persons or organizations have a financial interest:

(1) The employee, his spouse, minor child, or partners;

(2) A business or nonprofit organization in which the employee is serving as an officer, director, trustee, partner, or employee; or

(3) A person or business or nonprofit organization with whom or with which the employee is negotiating, or has any arrangement with, concerning prospective employment.

(b) The prohibitions in paragraph (a) of this section may be waived under certain circumstances which are set out in § 3.303.

(c) Illustrative of the types of matters in which employees commonly participate and which may fall within the prohibitions described in paragraph (a) of this section are the following:

(1) The negotiation, administration, or auditing of contracts or agreements;

(2) The selection or approval of contractors or known subcontractors under an EPA prime contract;

(3) The technical monitoring or direction of work under a contract;

(4) Enforcement activities;

(5) Issuance of permits to discharge industrial waste;

(6) Registration of pesticides products.

(d) Unless a waiver is granted under § 3.303, no employee or employee detailed to EPA shall participate personally and substantially in the course of his Government duties in any specific matter of a type listed in paragraph (c) of this section, or in any other matter if, to his knowledge, any of the persons or organizations identified in paragraph (a) of this section have a financial interest relating to that specific matter.

§ 3.303 Waiver of statutory prohibition.

(a) The prohibition of section 208(a) of Title 18, United States Code, may be waived in connection with a specific matter of the type which comes under the statute if the employee makes a full disclosure in writing of the nature of the matter involved and of the financial interest relating thereto and receives, in advance of his participation in such matter, a written determination that such financial interest is not so substantial as to affect the integrity of his services and, therefore, that the employee may participate personally and substantially in that matter. A written request for waiver must be submitted to the Agency Coun-

selor through the appropriate Deputy Counselor.

(b) The prohibition of section 208(a) of Title 18, United States Code, also may be waived by general regulation applicable to all employees so as to permit an employee (including personnel of another Government agency detailed to EPA) to participate personally and substantially in a specific matter, notwithstanding the existence of a financial interest relating to that matter, where it has been determined that such a financial interest is too remote or too inconsequential to affect the integrity of the employee's service in any matter in which he may act in his governmental capacity. Such a determination has been made by the Administrator with respect to the categories of financial interests set forth in appendix C to this subpart.

§ 3.304 Confidential statements of employment and financial interests.

(a) The criteria set forth in paragraph (d) of this section define the categories and types of employees who must submit confidential statements of employment and financial interests. Appendix A to this subpart provides procedures for the submission, review, and disposition of these statements. Appendix B to this subpart lists the positions whose incumbents are required to file confidential statements of employment and financial interests. The designated Agency Counselor, and Deputy Counselors referred to throughout § 3.304 are identified in § 3.202.

(b) Personnel, whether civil service employees or Public Health Service commissioned officiers, in positions listed in appendix B to this subpart C shall file confidential statements of employment and financial interests. These statements shall be filed by all officials, other than the Administrator, who are compensated at levels of the executive schedule.

(c) Confidential statements of employment and financial interests may be required of certain employees other than those whose positions are listed in appendix B to this subpart. The Counselor and Deputy Counselors are responsible for identifying such other positions in accordance with criteria set forth in paragraph (d) of this section and for notifying the employee concerned. This notification shall be in writing and shall include the reason for the decision.

(d) Financial interests of employee's relatives. For purpose of this reporting requirement, the financial interests of a spouse, minor child, or other member of an employee's immediate household are considered to be an interest of the employee and shall be reported. "Members of an employee's immediate household" means those blood relatives who are residents of the employee's household.

(e) Information not known by employees. If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information in his behalf. The employee concerned should avoid gaining knowledge about those interests in order to prevent the possibility of violating section 208 of Title 18, United States Code.

(f) The following criteria define the categories and types of employees who are required to file a confidential statement of employment and financial interests:

(1) Employees classified at the GS–13 level and above, under section 5332 of Title 5, United States Code (or comparable levels under other pay systems), unless otherwise exempted pursuant to paragraph (g) of this section, whose duties and responsibilities require the exercise of judgment in making a Government decision or in taking Government action in regard to:

(i) Contracting or procurement, including: The evaluation or selection of contractors; the negotiation, approval, or award of contracts; the supervision of activities performed by contractors, including the administration, monitoring, audit, and inspection of contractors and contract activities; and the initiation or approval of requests to procure supplies, equipment, or services, other than those common items available from EPA or GSA inventories.

(ii) Administering or monitoring grants or subsidies, including grants to educational institutions and other non-Federal organizations; or

(iii) Regulating or auditing private or other non-Federal enterprise.

(2) Employees classified at the GS–13 level and above (or comparable levels under other pay systems), who are identified by the Agency Counselor or Deputy Counselors as holding positions requiring the incumbent thereof to exercise judgment in making Government decisions or taking actions where such decisions or actions may have an economic impact on the interest of any non-Federal enterprise.

(3) Employees classified below the GS–13 level (or at a comparable level under other pay systems), who are in positions which otherwise meet the criteria of paragraph (f)(1) or (2) of this section, providing the Civil Service Commission has approved the determination that the incumbents of such positions should be required to file statements of employment and financial interests in order to protect the integrity of the Government and to avoid the employee's involvement in a possible conflict of interest situation.

(g) An employee described in paragraph (f)(1) of this section shall be exempted from the requirement for filing a confidential statement of employment and financial interests when the Counselor or a Deputy Counselor determines that the employee's duties are of such a nature, or are at such a level of responsibility and are subject to such a degree of supervision and review, that the possibility of his becoming involved in a conflict of interest is remote. Such a determination shall be written and recorded by the official (Counselor or a Deputy Counselor) concerned.

APPENDIX A—PROCEDURES FOR FILING STATEMENTS OF EMPLOYMENT AND FINANCIAL INTERESTS

(a) *General.*—(1) Submission of confidential statements of employment and financial interests. Each employee who is required to submit a confidential statement of employment and financial interests for whom there is no current statement on file shall promptly complete and forward this statement, but in any event no employee shall submit his financial statement later than 30 days after the effective date of issuance of these regulations. For employees appointed after the effective date of these regulations, statements shall be submitted within 30 days after entrance on duty. The employee's statement shall be submitted on EPA Form No. 3115.1, Confidential Statement of Employment and Financial Interests. The completed form No. 3115.1 shall be forwarded for review to the Deputy Counselor for the organization of the employee concerned, except that statements from employees in the immediate office of the Administrator and those of the Deputy Counselors shall be submitted for the review of the Counselor.

(2) *Review of statements.*—EPA Form 3115.1, when received by the Counselor or by a Deputy Counselor in accordance with paragraph (a) above, shall be reviewed by that official to determine whether or not there is or appears to be a conflict between the interests of the employee and the performance of his services for the Government.

(3) *Decisions on conflict of interest.*—When the review as provided in paragraph (b) above indicates a conflict between the interest of an employee and the performance of his services for the Government the reviewing official shall have the indicated conflict brought to the attention of the employee, grant the employee an opportunity to explain the conflict, and attempt to resolve it as expeditiously as possible. If the reviewing official cannot resolve a conflict on the basis of facts available to him he may refer the matter to the Security and Inspection Staff for an investigation into the facts surrounding the indicated conflict. The Security and Inspection Staff's written report shall be forwarded to the reviewing official who, if still unable to resolve the conflict, shall forward it to the Agency Counselor for a determination. If the Agency Counselor is unable to resolve the conflict the matter shall be referred to the Administrator. The Administrator shall determine what remedial or disciplinary action is appropriate in light of all available information. A record of the final disposition shall be made a part of the statement of employment and financial interests.

(4) *Submission of supplementary statements.*—Changes in, or additions to, information required by the submission of an EPA Form 3115.1 shall be reported quarterly on an additional EPA Form 3115.1 clearly indicating that the information is supplementary. The supplementary form 3115.1 shall be submitted at the end of the quarter in which the changes or additions occur. Quarters end September 30, December 31, March 31, and June 30. If there are no changes or additions within a quarter, a negative report is not required. For purposes of annual review however, an EPA Form 3115.1, clearly marked supplementary, must be submitted to the appropriate Counselor or Deputy Counselor by June 30 of each year. If no changes or additions have occurred during the year, a negative report is required.

(5) *Confidentiality.*—Each completed form 3115.1 (whether the original or supplementary submission) shall be held in confidence. No disclosure of information from this form

shall be made other than to EPA employees in the performance of official functions under this part or as the Chairman of the Civil Service Commission or the Administrator of EPA may determine for good cause shown.

(6) *Maintenance of statements.*—EPA form 3115.1 and related records shall be maintained by the appropriate reviewing official in a locked, limited access, container.

(b) *Employee's right to review.*—An employee who takes exception to the determination that he must submit an EPA form 3115.1 may request review and reconsideration in accordance with the procedures provided in the grievance procedure of the Agency.

APPENDIX B—POSITIONS WHOSE INCUMBENTS MUST FILE CONFIDENTIAL STATEMENTS OF EMPLOYMENT AND FINANCIAL INTERESTS

All positions occupied by officials paid at levels of the executive schedule except the Administrator.

OFFICE OF THE ADMINISTRATOR

Deputy Administrator.

OFFICE OF LEGISLATION

Director, Office of Legislation.

OFFICE OF CIVIL RIGHTS URBAN AFFAIRS

Director, Office of Civil Rights and Urban Affairs.
Director, Compliance Division.
Director, Equal Opportunity Division.

OFFICE OF INTERNATIONAL ACTIVITIES

Associate Administrator, Office of International Activities.
Director, Bilateral Programs Division.
Director, International Technology Division.
Director, Multilateral Organizations Division.

OFFICE OF FEDERAL ACTIVITIES

Director, Office of Federal Activities.

OFFICE OF PUBLIC AFFAIRS

Director, Office of Public Affairs.

ASSISTANT ADMINISTRATOR FOR PLANNING AND MANAGEMENT

Assistant Administrator for Planning and Management.
Director, Office of Education and Manpower Planning.

OFFICE OF AUDIT

Director, Office of Audit.
Deputy Director, Office of Audit.
Chief, Program Audit Branch.
Chief, Installation and Management Audit Branch.
Chief, Special Projects Branch.
Manager, Construction Grant Audit Group.
Managers, Area Audit Groups.

OFFICE OF ADMINISTRATION

Deputy Assistant Administrator for Administration.
Director of Administration, Research Triangle Park (RTP), N.C.
Chief, RTP Personnel Operations.
Chief, RTP Facilities Staff.
Chief, RTP Computer Operations.
Safety Officer RTP.
Chief, RTP Administrative Services.
Supervisor, RTP Contract Operations.
Head, R. & D. Procurement Section, RTP.
Chief, R. & D. Procurement Unit A, RTP.
Chief, R. & D. Procurement Unit B, RTP.
Head, Equipment, Services, and Construction Procurement Section, RTP.
Director, Security and Inspection Staff.
Director, Management and Organization Division.
Director, Personnel Management Division.
Director, Grants Administration Division.
Grants Officers, GS–13 and above.
Director, Contracts Management Division.
Contracts Officers, GS–13 and above.
Deputy Director, Contracts Management Division.
Chief, Cost Review and Policy Branch.
Chief, Headquarters Contract Operations Branch.
Director, Facilities and Support Services Division.
Deputy Director, Facilities and Support Services Division.
Chief, Claims Staff.
Chief, Facilities Planning Staff.
Chief, Program Management and Operations Staff.
Chief, Safety Systems Staff.
Chief, Audiovisual Support Branch.
Chief, Facilities Management Branch.
Chief, General Services Branch.
Director, Management Information and Data Systems Division.

OFFICE OF RESOURCES MANAGEMENT

Deputy Assistant Administrator for Resources Management.
Director, Budget Operations Division.
Director, Financial Management Division.

OFFICE OF PLANNING AND EVALUATION

Deputy Assistant Administrator for Planning and Evaluation.
Director, Economic Analysis Division.
Director, Policy Planning Division.
Director, Program Evaluation Division.
Director, Standards and Regulations Evaluation Division.

ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND GENERAL COUNSEL

Assistant Administrator for Enforcement and General Counsel.
Director, Office of Permit Programs.
Director, Office of Technical Analysis.
Director, Office of Program and Management Operations.

OFFICE OF GENERAL COUNSEL

Deputy General Counsel.
Associate General Counsel, Water Quality Division.
Associate General Counsel, Air Quality and Radiation Division.
Associate General Counsel, Pesticides and Solid Waste Management Division.
Associate General Counsel, Grants and Procurement Division.
Regional Counsels.

OFFICE OF WATER ENFORCEMENT

Deputy Assistant Administrator for Water Enforcement.
Director, Legal Support Division.
Director, Review and Coordination Division.
Director, Enforcement Proceedings Division.
Director, Cincinnati Field Investigation Center.
Director, Denver Field Investigation Center.

OFFICE OF GENERAL ENFORCEMENT

Deputy Assistant Administrator for General Enforcement.
Director, Mobile Source Enforcement Division.
Director, Pesticides Enforcement Division.
Director, Stationary Source Enforcement Division.

ASSISTANT ADMINISTRATOR FOR AIR AND WATER PROGRAMS

Assistant Administrator for Air and Water Programs.
Director, Office of Program Management Operations.
Director, Policy Analysis Staff.
Director, Technical Support Staff.

OFFICE OF WATER PROGRAMS OPERATIONS

Deputy Assistant Administrator for Water Programs Operations.
Director, Manpower Development Staff.
Director, Municipal Waste Water Systems Division.
Director, Oil and Hazardous Materials Division.
Director, Water Quality and Non-Point Source Control Division.
Director, Water Supply Division.

OFFICE OF WATER PLANNING AND STANDARDS

Deputy Assistant Administrator for Water Planning and Standards.
Director, Effluent Guidelines Division.
Director, Monitoring and Data Support Division.
Director, Water Planning Division.

OFFICE OF AIR QUALITY PLANNING AND STANDARDS

Deputy Assistant Administrator for Air Quality Planning and Standards.
Director, Control Programs Development Division.
Director, Emission Standards and Engineering Division.
Director, Monitoring and Data Analysis Division.
Director, Strategies and Air Standards Division.

OFFICE OF MOBILE SOURCE AIR POLLUTION CONTROL

Deputy Assistant Administrator for Mobile Source Air Pollution Control.
Director, Office of Program Management.
Director, Advanced Automotive Power Systems Development Division.
Director, Certification and Surveillance Division.
Director, Emission Control Technology Division.

ASSISTANT ADMINISTRATOR FOR CATEGORICAL PROGRAMS

Assistant Administrator for Categorical Programs.
Director, Office of Program and Management Operations.
Director, Office of Toxic Substances.
Deputy Assistant Administrator for Noise Abatement and Control.

OFFICE OF PESTICIDE PROGRAMS

Deputy Assistant Administrator for Pesticide Programs.
Director, Criteria and Evaluation Division.
Director, Registration Division.
Director, Technical Services Division.
Director, Operations Division.

OFFICE OF RADIATION PROGRAMS

Deputy Assistant Administrator for Radiation Programs.
Director, Technology Assessment Division.
Director, Criteria and Standards Division.
Director, Field Operations Division.

OFFICE OF SOLID WASTE MANAGEMENT PROGRAMS

Deputy Assistant Administrator for Solid Waste Management Programs.
Director, Operations Analysis Division.
Director, Processing and Disposal Division.
Director, Resource Recovery Division.
Director, Systems Management Division.

ASSISTANT ADMINISTRATOR FOR RESEARCH AND MONITORING

Assistant Administrator for Research and Monitoring.
Assistant for Health Effects.
Assistant for Technology Transfer.
Executive Assistant.

OFFICE OF RESEARCH

Deputy Assistant Administrator for Research.
Director, Process and Effects Division.
Director, Technology Division.
Director, Implementation Research Division.
Director, Environmental Studies Division.

OFFICE OF MONITORING

Deputy Assistant Administrator for Monitoring.
Director, Planning and Review Division.
Director, Quality Assurance Division.
Director, Advanced Techniques Division.

OFFICE OF PROGRAM OPERATIONS

Deputy Assistant Administrator for Program Operations.
Director, Program Management Division.
Director, Laboratory Operations Division.
Director, Research Information Division.

NATIONAL ENVIRONMENTAL RESEARCH CENTER, CINCINNATI, OHIO

Director, NERC, Cincinnati.
Deputy Director, NERC, Cincinnati.
Director of Administration.
Director of Program Coordination.
Safety Officer.
Chief, Personnel Operations.
Chief, Facilities Staff.
Chief, Administrative Services.
Chief, Computer Operations.
Supervisor, Contract Operations.
Laboratory Directors.
Laboratory Deputy Directors.
Laboratory Management Officers.

NATIONAL ENVIRONMENTAL RESEARCH CENTER, RESEARCH TRIANGLE PARK, N.C.

Director, NERC, RTP.
Deputy Director, NERC, RTP.
Director, Program Coordination.
Laboratory Directors.
Laboratory Deputy Directors.
Laboratory Management Officers.

NATIONAL ENVIRONMENTAL RESEARCH CENTER, LAS VEGAS, NEV.

Director, NERC, Las Vegas.
Deputy Director, NERC, Las Vegas.
Administrative Officer.
Director of Program Coordination.
Chief, Technical Services Program.
Chief, Technical Training Program.
Chief, Environmental Surveillance Program.
Chief, Radiological Research Program.

NATIONAL ENVIRONMENTAL RESEARCH CENTER, CORVALLIS, OREG.

Director, NERC, Corvallis.
Deputy Director, NERC, Corvallis.
Administrative Officer.
Director of Program Coordination.
Laboratory Directors.
Laboratory Deputy Directors.
Laboratory Management Officers.

ALL LABORATORIES

Laboratory Director.
Deputy Laboratory Director.
Management Officer.

ALL REGIONAL OFFICES

Regional Administrator.
Deputy Regional Administrator.
Assistant Regional Administrator for Management.
Safety Officer.
Chief, Financial Management Branch.
Chief, Grants Administration Branch.
Director, Air and Water Programs Division.
Director, Categorical Programs Division.
Director, Surveillance and Analysis Division.
Director, Enforcement Division.

APPENDIX C—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITION OF 18 U.S.C. 208(a) (SEE §§ 3.303(b) AND 3.606(d)(2)(ii))

1. Under the authority of section 208(b)(2) of Title 18, United States Code, it has been determined that the financial interests set forth in subparagraphs (a) through (e) of this paragraph are too remote or inconsequential to affect the integrity of the services of an employee or special Government employee in any matter in which he may act in his governmental capacity. This exemption applies whether such financial interests are held outright or in trust for the benefit of the employee, including a special Government employee, his spouse or minor child. Accordingly, interests listed in subparagraphs (a) through (e) of this paragraph need not be included in statements of outside employment and financial interests filed pursuant to § 3.301(b).

(a) Bonds other than corporate bonds.
(b) Mutual fund shares.
(c) Insurance policies.
(d) Cash, savings accounts, certificates of deposits, and shares in Federal credit unions.
(e) Ownership of real property used as the personal residence of a reporting employee.

2. When an employee, including a special Government employee, his spouse, or minor child is the beneficiary of a trust, the terms of which direct the trustee to manage the trust corpus in his sole discretion and not to disclose to the beneficiary the dealings and holdings of such trust, the Agency Counselor or a Deputy Counselor may determine that such trust provisions are adequate protection against real or apparent conflicts of interest and may grant an exemption from the prohibitions of section 208(a) of Title 18, United States Code. An exemption granted under this paragraph will not obviate the necessity of filing a statement of financial interests with respect to the assets held in such trust, unless such assets are not required to be reported by virtue of subparagraphs (a) through (e) of paragraph 1.

3. If an employee, including a special Government employee, has continued to participate in a bona fide pension, retirement, group life, health, or accident insurance plan, or other employee welfare or benefit plan that is maintained by a business or nonprofit organization of which he is a former employee, his financial interest in that organization will be exempt, except to the extent that the welfare or benefit plan is a profit-sharing or stock-bonus plan. This exemption extends also to any financial interests that the organization may have in other business activities.

Subpart D—Acceptance of Gifts, Gratuities, or Entertainment

§ 3.400 Purpose.

This subpart establishes EPA policy with respect to the acceptance of gifts, gratuities, entertainment (including meals), favors, loans, or any other thing of monetary value by EPA employees.

§ 3.401 Policy.

(a) It is EPA policy not to interfere in the private lives of employees and their families. However, certain conduct involving acceptance of gifts, gratuities, entertainment (including meals), favors, loans, or any other thing of monetary value which does not fall within any specific statutory prohibition must be regulated in view of the nature of the official duties of the employee and the special responsibilities that are assumed by a person who accepts Federal employment.

(b) Except as provided in paragraph (d) of this section, and in § 3.104(e) the direct or indirect solicitation or acceptance by an employee, his spouse, or minor child of any gift, gratuity, entertainment (including meals), favors, loan, or any other thing of monetary value from any person, corporation, or group is forbidden if the employee has reason to believe that the person, corporation, or group:

(1) Has or is seeking to obtain contractual or other business or financial relationships with EPA; or

(2) Has interests which may be substantially affected by such employee's performance or nonperformance of his official duty; or

(3) Is in any way attempting to affect the employee's official action; or

(4) Conducts operations or activities that are regulated by EPA.

(c) There are certain exceptions to the foregoing general rule which are set forth in paragraph (d) of this section. The application of these exceptions requires the exercise of good judgment and commonsense by employees. In determining whether one or more of the exceptions apply, employees shall be guided by the principle that situations have an appearance which might, whether justifiably or not, bring discredit to the Government or to EPA shall be avoided. If an employee finds that his acceptance of a meal, or of refreshments or entertainment pursuant to one of the exceptions under paragraph (d) of this section occurs other than infrequently, he should carefully reexamine the provisions of this subpart and consult with the appropriate Agency Counselor or Deputy Counselor in accordance with subpart B of this part. Each employee shall govern his conduct in light of this subpart, so that he shall have no difficulty in justifying his actions if required to do so.

(d) The following are exceptions to the general rule set forth in paragraph (b) of this section:

(1) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where the arrangements are consistent with the transaction of official business.

(2) Acceptance of modest entertainment, such as a meal or refreshment, in connection with attendance at widely attended gatherings sponsored by industrial, technical, or professional organizations; or in connection with attendance at public ceremonies or similar activities financed by nongovernmental sources where the employee's participation on behalf of EPA is the result of an invitation addressed to him in his official capacity and is approved as a part of his official duties, and the entertainment accepted is related to, and in keeping with, his official participation.

(3) Acceptance of gifts, favors, or entertainment, where there is an obvious family or personal relationship between the employee, or between his spouse,

children or parents, and the donor, and where the circumstances make it clear that it is that relationship, rather than the business of the persons concerned, which is the motivating factor for the gift, favor, or entertainment.

(4) Purchase of articles at advantageous rates where such rates are offered to Government employees as a class.

(5) Acceptance of loans from banks or other financial institutions of customary terms to finance proper and usual activities of employees, such as home mortgage loans.

(6) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, or other items of nominal value.

(7) Acceptance of incidental transportation in kind from a private organization, provided it is furnished in connection with the performance of the employee's official duties and is of a type customarily provided by the private organization. (For further guidance concerning the acceptance of travel and related expenses, see § 3.505.)

(e) A gift or gratuity the receipt of which is prohibited under this subpart shall be returned to the donor. If return is not possible, the gift or gratuity shall be turned over to a public or charitable institution and a report of such action, and the reasons why return was not feasible shall be made to the employee's supervisor. When possible, the donor also shall be informed of this action.

§ 3.402 Statutory prohibitions.

The prohibitions set forth in this subpart are to be construed as being in addition to and not in limitation of:

(a) The prohibitions of section 201 of Title 18, United States Code, as amended, relating to the corrupt solicitation or receipt of, or arrangement to receive, anything of value in connection with an employee's performance of his official duty; and

(b) The prohibitions of section 203 of Title 18, United States Code, as amended, relating to the unlawful solicitation or recipt of, or agreement to receive, compensation for services rendered by an employee in connection with matters affecting the Government.

Subpart E—Outside Employment

§ 3.500 Purpose.

This subpart prescribes EPA policy and procedures regarding outside employment or other outside activity of employees.

§ 3.501 Definition.

As used in this part, the term "outside employment or other outside activity" refers to any work, service, or other activity performed by an employee other than in the performance of his official duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting services, self-employment, and other work or services, with or without compensation.

§ 3.502 Policy.

(a) Employees are permitted to engage in outside employment or other outside activity that is compatible with the full and proper discharge of the duties and responsibilities of their Government employment. Guidelines for determining compatibility are set forth in § 3.503.

(b) Employees are encouraged to participate as private citizens in the affairs of their communities: *Provided*, That the limitations prescribed below, and otherwise by these regulations, are observed. Among these activities may be the following:

(1) Speaking, writing, editing, and teaching.

(2) Participation in the affairs of charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, and the acceptance of an award for a meritorious public contribution or achievement from any such organization.

(3) Participation in the activities of national, State, and local political parties not prescribed by law. In this connection employees should be particularly aware of the restrictions imposed on their activities by the "Hatch Act" (5 U.S.C. 7324–7327) and should consult whenever necessary with the appropriate Counselor or Deputy Counselor, as described in subpart B of this part, regarding the particularities of that act.

§ 3.503 Guidelines and limitations.

Outside employment or other outside activity is incompatible with the full and proper discharge of an employee's duties and responsibilities, and hence is prohibited, if:

(a) It would involve the violation of a Federal or State statute, a local ordinance, Executive order, or regulation to which the employee is subject.

(b) It would give rise to a real or apparent conflict of interest situation even though no violation of a specific statutory provision was involved.

(c) It would involve acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance might result in, or create the appearance of, a conflict of interest.

(d) It might bring discredit upon, or reasonably cause unfavorable criticism of, the Government or EPA or lead to relationships which might impair public confidence in the integrity of the Government or EPA.

(e) It would involve work with any contractor or subcontractor which is connected with any work being performed by that entity for EPA or would otherwise involve work for any person or organization which may be in a position to gain advantage in its dealings with the Government through the employee's exercise of his official duties.

(f) It would identify EPA or the employee officially with any organization manufacturing, distributing, or advertising a product relating to work conducted by EPA, or would create the false impression that it is an official action of EPA, or represents an official point of view. In any permissible outside employment, care shall be taken to ensure that names and titles of employees are not used to give the impression that the activity or product is officially endorsed or approved by EPA or is part of EPA activities.

(g) It would involve use of the employee's time during his official working hours.

(h) It would involve use by the employee of official facilities, e.g., office space, office machines or supplies, or the services of other employees during duty hours.

(i) It would be of such extent or nature as to interfere with the efficient performance of the employee's Government duties, or impair his mental or physical capacity to perform them in an acceptable manner.

(j) It would involve use of information obtained as a result of Government employment which is not freely available to the general public in that it either has not been made available to the general public or would not be made available on request. However, written authorization for the use of any such information may be given when the Administrator determines that such use would be in the public interest.

§ 3.504 Distinction between official and nonofficial activities.

In applying the provisions of this subpart, particularly with regard to writing, speaking, or editing activities, employees shall distinguish between official and nonofficial activities. In connection with writing, speaking, or editing, an activity shall normally be considered official if:

(a) It is the result of a request addressed to EPA to furnish a speaker, author, or editor or of an invitation addressed to an employee of EPA to perform these activities in his official capacity, rather than as a private individual; or

(b) The activity is performed in conjunction with attendance at a meeting approved under the authority of section 4111 of Title 5, United States Code. The fact that an activity was prepared for outside of duty hours or was performed after normal duty hours is not determinative of whether it is official or nonofficial.

§ 3.505 Compensation, honorariums, travel expenses.

(a) An employee may accept compensation or an honorarium for permissible outside employment or other outside activity which is nonofficial in character unless otherwise prohibited by this subpart.

(b) (1) Except as provided in paragraph (b) (2) of this section, travel expenses shall be borne by the Government when official employment activities of employees are involved, including attendance at meetings of nongovernmental organizations. Conversely, when nonofficial outside employment activities are involved, appropriated funds shall not be utilized for travel or subsistence.

(2) Contributions and awards incident to training in non-Government facilities and travel, subsistence, and other expenses incident to attendance at meetings may be accepted by employees, pro-

vided these contributions, awards, and payments are made by nonprofit organizations under section 4111 of Title 5, United States Code, and that the employee has obtained specific written authorization to accept the contribution or award.

§ 3.506 Special conditions applicable to teaching, lecturing and speechmaking.

(a) Subject to the limitations set forth in § 3.503, employees are encouraged to engage in teaching, lecturing, and speechmaking activities which are no part of their official duties provided that:

(1) Such activity is conducted on the employees' own time without the use of Government supplies and without specific information otherwise unavailable to the public.

(2) Government travel or per diem funds are not used for these purposes.

(3) Teaching and lecturing is not for the purpose of special preparation for a civil service examination that depends on information obtained as a result of Government employment except when that information is available to the general public.

(4) Such activities do not involve knowingly instructing persons on dealing with specific matters pending before Government organizations with which the employee is associated in an official capacity.

§ 3.507 Special conditions applicable to writing and editing.

(a) Subject to the limitations of § 3.503 and of this section, employees may serve as editors, editorial consultants, or on editorial boards, and may contribute articles to publications.

(b) Writing and editing activities which involve approval or disapproval of advertising are prohibited.

(c) Writing and editing, whether related or unrelated to the employee's official duties, shall not express or imply official support in the material itself or in advertising or promotional material, including book jackets and covers, relating to the employee and his contribution to the publication.

(d) writing or editing activities unrelated to the employee's official duties or other responsibilities and programs of the Federal Government shall omit mention of the employee's official title or affiliation with the Agency, or alternatively, use his official title and affiliation with the Agency in a way that shall not suggest or convey official endorsement of the work.

(e) Writing or editing activities related to the employee's official duties or other responsibilities and programs of the Federal Government shall omit mention of his official title or affiliation with the Agency or shall include a disclaimer. Disclaimers shall read as follows (unless a different wording is approved by the Office of Public Affairs): "This (article, book, etc.) was (written, edited) by (employee's name) in his private capacity. No official support or endorsement by the Environmental Protection Agency or any other agency of the Federal Government is intended or should be inferred."

§ 3.508 Special conditions applicable to publishing.

Employees may engage in publishing activities when the following conditions are met:

(a) No financial profit is derived from publishing materials which are made available to the general public by this Agency or which are available to the employee because of his official duties, but are not available to the general public.

(b) No financial profit is sought or derived from publishing proceedings or similar compilations of conferences, symposia, or similar gatherings:

(1) Which are sponsored by the Government, or

(2) Which involve the performance of official duties, or are directly related to official duties, or

(3) Where perticipation or attendance has been authorized on Government time.

(c) The official title of the individual engaged in such publishing business is not used. If the individual is the author as well as the publisher, the provisions referred to under § 3.507 apply.

§ 3.509 Administrative approval.

The provisions of this subpart shall be observed with respect to all outside employment or other outside activity. Each employee shall be alerted to identify and to avoid any situation that would involve prohibited activity. Aside from avoiding prohibited outside employment, each employee shall obtain administrative approval in accordance with appendix A to this part before engaging in outside employment of the following types:

(a) Regular self-employment.

(b) Consulting services.

(c) Holding State or local public office.

(d) Outside employment or other outside activity involving an EPA contractor or subcontractor.

(e) Any other outside work concerning the propriety of which an employee is uncertain.

Prior administrative approval may be required for additional types of outside employment where, because of special considerations, such a requirement is considered desirable for the protection of employees or EPA.

§ 3.510 Related statutory provisions.

Several criminal statutory provisions restrict certain types of outside activities on the part of employees as follows:

(a) Section 203 of Title 18, United States Code, imposes criminal penalties upon an employee who, other than in the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any service rendered or to be rendered either by himself or another in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest before any department, agency, court-martial, officer, or any civil, military, or naval commission.

(b) Section 205 of Title 18, United States Code, imposes criminal penalties upon any employee who, other than in the proper discharge of his official duties, acts as agent or attorney for prosecuting any claim against the United States or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, through his decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise, in a matter which is the subject of his official responsibility.

(c) (1) Under section 209 of Title 18, United States Code, an employee is prohibited from receiving any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the Government, from any source other than the Government of the United States except as may be contributed out of the treasury of any State, county, or municipality, or except as may be paid under the terms of Chapter 41 or Title 5, United States Code.

(2) Exceptions to the prohibitions of section 209 of Title 18, United States Code, are made for those employees continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer. However, such financial interests may still violate section 208 of Title 18, United States Code, unless waived (see subpart C, appendix C, paragraph 4 of this part).

APPENDIX A.—PROCEDURES FOR PERMISSION TO ENGAGE IN OUTSIDE EMPLOYMENT OR OTHER OUTSIDE ACTIVITY (SEE SUBPART E)

1. *Form and content of request.*—A request (in duplicate) for administrative approval of the categories of outside employment or other outside activity listed in § 3.509 of subpart E shall be in writing and addressed to the appropriate Counselor or Deputy Counselor. The request shall show:

a. Employee's name, occupational title, and Federal salary.

b. Nature of outside activity: Full description of specific duties or services to be performed and amount of compensation to be received. If without compensation so state.

c. Name and business of person or organization for which the work will be done. (In case of self-employment in a professional capacity serving a large number of individuals, instead of listing each client, the type of services to be rendered and estimate of the total number of clients anticipated during the next 6 months shall be indicated.)

d. Estimated total time that shall be devoted to the activity. (If on a continuing basis, the estimated time per year; if not, the anticipated ending date.)

e. Whether service can be performed entirely outside of usual duty hours; if not, estimated number of hours of absence from work that shall be required.

f. The grants or contracts involved, if contemplated outside employment includes consultative or professional services to institutions or Government units which have

negotiated or may seek a Federal grant or contract. Full details must be provided on any aspect of the professional and consultative services which involves, directly or indirectly, the preparation of grant application, contract proposals, program reports, and other materials which are designed to become the subject of dealings between the institutions and Government units and the Federal Government. Indicate method or basis of compensation (e.g., whether fee basis, per diem, per annum, or other).

2. *Acting on employee requests.*—a. Requests shall be thoroughly reviewed by the appropriate Agency Counselor or Deputy Counselor to insure that the outside activity for which approval is sought is permissible under applicable statutes and regulations. The review shall appraise the request in terms of (1) conflicts or apparent conflicts of interest, and (2) potential problems arising from the employee's participation in the outside activity which could result in embarrassment to the agency or the employee. As needed, advice and guidance shall be obtained from the Agency Counselor (§ 3.202).

b. Any conflict or apparent conflict of interest questions shall be resolved before approval action is taken. The Agency Counselor or Deputy Counselors on employee conduct shall furnish advice and assistance as needed by the employee concerned.

c. The Agency Counselor or Deputy Counselor shall indicate his action in writing in respense to the employee's written request. The record on each request shall be complete and contain the written request and written notification of action taken on the request. The record shall be maintained by the Agency Counselor or Deputy Counselor concerned.

3. *Keeping record up-to-date.*—If there is a change in the nature or scope of the duties or services performed or the nature of his employer's business, the employee shall promptly submit a revised request for approval. If the outside work is discontinued sooner than anticipated (not merely suspended temporarily), he shall notify the Deputy Counselor who approved the request.

4. *Enforcement.*—Failure to request administrative approval for outside employment or other outside activity for which approval is required is ground for disciplinary action.

5. *Confidentiality of requests.*—All requests for approval shall be treated as confidential and made available only to the Counselor, Deputy Counselors, and other officials specifically authorized by the Administrator.

Subpart F—Standards of Conduct for Special Government Employees

§ 3.600 Purpose.

This subpart: (a) Provides guidance with respect to the application of the conflict of interest statutes to special Government employees (as defined in § 3.601); it is of particular application to consultants and experts.

(b) Sets forth the standards of ethical conduct which, under Executive Order No. 11222 of May 8, 1965, and regulations of the Civil Service Commission, special Government employees are expected to observe.

§ 3.601 Applicability.

(a) This subpart is applicable to all employees who are classified as special Government employees. A "special Government employee" defined in § 3.102(c). It is of particular applicability to EPA consultants and experts, who normally fall within the definition of the term "special Government employee."

(b) To the extent that the conflict of interest statutes apply to a special Government employee, they apply to his activities on all days during the period of his EPA service, beginning with the date on which he takes an oath of office as a Government employee, whether he works on a full-time or intermittent basis. Similarly, the ethical standards prescribed in this subpart apply to the special Government employee during the full period of his appointment as an employee, and not merely on the days on which he performs services as an employee.

(c) Employees, including consultants and experts, who are appointed to serve for more than 130 days during a period of 365 consecutive days are not subject to this subpart, even though they may in fact work 130 days or less, but are subject to subparts A through E to this part, prescribing standards of conduct for regular Government employees.

§ 3.602 Standards of ethical conduct.

Under the Executive order and regulations of the Civil Service Commission, the following standards of ethical conduct are applicable to special Government employees:

(a) *Use of Government employment.*—A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

(b) *Use of inside information.*—A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. In this context, "inside information" means information obtained as a result of his Goverment employment which has not been made available to the general public or would not be made available on request. However, nonpublic information may be used upon a written determination made by the Agency Counselor that its use would be in the public interest.

(c) *Avoidance of actions which may appear coercive.*—A special Government employee shall not use his Government employment to coerce, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

(d) *Acceptance of gifts, entertainment or favors.*—(1) Except as provided in paragraph (d) (2) of this section, a special Government employee shall not solicit or receive from a person, organization, or group having business with EPA, any gift, gratuity, entertainment (including meals), favors, loan, or other things of monetary value, for himself or for another person, particularly one with whom he has family, business, or financial ties. This rule does not apply if the special Government employee is unaware of this kind of business.

(2) The following are exceptions to the general rule set forth in paragraph (d) (1) of this section:

(i) Receipt of salary, bonuses, or other compensation or emoluments from his non-Government employer or employers.

(ii) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting.

(iii) Acceptance of modest entertainment, such as a meal or refreshments, in connection with attendance at widely attended gatherings sponsored by industrial, technical, or professional organizations; or in connection with attendance at public ceremonies or similar activities financed by nongovernmental sources where the special Government employee's participation on behalf of EPA is the result of an invitation addressed to him in his official capacity and approved as a part of his official duties, and the entertainment accepted is related to, and in keeping with, his official participation.

(iv) Acceptance of gifts, favors, or entertainment, where there is an obvious family or personal relationship between the employee, or between his spouse, children, or parents, and the donor, and where the circumstances make it clear that it is that relationship rather than the business of the persons concerned which is the motivating factor for the gift, favor, or entertainment.

(v) Acceptance of loans from banks or other financial institutions on customary terms, to finance proper and usual activities of employees, such as home mortgage loans.

(vi) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, or other items of nominal value.

(vii) Acceptance of incidental transportation in kind from a private organization, when it is furnished in connection with the performance of the special Government employee's official duties, and provided it is of a type customarily provided by the private organization.

(e) *Gifts and honors from foreign governments.*—A special Government employee is not authorized to accept a gift, decoration, or other thing from a foreign government, unless authorized by Congress as provided by the Constitution and in section 7342 of Title 5, United States Code.

§ 3.603 Statement of employment and financial interests for special Government employees.

(a) Under Executive Order No. 11222 of May 8, 1965, and regulations of the Civil Service Commission, each special Government employee is required to submit a Statement of Employment and Financial Interests, EPA Form 3115–2, at the time of his initial appointment except to the extent that such a requirement has been waived by the Administrator as specified in paragraph (f) of this section.

(b) The Statement of Employment and Financial Interests shall be submitted to the appropriate Counselor or Deputy Counselor as defined in § 3.202. A new statement shall be submitted each time he is reappointed as an EPA special Government employee. The statement shall be kept current throughout the period of the employee's service as a special Government employee by the submission of supplementary statements on EPA Form 3115–2 clearly indicating the supplementary nature of the information furnished. The special Government employee is not required to submit any information relating to his connection with or interest in, a professional society, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business enterprise. In this connection, however, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed to be "business enterprises." Information relating to such institutions, where relevant, shall therefore be included in a special Government employee's statement of employment and financial interests.

(c) The purpose of the statement of employment and financial interests is to assist the employee, and those who review his statement, in avoiding situations where a conflicting financial interest might exist. The statement shall be treated by EPA as private information of the employee, and shall be held in confidence. It shall be reviewed only by EPA officials designated as Counselor and Deputy Counselors in § 3.202. There shall be no discussion or disclosure of the details of the information furnished except as necessary to carry out the provisions of this subpart. Information contained in the statement shall not be disclosed outside EPA except as authorized by the Administrator or the Civil Service Commission for good cause shown.

(d) The submission of a statement of employment and financial interests is not intended to relieve the employee from complying with other applicable provisions of law, Executive order, or this subpart. In particular, the employee is not thereby permitted to participate in a matter where such participation is prohibited by section 208 of Title 18, United States Code (see § 3.606(d)).

(e) Information concerning financial interests which have been exempted from the prohibition of section 208(a) of Title 18, United States Code, as set forth in appendix C to subpart B of this part may be omitted from the statement of employment and financial interests.

(f) The Administrator of EPA has determined that the following categories of special Government employees who are not consultants or experts as defined in chapter 304 of the Federal personnel manual shall not be required to file statements of employment and financial interests because their duties are of a nature and at such a level of responsibility that the submission of a statement by them is not necessary to protect the integrity of the Government:

(1) Temporary and summer employees below the grade of GS–13 under section 5332 of Title 5, United States Code.

(2) Employees participating in an intern or other training program.

§ 3.604 Advisory service.

Special Government employees who desire assistance or advice on interpreting the provisions of this subpart, or on other matters relating to the subject matter covered herein, are invited to consult the appropriate Agency Deputy Counselor or the Counselor as set forth in subpart B, § 3.202.

§ 3.605 Review, enforcement, reporting, and investigation.

(a) Each statement of employment and financial interests submitted under this subpart shall be reviewed by the Agency Counselor or appropriate Deputy Counselor. If his review discloses a conflict of interests or apparent conflict of interests the employee shall be given an opportunity to explain the conflict or apparent conflict, and every effort shall be made to resolve the matter. If the matter cannot be resolved it shall be reported to the Administrator, through the Deputy General Counsel, as Agency Counselor on conflict of interests matters. If the Agency Counselor decides that remedial action is necessary, he shall take such action immediately to end the conflict or apparent conflict of interests.

(b) Special Government employees shall consult with the appropirate Agency Counselor or Deputy Counselor with regard to any questions concerning this subpart. Resolution of problems disclosed by such consultations shall be accomplished at the lowest possible supervisory level in the agency through counseling or administrative action to eliminate a real or apparent conflict of interests. The services of the Director, Security and Inspection Staff, shall be requested by the Deputy Counselor, when necessary, to conduct investigations to ascertain all relevant facts.

(c) A violation of the regulations contained in this part may be cause for appropriate disciplinary action. All disciplinary or remedial action taken hereunder shall be in conformance with applicable laws. Executive orders, Civil Service Commission regulations, and EPA regulations. Appropriate disciplinary or remedial action includes, but is not limited to divestiture by the employee of his conflicting interest, disqualification for particular assignments, and reassignment.

(d) The special Government employee concerned shall have a reasonable opportunity during any investigation and at all levels of consideration of this problem to present in person and through documents his position on the matter.

§ 3.606 Application of conflict-of-interest statutes.

The "conflict-of-interest" statutes (18 U.S.C. 203, 205, 207, 208, and 209) are criminal statutes which provide for fines or imprisonment if they are violated. Their full text is set forth in appendix A to subpart A of this part. In summary, they apply to the special Government employee as follows:

(a) Sections 203 and 205 of Title 18, United States Code, apply to the special Government employee in his capacity as a private individual while serving also as a Government employee. They provide that the special Government employee may not, except in the discharge of his Government duties:

(1) Represent anyone else before a court or any Government agency in relation to a "particular matter" involving a specific party or parties in which the United States is a party or has a direct and substantial interest, and in which he has at any time participated "personally and substantially" either as a special or regular Government employee.

(2) Represent anyone else before a court or any Government agency in relation to a "particular matter" involving a specific party or parties which is pending within EPA, if he has served as an EPA employee for more than 60 days during the preceding 365 days. The special Government employee is bound by this restraint whether or not he has acted "personally and substantially" in relation to the "particular matter."

There are four exceptions to the application of one or both of the foregoing prohibitions, which are specified in the full text of section 205 of title 18, United States Code, at appendix A to subpart A.

(b) Section 207 of title 18, United States Code, applies to the special Government employee in his capacity as a private individual, after he has terminated his service as a Government employee. It provides that the former employee shall not:

(1) At any time after his Government employment has ended, represent anyone else before a court or any Government agency in relation to a "particular matter" involving a specific party or parties, in which the United States is a party or has a direct and substantial interest and in which he participated "personally and substantially" either as a special or regular Government employee.

(2) Within 1 year after his Government employment has ended, appear personally before a court or any Government agency in relation to a "particular matter" involving a specific party or parties in which the United States is a party or has a direct and substantial interest, and which was under his "official responsibility" as a Government employee within a period of 1 year prior to the termination of such responsibility. This prohibition applies whether or not the special Government employee participated "personally and substantially" in the "particular matter" while he was employed.

(c) Section 207(c) of Title 18, United States Code, applies to the partner of a special Government employee. It provides that during the period of the special Government employee's appointment, his partner shall not act as agent or attorney for anyone else in relation to a "particular matter" in which the United States is a party or has a direct

and substantial interest, and in which the employee is participating or has participated "personally and substantially" as a special Government employee, or which is under the employee's "official responsibility."

(d) (1) Section 208 of Title 18, United States Code, applies to the special Government employee, when he is acting in his capacity as a Government employee. It provides that the special Government employee shall not, in his governmental capacity, participate "personally and substantially" in any "particular matter" in relation to which matter, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

(2) The statute also provides two exemptions from the foregoing prohibition which permit a special Government employee to participate "personally and substantially" in a "particular matter," notwithstanding the existence of a conflicting financial interest which he holds directly or that is imputed to him. These exemptions are:

(i) In connection with specific matters, if the special Government employee's financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from him, an ad hoc exemption from the application of the statutory prohibition may be granted in writing in advance of his acting in relation to that matter, by the Administrator.

(ii) A general exemption, applicable to all employees including special Government employee, of certain financial interests which have been determined to be too remote or too inconsequential to affect the integrity of an employee's services in any matter in which he may be called upon to participate, may also be granted. The categories of financial interests which have been exempted by the Administrator under this general authority are set forth in appendix C to subpart C of this part.

(e) Section 209 of Title 18, United States Code, the fifth "conflict-of-interest" statute, does not apply to special Government employees.

§ 3.607 Other statutes.

(a) There are many other criminal statutes which are especially aimed at regulating the conduct of Government employees and which, therefore, apply to special Government employees. Two such statutes which are closely related to the conflict of interests statutes are:

(1) *Bribery.*—Section 201 of Title 18, United States Code, prohibits a Government employee from soliciting, receiving, or agreeing to receive, directly or indirectly, anything of value for himself or others in connection with the performance of his official duties, or in return for committing or aiding in the commission of a fraud on the United States.

(2) *Disclosure of confidential information.*—Section 1905 of Title 18, United States Code, prohibits a Government employee from disclosing, in any manner and to any extent not authorized by law, any information coming to him in the course of his employment or official duties which concerns or is related to the trade secrets, processes, operations, style or work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, business entity, or association.

(b) Regulations of the Civil Service Commission require that certain other statutes pertaining to the ethical and other conduct of special Government employees be brought to the attention of all special Government employees. These are listed in appendix B to subpart A of this part.

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