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H.R. 2246 ..... Pub. L. 93–46
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Health Programs Extension Act of 1973 (June 18, 1973; 87 Stat. 91)

Presidential Documents

Title 3—The President

EXECUTIVE ORDER 11724

Federal Property Council

By virtue of the authority vested in me by section 205(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(a)), and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. There is hereby established in the Executive Office of the President a Federal Property Council (hereinafter referred to as the Council). The Council shall be composed of the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, the Chairman of the Council on Environmental Quality, and such other members from the Executive Office of the President as the President may, from time to time, specify. The President shall designate one of the members to be Chairman of the Council, and shall designate its Executive Secretary.

SEC. 2. The Council shall:

(1) develop and review Federal real property policies with respect to their relationship to other policies and to the objectives of the executive branch of the Government and recommend to the President such Federal real property policies or reforms of policies as it deems necessary; and

(2) receive the reports made by the Administrator of General Services pursuant to section 3 of this order, as well as other reports relating to Federal real property requested by the Chairman, with particular attention to resolving conflicting claims on, and alternate uses for, any property described in those reports, and it shall make such reports and submit such recommendations to the President as may be appropriate.

SEC. 3(a) The Administrator of General Services shall:

(1) conduct surveys of real property holdings of executive agencies on a continuing basis and in a manner consistent with the needs of the Council, to identify properties which are not utilized, are underutilized, or are not being put to their optimum use; and

(2) make reports to the President, through the Council, describing any property or portion thereof which has not been reported excess to the requirements of the holding agency and which, in the judgment of the Administrator is either not utilized, is underutilized, or is not being put to the optimum use, and which he recommends should be reported as excess property.

(b) The Administrator of General Services shall participate in the deliberations of the Council, where appropriate.

SEC. 4. As used in this order:

(1) the term "executive agency" means "executive agency" as defined in section 3(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472(a));

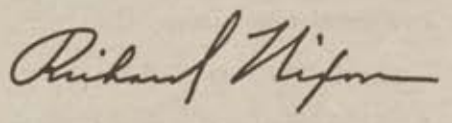
(2) the term "property", however modified, means real property or an interest therein, which is covered by the definition of "property" set forth in section 3(d) of the act (40 U.S.C. 472(d)), and also lands withdrawn or reserved from the public domain which are utilized by executive agencies for purposes other than national forests, national parks, or wildlife reserves; and

(3) the term "excess property" means "excess property" as defined in section 3(e) of the act (40 U.S.C. 472(e)).

SEC. 5. Executive agencies shall cooperate with the Council in the performance of its functions, and shall, to the extent permitted by law, provide it with such information, assistance, and staff support as may be needed to carry out those functions.

SEC. 6. Executive Order No. 11508 of February 10, 1970, and Executive Order No. 11560 of September 23, 1970, are hereby superseded, and the Property Review Board is hereby abolished.

SEC. 7. This order shall be effective as of July 1, 1973.



THE WHITE HOUSE,
June 25, 1973.

NOTE: For the text of Presidential remarks of June 25, 1973, in connection with EO 11724, above, see Weekly Comp. of Pres. Docs., Vol. 9, No. 26, issue of July 2, 1973.

[FR Doc.73-13091 Filed 6-26-73;10:03 am]

Rules and Regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 1—General Provisions

CHAPTER III—ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

PART 310—MISCELLANEOUS STATEMENTS

The Administrative Conference of the United States was established by 5 U.S.C. 571-576 to study the efficiency, adequacy and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs, and to make recommendations for improvement to administrative agencies, collectively or individually, to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

The Recommendations and Statements of the Conference have neither been published in the FEDERAL REGISTER nor codified in the Code of Federal Regulations. Beginning with the present publication, all formal Recommendations and Statements adopted by the Assembly of the Conference in Plenary Session will be published in the FEDERAL REGISTER upon their adoption and listed in the Code of Federal Regulations. In addition, those deemed to be of continuing general interest will be published in full in the Code of Federal Regulations. Past Recommendations and Statements will be accorded like treatment in a single up-dating publication that will be issued shortly.

The Administrative Conference of the United States at its Ninth Plenary Session held June 7-8, 1973, adopted three Recommendations and one formal Statement. Recommendation 73-1 proposes that agencies adopt rules setting forth minimum standards and structured practices governing the issuance of publicity which directs attention to agency action or policy and which may adversely affect identified persons. Recommendation 73-2 calls for refinement of the Department of Labor's procedures governing application for labor certification by immigrant aliens seeking permanent residence in the United States. Recommendation 73-3 urges Federal agencies responsible for large-volume benefit and compensation programs, such as Social Security and workmen's compensation, to establish statistical reporting systems that monitor caseload and decisional patterns and to use the information so obtained as part of a continuous process of evaluating and improving adjudicatory performance. The Statement is addressed to the current proposals of the American Bar Association for amending the Administrative Procedure Act, 5 U.S.C. 551-559. (The text of the American Bar Association proposals to which the Statement is directed is published in the Administrative Law Review, Volume 24, Number 4 (1972).)

1. A new Chapter III consisting of Part 305 and Part 310 is added to Title 1, CFR, to read as follows:

Sec.
305.73-1 Adverse Agency Publicity (Recommendation No. 73-1).
305.73-2 Labor Certification of Immigrant Aliens (Recommendation No. 73-2).
305.73-3 Quality Assurance Systems in the adjudication of claims of entitlement to benefits or compensation (Recommendation No. 73-3).

AUTHORITY: 5 U.S.C. 571-576.

§ 305.73-1 Adverse Agency Publicity (Recommendation No. 73-1).

(a) Adverse agency publicity—that is, statements made by an agency or its personnel which invite public attention to an agency's action or policy and which may adversely affect persons identified therein [1]—can cause serious and sometimes unfair injury. Where a reasonable and equally effective alternative is not available, adverse agency publicity is often necessary to warn of a danger to public health or safety or a threat of significant economic harm, or to serve other legitimate public purposes. However, adverse agency publicity is undesirable when it is erroneous, misleading or excessive or it serves no authorized agency purpose.

(b) Agency practices regarding adverse publicity vary widely. Some agencies use adverse publicity as the primary method of enforcement; for some others it is merely action incidental to formal sanctions. Agency rules seldom establish procedures or standards for the use of adverse agency publicity, and it is almost never subject to effective judicial review.

(c) In meeting these concerns, this recommendation addresses agency use of adverse publicity in connection with investigatory, rulemaking and agency adjudicatory processes as well as informal agency actions. It recommends the adoption of agency rules containing minimum standards and structured practices governing the issuance of publicity.

[1] Publicity as used here is distinguished from the mere decision to make records available to the public rather than preserve their confidentiality. That decision is governed by separate criteria set forth in the Freedom of Information Act (5 U.S.C. 552) and is not within the scope of this recommendation.

RECOMMENDATION

Each agency should state in its published rules the procedures and policies to be followed in publicizing agency action or policy, and internal operating practices should assure compliance. In the adoption of such procedures and policies, each agency should balance the need for adequately serving the public interest and the need for adequately protecting persons affected by adverse agency publicity in accordance with the following standards:

1. All adverse agency publicity should be factual in content and accurate in description. Disparaging terminology should be avoided.

2. Adverse agency publicity relating to regulatory investigations of specifically identified persons or pending agency trial-type proceedings should issue only in limited circumstances in accordance with the criteria outlined below.

a. Where an agency determines that there is a significant risk the public health or safety may be impaired or substantial economic harm may occur unless the public is immediately notified, it may use publicity as one of the means of speedily and accurately notifying the affected public. However, where public harm can be avoided by immediate discontinuance of an offending practice, a respondent should be allowed an opportunity, where feasible, to cease the practice (pending a legal test) in lieu of adverse agency publicity.

b. Where it is required in order to bring notice of pending agency adjudication to persons likely to be desirous of participating therein or likely to be affected by that or a related adjudication, the agency should rely on publicity to the extent necessary to provide such notice even though it may be adverse to a respondent.

c. Where information concerning adverse agency action is available to the public regardless of agency publicity measures and is likely to result in media publicity, adverse agency publicity should be issued only to the extent necessary to foster agency efficiency, public understanding, or the accuracy of news coverage.

3. Adverse agency publicity not included in paragraph 2 above should issue only after the agency has taken reasonable precautions to assure that the information stated is accurate and that the publicity fulfills an authorized purpose.

4. Where information in adverse agency publicity has a limited basis—for example, allegations subject to subsequent agency adjudication—that fact should be prominently disclosed. Any respondent or prospective respondent in an agency proceeding should, if practicable and consistent with the nature of the proceeding, be given advance notice of adverse agency publicity relating to the proceeding and a reasonable opportunity to prepare in advance a response to such publicity.

5. Where adverse agency publicity is shown to be erroneous or misleading and any person named therein requests a retraction or correction, the agency should issue the retraction or correction in the same manner (or as close thereto as feasible) as that by which the original publicity was disseminated.

§ 305.73–2 Labor Certification of Immigrant Aliens (Recommendation No. 73–2).

NOTE: The text of this recommendation will not be published in the Code of Federal Regulations.

(a) Under the 1965 amendments to the Immigration and Nationality Act aliens seeking permanent residence for the purpose of employment must obtain a certification from the Secretary of Labor that, in essence, there are no suitable workers available in the United States and that their employment will not adversely affect wages and working conditions. 8 U.S.C. 1182(a)(14). The labor certifications are made by the regional offices of the Manpower Administration of the Department of Labor.

(b) This recommendation, like the underlying study, is confined to labor certification for permanent residence and does not reach to the certification either of temporary workers or of seasonal or daily commuters. In FY 1972 about 60,000 applications for permanent labor certifications were received and about 30,000 were granted. Aliens in the professions, sciences and arts (PSA) generally make their own applications for employment; all other applications are made by the employer for a particular employment (job-offer).

(c) The procedures and standards for certification and review are outlined in the regulations. 29 CFR 60.2–60.4. Except for two lists, of employments where certification is automatic and where it is precluded, the regulations are sparse in detail. They are supplemented by 14 pages of Guidelines, which in turn are supplemented by memoranda from the national office of the Manpower Administration. Some regions hold these supplemental materials confidential while others make them publicly available.

(d) The initial decision by the certifying officer is made without hearing, incorporating information either gathered (in writing or by telephone) from the state employment service or independently developed by the officer; the underlying information is often vague and formless in nature. Notice of grant or denial is given to the Immigration Service or the consular office which submitted the application, in the case of a PSA applicant, or to the employer in the case of a job-offer applicant, but not to the alien himself. Ninety days are allowed in which either the alien or the employer may appeal a denial; a considerable part of that period may expire before the alien himself has received notice of the denial. The Department does not include with its notice of denial any advice as to the right of appeal. The Immigration Service has since February, 1972 been advising the PSA applicant of his right to appeal when it forwards the notice.

(e) Review is conducted by a reviewing officer in a regional office. He is free to go outside the record made by the certifying officer. The stated policy is to make the material before the certifying officer available to the alien or his employer, but the practicing bar denies that that policy is carried out and finds in any case that the information is often uninformative. There is no procedure for access by the applicant to any new material developed by the reviewing officer before final administrative decision. The decisions on review are ordinarily written and adequately informative.

(f) One district court has twice afforded judicial review of a denial of certification, and has in each case reversed the denial with a sharply critical opinion.

RECOMMENDATION

A. PROCEDURES AND STANDARDS FOR DECISION

The Guidelines and appropriate supplemental memoranda should be made available to the public as required by the Freedom of Information Act. Copies should be maintained in each regional office. The published regulations should, at such time as this is feasible, be expanded to include the appropriate parts of this supplemental material.

B. THE RECORD FOR DECISION

The national office of the Manpower Administration should in its regulations develop standards which would improve the quality and degree of specificity of the record upon which certification is granted or denied.

C. TAKING AN APPEAL

1. Notice of denial of certification should be sent by the certifying officer directly to the alien who is a PSA applicant as well as to the Immigration Service and the consular office. Notice of denial should be sent the alien job-offer applicant as well as the employer; to avoid consequent confusion the regulations might appropriately be changed to provide that only the employer can appeal denial of a job-offer certification.

2. A notice of the right of appeal should accompany each denial of certification, in conformity with the recent practice of the Immigration Service when it forwards notice of denial to a PSA applicant.

3. In cases where the applicant shows that circumstances beyond his control have prevented timely completion of his material on appeal, the reviewing officer should allow a protective appeal, to be supplemented within a prescribed time.

D. DECISION ON REVIEW

1. The regulations should provide that an applicant on appeal has full access to the record upon which the certifying officer bases his denial.

2. The regulations should state the circumstances in which the reviewing officer may appropriately develop new information, and should provide for advice to, and opportunity for comment by, the applicant if the new information has an effect adverse to his interests.

§ 305.73–3 Quality Assurance Systems in the adjudication of claims of entitlement to benefits or compensation (Recommendation No. 73–3).

(a) The Federal government is engaged in either the direct administration or the funding of a substantial number of programs which involve the adjudication of claims of entitlement to benefits or compensation. Examples include veterans' benefits; the basic Social Security (OASDI) programs; Medicare and Medicaid; public employee retirement benefits; federal employees' and longshoremen's and harbor workers' compensation programs; and programs of categorical public assistance for the aged, blind and disabled and for dependent children.

(b) In many of these programs the number of claims per year is very large while at the same time the determinations of fact and law involved in adjudicating an individual claim may be quite complex and difficult. Moreover, claimants under these programs often lack the personal resources or access to technical assistance necessary to prepare claims material adequately and to pursue hearing or administrative appeal procedures should their claims be denied. These factors give rise to a particular concern with the quality of the adjudication process and product at all levels of the administrative process in programs which make determinations concerning large numbers of claims of entitlement to individual benefits or compensation.

(c) As a part of a continuous effort to provide the highest possible degree of accuracy, timeliness and fairness in the adjudication of claims, the following recommendation should be adopted by agencies which directly administer benefit and compensation programs and by agencies which have a capacity and a responsibility to assure the quality of claims adjudication by grantees of federal funds.

RECOMMENDATION

1. Positive caseload management should be recognized as essential to the accurate, timely and fair adjudication of claims of entitlement to benefits or compensation. A positive caseload management system should include three connected operations: (1) The development of standards and methods for measuring the accuracy, timeliness and fairness of agency adjudications; (2) the continuous evaluation of agency adjudications through the application of those standards and methods; and (3) the use of the information gathered in the course of such evaluation to identify needed improvements in adjudicative performance.

2. As part of their positive caseload management program, agencies should begin immediately to explore, develop and implement statistical quality assurance reporting systems that will indicate the accuracy, timeliness and fairness of claims processing. In designing such systems, agencies should consider the need for information of a type that:

(a) Reflects differences in the types of cases and types of issues adjudicated and the stages of the administrative process involved;

(b) Identifies the management unit or, where appropriate, the individual adjudicator involved in order that effective action may be taken to reinforce success and to improve performance;

(c) Permits separate evaluation of (1) substantive decision-making, (2) case development effort and (3) procedural regularity;

(d) Enables separate evaluation of particular functions of the decision process (e.g., issue statement or evaluation of evidence in substantive decision-making).

3. Agencies should employ such other techniques for gathering information on their adjudication process, including field investigations and special studies, as are required for the evaluation of accuracy, timeliness and fairness. Agencies should be particularly sensitive to the need for better information on the extent to which claimants' personal resources, social status and access

to representation or other assistance may affect the adjudication of claims.

4. The positive caseload management program should facilitate not only objective evaluation of the agency's case processing operation, but also the effective utilization of quality assurance information in policy formation and operational control.

2. A new Part 310 is added to Title 1 CFR, to read as follows:

§ 310.1 [Reserved]

§ 310.2 Statement of the Administrative Conference on the ABA Proposals to Amend the Administrative Procedure Act (Adopted June 7–8, 1973.).

(a) In August, 1970 the House of Delegates of the American Bar Association adopted twelve resolutions calling in general terms for amendments to the Administrative Procedure Act. They are a valuable means of focusing the attention of the Administrative Conference, the organized bar, and other interested persons upon revisions and improvements in the APA suggested by a quarter-century of experience.

(b) The Conference has studied the resolutions and the implementing recommendations prepared by the Administrative Law Section of the ABA. The Conference has expressed its views in recommendations previously adopted respecting the subject matter of several of the resolutions. We believe it desirable, however, to state in a single document our views on the resolutions and on those parts of the implementing recommendations which appear to raise issues separate from those posed by the resolutions.

Resolution No. 1.

The Conference approves in principle Resolution No. 1, calling for improved definitions of "rule" and "order" so as to distinguish clearly between the nature of rulemaking and the nature of adjudication. The Conference has commenced, and will continue, the further study that is needed to determine how this can most effectively be achieved.

Resolution No. 2.

The Conference agrees with Resolution No. 2. We have previously called for eliminating from 5 U.S.C. 553 the exemption for rules relating to "public property, loans, grants, benefits, or contracts" (Recommendation No. 69–8). We also favor limiting or eliminating the present exemption that applies whenever a military or foreign affairs function is involved, provided that appropriate safeguards can be retained to protect the aspects of those functions that concededly need special treatment. This subject deserves further study, which the Conference has already begun.

Resolution No. 3.

Resolution No. 3 would extend the existing provisions regarding separation of functions in 5 U.S.C. 554(d) to all formal proceedings, both adjudicatory and rulemaking; the existing exceptions for ratemaking, initial licensing, and formal rulemaking generally would be eliminated. With respect to such formal proceedings, the Conference approves this proposal insofar as it applies to agency staff who have actually engaged in investigative or prosecutorial functions in the particular proceeding, including persons who have actually exercised supervisory authority over such functions once the formal phase of the proceeding has commenced. We do not believe, however, that agency officials having general organizational or supervisory responsibility for such functions should, solely by virtue of that responsibility, be barred from performing their customary function of advising agency members in proceedings not presently covered by 5 U.S.C. 554(d).

Resolution No. 4.

The Conference approves the purpose of Resolution No. 4, which seeks the prohibition of *ex parte* communications between agency members and parties or other interested persons outside the agency on any fact in issue in an adjudicatory or rulemaking proceeding subject to 5 U.S.C. 556 and 557. We leave open for further consideration by the Council and cognizant committees whether this objective can most effectively be sought by legislation or by agency rules.

Resolution No. 5.

As the numerous Conference recommendations of general applicability indicate, the Conference endorses the principle of uniformity of administrative procedures—including procedures governing the conduct of formal adjudication—where considerations of fairness or expedition do not justify differences. It is extremely difficult to determine, however, where such considerations are widely applicable without an intensive agency-by-agency examination of the particular procedure in question. As a matter of priority, the advantages to be gained by seeking standardization through agency-by-agency examination of a procedure whose only apparent flaw may be its nonuniformity are not always as important as improvement of some procedures whose actual operation has been shown to be defective. The work involved, and hence the opportunity cost, becomes even greater if the uniform procedure is to be not merely recommended but imposed, making it necessary to pass upon exceptions for particular agencies. For these reasons, the Conference would not desire a statutory mandate to enforce the single goal of uniformity with respect to particular provisions of administrative law, but would prefer to further, as it has in the past, all the values of sound administrative procedure—including the value of uniformity—by making recommendations in those areas where the need and the utility of Conference action are most apparent.

Resolution No. 6.

The Conference has already called for agencies to consider delegating final decisional authority to presiding officers or to intermediate appellate boards, subject to discretionary review by the agency (Recommendation 68–6). ABA Resolution No. 6 and that part of its Recommendation No. 8 which authorizes such delegation are consistent with and would implement the Conference recommendation, and we endorse them.

Resolution No. 7.

Resolution No. 7 would require agencies "to the extent practicable and useful" to provide by rule for prehearing conferences. The Conference has already endorsed the principal objective of this resolution, which is increased use of prehearing conferences in adjudicatory proceedings (Recommendation 70–4). We agree with the conclusion expressed in ABA Recommendation No. 7 that pursuit of this objective is best conducted through the Conference.

Resolution No. 8.

The Conference agrees that the presiding officer should have substantial authority in the conduct of adjudicatory proceedings. The Conference has already recommended legislation to authorize agencies, at their discretion, to accord administrative finality to the decisions of administrative law judges (Recommendation 68–6). We endorse the ABA proposal insofar as it would achieve that result.

The Conference shares the Association's view that an Administrative Law Judge who has presided over the reception of evidence should exercise responsibility for rendering the initial decision, with limited exceptions. The specification of those exceptions and other matters set forth in the ABA's implementing recommendation raise issues which the Chairman's Office of the Conference and the Committee on Agency Organization and Personnel have studied in some depth and discussed with the relevant committee of the Administrative Law Section of the ABA. Since further study and discussion would be fruitful, the Conference takes no position on these matters at the present time.

Resolution No. 9.

Resolution No. 9, as elaborated upon by its implementing recommendation, calls for legislation authorizing agencies to provide by rule for abridged on-the-record procedures for use by unanimous consent of the parties. We do not believe that such legislation would accord the agencies any authority they do not already possess, and it might be construed to invalidate certain procedures at present employed in the absence of unanimous consent. Accordingly, we recommend against implementation of this proposal.

Resolution No. 10.

Resolution No. 10 would grant all agencies authority to make subpoenas generally available in adjudicatory proceedings. Those agencies which conduct adjudications subject to 5 U.S.C. 554, 556 and 557 or otherwise determined on the record after hearing should, as a general rule, possess subpoena power, and subpoenas should be available to the parties in such proceedings. We favor an amendment to the Administrative Procedure

Act which would achieve this result with respect to adjudications subject to sections 554, 556 and 557. It is not feasible or desirable, however, to make subpoenas available to either the agencies or the parties in every case of informal adjudication. Thus, amending the Administrative Procedure Act to provide a grant of subpoena power in appropriate cases of informal adjudication will require a definition of the category of proceedings to be covered; since framing a workable definition is exceedingly difficult, it may be found preferable for Congress to make such grants of subpoena power on a less general basis. In any event, we favor retention of that provision of the Administrative Procedure Act (5 U.S.C. 555 (d)) which permits the agencies to require by rule a statement or showing of general relevance and reasonable scope of the evidence sought before issuance of a subpoena.

Resolution No. 11.

The Conference agrees in principle with the proposal that agencies be required to provide by rule the procedure applicable to cases of informal adjudication. We are convinced that in view of the vast range of informal agency adjudication, more empirical study is necessary before sound procedures of general applicability can be formulated.

Resolution No. 12.

The Conference does not favor at this time amending the Administrative Procedure Act to treat agency issuance of prejudicial publicity. We believe that there exists at present an adequate legal remedy for agency publicity which affects the integrity of an on-the-record agency proceeding. We agree with the American Bar Association that agency practices in the issuance of publicity adversely affecting persons in their businesses, property, or reputations also present a problem, and we have proposed in our Recommendation 73-1 means of dealing with it.

(5 U.S.C. 571-576)

EDITORIAL NOTE: The following separate statements are published pursuant to the requirements of 5 U.S.C. 575(a)(1).

Separate Statement of Max D. Paglin, Earl W. Kintner, Anthony L. Mondello, William A. Nelson, Charles F. Bingmam and John H. Powell, Jr.

The above-named members of the Committee on Agency Organization and Personnel are of the opinion, for the reasons set forth in the Staff report accompanying the proposed Recommendation, that the Conference's position on Resolution No. 3 of the ABA Proposals (Separation of Functions) should be in the form and language originally submitted by the Council and various committees, to wit:

Resolution No. 3. Resolution No. 3 would extend the eixsting provisions regarding separation of functions in 5 U.S.C. 554(d) to all formal proceedings, both adjudicatory and rulemaking; the existing exceptions for ratemaking, initial licensing, and formal rulemaking generally would be eliminated. With respect to rulemaking of particular applicability, all ratemaking, and initial licensing, the Conference approves this proposal insofar as it applies to agency staff actually engaged in investigative or prosecutorial functions, including the actual exercise of supervisory authority over such functions in a particular case. We do not believe, however, that agency officials having general organizational or supervisory responsibility for such functions should, solely by virtue of that responsibility, be barred from performing their customary function of advising agency members in proceedings not presently covered by 5 U.S.C. 554(d). With respect to rulemaking of general applicability, the Conference believes there should be no statutory requirement of separation of functions.

Separate Statement of Malcolm S. Mason

I join in the above statement of Max D. Paglin and other named members of the Committee on Agency Organization and Personnel, except that I favor that portion of the Assembly's amendment to the original submission which would permit consultation with staff members whose exercise of supervisory authority occurs prior to commencement of the formal phase of the proceeding. More generally, I am of the view that various portions of the Conference's Statement concerning the ABA proposals overemphasize notions of formal neatness at the expense of realistic examination of the actual problems encountered in actual agencies in various kinds of proceedings.

Dated June 18, 1973.

RICHARD K. BERG,
Executive Secretary.

[FR Doc.73-12841 Filed 6-26-73;8:45 am]

Title 9—Animals and Animal Products

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

SUBCHAPTER B—COOPERATIVE CONTROL AND ERADICATION OF LIVESTOCK OR POULTRY DISEASES

PART 56—SWINE DESTROYED BECAUSE OF HOG CHOLERA

Payment of Indemnities

Statement of consideration. The purpose of this amendment is to clarify the provisions of § 56.4 of Part 56, 9 CFR, and to provide for owners written concurrence in claims which may be paid for destruction, burial, incineration, rendering, or otherwise disposing of swine destroyed because of hog cholera.

Pursuant to the provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111-113, 114, 114a, 114g, 115, 117, 120, 121, 123-126, 134a-134h), Part 56, Title 9, Code of Federal Regulations relating to the payment of indemnity for swine destroyed because of hog cholera, is hereby amended in the following respects:

Section 56.4 is amended to read:

§ 56.4 Care and feeding of swine under quarantine; disposal after slaughter.

The Department may pay one-half the expenses for destruction, burial, incineration, rendering, or otherwise disposing of swine infected with or exposed to hog cholera, and one-half the expenses of transportation of such swine to the point where such destruction shall take place. The amount of the claim which may be paid for destruction, burial, incineration, rendering, or otherwise disposing of swine infected with or exposed to hog cholera shall be determined by a Veterinary Services or State representative or jointly. The record of such claim shall be signed by a Veterinary Services or State representative or jointly and by the owner certifying his acceptance of the amount claimed. The Department will not pay expenses for the care and feeding of swine held for destruction except as specifically approved by the Deputy Administrator, and in the case of approval, such expenses for care and feeding of such swine shall be deducted from the appraised value of the swine and indemnity payments may be made to the limit specified in § 56.7.

(Secs. 3-5, 23 Stat. as amended, sec. 2, 32 Stat. 792, as amended, sec. 3, 33 Stat. 1265, as amended, sec. 11, 58 Stat. 734, as amended, 75 Stat. 481, 76 Stat. 129-132; 21 U.S.C. 111-113, 114, 114a, 114g, 115, 117, 120, 121, 123-126, and 134a-134b; 37 FR 28464, 28477.)

Effective date. The foregoing amendment shall become effective June 27, 1973.

The amendment imposes certain further restrictions necessary to prevent the interstate spread of hog cholera and should be made effective promptly to be of maximum benefit to affected persons. 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 22d day of June 1973.

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

[FR Doc.73-12939 Filed 6-26-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airworthiness Docket No. 73-SW-40; Amdt. 39-1677]

PART 39—AIRWORTHINESS DIRECTIVES

Mitchell Automatic Pilot Instruments

There have been reports of the Mitchell Industries, Inc. automatic pilot roll servo, as installed on several Beech model aircraft, interfering with the mechanical wing flap control system. In one instance, this resulted in loss of aileron control. Since this condition is likely to exist or develop in other airplanes of the

same type design, an airworthiness directive is being issued to require modification of these Beech model airplanes which have the mechanical wing flap controls and the Mitchell automatic pilot roll servo.

Since a situation exists which 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 hereby amended by adding the following new Airworthiness Directive:

MITCHELL INDUSTRIES, INC., doing business as Edo-Aire Mitchell. Applies to Mitchell automatic pilot instruments installed in various Beech aircraft with a mechanical wing flap control system in accordance with the following Supplemental Type Certificates:

STC No.	Beech Airplane Models	Autopilot Model
SA1346SW	23, A23, A23A, A23-19, 19A, A24, A24R, B19, M19A, A23-24, B23, C23.	Century I. Model AK341.
SA1348SW	23, A23, A23A, A23-19, 19A, B19, M19A, A23-24, B23, C23, A24, A24R.	Century II$_B$. Model AK342.

Compliance required within the next ten (10) hours' time in service after the effective date of this AD, unless already accomplished.

To prevent interference of the flap control system with the automatic pilot roll servo, which may result in loss of aileron control, accomplish the following:

Remove the automatic pilot roll servo assembly and all servo installation brackets from the airplanes or install the cable tensioner Kit PKMB-8 in accordance with Edo-Aire Mitchell Service Bulletin No. MB-8 dated June 7, 1973, or later FAA approved revision, or any other method approved by the Chief, Engineering and Manufacturing Branch, Southwest Region, Federal Aviation Administration, Fort Worth, Texas.

The bulletin mentioned herein may be obtained from Edo-Aire Mitchell, P.O. Box 610, Mineral Wells, Texas 76067.

This amendment becomes effective June 29, 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 Wort Worth, Texas on June 18, 1973.

HENRY C. NEWMAN,
Director, Southwest Region.

[FR Doc.73-12846 Filed 6-26-73;8:45 am]

[Airspace Docket No. 73-SO-42]

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

Alteration of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Savannah, Ga., control zone and transition area.

The Savannah control zone is described in § 71.171 (38 FR 351) and the Savannah transition area is described in § 71.181 (38 FR 435). In the descriptions, controlled airspace is designated for the protection of IFR operations at Hunter Army Airfield. Since Hunter AAF will be deactivated and all associated navigation aids will be decommissioned, effective July 31, 1973, this controlled airspace will no longer be required. It is necessary to alter the descriptions to reflect these changes. Since these amendments lessen the burden on the public, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 GMT, July 31, 1973, as hereinafter set forth.

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

SAVANNAH, GA.

Within a 5-mile radius of Savannah Municipal Airport (Lat. 32°07'35" N, Long. 81°12'05" W).

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

SAVANNAH, GA.

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Savannah Municipal Airport (Lat. 32°07'35" N, Long. 81°12'05" W); within 3 miles each side of Savannah VORTAC 052° radial, extending from the 8.5-mile radius area to 8.5 miles northeast of the VORTAC; within 3 miles each side of the ILS localizer east course, extending from the 8.5-mile radius area to 13 miles east of Runway 27 threshold.

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

Issued in East Point, Ga., on June 14, 1973.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.73-12847 Filed 6-26-73;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. C-2399]

PART 13—PROHIBITED TRADE PRACTICES

Irving M. Balderson, et al.

Subpart—Advertising falsely or misleadingly: § 13.10 *Advertising falsely or misleadingly;* § 13.75 *Free goods or services;* § 13.155 *Prices:* 13.155-95 Terms and conditions; § 13.180 *Quantity:* 13.180-30 In stock. Subpart—Delaying or withholding corrections, adjustments or action owed: § 13.675 *Delaying or withholding corrections, adjustments or action owed.* Subpart—Failing to maintain records: § 13.1051 *Failing to maintain records:* 13.1051-20 Adequate. Subpart—Misrepresenting oneself and goods—Goods: § 13.1647 *Guarantees;* § 13.1720 *Quantity;* § 13.1760 *Terms and conditions:* 13.1760-50 *Sales contract;*—Prices: § 13.1823 *Terms and conditions.* Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-75 Truth in Lending Act; § 13.1855 *Identify;* § 13.1857 *Instruments' sale to finance companies;* § 13.1882 *Prices;* § 13.1892 *Sales contract, right-to-cancel provision;* § 13.1905 *Terms and conditions:* 13.1905-50 Sales contract. Subpart—Offering unfair, improper, and deceptive inducements to purchase or deal: § 13.1955 *Free goods;* § 13.1980 *Guarantee, in general.* Subpart—Using deceptive techniques in advertising: § 13.2275 *Using deceptive techniques in advertising.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Irving M. Balderson, et al., t/a National Carpet Service Company, et al., Fairmont Heights, Md., Docket No. C-2399, May 2, 1973]

In the matter of Irving M. Balderson and Steven C. Goldsmith, individually, trading and doing business as National Carpet Service Company and Lanham Carpets.

Consent order requiring two individuals trading as two different companies located in Fairmont Heights, Maryland, engaged in the selling, distribution, and installation of carpeting and floor coverings, among other things to cease misrepresenting various sales offers; failing to maintain adequate records; misrepresenting the prices, terms or conditions under which respondents supply separate padding and provide installation of floor coverings; misrepresenting guarantees; misrepresenting the quantity and qualities of stock on hand; misrepresenting the word "free" with respect to merchandise offered; and failing to inform customers of their right to cancel any sales contract within three (3) business days.

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

It is ordered, That respondents Irving M. Balderson and Steven C. Goldsmith, individually, trading and doing business as National Carpet Service Company, and Lanham Carpets, or under any other name or names, and respondents' agents, representatives, and employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of carpeting and floor coverings, or any other article of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme, or device wherein false, misleading, or deceptive statements or representations are made in order to obtain leads or prospects for the sale of carpeting or other merchandise or services.

2. Making representations, orally or in writing, directly or by implication, purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but

to obtain leads or prospects for the sale of other merchandise at higher prices.

3. Disparaging in any manner, or discouraging the purchase of any merchandise or services which are advertised or offered for sale.

4. Representing, orally or in writing, directly or by implication, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.

5. Failing to maintain and produce for inspection and copying for a period of three years adequate records to document for the entire period during which each advertisement was run and for a period of six weeks after the termination of its publication in press or broadcast media:

a. the cost of publishing each advertisement including the preparation and dissemination thereof;

b. the volume of sales made of the advertised product or service at the advertised price; and

c. a computation of the net profit from the sales or each advertised product or service at the advertised price.

6. Representing, orally or in writing, directly or by implication, that a stated price for carpeting or floor coverings includes the cost of a separate padding and the installation of such padding and carpeting thereof, unless in every instance where it is so represented the stated price for floor covering does, in fact, include the cost of such separate padding and installation thereof; or misrepresenting in any manner, the prices, terms, or conditions under which respondents supply separate padding and provide installation in connection with the sale of floor covering products.

7. Representing, orally or in writing, directly or by implication, that any product or service is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and respondents deliver to each purchaser, prior to the signing of the sales contract, a written guarantee clearly setting forth all of the terms, conditions and limitations of the guarantee fully equal to the representations, orally or in writing, directly or by implication, made to each such purchaser, and unless respondents promptly and fully perform all of their obligations and requirements under the terms of each such guarantee.

8. Representing, directly or indirectly, orally or in writing, that respondents have "hundreds" or any other number of patterns and colors of carpeting in stock unless respondents have the stated number of patterns or colors in stock and available for immediate sale and delivery; or misrepresenting, in any manner, the colors, patterns, size, kind or quantity of carpeting in stock and available for sale delivery or installation.

9. Representing, directly or indirectly, orally or in writing, that a purchaser of respondents' merchandise or services will receive a "free" vacuum cleaner or kitchen carpeting or any other "free" merchandise, service, prize or award unless all conditions, obligations, or other prerequisites to the receipt and retention of such merchandise, services, gifts, prizes or awards are clearly and conspicuously disclosed at the outset in close conjunction with the word "free" wherever it first appears in each advertisement or offer.

10. Representing, directly or indirectly, orally, or in writing, that any merchandise or service is furnished "free" or at no cost to the purchaser of advertised merchandise or services, when, in fact, the cost of such merchandise or service is regularly included in the selling price of the advertised merchandise or service.

11. Representing, directly or indirectly, orally or in writing, that a "free" offer is being made in connection with the introduction of new merchandise or services offered for sale at a specified price unless the respondents expect, in good faith, to discontinue the offer after a limited time and commence selling such merchandise or service, separately, at the same price at which it was sold with a "free" offer.

12. Representing, directly or indirectly, orally or in writing, that merchandise or service is being offered "free" with the sale of merchandise or service which is usually sold at a price arrived at through bargaining, rather than at a regular price, or where there may be a regular price, but where other material factors such as quantity, quality, or size arrived at through bargaining.

13. Representing, directly or indirectly, orally or in writing, that a "free" offer is available in a trade area for more than six (6) months in any twelve (12) month period. At least thirty (30) days shall elapse before another such "free" offer is made in the same trade area. No more than three such "free" offers shall be made in the same area in any twelve (12) month period. In such period, respondents' sale in that area of the product or service in the amount, size or quality promoted with the "free" offer shall not exceed 50 percent of the total volume of its sales of the product or service, in the same amount, size or quality, in the area.

14. Representing, directly or indirectly, orally or in writing, that a product or service is being offered as a "gift", "without charge", "bonus", or by other words or terms which tend to convey the impression to the consuming public that the article of merchandise or service is free, when the use of the term "free" in relation thereto is prohibited by the provisions of this order.

15. Contracting for any sale whether in the form of trade acceptance, conditional sales contract, promissory note, or otherwise which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of execution.

16. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

17. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable, and which shall contain in 10-point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

NOTICE OF CANCELLATION

[enter date of transaction]

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to [Name of seller], at [address of seller's place of business], not later than midnight of _____.

(date)

I hereby cancel this transaction.

(Date)

(Buyer's signature)

18. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

19. Including any sales contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this order including specifically his right to cancel the sale in accordance with the provisions of this order.

20. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

21. Misrepresenting, directly or indirectly, orally or in writing, the buyer's right to cancel.

22. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

23. Negotiating, transferring, selling, or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

24. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

25. Advertising the price of carpet, either separately or with padding and installation included, for specified areas of coverage without disclosing in immediate conjunction and with equal prominence the square yard price for additional quantities of such carpet with padding and installation needed.

Provided, however, that nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by federal law or the law of the state in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon showing, shall make such modifications as may be warranted in the premises.

It is further ordered, That each of respondents do forthwith cease and desist from disseminating, or causing the dissemination of, any advertisement of merchandise by means of newspapers, or other printed media, television or radio, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, unless respondents clearly and conspicuously disclose in each advertisement the following notice set off from the text of the advertisement by a black border:

The Federal Trade Commission has found that we have engaged in bait & switch advertising solely designed to sell products other than those advertised.

One year from the date this order becomes final or any time thereafter, respondents upon showing that they have discontinued the practices prohibited by this order and that the notice provision is no longer necessary to prevent the continuance of such practices may petition the Commission to waive compliance with this order provision.

It is further ordered, That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized for the purpose of obtaining leads for the sale of carpeting or floor coverings, or utilized in the advertising, promotion or sale of carpeting or floor coverings and other merchandise.

It is further ordered, That respondents, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondents and each newspaper publishing company, television or radio station or other advertising media which is utilized by the respondents to obtain leads for the sale of carpeting or floor coverings and other merchandise, with a copy of the Commission's News Release setting forth the terms of this order.

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale, sale of any product, consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That each of the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form of their compliance with this order.

By the Commission.

Issued May 2, 1973.

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

[FR Doc.73-12908 Filed 6-26-73;8:45 am]

[Docket No. C-2400]

PART 13—PROHIBITED TRADE PRACTICES

ARA Services, Inc.

Subpart—Acquiring corporate stock or assets: § 13.5 *Acquiring corporate stock or assets:* 13.5-20 Federal Trade Commission Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18). [Cease and desist order, ARA Services, Inc., Philadelphia, Pa., Docket No. C-2400, May 9, 1973]

In the matter of ARA Services, Inc., a corporation.

Consent order requiring a Philadelphia, Pennsylvania, vending business and wholesale distributor of periodicals and paperback books, among other things to divest the stocks and assets in various areas throughout the United States. Respondent is further prohibited from acquiring any corporate stock or assets of any firms engaged in full-line vending in any Standard Metropolitan Statistical Area [SMSA], or county not within an SMSA for a period of ten (10) years without prior Commission approval.

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

(a) *It is ordered*, That respondent, ARA Services, Inc., (hereinafter "ARA" or respondent), a corporation, and its successors and assigns, shall divest the stocks, assets, properties, rights, privileges and interests of whatever nature, tangible or intangible, necessary to support divestitures of the following vending sales volume in the market areas specified below:

Allentown, Pennsylvania	$1,990,000
Knoxville, Tennessee	590,000
Fort Wayne, Indiana	2,000,000
Omaha/Lincoln, Nebraska	1,500,000
Houston, Texas	750,000
Hudson, Bergen, Passaic, Morris, Monmouth, Middlesex, Somerset, Union, Essex Counties, New Jersey/Richmond County, New York	2,000,000
Indianapolis, Indiana	481,000
Pittsburgh, Pennsylvania	964,000

(b) ARA shall further divest all stocks, assets, properties, rights, privileges and interests of whatever nature, tangible and intangible, necessary to support divestitures of all of its vending sales volume in the following market areas:

Corpus Christi, Texas
Duluth, Minnesota
St. Clair County, Michigan
Las Vegas, Nevada
Louisville, Kentucky

(c) ARA shall further divest all stocks, assets, properties, rights, privileges and interests of whatever nature, tangible and intangible, necessary to support divestiture of all of its route vending sales volume in the following market area:

Lorain/Elyria, Ohio

Each divestiture shall be made up of a viable vending business. Each divestiture

shall be absolute but, if the acquirer requests, ARA may, subject to the approval of the Federal Trade Commission as provided in the next paragraph, finance the purchase, or lease rather than sell equipment to the acquirer. In the event of a foreclosure or repossession pursuant to any leasing or financing agreement, ARA shall redivest the repossessed vending business and equipment within twelve (12) months of the repossession. With respect to Las Vegas, Nevada, divestitures shall be made to a minimum of two separate acquirers.

With respect to the divestitures specified in part (a) of this paragraph, respondent shall, within sixty (60) days of the service of this order, submit to the Commission a list of the vending operations to be divested in compliance with part (a), including a list of customer locations and vending sales volume. Losses thereafter of vending sales volume in such accounts shall be deemed to constitute divestiture, provided that respondent has exercised customary due care in servicing such locations, has refrained from doing any act which caused such loss, and, has at the time of submission, no knowledge that loss of the accounts to be divested is imminent or probable in the near future. Divestiture shall be made of any gains of vending sales volume in said accounts. Any claim of loss shall be supported by a verified statement of a certified public accountant following audit.

All divestitures specified in part (a) of this paragraph shall be submitted for approval to the Commission by June 30, 1974; all divestitures shall be submitted to the Commission for approval on or before June 30, 1975; and each divestiture shall be consummated within sixty (60) days after final Commission approval of divestiture. After each divestiture, respondent shall forthwith report to the Commission the vending sales volume and customer locations divested.

II

It is further ordered, That no divestiture required by paragraph I of this order shall be effected directly or indirectly to any person who is at the time of divestiture an officer, director, employee or agent of or otherwise under the control or influence of respondent, or who owns or controls, directly or indirectly, more that one (1) percent of the outstanding capital stock of respondent.

III

It is further ordered, That for a period of three (3) years from the date of each divestiture respondent shall not solicit or acquire, directly or indirectly, any of the accounts divested pursuant to this order.

IV

It is further ordered, That respondent shall not repurchase any vending operation divested by it pursuant to this order for a period of ten (10) years after the date of approval of the last divestiture required by this order.

V

It is further ordered, That for a period of ten (10) years from the date of service of this order, respondent shall, except as provided in Paragraph VIII or unless it has received prior Commission approval, cease and desist from acquiring, directly or indirectly, the assets, stock, share capital or any other interest in or of any firm or person engaged in full-line vending as defined in the accompanying complaint in any Standard Metropolitan Statistical Area (SMSA), or county not within an SMSA, in which respondent is engaged in full-line vending operations.

VI

It is further ordered, That for a period of ten (10) years from the date of service of this order, respondent shall, except as provided in Paragraph VIII or unless it has received prior Commission approval, cease and desist from acquiring, directly or indirectly, the assets, stocks, share capital or any other interest in or of any firm or person engaged in street vending as defined in the accompanying complaint in any SMSA, or county not within an SMSA, in which respondent is engaged in street vending operations.

VII

Respondent shall for a period of ten (10) years from the date of service of this order report and describe any proposed acquisition which includes vending operations, except those referred to in Paragraph VIII of the order, and give notice to the Federal Trade Commission at least thirty (30) days before consummation of such acquisition with a satisfactory showing that the reported acquisition complies with the requirements of this order. Such report shall describe separately for both respondent and the operation to be acquired the annual sales volume in full-line vending and street vending and the SMSA and counties in which such business is conducted.

VIII

Nothing contained in this order shall be construed to prohibit respondent: (1) from purchasing new or used vending equipment; (2) from purchasing vending machines, fixtures, equipment and other accessories from any vending business which, as a result of bona fide competitive bids or proposals, has been replaced as a vendor by respondent; (3) from purchasing isolated vending routes or parts thereof as follows:

(a) Full-line vending routes or parts thereof with sales volume which individually does not exceed a maximum of $165,000 and cumulatively does not exceed a maximum of $330,000 in any SMSA, or county not within an SMSA, in which respondent is engaged in full-line vending during the ten (10) year term of the order. This subparagraph (a) shall be inapplicable, for a period of five (5) years from the date of this order, in the divestiture areas listed in paragraph I.

(b) Street vending routes or parts thereof in any SMSA, or county not within an SMSA, in which respondent is engaged in street vending not exceeding the following schedule:

Population	Maximum Cumulative Allowable in 10 years	Maximum Sales Volume of Any One Acquisition
0 to 300,000	$150,000	$100,000
300,001 to 800,000	300,000	150,000

No more than one such acquisition in excess of $75,000 sales volume may be made within any SMSA, or county not within an SMSA, in which respondent is engaged in street vending in any twelve (12) month period. The dollar sales volume figures for street acquisitions in this paragraph are exclusive of Federal cigarette excise taxes and all state and local cigarette and sales taxes and are adjustable upward or downward according to the Consumer Price Index published by the Bureau of Labor Statistics.

In any SMSA, or county not within an SMSA, in which respondent is engaged in street vending where the population exceeds 800,000 respondent shall be limited to single street route acquisitions, defined for purposes of this order as the amount of business serviced by a single route man, or part time equivalent. This subparagraph (b) shall be inapplicable, for a period of five (5) years from the date of this order, in the divestiture areas listed in Paragraph I.

Respondent shall submit a written report of acquisitions covered by this paragraph to the Federal Trade Commission annually from the date of service of this order for the ten (10) year period of the order describing each route acquisition consummated during the period and showing that the reported acquisition complies with the requirements of this paragraph. Each such report shall be supported by a verified statement by a certified public accountant following audit.

IX

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any change in respondent, and that this order shall be binding upon any successor.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this order. All reports shall include, among other things that are from time to time required, a detailed description of the steps taken to comply with this order.

By the Commission.

Issued May 9, 1973.

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

[FR Doc.73-12907 Filed 6-26-73;8:45 am]

[Docket No. 2401]

PART 13—PROHIBITED TRADE PRACTICES

Hollow Metal Door and Buck Association, Inc., et al.

Subpart—Aiding, assisting and abetting unfair or unlawful act or practice: § 13.290 *Aiding, assisting and abetting unfair or unlawful act or practice.* Subpart—Coercing and intimidating: § 13.350 *Customers or prospective;* § 13.370 *Suppliers and sellers.* Subpart—Collecting, assembling, furnishing or utilizing consumer reports: § 13.382 *Collection, assembling, furnishing or utilizing consumer reports;* 13.382–1 Confidentiality, accuracy, relevancy, and proper utilization. Subpart—Combining or conspiring: § 13.388 *To control allocations and solicitation of customers;* § 13.395 *To control marketing practices and conditions;* § 13.430 *To enhance, maintain or unify prices;* § 13.470 *To restrain and monopolize trade;* § 13.493 *To submit collusive bids.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C 45) [Cease and desist order, Hollow Metal Door and Buck Association, Inc. et al., New York, N.Y., Docket No. C-2401, May 15, 1973]

In the Matter of Hollow Metal Door and Buck Association, Inc., ACME & DORF Metal Door Corp., ACME Steel Door Corporation, American Steel Products Corporation, ARAM Metal Products, Ltd., ARCH Opening Steel Buck Corp., Atlantic Metal Products, Inc., Bilt-Rite Steel Buck Corporation, City Steel Door Corp., County Firedoor Corporation, Elevator Doors, Inc., F.H.A. Steel Products Corporation, Firedoor Corporation of America, General Fire-Proof Door Corporation, J.G.L. Custom Metal Doors Corporation, SOS Consolidated, Inc., Reliable Fireproof Products Corp., Superior Fireproof Door and Sash Company, Inc., Superior Steel Door and Trim Co., Triumph Metal Products, Inc., Williamsburg Fireproof Products Corporation, corporations, and Alfred Finkel, individually and as an officer of Hollow Metal Door and Buck Association, Inc., and Williamsburg Fireproof Products Corporation, Bertram Teich, individually and as an officer of Hollow Metal Door and Buck Association, Inc., and Acme Steel Door Corporation, Samuel Sklar, individually and as an officer of Hollow Metal Door and Buck Association and F.H.A. Steel Products Corporation, Eliot Kalan, individually and as an officer of Hollow Metal Door and Buck Association, Inc., and County Firedoor Corporation, Algernon Miller, individually and as Executive Secretary and General Counsel of Hollow Metal Door and Buck Association, Inc., Moe Brookmeyer, individually and as an officer of Reliable Fireproof Products Corp., Arthur Graine, individually and as an officer of Pioneer Industries Division of SOS Consolidated, Inc., A. David Ross, individually and as an officer of American Steel Products Corporation, Sal Scuderi, individually and as an officer of Triumph Metal Products, Inc., Bernard Schechter, individually and as an officer of Firedoor Corporation of America, Seymour Schnittman, individually and as an officer of Arch Opening Steel Buck Corp., Sam Shear, individually and as an officer of City Steel Door Corp., and, AARON SZABO, individually and as an officer of General Fire-Proof Door Corporation.

Consent order requiring a New York City based trade association of manufacturers of steel doors and frames, twenty members companies and thirteen individuals holding managerial positions either in the association or member companies, among other things to cease restraining competition in the steel door and construction industries.

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

1. *Metal doors and frames,* as used in this order, include metal doors, frames, partitions, trim, elevator doors, elevator cabs and any other products made in whole or part of fabricated metal, manufactured, sold or distributed now or in the future for installation or use in a construction project or job.

2. *Bid,* as used in this order, refers to any offer, solicitation, invitation, estimate or other communication, made to a buyer or prospective buyer, containing any term of sale or proposed term of sale.

It is ordered, That respondents:

Hollow Metal Door and Buck Association, Inc.,
Acme & Dorf Metal Door Corp.,
Acme Steel Door Corporation,
American Steel Products Corporation,
Aram Metal Products, Ltd.,
Arch Opening Steel Buck Corp.,
Atlantic Metal Products, Inc.,
Bilt-Rite Steel Buck Corporation,
City Steel Door Corp.,
County Firedoor Corporation,
Elevator Doors, Inc.,
F.H.A. Steel Products Corporation,
Firedoor Corporation of America,
General Fire-Proof Door Corporation,
J.G.L. Custom Metal Door Corporation,
SOS Consolidated, Inc.,
Reliable Fireproof Products Corp.,
Superior Fireproof Door and Sash Company, Inc.,
Superior Steel Door and Trim Co.,
Triumph Metal Products, Inc.,
Williamsburg Fireproof Products Corporation, corporations, and
Alfred Finkel, individually and as an officer of Hollow Metal Door and Buck Association, Inc., and Williamsburg Fireproof Products Corporation,
Bertram Teich, individually and as an officer of Hollow Metal Door and Buck Association, Inc., and Acme Steel Door Corporation,
Samuel Sklar, individually and as an officer of Hollow Metal Door and Buck Association, Inc., and F.H.A. Steel Products Corporation,
Eliot Kalan, individually and as an officer of Hollow Metal Door and Buck Association, Inc., and County Firedoor Corporation,
Algernon Miller, individually and as Executive Secretary and General Counsel of Hollow Metal Door and Buck Association, Inc.,
Moe Brookmeyer, individually and as an officer of Reliable Fireproof Products Corp.,
Arthur Graine, individually and as an officer of Pioneer Industries Division of SOS Consolidated, Inc.,
A. David Ross, individually and as an officer of American Steel Products Corporation,
Sal Scuderi, individually and as an officer of Triumph Metal Products, Inc.,
Bernard Schechter, individually, and as an officer of Firedoor Corporation of America,
Seymour Schnittman, individually and as an officer of Arch Opening Steel Buck Corporation,
Sam Shear, individually and as an officer of City Steel Door Corporation,
Aaron Szabo, individually and as an officer of General Fire-Proof Door Corporation,

and respondents' officers, agents, representatives and employees, successors and assigns, directly or indirectly, through any corporate or other device, in or in connection with the manufacture, distribution or sale of metal doors and frames in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, individually, jointly or severally from any of the following:

I

1. (A) Submitting any bid to any customer or prospective customer of metal doors and frames when any price, term or condition of sale contained in said bid was discussed with, disclosed to or received from, directly or indirectly, any competitor, actual or potential.

(B) Using the present bid proposal form previously recommended by the H.M.D.B.A. and, after ceasing and desisting from such use, each respondent member of H.M.D.B.A. shall, in its independent judgment, arrive at a new bid proposal form containing the future terms or conditions of sale of such member, which future terms or conditions of sale shall not be the subject of any recommendation or suggestion of H.M.D.B.A.

(C) Entering into, performing, enforcing, furthering or adhering to any conspiracy, contract, agreement, understanding, or planned common course of action with any person, firm, or organization to establish, fix, control, stabilize or maintain prices, discounts or the terms or conditions of sale of metal doors and frames including, but not limited to, the terms or proposed terms of any bid.

2. (A) Furnishing, exchanging or circulating any credit information or engaging in any credit reporting plan unless:

(1) the information furnished is in response to a specific request for information concerning a named person, business, firm or transaction;

(2) no recommendation is made concerning the use of such information by the recipient;

(3) the subject of the requested credit information report is first provided with a copy of the report and afforded an opportunity to include comments or corrections; and

(4) the comments or corrections made by the subject of the requested credit information are included with or made a part of the report furnished to the requesting party.

(B) Entering into, performing, enforcing, furthering or adhering to any conspiracy, contract, agreement, understanding, or planned common course of action with any person, firm or organization to deny the availability of credit to any other person, firm or organization, or to adversely affect the credit standing of any such person, firm or organization, except as permitted hereinabove in subparagraph A of this Paragraph.

3. (A) Publishing or disseminating, directly or indirectly, or causing to be published or disseminated to any competitor, the name of any customer or prospective customer of metal doors and frames, for the purpose or with the effect of having that customer or potential customer boycotted or subjected to foreclosure or impediment in obtaining metal doors and frames, except as permitted hereinabove in subparagraph 2(A).

(B) Entering into, performing, enforcing, furthering, or adhering to any conspiracy, contract, agreement, understanding or planned common course of action with any person, firm or organization to boycott or refuse to deal with any customer or potential customer of metal doors and frames, except as permitted hereinabove in subparagraph 2 (A).

4. (A) Publishing or disseminating, directly or indirectly, or causing to be published or disseminated, through H.M.D.B.A. or otherwise, to any competitor any information which permits the identification of any present customer or prospective customer of metal doors and frames for the purpose or with the effect of foreclosing competition for the business of such customer or prospective customer, except as permitted hereinabove in subparagraph 2(A).

(B) Entering into, performing, enforcing, furthering, or adhering to any conspiracy, contract, agreement, understanding or planned common course of action with any person, firm or organization to allocate or divide the market among competitors, whether by customer, work site, geographically or otherwise.

5. (A) Harassing, threatening, coercing, or intimidating any member of the H.M.D.B.A., any purchaser of metal doors and frames, or any supplier of metal doors and frames including, but not limited to, making threats of punishment or of imposition of economic burdens on said members, customers or suppliers, or foreclosing or limiting in any way the opportunity of said members, customers or suppliers to engage in the sale or purchase of said products, or to cause them harm, financial, economic or otherwise, or from taking action to carry out such threats; *provided however*, The following may be done:

(1) H.M.D.B.A. may collect claims against members for non-payment of periodic dues and may suspended or expel members on account of one year delinquency of such dues; and

(2) members of H.M.D.B.A. may collect claims or may bring suit against customers for lawful debts, if such action is taken on an independent basis or through a collection agency without participation or involvement of any competitor, or H.M.D.B.A., its officers and employees, or any other trade association.

(B) Entering into, performing, enforcing, furthering or adhering to any conspiracy, contract, agreement, understanding or planned common course of action with any person, firm, or organization to harass, threaten, intimidate or coerce any member of H.M.D.B.A., any purchaser of metal doors and frames, or any supplier of metal doors and frames.

6. (A) Furnishing, exchanging or circulating to any competitor or potential competitor in the manufacture, sale or distribution of metal doors and frames any information concerning any employee's employment record, background, qualifications or availability for employment unless:

(1) the information furnished is in response to a specific request from a prospective employer to a former employer for information concerning the employment qualifications of a named employee and only the requesting party is furnished such information;

(2) no recommendation is made concerning the use of such information by the recipient;

(3) the request contains or is accompanied by signed written consent of the employee to furnish such information; and

(4) the information furnished is a truthful and objective report on the employee.

(B) Failing to hire any prospective employee solely or primarily because of his employment with any member of H.M.D.B.A.

(c) Entering into, performing, enforcing, furthering, or adhering to any conspiracy, contract, agreement, understanding or planned common course of action with any person, firm or organization to prevent, restrain, control or limit employees from change of employment, except as permitted hereinabove in subparagraph A of this Paragraph.

7. (A) Communicating to any person, firm or organization any information pertaining to the union or non-union status of any person, firm or organization engaged in the manufacture, sale or distribution of metal doors and frames, or about the entry or potential entry by any firm into the business of manufacture, sale or distribution of metal doors and frames.

(B) Entering into, performing, enforcing, furthering or adhering to any conspiracy, contract, agreement, understanding or planned common course of action with any person, firm or organization to exclude other firms from entering the business of manufacture, sale or distribution of metal doors and frames, or to deprive or impede any competitor or potential competitor engaged in the manufacture, sale or distribution of such products of access to union labor, or to impose union terms upon any such competitor or potential competitor.

II

It is further ordered, That respondent Hollow Metal Door and Buck Association, Inc.:

1. Hold election for association officers, disqualifying from candidacy for such office any officer or employee of respondents Williamburg Fireproof Products Corporation, Firedoor Corporation of America, SOS Consolidated Inc. and County Firedoor Corporation, continuing such disqualification in effect for a period of five years from the date of this Order.

2. Amend its by-laws to require that members, as a condition of membership, observe the provisions of this Order and consent to be bound by the terms thereof.

3. Permit resignation of a member at any time.

4. Maintain minutes containing a complete record of all discussion and actions of the H.M.D.B.A. and all committees thereof.

III.

It is further ordered, That the respondent members of H.M.D.B.A. shall not for a period of ten (10) years after the effective date of this Order participate in any trade association or similar organization, other than the H.M.D.B.A., having activities in the Metropolitan New York area or whose members manufacture or sell products for the construction industry, *provided however*, That nothing herein shall prevent respondent members from joining such association or organization as non-voting members thereof.

IV.

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

V.

It is further ordered, That respondents, individually, within sixty (60) days after the effective date of this Order, file with the Commission a report in writing setting forth in detail the manner and form in which each has complied with this Order.

By the Commission.

Issued May 15, 1973.

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

[FR Doc.73-12910 Filed 6-26-73;8:45 am]

[Docket No. C-2403]

PART 13—PROHIBITED TRADE PRACTICES

Benton & Bowles, Inc.

Subpart—Advertising falsely or misleadingly: § 13.45 *Content*; § 13.135 *Nature of product or service*; §13.170 *Qualities or properties of product or service*: 13.170-52 Medicinal, therapeutic, healthful, etc.; § 13.205 *Scientific or other relevant facts*. Subpart—Misrepresenting oneself and goods—Goods: § 13.1575 *Comparative data or merits*; §13.1605 *Content*; § 13.1710 *Qualities or properties*; § 13.1740 *Scientific or other relevant facts*. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1850 *Content*; § 13.1885 *Qualities or properties*; § 13.1895 *Scientific or other relevant facts*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [cease and desist order, Benton & Bowles, Inc., New York, N.Y., Docket No. C-2403, May 22, 1973]

In the Matter of Benton & Bowles, Inc., a Corporation

Consent order requiring a New York City advertising agency, among other things to cease misrepresenting the medicinal or therapeutic qualities of a non-prescription internal analgesic product, Vanquish, and misrepresenting certain scientific facts with regard to the product in advertising.

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

It is ordered, That respondent Benton & Bowles, Inc., a corporation, its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any controlled corporation, wholly owned subsidiary or division in connection with the advertising, offering for sale, sale or distribution of Vanquish in the United States, do forthwith cease and desist from:

A. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which:

1. Represents, directly or by implication, that a recommended dose of Vanquish is more effective in relief of pain than a recommended dose of any aspirin or buffered aspirin.

2. Represents, directly or by implication, that Vanquish will cause gastric discomfort less frequently than any aspirin or buffered aspirin.

3. Fails to disclose that Vanquish contains aspirin and caffeine.

B. Disseminating, or causing the dissemination of, any advertisement by any means which contains statements which are inconsistent with, negate or contradict any disclosures required by Subparagraph A above, or in any way obscure the meaning of such disclosure;

C. Disseminating, or causing the dissemination of, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in Subparagraphs A(1) and A(2) above or fails to include the disclosures required in Subparagraph A(3) above.

It is further ordered, That respondent Benton & Bowles, Inc., a corporation, its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any controlled corporation, wholly owned subsidiary, or division, in connection with the advertising, offering for sale, sale or distribution of any non-prescription internal analgesic product in the United States do forthwith cease and desist from:

A. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which:

1. Represents directly or by implication, that a claim concerning the comparative performance, the comparative effectiveness, or the comparative freedom from side effects of such product has been established, when there exists a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug products, as to the validity of such claim, unless the respondent can establish that it neither knew nor had reason to know of the existence of such substantial question; or

2. Refers to the ingredients aspirin or caffeine by any word or words other than their common, or usual name, unless (a) it is clearly and conspicuously disclosed that such word or words refer to aspirin or caffeine, and, (b) it is clearly and conspicuously disclosed that the only active analgesic ingredient in such product is aspirin and the only stimulant ingredient in such product is caffeine, if such is the case; or

3. Fails to disclose that the product contains aspirin or caffeine, if such is the case, provided, however, that Paragraphs A (2) and (3) of part II of this order shall not take effect or be binding unless or until order provisions embodying these same disclosure requirements become final with respect to Sterling Drug, Inc., co-respondent joined in the complaint issued in 722 3221.

B. Disseminating, or causing the dissemination, of any advertisement by any means, which contains statements which are inconsistent with, negate or contradict any disclosures required by Paragraph A above, or in any way obscure the meaning of such disclosures;

C. Disseminating, or causing the dissemination of, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in Paragraph A(1) and A(2) above, or which fails to disclose the disclosures required in Paragraph A(2) and A(3) above.

D. Making any representation, directly or by implication, concerning the comparative performance, the comparative effectiveness, or the comparative freedom from side effects of such product, when there exists a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such analgesic products, as to the validity of such representation, unless the respondent can establish that it neither knew nor had reason to know of the existence of such substantial question.

E. Making any statement or representations, directly or by implication, concerning the performance, effectiveness, or freedom from side effects of such product, unless there exists competent and reliable evidence to provide a reasonable basis for such representations. Notwithstanding the foregoing it shall be a complete defense in any enforcement proceeding instituted hereunder for said respondent to establish it neither knew nor had reason to know that said evidence was not competent and reliable.

F. Provided, however, that Paragraphs A(1) and D of part II of the order shall not take effect or be binding unless or until an order provision embodying the "Standard" set forth in Paragraphs A(1) and D, or any modification thereof, becomes final with respect to Sterling Drug, Inc., co-respondent joined in the complaint issued in 722 3221. Provided further that should said order against Sterling Drug, Inc., contain a standard different or modified in any respect from the "Standard" set forth in said paragraphs, both parties agree to a reopening and modification of these paragraphs for the sole purpose of incorporating said modification into these paragraphs. For the purpose of this Paragraph F the "Standard" shall mean "when there exists a substantial question, recognized by experts, qualified by scientific training and experience to evaluate the safety and efficacy of such non-prescription internal analgesic product." Furthermore, the defense of "knew or had reason to know" as set forth in Paragraphs A(1) and D of this order shall not be revised or modified or otherwise affected, even though the standard finally utilized is different or modified in any respect from the "Standard" set forth in said paragraphs.

G. Provided further that the proscriptions of this order shall apply only to claims for the prevention, treatment, or relief of pain, but not to claims for the relief of minor pain or discomfort that is incidental to the elimination, by the product, of an underlying condition causing such minor pain or discomfort, such as a cough or stuffy nose.

III

It is further ordered, That respondent corporation shall forthwith distribute a

copy of this order to each of its operating divisions.

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

It is further ordered, That respondent shall, within sixty (60) days and at the end of six (6) months after the effective date of the order served upon it, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with the order to cease and desist.

By the Commission.

Issued May 22, 1973.

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

[FR Doc.73-12909 Filed 6-26-73;8:45 am]

Title 19—Customs Duties

CHAPTER I—BUREAU OF CUSTOMS, DEPARTMENT OF THE TREASURY

[T.D. 73-173]

PART 1—GENERAL PROVISIONS

Customs Stations

On March 26, 1973, a proposal to revoke the designation of San Ygnacio, Tex., as a Customs station in the Laredo, Tex., Customs district (Region VI), was published in the FEDERAL REGISTER (38 FR 7810). There were no comments received.

Accordingly, the designation of San Ygnacio, Tex., as a Customs station is hereby revoked. To reflect this revocation, the table in § 1.3(d) of the Customs Regulations is amended by deleting "San Ygnacio" from the list of "Customs stations," and "Laredo" from the "Port of entry having supervision" listing in the Laredo, Tex., district.

(Sec. 1, 37 Stat. 434; 5 U.S.C. 301, 19 U.S.C. 1)

Effective date. This amendment shall be effective on June 27, 1973.

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

Approved: June 15, 1973.

JAMES B. CLAWSON, *Acting Assistant Secretary of the Treasury*.

[FR Doc.73-12963 Filed 6-26-73;8:45 am]

[T.D. 73-174]

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

Filing of Increased Number of Copies of Documents With Application

JUNE 14, 1973.

On February 15, 1973, a notice of proposed rulemaking was published in the FEDERAL REGISTER (38 FR 4515), which proposed to increase the number of copies of documents required by the Bureau of Customs to be filed with an application to record a copyright or trademark from 700 to 1,000. No comments were filed in response to the notice of proposed rulemaking.

The present requirements in the Customs Regulations that the size of the photographic or other likenesses of copyrighted work be 8" x 10½" is also changed to require that they be approximately 8" x 10½".

Accordingly, the proposed amendments to §§ 133.3 and 133.33 of the Customs Regulations are hereby adopted as set forth below.

Effective date. These amendments shall become effective on July 27, 1973.

VERNON D. ACREE, *Commissioner of Customs*.

Approved: June 14, 1973.

EDWARD L. MORGAN, *Assistant Secretary of the Treasury*.

Paragraph (a) of § 133.3 and paragraph (a)(2) of § 133.33 are amended to read as follows:

§ 133.3 Documents and fee to accompany application.

(a) *Documents*. The application shall be accompanied by:

(1) A status copy of the certificate of registration certified by the United States Patent Office showing title to be presently in the name of the applicant; and

(2) One thousand copies of this certificate, or of a United States Patent Office facsimile. The copies may be reproduced privately and shall be on paper approximately 8½" x 11" in size. If the certificate consists of two or more pages, the copies may be reproduced on both sides of the paper.

* * * * *

(Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a)

§ 133.33 Documents and fee to accompany application.

(a) * * *

* * * * *

(2) One thousand photographic or other likenesses reproduced on paper approximately 8" x 10½" in size of any three-dimensional work, design, print, label, or other work not readily identifiable by title and author. An application shall be excepted from this requirement if it covers a work such as a book, magazine, periodical, or similar copyrighted matter readily identifiable by title and author. One thousand likenesses of a component part of a copyrighted work, together with the name or title, if any, by which the part so depicted is identifiable, may accompany an application covering an entire copyrighted work.

* * * * *

(Sec. 501, 65 Stat. 290; 31 U.S.C. 483a) (R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

[FR Doc.73-12962 Filed 6-26-73;8:45 am]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 591—ALLOWANCES AND DIFFERENTIALS

Part 591 is being changed in its entirety to accommodate additional program responsibilities in the allowances area.

Former Subparts A, B, C, and D are rescinded and the subject matter redesignated as Subpart B, and retitled as "Cost of Living Allowance and Post Differential—Nonforeign Areas." In addition, the sections have been renumbered. It should be noted that there is no change in the regulations other than retitling and renumbering.

Subpart C is the new regulations governing the Allowance Based on Duty at Remote Worksites program.

Subpart A is reserved at this time for the Allowances for Uniforms program.

Part 591 of title 5 of the CFR is revised as set forth below:

Subpart A—[Reserved]

Subpart B—Cost of Living Allowance and Post Differential—Nonforeign Areas

Sec.
591.201 Definitions.
591.202 Areas covered.
591.203 Places and rates at which allowances shall be paid.
501.204 Places and rates at which differentials shall be paid.
591.205 Establishment of rates for additional places.
591.206 Periodic review.
591.207 Deductions from allowances.
591.208 Agencies and employees covered.
591.209 Exclusion of certain employees.
591.210 Eligibility for differential.
591.211 Coordination of allowances and differentials.
591.212 Payment of allowances and differentials.

AUTHORITY: 5 U.S.C. 5941; sec. 202, E.O. 10,000; 3 CFR, 1954-58 Comp., p. 268.

Subpart C—Allowance Based on Duty at Remote Worksites

Secs.
591.301 Purpose.
591.302 Coverage.
591.303 Responsibilities of agencies.
591.304 Criteria for determining remoteness.
591.305 Allowance rates.
591.306 Employee eligibility for an allowance.
591.307 Payment of allowance rates.
591.308 Relationship to additional pay payable under other statutes.
591.309 Effective date for payment of allowances.
591.310 Effect of regulations in this subpart on allowances established under previous statutes.

APPENDIX A—Daily transportation allowance rate schedule—commuting over land by private motor vehicle to remote duty posts.

APPENDIX B—Daily inconvenience or hardship allowance schedule—commuting over land by motor vehicle to remote duty posts.

AUTHORITY: 5 U.S.C. 5942; sec. 8, E.O. 11609.

Subpart B—Cost of Living Allowance and Post Differential—Nonforeign Areas

§ 591.201 Definitions.

In this part:

(a) "Date of arrival" means the beginning of business on the workday of the employee's arrival at the post, or other place designated. When the employee's arrival is on a nonworkday, "date of arrival" means the beginning of business on the first workday following arrival.

(b) "Date of departure" means the close of business on the workday of the employee's departure from the post or other place designated. When the employee's departure is on a nonworkday, "date of departure" means the close of business on the last workday preceding departure.

(c) "Day or calendar day" means any day of the year. Fractional days are considered whole days.

(d) "Detail" means the temporary assignment or temporary duty of an employee away from his post of regular assignment, including all periods of leave while serving at the post of detail.

(e) "Non-foreign allowance" or "allowance" means a cost-of-living allowance payable under section 5941 of title 5, United States Code, at a post in a nonforeign area where living costs are substantially higher than in the District of Columbia.

(f) "Non-foreign area" means the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, territories and possessions of the United States, and such additional areas located outside the continental United States as the Secretary of State shall designate as being within the scope of Part II of Executive Order 10000, as amended.

(g) "Non-foreign differential" or "differential" means an allowance payable under section 5941 of title 5, United States Code, at a post in a nonforeign area when conditions of environment differ substantially from conditions of environment in the States and warrant its payment as a recruitment incentive.

(h) "On assignment" or "on transfer" at a post of duty means officially occupying a position located at the post, geographically and organizationally, and having official headquarters at the post for travel and other administrative purposes.

(i) "Rate of basic pay" means the rate of pay fixed by statute for the position held by an individual, before any deductions and exclusive of additional pay of any kind, such as overtime pay, night differential, extra pay for work on holidays, or allowances and differentials.

§ 591.202 Areas covered.

The following areas are subject to this part:

Alaska (including all the Aleutian Islands east of longitude 167 degrees east of Greenwich).

American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoan group east of longitude 171 degrees west of Greenwich, together with Swains Island).

Canton and Enderbury Islands.

Commonwealth of Puerto Rico.

Guam.

Hawaii (including Ocean or Kure Island).

Howland, Baker, and Jarvis Islands.

Johnston or Cornwallis Island, and Sand Island.

Kingman Reef.

Midway Islands.

Navassa Island.

Palmyra Island.

Swan Islands.

Virgin Islands of the United States.

Wake Island.

Any small guano islands, rocks, or keys which, in pursuance of action taken under the Act of Congress, August 18, 1856, are considered as appertaining to the United States.

Any other islands to which the United States Government reserves claim, such as Christmas Island.

§ 591.203 Places and rates at which allowances shall be paid.

In accordance with section 5941 of title 5, United States Code, and section 205 of Executive Order 10000, as amended and in consideration of relative consumer price levels in the area and in the District of Columbia, and differences in goods and services available and the manner of living of persons employed in the area concerned in positions comparable to those of U.S. employees in the area, allowances are established at the following places and rates:

Alaska (including all the Aleutian Islands east of longitude 167 degrees east of Greenwich): 25 percent of rate of basic pay.

Commonwealth of Puerto Rico: 5 percent of rate of basic pay.

Hawaii (excluding Ocean or Kure Island): 15 percent of rate of basic pay.

§ 591.204 Places and rates at which differentials shall be paid.

In accordance with section 5941 of title 5, United States Code, and section 202 of Executive Order 10000, as amended, and based on (a) extraordinarily difficult living conditions, (b) excessive physical hardship, or (c) notably unhealthful conditions, differentials are established at the following places and rates:

American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoan group east of longitude 171 degrees west of Greenwich, together with Swains Island): 25 percent of rate of basic pay.

Canton Island: 25 percent of rate of basic pay.

Christmas Island: 25 percent of rate of basic pay.

Guam: 25 percent of rate of basic pay.

Johnston or Cornwallis Island, and Sand Island: 25 percent of rate of basic pay.

Midway Islands: 25 percent of rate of basic pay.

Swan Islands: 25 percent of rate of basic pay.

Wake Island: 25 percent of rate of basic pay.

§ 591.205 Establishment of rates for additional places.

The department or agency concerned shall submit to the Commission in writing requests for the establishment of rates of allowances or differentials for places for which they have not been established by this subpart.

§ 591.206 Periodic review.

The Commission shall review from time to time, but at least annually, the places designated, the rates fixed, and the regulations in this part, which are prescribed for payment of allowances and differentials, with a view to making those changes therein as will insure that payment thereof shall continue only during the continuance of conditions justifying payment of allowances and differentials, and shall not in any instance exceed the amount justified.

§ 591.207 Deductions from allowances.

In accordance with the provisions of section 205(b)(2) of Executive Order 10000, as amended, deductions from allowances of the following classes of employees shall be made at the following places and rates: None.

§ 591.208 Agencies and employees covered.

(a) In accordance with section 5941 of title 5, United States Code, Part II of Executive Order 10000, as amended, and this part, each executive department, independent establishment, and wholly owned Government corporation shall pay (1) an allowance to each of its employees whose rate of basic pay is fixed by statute, who is located at a place for which an allowance has been established, and who is otherwise eligible to receive allowance payments; and (2) a differential to each of its employees whose rate of basic pay is fixed by statute, who is located at a place for which a differential has been establishd, and who is otherwise eligible to receive differential payments.

(b) Section 5941 of title 5, United States Code, Part II of Executive Order 10000, as amended, and this part apply to employees of the United States whose rates of basic pay are fixed by statute.

§ 591.209 Exclusion of certain employees.

(a) Section 5941 of title 5, United States Code, Part II of Executive Order 10000, as amended, and this part do not apply to employees in the Panama Canal Zone whose rates of basic pay are fixed by statute, or to any other groups of employees for whom allowances and differentials for service outside the continental United States or in Alaska are otherwise specifically authorized by statute.

(b) Governors of territories. A department or agency shall not pay an allowance or differential to a governor of a territory in a nonforeign area, except that on the specific request of the department or agency concerned, the Commission may authorize the payment of a differential to a governor whose pay is fixed under chapter 51 and subchapter III of chapter 53 of title 5, United States Code, if he is otherwise eligible to receive

a differential and the Commission determines that payment is warranted in the circumstances.

§ 591.210 Eligibility for differential

(a) The department or agency concerned shall determine eligibility to receive a differential of any person not included in a class enumerated in paragraph (c) of this section in accordance with paragraph (b) of this section.

(b) In order for an employee to be eligible to receive a differential, (1) he shall be a citizen or national of the United States; (2) his residence in the area to which the differential applies, at the time of receipt thereof, shall be fairly attributable to his employment by the United States; and (3) his residence in the area over an appropriate prior period of time must not be fairly attributable to reasons other than employment by the United States or by United States firms, interests, or organizations.

(c) Subject to paragraph (b) of this section, the classes of persons eligible to receive differentials include but are not limited to:

(1) Persons recruited or transferred from outside the area to which the differential concerned is applicable, except that the department or agency concerned shall exclude from those eligible to receive a differential the spouse of an individual who is stationed, employed, or resident in the differential area when the department or agency determines that the spouse is there primarily to be near the individual.

(2) Persons employed in the area to which the differential concerned is applicable but (i) who were originally recruited from outside the area and have been in substantially continuous employment by other Federal agencies, contractors of Federal agencies, or international organizations in which the United States Government participates, and whose conditions of employment provide for their return transportation to places outside the differential area concerned; or (ii) who were at the time of employment temporarily present in the differential area concerned for purposes of travel or formal study and maintained residence outside the area during the period so present.

(3) Persons who are not normally residents of the area to which the differential concerned is applicable and who are discharged from the military service of the United States in the area to accept employment therein with an agency of the Federal Government.

§ 591.211 Coordination of allowances and differentials.

An employee eligible to receive an allowance at a post for which both an allowance and a differential have been established shall receive the full allowance otherwise payable to him under this part. When both an allowance and a differential are authorized at one post, the eligible employee shall be paid the full allowance first, and in addition so much of the differential as will not cause the total amount for allowances and differentials to exceed a rate of 25 percent of his rate of basic pay.

§ 591.212 Payment of allowances and differentials.

(a) Payment of an allowance or a differential shall not be made for any time for which an employee does not receive basic pay.

(b) The total amount of allowances and differentials paid under authority of section 5941 of title 5, United States Code, and this part shall not exceed in any instance 25 percent of the rate of basic pay.

(c) Payment of an allowance or a differential shall begin as of the date of arrival at the post of duty on regular assignment or transfer, or on the date of entrance on duty in the case of local recruitment. Payment of an allowance or a differential shall cease on separation, or as of the date of departure on transfer to a new post of regular assignment.

(d) An allowance or a differential shall not be included in the base used in computing overtime pay, night differential, holiday pay, retirement deductions, or any other additional pay, allowance, or pay differential.

(e) Payment of an allowance or a differential is not an "equivalent increase" in pay within the meaning of section 5335 of title 5, United States Code.

(f) When an employee who is en route to, or returning from, his post of regular assignment is required to perform work in an area where payment of allowances or differentials is authorized, he shall be paid the allowances or differentials for his post of regular assignment while he is performing this work.

(g) Payment of an allowance at the rate prescribed for the post of regular assignment shall continue for all periods of temporary absence from the post on leave, including transit time. Payment of a differential at the rate prescribed for the post of regular assignment shall continue for the first 42 consecutive days of temporary absence from the post on leave, including transit time. Payment of allowances and differentials under this paragraph is authorized only if the employee returns to a post of regular assignment in a foreign or non-foreign area, unless

(1) The department or agency concerned determines that it is in the public interest not to return the employee to a post of regular assignment, or

(2) The department or agency concerned determines that the employee's failure to return to a post of regular assignment was due to compelling personal reasons, such as the health of the employee or his family, or to circumstances over which the employee has no control.

(h)(1) Payment of an allowance at the rate prescribed for the post of regular assignment shall continue for all periods of detail from the post including transit time, except that when an employee detailed to a foreign area post receives a differential authorized by the Department of State under section 5925 of title 5, United States Code, the payment of the allowance under this subpart will be reduced to a rate which when added to the foreign post differential rate will not result in a total rate of more than 25 percent.

(2) Payment of a differential at the rate prescribed for the post of regular assignment shall continue for the first 42 consecutive calendar days on detail from the post including transit time, except that when the employee is detailed to a foreign area post for which the Department of State has authorized a differential under section 5925 of title 5, United States Code, but the employee may not be paid the differential because he is detailed from a post of regular assignment which is not in one of the several States or District of Columbia, the department or agency shall pay him the differential prescribed for his post of regular assignment for the entire period of detail (including the periods of leave granted during the period of detail). When an employee other than an employee covered by the exception in the preceding sentence has aggregated 42 days in a pay status at a differential post, he shall thereafter be paid the differential prescribed for each post of detail, but not for any time in transit. In any case the total amount of allowances and differentials payable under this part is restricted to 25 percent of the employee's basic pay as specified in section 5941 of title 5, United States Code, § 591.304, and paragraph (b) of this section. When an employee detailed to a foreign area post receives a differential authorized by the Department of State under section 5925 of title 5, United States Code, the payment of the differential under this subpart will be reduced to a rate which when added to the foreign post differential rate will not result in a total rate of more than 25 percent.

(i) Except as provided by paragraph (h) of this section, when an employee is temporarily absent from his post of regular assignment on leave and detail, payment of the differential for his post of regular assignment is limited to the first 42 consecutive calendar days of the temporary absence, including transit time.

(j) Payment of an allowance or differential to an employee serving on a part-time basis shall be prorated to cover only those periods of time for which the employee receives basic pay.

Subpart C—Allowance Based on Duty at Remote Worksites

§ 591.301 Purpose.

This subpart prescribes the regulations required by section 5942 of title 5, United States Code, for the payment of an allowance based on duty at remote worksites.

§ 591.302 Coverage.

(a) *Agencies.* This subpart applies to Executive department as defined in section 101 of title 5, United States Code, and to independent establishments as defined in section 104 of title 5, United States Code, but does not apply to Government corporations as defined in section 103 of title 5, United States Code.

(b) *Employees.* This subpart applies to each employee assigned to a permanent duty station at or within a designated remote duty post, except an employee who is a permanent or temporary resident at the remote duty post, and except foreign nationals employed at remote duty posts in foreign countries.

§ 591.303 Responsibilities of agencies.

Each agency is responsible for:

(a) Preparing recommendations to the Commission to establish or adjust an allowance for each remote duty post.

(b) Advising the Commission in a timely manner of any changes in a duty post or commuting conditions or other factors that may affect an existing allowance authorization.

§ 591.304 Criteria for determining remoteness.

(a) Except as provided by paragraphs (b) and (c) of this section a duty post shall be determined by the Commission to be a remote duty post for basic allowance eligibility purposes when:

(1) Normal ground transportation (e.g. automobile, train, bus) is available on a daily basis and the duty post is 50 miles, or more, one way from the nearest established community or suitable place of residence. Distance shall be computed in road or rail miles over the most direct route traveled from the center of the city, or other appropriate point for large cities or areas; or

(2) Daily commuting is impracticable because the location of the duty post and available transportation are such that agency management requires employees to remain at the duty posts for their workweek as a normal and continuing part of the conditions of employment; or

(3) Transportation may be accomplished only by boat, aircraft, or unusual conveyance, or under extraordinary conditions, and the distance, time, and commuting conditions result in expense, inconvenience, or hardship significantly greater than that encountered in metropolitan area commuting. A determination may only be made on an individual location basis.

(b) Except when the criterion in paragraphs (a)(2) and (3) of this section is met, the criterion in paragraph (a)(1) of this section is not met:

(1) When the duty post is within the boundary of a metropolitan area, a developed urban area, or community of sufficient size to provide adequate consumer facilities; and

(2) When the duty post is within 50 miles of the center of, or other appropriate point for large cities or areas, a metropolitan area, a developed urban area, or community of sufficient size to provide adequate consumer facilities. (This generally excludes a post of duty within 50 miles of any city of 5,000 or more population.)

(c) A determination of remoteness for a duty post outside the 50 United States will be made on an individual location basis, taking into consideration the distance, time, commuting conditions, and the extent to which these factors result in significant expense, inconvenience, or hardship.

§ 591.305 Allowance rates.

(a) *General.* An allowance rate may not exceed $10 a day. An allowance rate shall be established by the Commission for each post of duty determined to be remote under § 591.304, and shall be terminated or adjusted by the Commission as warranted. In determining the amount of the allowance rate, the Commission shall consider the following:

(1) Transportation expense incurred in commuting to the remote post of duty as compared to transportation expenses (including cost of public transportation service) representative of those incurred in metropolitan areas within the United States or overseas as appropriate as periodically determined by the Commission.

(2) Expenses incurred for lodging, meals, other services, and miscellaneous expenses when it is not feasible for an employee to commute daily as at duty posts determined under § 591.304(a)(2) of this subpart.

(3) Inconvenience or hardship associated with commuting to the remote duty post taking into account such factors as travel time, road conditions and terrain, type and quality of vehicle, climate conditions, and conditions that exist at those duty posts determined by the Commission to meet the criterion in § 591.304(a)(2) of this subpart.

(4) Operational or workload demands, weather conditions, or other situations which require an employee to report to or remain at his post of duty substantially beyond his normal arrival or departure time with respect to those duty posts meeting the criterion in § 591.304 (a)(2) of this subpart.

(b) *Authorized allowance rates.* Each authorized allowance rate for each duty post may consist of up to three parts, separately stated as appropriate, and the authorized allowance rate shall be paid as provided in § 591.306, but no employee my be paid more than $10 a day. The parts which go to make up the authorized allowance rate are:

(1) *Transportation Allowance.*—(i) *Commuting by private motor vehicle.* A transportation allowance schedule showing the daily transportation expense rate to be paid under the distances and conditions described, when commuting by private motor vehicle is set out as Appendix A to this subpart and is incorporated in and made part of this section.

(ii) *Travel by commercial or Government provided transportation.* The transportation allowance shall be limited to the cost of the service less normal cost for public transportation service in metropolitan areas.

(2) *Inconvenience or hardship allowance.* An allowance rate to compensate for hardship or inconvenience may not be considered unless the travel time normally exceeds one hour one way between the closest established community or suitable place of residence and the remote duty post. An allowance schedule covering land travel by motor vehicle, showing the daily rates to be paid under the time factors and conditions described, for inconvenience or hardship combined, is set out as Appendix B to this subpart and is incorporated in and made part of this section.

(3) *Other commuting situations.* Notwithstanding paragraphs (b)(1) and (2) of this section, when commuting is by boat, aircraft or an unusual conveyance or under extraordinary conditions by motor vehicle, or involving factors or conditions unique to the duty post, the Commission shall establish the allowance based on the facts and circumstances of that individual remote duty post.

(4) *Miscellaneous.* When daily commuting is impracticable as determined under § 591.304(a)(2) of this subpart:

(i) The Commission may authorize a miscellaneous allowance the amount to depend on such factors as miscellaneous expenses, living conditions that exist at the duty post, or inconvenience or hardship that may be associated with this type of employment environment. When employees are required to pay a fee for lodging, meals, or other services at the remote duty post, the miscellaneous allowance shall at least equal the amount charged for the use of facilities and services.

(ii) On those days when operational or workload demands, weather conditions, or other situations result in employees reporting to or remaining at the remote duty post substantially beyond normal arrival or departure time, the maximum daily allowance rate of $10 shall be paid.

§ 591.306 Employee eligibility for an allowance.

(a) An authorized allowance rate as prescribe by the Commission shall be paid to each employee with a permanent duty station at or within a remote post of duty approved under § 591.304 of this subpart, regardless of type of appointment or work schedule, only (1) when the employee travels the prescribed minimum distance and time, or is subject to prescribed minimum inconvenience or hardship factors, while commut from the nearest established community or suitable place of residence and the remote duty post, or (2) the employee remains at the worksite at the direction of management because daily commuting is impractical.

(b) An employee shall be paid an authorized allowance rate for those days on which he incurs unusual expense in commuting to a remote post of duty or for those days on which he is subject to extraordinary inconvenience or hardship during the commuting.

(c) An employee who resides permanently, or temporarily for his own convenience at a remote duty post is not eligible for an authorized allowance rate during his period of residence.

§ 591.307 Payment of allowance rates.

(a) An authorized allowance rate is earned on a daily basis; however, where

appropriate for administrative convenience, the rate may be averaged taking into consideration the number of noncommuting days over a period of time, and paid for each workday, excluding days in a nonpay status and periods of extended absence.

(b) The transportation allowance is paid only when expense is incurred and at the lowest rate consistent with available transportation.

(c) The inconvenience or hardship allowance is paid regardless of eligibility for transportation expense part of allowance rate when the employee is otherwise eligible.

(d) Except as provided under § 591.305(b)(4)(ii), when the necessity for remaining at the post of duty for the workweek is the basis for the allowance under § 591.304(a)(2) of this subpart the allowance rate is paid for each full day, or prorated for part of a day, that the employee remains at the duty post.

(e) The transportation allowance prescribed by paragraph (b)(1)(i) of § 591.305, or other allowance as may be prescribed by the Commission for commuting by private motor vehicle, may not be paid unless the officially approved work schedule of the employee precludes use of other transportation services that may be available at lower cost.

(f) An employee, who normally commutes on a daily basis, will not be disqualified from receiving an authorized allowance when he is officially required to remain overnight at the remote duty post, for one or more days on a temporary basis, because of the schedule of operations or the nature of assigned work.

(g) When a remote duty post is determined by the Commission under paragraph (a)(3) or paragraph (c) of § 591.304 as being basically eligible for an allowance, the Commission will determine the basis for payment of the allowance rate taking into consideration the facts and circumstances associated with commuting to the remote duty post.

§ 591.308 Relationship to additional pay payable under other statutes.

An allowance authorized under this subpart is in addition to any additional pay or allowances payable under other statutes. It shall not be considered part of the employee's rate of basic pay in computing additional pay or allowances payable under other statutes.

§ 591.309 Effective date for payment of allowances.

When the Commission authorizes an allowance for a remote duty post, it shall specify the effective date that an agency shall begin paying the allowance to its employees, except that the Commission may not specify a date earlier than January 8, 1971.

§ 591.310 Effect of regulations in this subpart on allowances established under previous statutes.

Regulations in this subpart do not require a reduction in the allowance rates authorized under previous statutes, unless the Commisison determines that an adjustment is warranted on the basis of a change in facts and circumstances on which that previous allowance was established.

APPENDIX A.—DAILY TRANSPORTATION ALLOWANCE SCHEDULE, COMMUTING OVER LAND BY PRIVATE MOTOR VEHICLE TO REMOTE DUTY POSTS

Round Trip Distance in Excess of 50 Miles	Degree A Commuting Conditions	Degree B Commuting Conditions	Degree C Commuting Conditions
up to 9 miles	$ .20	$ .22	$ .24
10 to 19	.70	.77	.84
20 to 29	1.20	1.32	1.44
30 to 39	1.70	1.87	2.04
40 to 49	2.20	2.42	2.64
50 to 59	2.70	2.97	3.24
60 to 69	3.20	3.52	3.84
70 to 79	3.70	4.07	4.44
80 to 89	4.20	4.62	5.04
90 to 99	4.70	5.17	5.64
100 to 109	5.20	5.72	6.24
110 to 119	5.70	6.27	6.84
120 to 129	6.20	6.82	7.44
130 to 139	6.70	7.37	8.04
140 to 149	7.20	7.92	8.64
150 to 159	7.70	8.47	9.24
160 to 169	8.20	9.02	9.84
170 and over	8.70	9.57	10.00

Degree A Commuting Conditions. Good paved roads; climatic conditions cause intermittent driving difficulty.

Degree B Commuting Conditions. Roads typically fair but may be good for part of distance or may be unpaved for short distance; climatic conditions during part of a season, in relation to terrain, contribute to additional cost.

Degree C Commuting Conditions. Fair to poor roads; unpaved for part of distance, or travel over open range; hilly or mountainous terrain; climatic conditions during most of a season contribute to additional cost.

APPENDIX B.—DAILY INCONVENIENCE OR HARDSHIP ALLOWANCE SCHEDULE, COMMUTING OVER LAND BY MOTOR VEHICLE TO REMOTE DUTY POSTS

Round Trip Time in Excess of Two Hours	Degree A Commuting Conditions	Degree B Commuting Conditions	Degree C Commuting Conditions
up to 15 minutes	$.50	$.63	$.75
16 to 30	1.00	1.25	1.50
31 to 45	1.50	1.88	2.25
46 to 60	2.00	2.50	3.00
61 to 75	2.50	3.13	3.75
76 to 90	3.00	3.75	4.50
91 to 105	3.50	4.38	5.25
106 to 120	4.00	5.00	6.00
121 to 135	4.50	5.63	6.75
136 to 150	5.00	6.25	7.50
151 to 165	5.50	6.88	8.25
166 to 180	6.00	8.13	9.00

Degree A Commuting Conditions. Good paved roads; climatic conditions, in relation to type and quality of vehicle, cause minimal discomfort during trip.

Degree B Commuting Conditions. Roads typically fair, but may be good for part of distance and possibly unpaved for short distance; climatic conditions during part of a season, in relation to type and quality of vehicle, result in moderate discomfort during trip.

Degree C Commuting Conditions. Fair to poor roads, unpaved for part of distance; climatic conditions during most of a season, in combination with such factors as type and quality of vehicle and terrain, result in unusual discomfort during trip.

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

[FR Doc.73-12868 Filed 6-26-73;8:45 am]

Title 7—Agriculture

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

SUBCHAPTER D—PROVISIONS COMMON TO MORE THAN ONE PROGRAM

[Amdt. 1]

PART 792—CONSERVING BASE AND DESIGNATED SET-ASIDE ACREAGE

Reduction in Payments for Haying and Grazing

In order to prevent or alleviate a shortage in the supply of agricultural commodities, the regulations governing the conserving base and designated set-aside acreage, 36 FR 17561, are being amended effective with the 1973 crop year to permit haying and grazing of acreage set aside under the wheat and feed grain programs. Producers who elect to hay and graze the set-aside acreage shall be subject to a reduction in payments.

Section 792.3 is amended by adding a new sentence at the end of paragraphs (c) and (d), respectively, to read as follows:

§ 792.3 Designation, use and care of set-aside acreage under the feed grain, upland cotton, and wheat set-aside programs; approved conserving uses.

* * * * *

(c) *Restriction on harvesting of crops from set-aside acreage.* * * * Effective with respect to the 1973 crop year, in order to prevent or alleviate a shortage in the supply of agricultural commodities, conserving crops may, at the election of the farm operator and subject to a reduction in payments, be harvested for hay. The rate of reduction in payments for producers who harvest hay from the set-aside acreage shall be established in accordance with instructions issued by the Deputy Administrator.

(d) *Restriction on grazing.* * * * Effective with respect to the 1973 crop year, in order to prevent or alleviate a shortage in the supply of agricultural commodities, the designated set-aside acreage may, at the election of the farm operator and subject to a reduction in payments, be grazed during the five principal growing months. The rate of reduction in payments for producers who graze the set-aside acreage shall be established in accordance with instructions issued by the Deputy Administrator.

* * * * *

(Sec. 379b, 84 Stat. 1362, 7 U.S.C. 1379b; sec. 105, 84 Stat. 1368, 7 U.S.C. 1441 note)

Effective date. Since farmers are now completing their plans for the 1973 crop

year, it is essential that the foregoing amendment be made effective as soon as possible. It is hereby found and determined that compliance with the notice and public procedure provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest. Accordingly, this amendment shall become effective on June 27, 1973.

Signed at Washington, D.C., on June 21, 1973.

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

[FR Doc.73-12940 Filed 6-26-73;8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FHA Ins. 442.1]

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

Subpart A—Loans and Grants for Community Domestic Water and Waste Disposal Systems

DELETION

In § 1823.1, (37 F.R. 12037), Title 7, Code of Federal Regulations, reference to Part 1890h is hereby deleted. This part is being removed from the Code of Federal Regulations effective on June 27, 1973.

(Sec. 339, 75 Stat. 318, 7 U.S.C. 1989; Order of the Act. Sec. of Agr. 36 F.R. 21529; 37 F.R. 22008.)

Dated June 6, 1973.

FRANK B. ELLIOTT,
Acting Administrator, Farmers Home Administration.

[FR Doc.73-12942 Filed 6-26-73;8:45 am]

[FHA Instruction 442.8]

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

Subpart H—Association Loans for Irrigation and Drainage and Other Soil and Water Conservation Measures

DELETION

In § 1823.221 (35 FR 15091), Title 7, Code of Federal Regulations, reference to Part 1890h is hereby deleted. This part is being removed from the Code of Federal Regulations effective on June 27, 1973.

(Sec. 339, 75 Stat. 318, 7 U.S.C. 1989; Orders of the Act. Sec. of Agr. 36 FR 21529; 37 FR 22008.)

Dated June 14, 1973.

J. R. HANSON,
Acting Deputy Administrator, Farmers Home Administration.

[FR Doc.73-12943 Filed 6-26-73;8:45 am]

[FHA Instruction 442.9]

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

Subpart I—Processing Loans to Associations (Except for Domestic Water and Waste Disposal)

DELETION

In § 1823.251 (35 FR 1509), Title 7, Code of Federal Regulations, reference to part 1809h is hereby deleted effective on publication in the Federal Register. Part 1809h is being removed from the Code of Federal Regulations effective on June 27, 1973.

(Sec. 339, 75 Stat. 318, 7 U.S.C. 1989; Order of Sec. of Agr. 29 FR 16210; Order of Act. Sec. of Agr., 36 FR 22008; Order of Asst. Sec. of Agr. for Rural Development and Conservation, 36 FR 21529.)

Dated June 14, 1973.

J. R. HANSON,
Acting Deputy Administrator, Farmers Home Administration.

[FR Doc.73-12944 Filed 6-26-73;8:45 am]

SUBCHAPTER G—MISCELLANEOUS REGULATIONS

[AL 901(442)]

PART 1890h—ASSOCIATION LOANS AND GRANTS IN MAJOR DISASTER AREAS

Deletion of Part

Part 1890h, "Association Loans and Grants in Major Disaster Areas," (35 FR 14914), is deleted from Chapter XVIII of Title 7 of the Code of Federal Regulations. Authorization for loans and grants in major disaster areas was repealed by the Disaster Relief Act of 1970, P.L. 91-606.

(Sec. 339, 75 Stat. 318, 7 U.S.C. 1989; Orders of the Act. Sec. of Agr., 36 FR 21529; 37 FR 22008.)

Effective date. This deletion shall become effective on June 27, 1973.

Dated June 6, 1973.

FRANK B. ELLIOTT,
Acting Administrator, Farmers Home Administration.

[FR Doc.73-12945 Filed 6-26-73;8:45 am]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 100—STATEMENT OF ORGANIZATION

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

Miscellaneous Amendments

Pursuant to 5 U.S.C. 552 and the authority contained in 8 U.S.C. 1103 and 8 CFR 2.1, amendments, as set forth herein, are prescribed in Parts 100 and 235 of Chapter I of Title 8 of the Code of Federal Regulations.

In Part 100, §§ 100.4(b) and (c)(2) are amended to reflect the elimination of District No. 36—Port Isabel, Texas; the creation of a new District No. 38—Houston, Texas; and the revised territorial jurisdiction of existing District No. 14—San Antonio, Texas; also, § 100.4(c)(3) is amended to reflect the elimination of District No. 36 and the reassignment to District No. 14 of a specified port of entry. Corollary amendments of a technical nature are made in §§ 100.4(a) and 235.10.

The following amendments to Chapter I of Title 8, Code of Federal Regulations, are hereby prescribed:

Section 100.4 is amended in the following respects:

1. In paragraph (a), the last sentence is amended by changing the reference to District "36" to read "38";

2. In paragraph (b), item 14 "San Antonio, Texas" is amended to reflect jurisdiction over the specified counties in the State of Texas;

3. In paragraph (b), a new item 38 "Houston, Texas" is added;

4. In paragraph (c)(2), District No. 14—San Antonio, Tex., the listing of "Class A" ports of entry is amended by adding thereto in alphabetical sequence the following: "* Brownsville, Tex.; * Corpus Christi, Tex. (the port of Corpus Christi includes, among others, the port facilities at Harbor Island, Ingleside, and Port Lavaca-Point Comfort, Tex.); * Port Isabel, Tex.";

5. In paragraph (c)(2), a new "District No. 38—Houston, Tex." is added; and

6. In paragraph (c)(3), District No. 14—San Antonio, Tex., is amended by adding thereto in alphabetical sequence the following airport: "Brownsville, Tex., Rio Grande Valley International Airport at Brownsville, Tex.".

As amended, § 100.4 reads, in pertinent part, as follows:

§ 100.4 Field service.

* * * * *

(a) *Regional offices.* The Northeast Regional Office, located in Burlington, Vermont, has jurisdiction over districts 1, 2, 3, 7, 21, 22, and 23 and Border Patrol sectors 1, 2, 3, and 4. The Southeast Regional Office, located in Richmond, Virginia, has jurisdiction over districts 4, 5, 6, 24, 25, 26, 27, and 28 and Border Patrol sectors 20 and 21. The Northwest Regional Office, located in St. Paul, Minnesota, has jurisdiction over districts 8, 9, 10, 11, 12, 29, 30, 31, and 32 and Border Patrol sectors 5, 6, 7, 8, and 9. The Southwest Regional Office, located in San Pedro, California, has jurisdiction over districts 13, 14, 15, 16, 17, 18, 19, 35, and 38 and Border Patrol sectors 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19.

(b) *District offices.* The following districts, which are designated by numbers, have fixed headquarters and are divided as follows:

* * * * *

14. *San Antonio, Texas.* The district office in San Antonio, Texas, has jurisdiction over the following counties in the State of Texas: Aransas, Atascosa, Bandera, Bastrop, Bee, Bell, Bexar, Blanco, Brazos, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Coke, Coleman, Comal, Concho, Coryell, Crockett, De Witt, Dimmit, Duval, Edwards, Falls, Fayette, Frio, Gillespie, Glasscock, Goliad, Gonzales, Guadalupe, Hays, Hildalgo, Irion, Jackson, Jim

Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, Lampasas, La Salle, Lavaca, Lee, Live Oak, Llano, McCulloch, McLennan, McMullen, Mason, Maverick, Medina, Menard, Milam, Mills, Nueces, Reagan, Real, Refugio, Robertson, Runnels, San Patricio, San Saba, Schleicher, Starr, Sterling, Sutton, Taylor, Tom Green, Travis, Uvalde, Val Verde, Victoria, Webb, Willacy, Williamson, Wilson, Zapata, Zavala.

* * * * *

38. *Houston, Texas.* The district office in Houston, Texas, has jurisdiction over the State of Oklahoma and the following counties in the State of Texas: Anderson, Andrews, Angelina, Archer, Armstrong, Austin, Bailey, Baylor, Borden, Bosque, Bowie, Brazoria, Briscoe, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Collin, Collingsworth, Colorado, Comanche, Cooke, Cottle, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Gaines, Galveston, Garza, Gray, Grayson, Gregg, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harris, Harrison, Hartley, Haskell, Hemphill, Henderson, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Jack, Jasper, Jefferson, Johnson, Kaufman, Kent, King, Knox, Lamar, Lamb, Leon, Liberty, Limestone, Lipscomb, Lubbock, Lynn, Madison, Marion, Martin, Matagorda, Mitchell, Montague, Montgomery, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Polk, Potter, Rains, Randall, Red River, Roberts, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Stephens, Stonewall, Swisher, Tarrant, Terry, Throckmorton, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, Waller, Washingtno, Wharton, Wheeler, Wichita, Wilbarger, Wise, Wood, Yoakum, and Young.

(c) *Suboffices.* * * *

(2) *Ports of entry for aliens arriving by vessel or by land transportation.* * * *

DISTRICT NO. 14—SAN ANTONIO, TEX.

CLASS A

Amistad Dam, Tex.
* Brownsville, Tex.
* Corpus Christi, Tex. (the port of Corpus Christi includes, among others, the port facilities at Harbor Island, Ingleside, and Port Lavaca-Point Comfort, Tex.)
* Del Rio, Tex.
* Eagle Pass, Tex.
* Falcon Heights, Tex.
* Hidalgo, Tex.
* Laredo, Tex.
* Los Ebanos, Tex.
* Port Isabel, Tex.
* Progreso, Tex.
* Rio Grande City, Tex.
* Roma, Tex.

* * * * *

DISTRICT NO. 38—HOUSTON, TEX.

CLASS A

Beaumont, Tex.
* Galveston, Tex. (the port of Galveston includes, among others, the port facilities at Freeport, Port Bolivar, and Texas City, Tex.)
* Houston, Tex. (the port of Houston includes, among others, the port facilities at Baytown, Tex.)
* Port Arthur, Tex. (the port of Port Arthur includes, among others, the port facilities at Orange and Sabine, Tex.)

(3) *Ports of entry for aliens arriving by aircraft.* * * *

* * * * *

DISTRICT NO. 14—SAN ANTONIO, TEX.

Brownsville, Tex., Rio Grande Valley International Airport at Brownsville, Tex.
Del Rio, Tex., Del Rio International Airport
Eagle Pass, Tex., Eagle Pass Airport
Laredo, Tex., Laredo International Airport
McAllen, Tex., Miller International Airport

* * * * *

§ 100.4 [Amended]

7. In § 100.4, paragraph (b), item 36 "Port Isabel, Texas" is deleted in its entirety;

8. In § 100.4, paragraph (c)(2), "District No. 36—Port Isabel, Tex." is deleted in its entirety; and

9. In § 100.4 paragraph (c)(3), "District No. 36—Port Isabel, Tex." is deleted in its entirety.

In § 235.10, the second sentence is amended by substituting "Houston, Tex." in lieu of "Port Isabel, Tex". As amended, § 235.10 reads as follows:

§ 235.10 U.S. Citizen Identification Cards.

To facilitate entry over the Canadian land border, a citizen and resident of the United States may apply at any district office for a U.S. Citizen Identification Card, Form I-197. To facilitate identification by immigration officers, a citizen and resident of the United States may apply at a district office in San Antonio, Tex.; El Paso, Tex.; Houston, Tex.; Los Angeles, Calif.; San Francisco, Calif.; or Phoenix, Ariz., for an Identification Card, Form I-179. The application for either card shall be made on Form I-196, accompanied by the fee required under § 103.7 of this chapter and one photograph 1½ inches by 1½ inches, and, in the case of a U.S. citizen who was not born in the United States, a certificate of naturalization or citizenship.

Compliance with the provisions of section 553 of Title 5 of the United States Code (80 Stat. 383) as to notice of proposed rulemaking is unnecessary in this instance and would serve no useful purpose because the amendments to §§ 100.4 and 235.10 relate to agency management.

Effective date. This order shall become effective on August 1, 1973.

Dated June 21, 1973.

JAMES F. GREENE,
Acting Commissioner of Immigration and Naturalization.

[FR Doc.73-12900 Filed 6-26-73;8:45 am]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Installation of Fenders; Suspension of Effective Date

Subparagraphs (5) and (8) of 29 CFR 1926.602(a) require fenders to be installed on pneumatic-tired earth-moving haulage equipment manufactured before January 1, 1972, no later than June 30, 1973. The Construction Safety Advisory Committee established under section 107(e) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) is preparing to consider the feasibility of this standard (38 FR 14991). Accordingly this effective date is hereby suspended from June 30, 1973, to January 2, 1974, in order to avoid subjecting the construction industry to the burden of adjusting to this obligation while its appropriateness is under reexamination.

This decision is reflected by redesignating the present subparagraph (8) of § 1926.602(a) as subdivision (i) of § 1926.602(a)(8) and by adding a new § 1926.602(a)(8)(ii) to read as follows:

§ 1926.602 Material handling equipment.

(a) *Earthmoving equipment* * * *

(8) *Specific effective dates—brakes and fenders.* * * * (ii) Notwithstanding the provisions of paragraph (a)(8)(i) of this section, the requirement that fenders be installed on pneumatic-tired earthmoving haulage equipment manufactured before January 1, 1972, shall take effect on January 2, 1974.

* * * * *

(Sec. 6, Pub. L. 91-596, 84 Stat. 1593 (29 U.S.C. 655); Sec. 1, Pub. L. 91-54, 83 Stat. 96 (40 U.S.C. 333))

Signed at Washington, D.C. this 20th day of June 1973.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.73-12947 Filed 6-26-73;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

SURFACE LUBRICANTS USED IN THE MANUFACTURE OF METALLIC ARTICLES

The Commissioner of Food and Drugs, having evaluated data in a petition (FAP 2B2647) filed by E. F. Houghton & Co., 308 West Lehigh Ave., Philadelphia, PA 19133, and other relevant material, concludes that the food additive regulations should be amended, as set forth below, to provide for the safe use of acetate esters of fatty alcohols as components of surface lubricants employed in the manufacture of metallic articles that contact food.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.2531 (a)(2) is amended by alphabetically adding to the list of substances the following new item:

§ 121.2531 Surface lubricants used in the manufacture of metallic articles.

* * * * *

(a) * * *

(2) * * *

List of substances:	*Limitations*
* * *	* * *
Acetate esters derived from synthetic straight chain alcohols (complying with § 121.1238) that have even numbers of carbon atoms in the range C_8–C_{18}.	
* * *	* * *

* * * * *

Any person who will be adversely affected by the foregoing order may at any time on or before July 27, 1973, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event a hearing as held. Objections may be accompanied by a memorandum or brief in support thereof. Six copies of all documents shall be filed. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective on June 27, 1973.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348 (c)(1))

Dated June 20, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-12876 Filed 6-26-73;8:45 am]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

ANTIOXIDANTS AND/OR STABILIZERS FOR POLYMERS

Correction

In FR Doc. 73-11601 appearing at page 15443 in the issue of Tuesday, June 12, 1973, in § 121.2566(b) "2,6-Di-*tert*-butyl-4-ethyl-" should read "2,6-Di-*tert*-butyl-4-ethylphenol".

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

ANTIOXIDANTS AND/OR STABILIZERS FOR POLYMERS

The Commissioner of Food and Drugs having evaluated data in a petition (FAP 2B2758) filed by Badische Anilin & Soda-Fabrik AG, BASF-6700 Ludwigshafen, Germany, and other relevant material, concludes that the food additive regulations (21 CFR Part 121) should be amended, as set forth below, to provide for the safe use of potassium bromide and either cupric acetate or cupric carbonate for heat stabilizing nylon 66 resins.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.2566(b) is amended by alphabetically inserting in the list of substances a new item as follows:

§ 121.2566 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) List of substances:

	Limitations
* * *	* * *
Potassium bromide and either cupric acetate or cupric carbonate.	For use at levels not exceeding 0.18 percent potassium bromide and 0.005 percent copper as cupric acetate or cupric carbonate by weight of nylon 66 resins complying with § 121.2502; the finished resins are used or are intended to be used to contain foods during oven baking or oven cooking at temperatures above 250° F. The average thickness of such resins in the form in which they contact food shall not exceed 0.0015 inch.
* * *	* * *

Any person who will be adversely affected by the foregoing order may at any time on or before July 27, 1973, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, MD 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Objections may be accompanied by a memorandum or brief in support thereof. Six copies of all documents shall be filed. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective on June 27, 1973.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348 (c)(1))

Dated June 20, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-12875 Filed 6-26-73;8:45 am]

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

SUBCHAPTER C—DRUGS

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

Combination Drug

The Commissioner of Food and Drugs has evaluated a new animal drug application (91-326V) filed by Hess & Clark, division of Rhodia, Inc., Ashland, Ohio 44805, proposing the safe and effective use of decoquinate, 3-nitro-4-hydroxyphenylarsonic acid, and zinc bacitracin in the feed of broiler chickens. The application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), parts 121 and 135e are amended as follows:

1. Part 121 is amended in § 121.262 by adding a new item to table 1 in paragraph (c) as follows:

§ 121.262 3 - Nitro-4-hydroxyphenylarsonic acid.

* * * * *

(c) * * *

TABLE 1—3-Nitro-4-Hydroxyphenylarsonic acid in complete chicken and turkey feed

Principal ingredient	Grams per ton	Combined with—	Grams per ton	Limitations	Indications for use
*	*	*	*	*	*
3.1 3-Nitro-4-hydroxy-phenyl-arsonic acid.	11-45 (0.0012%-0.005%)	Decoquinate + Bacitracin	27.2 (0.003%) 12-50	For broiler chickens; do not feed to laying chickens; withdraw 5 days before slaughter; as sole source of organic arsenic; as zinc bacitracin as provided by code No. 009, § 135.501(c) of this chapter; as decoquinate as provided by code No. 019, § 135.501(c) of this chapter; as 3-nitro-4-hydroxy-phenyl-arsonic acid as provided by code No. 031, § 135.501(c) of this chapter.	As an aid in the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. mivati*, *E. maxima*, and *E. brunetti*; and for increased rate of weight gain and improved feed efficiency.

* * * * *

2. Part 135e is amended in § 135e.51 by adding a new item to the table in paragraph (g) as follows:

§ 135e.51 Decoquinate.

* * * * *

(g) * * *

Principal Ingredient	Grams per ton	Combined with—	Grams per ton	Limitations	Indications for use
*	*	*	*	*	*
3. Decoquinate.	27.2 (0.003%)	3-Nitro-4-hydroxy-phenyl-arsonic acid + Bacitracin	11-45 (0.0012%-0.005%) 12-50	For broiler chickens; do not feed to laying chickens; withdraw 5 days before slaughter; as sole source of organic arsenic; as zinc bacitracin as provided by code No. 009, §135.501(c) of this chapter; as 3-nitro-4-hydroxy-phenyl-arsonic acid as provided by code No. 031, § 135.501(c) of this chapter.	As an aid in the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. mivati*, *E. maxima*, and *E. brunetti*; and for increased rate of weight gain and improved feed efficiency.

Effective date.—This order shall be effective on June 27, 1973.

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

Dated June 19, 1973.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.73-12768 Filed 6-26-73;8:45 am]

PART 135—NEW ANIMAL DRUGS

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Change in Corporate Name

Correction

In FR Doc. 11600 appearing at page 15444 in the issue of Tuesday, June 12, 1973, immediately after the eighth line of the first paragraph, insert "been changed. The Commission con-".

PART 135—NEW ANIMAL DRUGS

Subpart C—Sponsors of Approved Applications

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

Oxytocin Injection, Veterinary

The Commissioner of Food and Drugs has evaluated a new animal drug application (46-665V) filed by National Laboratories Corp., 1721 Baltimore Ave., Kansas City, MO 64108, proposing the safe and effective use of oxytocin injection, veterinary in horses, cows, sows, ewes, dogs, and cats. The application is approved.

To facilitate referencing, National Laboratories Corp. is being assigned a code number and placed in the list of firms in § 135.501 (21 CFR 135.501).

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

1. Part 135 is amended in § 135.501 by adding a new code number 095 to paragraph (c), as follows:

§ 135.501 Names, addresses, and code numbers of sponsors of approved applications.

* * * * *

(c) * * *

Code Number	*Firm name and address*
* * *	* * *
095	National Laboratories Corp., 1721 Baltimore Ave., Kansas City, Mo. 64108.

2. Part 135b is amended by revising paragraph (b) of § 135b.64 to read as follows:

§ 135b.64 Oxytocin injection, veterinary.

* * * * *

(b) *Sponsor.* See code Nos. 075, 080, and 095 in § 135.501(c) of this chapter.

* * * * *

Effective date. This order shall be effective on June 27, 1973.

Dated June 21, 1973.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.73-12874 Filed 6-26-73;8:45 am]

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Selenium and Vitamin E Combination Drugs

The Commissioner of Food and Drugs has evaluated supplemental new animal drug applications (30-313V and 30-316V) filed by Burns Biotec Laboratories, Inc., 7711 Oakport St., Oakland, CA 94621, proposing the safe and effective use of selenium and vitamin E capsules and injection for use in dogs. The supplemental applications are approved.

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

1. Part 135b is amended in § 135b.53 by redesignating existing paragraph (a) as paragraph (a)(1), by redesignating existing paragraph (b) as subparagraph (a)(2), by redesignating existing paragraphs (c)(1), (c)(2), (3), and (4) as paragraph (a)(3)(i), (ii), and (iv), respectively, and by adding a new paragraph (b) as follows:

§ 135b.53 Selenium, vitamin E injection, veterinary.

* * * * *

(b)(1) *Specifications.* The drug contains in each milliliter 2.19 milligrams of sodium selenite (equivalent to 1 milligram of selenium), 50 milligrams of vitamin E (68 I.U.) (as d-alpha tocopheryl acetate), 100 milligrams of polyoxyethylated vegetable oil, 1:10,000 thimerosal and water for injection.

(2) *Sponsor.* See code No. 070 in § 135.501(c) of this chapter.

(3) *Conditions of use.* (i) The drug is intended for use as an aid in alleviating and controlling inflammation, pain and lameness associated with certain arthropathies in dogs.

(ii) The drug is administered subcutaneously or intramuscularly in divided doses in 2 or more sites at a dosage level of 1 milliliter per 20 pounds of body weight with a minimum dosage of ¼ millitter and a maximum dosage of 5 milliliters. The dosage is repeated at 3 day intervals until a satisfactory therapeutic response is observed. A maintenance regimen is then initiated which consists of 1 milliliter per 40 pounds of body weight with a minimum dosage of ¼ milliliter which is repeated every 3 days or 7 days, or longer, as required to maintain continued improvement or an asymptomatic condition; or the drug may be used in capsule form for oral maintenance therapy.

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

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

§ 135c.113 Selenium, vitamin E capsules, veterinary.

(a) *Specifications.* The capsules contain 2.19 milligrams of sodium selenite (equivalent to 1 milligram of selenium) and 56.2 milligrams of vitamin E (68 I.U.) (as d-alpha tocopheryl acid succinate) or 0.548 milligram of sodium selenite (equivalent to .25 milligram of selenium and 14 milligrams of vitamin E (17 I.U. (as d-alpha tocopheryl acid succinate.)

(b) *Sponsor.* See code No. 070 in § 135.501(c) of this chapter.

(c) *Conditions of use.* (1) The drug is intended for use as an aid in alleviating and controlling inflammation, pain, and lameness associated with certain arthropathies in dogs.

(2) The capsules are administered orally with the larger capsules administered at a dosage level of 1 capsule per 20 pounds of body weight to a maximum of 5 capsules with the dosage repeated at 3 day intervals until a satisfactory therapeutic response is observed. A maintenance dosage is then administered consisting of 1 capsule per 40 pounds of body weight, with a minimum of 1 capsule per 40 pounds of body weight, with a minimum of 1 capsule, given every 3 days, or 7 days, or longer, as required to maintain improvement or an asymptomatic condition. For dogs under 20 pounds of body weight, the small capsules are administered orally at a dosage level of 1 per 5 pounds of body weight with a minimum of 1 capsule which dosage is repeated at 3 day intervals until a satisfactory response is observed then a maintenance regimen is initiated with 1 capsule per 10 pounds of body weight, minimum of 1 capsule, every 3 days, or 7 days, or longer as required to maintain continued improvement or an asymptomatic condition.

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

Effective date. This order shall be effective on June 27, 1973.

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

Dated June 21, 1973.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.73-12872 Filed 6-26-73;8:45 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Diethylcarbamazine Citrate Syrup

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (46-147V) filed by Babineaux Veterinary Products, Inc., 6425 Airline Highway, Metairie, LA 70003, proposing additional uses of diethylcarbamazine citrate syrup for the treatment of dogs and use of the product in the treatment of cats. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135c is amended in § 135c.52 by revising paragraphs (c) (1) and (2) as follows:

§ 135c.52 Diethylcarbamazine citrate syrup.

* * * * *

(c) *Conditions of use.* (1) The drug is indicated for use in dogs for the prevention of infection with *Dirofilaria immitis* and *T. canis* and *T. leonina*. It is also indicated for treatment of ascarid infections of *T. canis* and *T. leonina* in dogs and *T. cati* in cats.

(2) For prevention of heartworm and ascarid infections in dogs the drug may be added to the daily diet at a dosage rate of 3.0 milligrams per pound of body weight per day or given directly by mouth at the same dosage rate. For treatment of ascarid infections in dogs and cats the drug is administered at a dosage level of 25 to 50 milligrams per pound of body weight preferably administered immediately after feeding.

* * * * *

Effective date. This order shall be effective on June 27, 1973.

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

Dated June 21, 1973.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 73-12871 Filed 6-26-73;8:45 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Lincomycin and Spectinomycin

The Commissioner of Food and Drugs has evaluated a new animal drug application (46-109V) filed by The Upjohn Co., Kalamazoo, MI 49001, proposing the safe and effective use of lincomycin hydrochloride monohydrate and spectinomycin sulfate tetrahydrate for use in drinking water for chickens up to 7 days of age as an aid in the control of chronic respiratory disease. The application is approved.

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

§ 135c.94 Lincomycin hydrochloride monohydrate and spectinomycin sulfate tetrahydrate soluble powder.

(a) *Specifications.* The lincomycin hydrochloride monohydrate meets the specifications prescribed by § 148x.1(a)(1). The spectinomycin sulfate tetrahydrate used in manufacturing the drug is the antibiotic substance produced by the growth of *Streptomyces spectabilis* or the same antibiotic substance produced by any other means. The quantity of total antibiotic activity cited in this section refers to the equivalent weight of the base activity of the drugs. Lincomycin hydrochloride monohydrate and spectinomycin sulfate tetrahydrate are present in the drug in the ratio of 1 to 2 on the basis of equivalency of lincomycin base to equivalency of spectinomycin base.

(b) *Sponsor.* See code No. 037 in § 135.501(c) of this chapter.

(c) *Related tolerances.* See §§ 135g.24 and 135g.65 of this chapter.

(d) *Conditions of use.* (1) It is administered, in the drinking water of chickens up to 7 days of age as an aid in the control of chronic respiratory disease caused by *Mycoplasma gallisepticum* susceptible to lincomycin-spectinomycin and complicated chronic respiratory disease (air sac infection) caused by *Escherichia coli* and *M. gallisepticum* susceptible to lincomycin-spectinomycin.

(2) For aid in the control of these conditions it is administered in the drinking water at a level of 2 grams of antibiotic activity per gallon of water as the sole source of water for the first 5 to 7 days of life.

Effective date. This order shall be effective on June 27, 1973.

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

Dated June 21, 1973.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.73-12873 Filed 6-26-73;8:45 am]

CERTIFICATION OF ANTIBIOTIC DRUGS

Nystatin—Iodochlorhydroxyquin Ointment

On November 5, 1970 (35 FR 17069), the Food and Drug Administration published its conclusion regarding Nystaform ointment containing nystatin and iodochlorhydroxyquin marketed by Dome Laboratories, Division of Miles Laboratories, Inc., 125 West End Ave., New York, NY 10023.

The Food and Drug Administration evaluated reports received by the National Academy of Sciences/National Research Council and concluded that this preparation is effective for the treatment of cutaneous and mucocutaneous mycotic infections caused by Candida species (Monilia). When these infections are complicated by iodochlorhydroxyquin sensitive bacteria, the preparation containing nystatin and iodochlorhydroxyquin is effective.

Since labeling information has been provided in accord with the reevaluation of the drug as published in the November 5, 1970 announcement, the Commissioner of Food and Drugs concludes that the antibiotic regulations should be amended as set forth below to provide for the certification of this drug.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and under authority delegated to the Commissioner (21 CFR

2.120), Parts 141, 146, and 148k (21 CFR Parts 141, 146, and 148k) are amended as follows:

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

1. Part 141 is amended by adding the following new section:

§ 141.553 Thin layer chromatographic identity test for iodochlorhydroxyquin.

(a) *Equipment*—(1) *Chromatography tank.* A rectangular tank, approximately 9 x 9 x 3.5 inches with a glass solvent trough on the bottom.

(2) *Plates.* Use 20 x 20 centimeter thin layer chromatography plates coated with Silica Gel G or equivalent to a thickness of 250 microns.

(b) *Developing solvent.* Mix benzene and methanol in volumetric proportions of 90:10.

(c) *Preparation of spotting solutions*—(1) *Sample solution.* Use the sample solution prepared as described in the section for the particular product to be tested.

(2) *Reference solution.* Prepare a solution containing 0.5 milligram of iodochlorhydroxyquin U.S.P. reference standard per milliliter in acetone.

(d) *Procedure.* Pour developing solvent into the glass trough on the bottom of the chromatography tank. Cover and seal the tank. Allow it to equilibrate for 1 hour. Spot a plate as follows: Apply approximately 10 microliters each of the sample solution and of the reference solution on a line 2.0 centimeters from the base of the silica gel plate and at intervals of not less than 2.0 centimeters. After all spots are thoroughly dry, place the silica gel plate directly into the glass trough of the chromatography tank. Cover and reseal the tank. Allow the solvent front to travel about 15 centimeters from the starting line, remove the plate from the tank, and allow to air dry. Examine under a strong source of ultraviolet light. The sample and standard are visible as dark spots.

(e) *Evaluation.* Measure the distance the solvent front traveled from the starting line and the distance the spots are from the starting line. Calculate the R_f value by dividing the latter by the former. The sample and standard should have spots of corresponding R_f values (0.55 to 0.60).

PART 146—ANTIBIOTIC DRUGS—PROCEDURAL AND INTERPRETIVE REGULATIONS

2. Part 146 is amended in § 146.8(b)(1) by alphabetically inserting a new item in the fee schedule, as follows:

§ 146.8 Fees.

* * * * * * *

(b) * * *

(1) * * *

Test	Chargeable fee per Test
* * *	* * *
Iodochlorhydroxyquin content	27
* * *	* * *

* * * * * * *

PART 148k—NYSTATIN

3. Part 148k is amended by adding the following new section:

§ 148k.13 Nystatin-iodochlorhydroxyquin ointment.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Nystatin-iodochlorhydroxyquin ointment is composed of nystatin and iodochlorhydroxyquin in a suitable and harmless ointment base. Each gram contains 100,000 units of nystatin and 10 milligrams of iodochlorhydroxyquin. Its nystatin content is satisfactory if it is not less than 90 percent and not more than 140 percent of the number of units of nystatin that it is represented to contain. Its iodochlorhydroxyquin content is satisfactory if it is not less than 90 percent and not more than 110 percent of the number of milligrams of iodochlorhydroxyquin that it is represented to contain. It passes the identity test for iodochlorhydroxyquin. Its moisture content is not more than 0.5 percent. The nystatin used conforms to the standards prescribed by § 148k.1(a)(1). The iodochlorhydroxyquin used conforms to the standards prescribed by U.S.P. XVIII.

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

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

(i) Results of tests and assays on:

(*a*) The nystatin used in making the batch for potency, safety, loss on drying, pH, and identity.

(*b*) The iodochlorhydroxyquin used in making the batch for all U.S.P. XVIII specifications.

(*c*) The batch for nystatin content, iodochlorhydroxyquin content, iodochlorhydroxyquin identity, and moisture.

(ii) Samples required:

(*a*) The nystatin used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of seven immediate containers.

(b) *Tests and methods of assay*—(1) *Nystatin content.* Proceed as directed in § 141.110 of this chapter, preparing the sample for assay as follows: Place an accurately weighed representative portion of the sample into a high-speed glass blender jar containing sufficient dimethylformamide to give a convenient concentration. Blend for 3 to 5 minutes. Remove an aliquot and dilute with sufficient dimethylformamide to yield a stock solution containing 400 units of nystatin per milliliter (estimated). Further dilute an aliquot of the stock solution with 10 percent potassium phosphate buffer, pH 6.0 (solution 6), to the reference concentration of 20 units of nystatin per milliliter (estimated).

(2) *Iodochlorhydroxyquin content.*—(i) *Reagents.* (*a*) Ferric chloride reagent. Dissolve 1.0 gram of ferric chloride ($FeCl_3 \cdot 6H_2O$) in a mixture of 1.0 milliliter of concentrated hydrochloric acid and sufficient distilled water to make 1 liter.

(*b*) Acetone, reagent grade.

(*c*) 2-Methoxyethanol, reagent grade.

(ii) *Preparation of standard solution.* Dissolve an accurately weighed portion of iodochlorhydroxyquin U.S.P. reference standard in sufficient 2-methoxyethanol to make a solution containing 1.0 milligram of iodochlorhydroxyquin per milliliter. Transfer 5.0 milliliters of this standard solution to a 50-milliliter volumetric flask.

(iii) *Preparation of sample solution.* Accurately weigh a portion of the sample equivalent to 50 milligrams of iodochlorhydroxyquin into a 125-milliliter Erlenmeyer flask. Add 50 milliliters of acetone, warm on a steam bath, and shake gently. Cool to room temperature and filter contents through a pledget of glass wool into a 100-milliliter volumetric flask. Wash the Erlenmeyer flask with two 20-milliliter portions of acetone and filter the washings into the volumetric flask. Dilute to volume with acetone and mix thoroughly. Transfer a 10-milliliter aliquot of the acetone solution to a 50-milliliter volumetric flask and evaporate on a steam bath. To the residue, add 20 milliliters of 2-methoxyethanol and swirl to dissolve the iodochlorhydroxyquin.

(iv) *Procedure.* To each flask containing standard solution and sample solution, respectively, add 2.0 milliliters of ferric chloride reagent and dilute to volume with 2-methoxyethanol. Mix thoroughly. Using a suitable spectrophotometer equipped with 1.0-centimeter cells and a blank prepared by diluting 2.0 milliliters of ferric chloride reagent to 50 milliliters with 2-methoxyethanol, determine the absorbance of the sample and standard solutions at 650 nanometers. Set the instrument to 100-percent transmission with the blank.

(v) *Calculation.*

$$\text{Milligrams of iodochlorhydroxyquin per gram of sample} = \frac{\text{Absorbance of sample} \times 50}{\text{Absorbance of standard} \times \text{Weight of sample in grams}}$$

(3) *Iodochlorhydroxyquin identity.* Proceed as directed in § 141.553 of this chapter, preparing the sample solution as follows: Accurately weigh a portion of the sample equivalent to 50 milligrams of iodochlorhydroxyquin into a 125-milliliter Erlenmeyer flask. Add 50 milliliters of acetone, warm on a steam bath, and shake gently. Cool to room temperature and filter contents through a pledget of glass wool into a 100-milliliter volumetric flask. Wash the Erlenmeyer flask with two 20-milliliter portions of acetone and filter the washings into the volumetric flask. Dilute to volume with acetone and mix thoroughly.

(4) *Moisture.* Proceed as directed in § 141.502 of this chapter.

Since the conditions, prerequisite to providing for certification of subject antibiotic have been complied with, and since the matter is noncontroversial, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall become effective on June 27, 1973.

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

Dated June 21, 1973.

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

[FR Doc.73-12877 Filed 6-26-73;8:45 am]

PART 141c—CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

Demeclocycline; Recodification, Updating, and Technical Revisions; Correction

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), a final rule making was published in the FEDERAL REGISTER of April 9, 1973 (38 FR 9010) providing for the recodification, updating, and technical revisions of the demeclocycline hydrochloride and demeclocycline monographs.

The amendments, which amended certain portions of §§ 141c.259(a)(1), 141c.263(a)(1), and 141c.271(a)(1), should have completely revised these subparagraphs to provide clear potency limits. Accordingly, Part 141c is amended as follows:

1. In § 141c.259 by revising paragraph (a)(1) to read as follows:

§ 141c.259 Demeclocycline hydrochloride-nystatin capsules.

(a) *Potency*—(1) *Demeclocycline hydrochloride content.* Proceed as directed in § 150b.11(b)(1) of this chapter.

* * * * *

2. In § 141c.263 by revising paragraph (a)(1) to read as follows:

§ 141c.263 Demeclocycline-nystatin for oral suspension.

(a) *Potency*—(1) *Demeclocycline content.* Proceed as directed in § 150b.13(b)(1) of this chapter.

* * * * *

3. In § 141c.271 by revising paragraph (a)(1) to read as follows:

§ 141c.271 Demeclocycline hydrochloride-nystatin tablets.

(a) *Potency*—(1) *Demeclocycline hydrochloride content.* Proceed as directed in § 150b.12(b)(1) of this chapter.

* * * * *

Since the potency limits have been previously proposed with time allowed for comments, in the FEDERAL REGISTER of September 14, 1972 (37 FR 18625), and no comments or objections were received, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall be effective on June 27, 1973.

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

Dated June 21, 1973.

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

[FR Doc.73-12878 Filed 6-26-73;8:45 am]

PART 146—ANTIBIOTIC DRUGS; PROCEDURAL AND INTERPRETATIVE REGULATIONS

Antibiotic Certification Fees

Correction

In FR Doc. 73-11391 appearing at page 14917 in the issue of Thursday, June 7, 1973, in § 146.8(b)(1), after the entry "Undecylenic acid content", insert "Ultraviolet absorptivity.....23".

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER F—QUARANTINE, INSPECTION, LICENSING

PART 71—FOREIGN QUARANTINE

Definition of Quarantinable Diseases; Radio Report of Illness; Quarantine Inspection; Reports During Stay in Port

A notice was published in the FEDERAL REGISTER on April 3, 1973, 38 FR 8522, proposing to amend Part 71 of Title 42, Code of Federal Regulations, concerning public health measures for aircraft and vessels arriving in the United States. The proposed changes will permit implementation of procedures and methods which are necessary to continue to present a scientifically based service to the public and the professions and will increase facilitation of international travel. A 30-day period was prescribed for submittal of data, views, and arguments. One response was received. It endorsed the proposed changes.

The proposed amendments included substitution of a requirement for making medical reports to quarantine stations in terms of signs and symptoms rather than in terms of named diseases, which are frequently not readily identifiable. Upon further consideration, the reporting provision has been broadened to include a requirement for reporting any death, regardless of cause or symptoms.

After further review, the proposed amendments, as set forth below, are hereby adopted, to be effective July 1, 1973.

Dated: June 8, 1973.

/s/ FREDERICK L. STONE,
Acting Administrator, Health Services and Mental Health Administration.

Approved: June 21, 1973.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

1. Revise paragraph (w) of § 71.1 of Part 71 by deleting "relapsing fever" and "typhus." As thus revised, paragraph (w) reads as follows:

§ 71.1 Definitions.

* * * * *

(w) *Quarantinable diseases.* The specific communicable diseases: cholera, plague, smallpox, and yellow fever.

* * * * *

2. Revise § 71.31 to read as follows:

§ 71.31 Radio report of death or illness.

(a) *Vessels.* The master of a vessel destined for a port under the control of the United States shall report immediately, by radio, to the quarantine station at or nearest the port at which the vessel will arrive, the occurrence on board, among passengers or crew (including those who have disembarked or have been removed), during the 15-day period preceding the date of expected arrival or during the period since departure from a port under the control of the United States (whichever period of time is shorter), any death, without regard to cause or signs and symptoms, or any illness characterized by signs and symptoms as follows:

(1) Temperature of 100° F. (38° C.) or greater (i) which was accompanied or followed by rash, jaundice, or glandular swelling, or (ii) which persisted for 2 days or more.

(2) Diarrhea severe enough to interfere with work or normal activity.

(b) *Aircraft.* The commander of an aircraft destined for an airport under the control of the United States shall report immediately to the quarantine station at or nearest the airport at which the aircraft will arrive the occurrence, on board, among passengers or crew, of every death or illness as specified in paragraph (a) of this section.

3. Revise § 71.46 to read as follows:

§ 71.46 General provisions.

(a) Upon arrival at a port under the control of the United States, a vessel or aircraft shall undergo quarantine inspection unless:

(1) The last port prior to such arrival was in an area determined by the Director, Center for Disease Control, to present no significant threat of introduction of communicable disease into the United States or its possession; [1] or,

(2) A period of more than 15 days has elapsed since departure from the last port, or,

(3) The Director, Center for Disease Control, determines that exemption from quarantine inspection will present no significant threat of introduction of communicable disease into the United States or its possessions.

---

[1] A list of such areas and changes thereto will be published in the FEDERAL REGISTER. A current list may be obtained from the Director, Center for Disease Control, 1600 Clifton Road NE., Atlanta, Ga. 30333, Attention: Chief, Quarantine Branch; or from Public Health Service quarantine stations at United States ports.

(b) Notwithstanding the provisions of paragraph (a) of this section:

(1) Vessels and aircraft shall comply with any conditions and carry out any additional measures specified in the pratique.

(2) A vessel shall undergo quarantine inspection prior to entry into such port if, within the 15-day period preceding such arrival, or during the period since departure from a port under the control of the United States, whichever period of time is shorter, there is or has been any death or illness among the passengers or crew, including those who have disembarked or been removed, as specified in § 71.31(a).

(3) An aircraft shall undergo quarantine inspection if there is or has been on board during the flight any death or illness among the passengers or crew, as specified in § 71.31(a).

(4) Vessels and aircraft shall undergo quarantine inspection if the Director, Center for Disease Control, determines that entry would be likely to cause the introduction of communicable disease.

4. Revise paragraph (a) of § 71.49 to read as follows:

§ 71.49 Report of disease or rodent mortality on vessel during stay in port.

* * * * *

(a) Any death or illness as specified in § 71.31(a).

* * * * *

[FR Doc.73-12862 Filed 6-26-73;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

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

[Docket No. FI-153]

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
*	*		*	*	*	*
Arkansas	Monroe	Clarendon, City of				June 25, 1973. Emergency.
Connecticut	New Haven	Wallingford, Town of.				Do.
Maryland	Carroll	Westminister, City of.				Do.
Massachusetts	Hampden	Agawam, Town of.				Do.
Michigan	Muskegon	Laketon, Township of.				Do.
Do.	Oakland	Royal Oak, City of.				Do.
New Jersey	Morris	Montville, Township of.				Do.
New York	Tioga	Newark Valley, Town of.				Do.
Texas	Bexar	Leon Valley, City 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 June 15, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-12780 Filed 6-26-73;8:45 am]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

[Docket No. FI-154]

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
*	*		*	*	*	*
California	Tehama	Unincorporated areas.	I 06 103 0000 01 through I 06 103 0000 05	Department of Water Resources, P.O. Box 388, Sacramento, Calif. 95802. California Insurance Department, 107 South Broadway, Los Angeles, Calif. 90012, and 1407 Market St., San Francisco, Calif. 94103.	Tehama County Planning Commission, room 22, Courthouse, Red Bluff, Calif. 96080.	Apr. 23, 1971. Emergency. July 6, 1973. Regular.
Florida	St. John's	do	I 12 109 0000 03 through I 12 109 0000 26	Department of Community Affairs, 2571 Executive Center Circle East, Howard Bldg., Tallahassee, Fla. 32301. State of Florida Insurance Department, Treasurer's Office, The Capitol, Tallahassee, Fla. 32304.	Clerk of the Circuit Court, St. John's County Courthouse, St. Augustine, Fla. 32084.	Sept. 25, 1970. Emergency. July 6, 1973. Regular.
Louisiana	Plaquemines Parish.	do				June 20, 1973. Emergency.
Massachusetts	Bristol	New Bedford, City of.	I 25 005 0850 01 through I 25 005 0850 11	Division of Water Resources, Water Resources Commission, State Office Bldg., 100 Cambridge St., Boston, Mass. 02202. Massachusetts Division of Insurance, 100 Cambridge St., Boston, Mass. 02202.	City Planning Department, City of New Bedford, 133 William St., New Bedford, Mass. 02740.	Feb. 25, 1973. Emergency. July 6, 1973. Regular.
Texas	Angelina	Lufkin, City of				June 20, 1973. Emergency.
Do	Dallas	Grand Prairie, City of.	I 48 113 2800 01 through I 48 113 2800 19	Texas Water Development Board, P.O. Box 13087, Capitol Station, Austin, Tex. 78711. Texas Insurance Department, 1110 San Jacinto St., Austin, Tex. 78701.	City Hall, 318 West Main, Grand Prairie, Tex. 75050.	Oct. 1, 1971. Emergency. July 6, 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 June 19, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-12781 Filed 6-26-73;8:45 am]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

[Docket No. FI-157]

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
*	*	*	*	*	*	*
Florida	Manatee	Longboat Key, Town of.				Apr. 30, 1970. Emergency. July 30, 1971. Regular. Sept. 15, 1972. Suspended. June 18, 1973. Reinstated.
New Jersey	Burlington	Medford, Township of.				June 22, 1973. Emergency.

(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 June 15, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-12784 Filed 6-26-73;8:45 am]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

[Docket No. FI-155]

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 June 27, 1973.

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
*	*	*	*	*	*	*
California	Tehama	Unincorporated areas.	H 06 103 0000 01 through H 06 103 0000 05	Department of Water Resources, P.O. Box 388, Sacramento, Calif. 95802. California Insurance Department, 107 South Broadway, Los Angeles, Calif. 90012, and 1407 Market St., San Francisco, Calif. 94103.	Tehama County Planning Commission, room 22, Courthouse, Red Bluff, Calif. 96080.	July 6, 1973.
Florida	St. John's	do	H 12 109 0000 03 through H 12 109 0000 26	Department of Community Affairs, 2571 Executive Center Circle East, Howard Bldg., Tallahassee, Fla. 32301. State of Florida Insurance Department, Treasurer's Office, The Capitol, Tallahassee, Fla. 32304.	Clerk of the Circuit Court, St. John's County Courthouse, St. Augustine, Fla. 32084.	Do.
Massachusetts	Bristol	New Bedford, City of.	H 25 005 0850 01 through H 25 005 0850 11	Division of Water Resources, Water Resources Commission, State Office Bldg., 100 Cambridge St., Boston, Mass. 02202. Massachusetts Division of Insurance, 100 Cambridge St., Boston, Mass. 02202.	City Planning Department, City of New Bedford, 133 William St., New Bedford, Mass. 02740.	Do.

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	Glen Ridge, Borough of.	H 34 013 1170 01	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.	Borough Hall, Borough of Glen Ridge, Glen Ridge, N.J. 07028.	Do.
Do	Middlesex	Spotswood, Borough of.	H 34 023 3200 01	do	Borough Hall, Borough of Spotswood, Spotswood, N.J. 08884.	Do.
Do	Monmouth	Fair Haven, Borough of.	H 34 025 0940 01	do	Borough Hall, Borough of Fair Haven, Fair Haven, N.J. 07701.	Do.
Pennsylvania	Bucks	Solebury, Township of.	H 42 017 7015 01 through H 42 017 7015 06	Department of Community Affairs, Commonwealth of Pa., Harrisburg, Pa., 17120. Pennsylvania Insurance Department, 108 Finance Bldg., Harrisburg, Pa. 17120.	Solebury Township Bldg., Sugan Rd., Solebury, Pa. 18963.	Do.
Do	Lyzerne	Larksville, Borough of.	H 42 079 4280 01 H 42 079 4280 02	do	Chief of Police of Larksville Borough, Larksville Borough, First St., Larksville, Pa. 18704.	Do.
Texas	Dallas	Grand Prairie, City of.	H 48 113 2800 01 through H 48 113 2800 19	Texas Water Development Board, P.O. Box 13087, Capitol Station, Austin, Tex. 78711. Texas Insurance Department, 1110 San Jacinto St., Austin, Tex. 78701.	City Hall, 318 West Main, Grand Prairie, Tex. 75050.	Do.
Wisconsin	Marinette	Marinette, City of.	H 55 075 2840 01 H 55 075 2840 02	Department of Natural Resources, P.O. Box 450, Madison, Wis. 53701. Wisconsin Insurance Department, 212 North Bassett St., Madison, Wis. 53703.	City Hall, 1901 Hall Ave., Marinette, Wis. 54134.	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 June 19, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-12782 Filed 6-26-73;8:45 am]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

[Docket No. FI-156]

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 June 27, 1973. 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 special flood hazards
*	*		*	*	*	*
Florida	Manatee	Longboat Key, Town of.	H 04 081 1835 02 through H 04 081 1835 04	Department of Community Affairs, 2571 Executive Center Circle East, Howard Bldg., Tallahassee, Fla. 32301. State of Florida Insurance Department, Treasurer's Office, The Capitol, Tallahassee, Fla. 32304.	Municipal Office, 5144 Gulf of Mexico Dr., Longboat Key, Fla. 33548.	Apr. 27, 1970.

(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 June 15, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-12783 Filed 6-26-73;8:45 am]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

[Docket No. FI-158]

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 June 27, 1973. 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
*	*		*	*	*	*
California	Los Angeles	Duarte, City of	H 06 037 1047 04 through H 06 037 1047 06	Department of Water Resources, P.O. Box 388, Sacramento, Calif. 95802. California Insurance Department, 107 South Broadway, Los Angeles, Calif. 90012, and 1407 Market St., San Francisco, Calif. 94103.	Office of the Clerk, 1634 East 3d St., Box 218, Duarte, Calif. 91010.	June 29, 1973.
Massachusetts	Barnstable	Bourne, Town of	H 25 001 0121 01 through H 25 001 0121 08	Division of Water Resources, Water Resources Commission, State Office Bldg., 100 Cambridge St., Boston, Mass. 02202. Massachusetts Division of Insurance, 100 Cambridge St., Boston, Mass. 02202.	Office of the Board of Selectmen, Town of Bourne, Bourne, Mass. 02532.	Do.
Michigan	Macomb	Sterling Heights, City of.	H 26 099 4731 01 H 26 099 4731 02	Water Resources Commission, Bureau of Water Management, Stevens T. Mason Bldg., Lansing, Mich. 48926. Michigan Insurance Bureau, 111 North Hosmer St., Lansing, Mich. 48913.	City of Sterling Heights, 40555 Utica Rd., Sterling Heights, Mich. 48078.	Do.
Nebraska	Platte	Columbus, City of.	H 31 141 1100 01 H 31 141 1100 02	Nebraska Natural Resources, Commission, P.O. Box 54725, State House Station, Lincoln, Nebr. 68509. Nebraska Insurance Department, 1335 L St., Lincoln, Nebr. 68509.	Columbus City Hall, Columbus, Nebr. 68601.	Do.
New Jersey	Bergen	Garfield, City of	H 34 003 1110 01	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 City Clerk, City Hall, Outwater Lane, Garfield, N.J. 07026.	Do.
Do	Essex	Roseland, Borough of.	H 34 013 2890 01	do	Borough Hall, Borough of Roseland, Roseland, N.J. 07068.	Do.
Pennsylvania	Elk	Johnsonburg, Borough of.	H 42 047 4000 01 H 42 047 4000 02	Department of Community Affairs, Commonwealth of Pa., Harrisburg, Pa. 17120. Pennsylvania Insurance Department, 108 Finance Bldg., Harrisburg, Pa. 17120.	Johnsonburg Community Center, 600 Market St., Johnsonburg, Pa. 15845.	Do.
Do	Lycoming	Williamsport, City of.	H 42 081 9380 01 through H 42 081 9380 03	do	City of Williamsport, City Hall, 454 Pine St., Williamsport, Pa. 17701.	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 June 15, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-12785 Filed 6-26-73;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular 2344]

PART 2800—RIGHTS-OF-WAY

Advance Permission

On page 8449 of the FEDERAL REGISTER of April 2, 1973, there were published a notice and text of a proposed amendment to Subpart 2801 of Title 43, Code of Federal Regulations. The purpose of this amendment is to delete paragraph (a) of § 2801.1–4 which provides for the granting of advance permission to start construction, use, and occupy the lands under the jurisdiction of the Department of the Interior and its agencies, in advance of approval of a right-of-way application. The deletion was proposed because a system of advance permission is not compatible with environmental protection or land use planning.

Interested persons were given until May 4, 1973, within which to submit comments, suggestions, or objections to the proposed amendment. Fifteen comments were received. Three writers endorsed the proposed regulations and suggested no changes. The others objected to deletion of the existing regulations and made the following comments and suggestions:

1. The present system of permitting advance entry works well and is compatible with full consideration of the environment and proper land use planning.

Comment. No evidence was presented in support of this allegation.

2. To delete the provision would unduly delay timely construction of facilities providing services to individual customers as well as transmission of energy resources, such as natural gas, to market.

Comment. Requirements of law, including the National Environmental Policy Act of 1969, and regulations are established to make sure the public interest will be served. Issuance of rights and principles before necessary determinations are made is inconsistent with these laws. Once the appropriate determinations are made, the time required to issue a right-of-way permit is relatively short.

3. One writer suggested that parallel rights-of-way be excepted from the deletion since construction of new rights-of-way adjacent to old structures does not constitute a new impact. Another suggested that communications facilities be excepted. One writer suggested that advance permission be banned only in specified areas of environmental or land use planning importance.

Comment. Each proposed action has a potential for impact on the environment. Only by thorough study of each proposal is it possible to judge the significance of the impact and determine if issuance of a permit is in the public interest.

4. Two writers were concerned that deletion of the provision would prevent access for preliminary surveys and studies which are needed to prepare the right-of-way application.

Comment. The present regulation deals only with permission to commence construction work. It does not relate to such activities as entering public lands for survey, testing or separate activities related to determining whether lands are suitable for a right-of-way. Permission for such activities can be granted under other regulations.

The advance permission provision of the regulations is a privilege the Department has determined can no longer be granted. This rulemaking is in effect a formal notice that the privilege will no longer be available. It is hereby determined that the publication of this rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The proposed amendment is hereby adopted without change, and is set forth below. This amendment shall become effective August 1, 1973.

Section 2801.1–4 is revised to read as follows:

§ 2801.1–4 Unauthorized occupancy.

Any occupancy or use of the lands of the United States without authority will subject the person occupying or using the land to prosecution and liability for trespass.

JACK O. HORTON,
Assistant Secretary of the Interior.

JUNE 21, 1973.

[FR Doc.73-12912 Filed 6-26-73;8:45 am]

Title 32—National Defense

CHAPTER VI—DEPARTMENT OF THE NAVY

SUBCHAPTER B—NAVIGATION

PART 706—NAVIGATIONAL LIGHT WAIVERS

CFR Correction

In the table to § 706.2 appearing on page 22 of title 32 parts 700–799 revised as of January 1, 1972, the entries appearing under the vessel class "PATROL VESSELS:" should read as set forth below.

Vessel class or type	Distance in feet of the forward 20-point white light below minimum required height (based on requirements of International Rule 2(a) (iii)).	Distance in feet below minimum required vertical separation between forward and after 20-point white lights (based on requirements of International Rule 2(a) (iii)).	Ratio of horizontal to vertical separation of the two 20-point white lights (based on International Rule 2(a) (iii) which requires ratio of 3.0 to 1).	Minimum distance horizontally in feet between forward and after 20-point white lights.
Patrol vessels:				
DE (Escort vessel)				
DER (radar picket escort vessel)				
PC (submarine chaser)	17 or less	5 or less	1.0 or greater to 1	19 or greater.
PCE (escort)				
PCER (rescue escort)				
PC(H) (hydrofoil patrol craft).	None		After white light not carried.	
PGM (motor gunboat)	8 or less	None	1.0 or greater to 1	19 or greater.

CHAPTER XVI—SELECTIVE SERVICE SYSTEM

PART 1690—DETERMINATION OF AVAILABILITY OF MEMBERS OF THE STANDBY RESERVE OF THE ARMED FORCES FOR ORDER TO ACTIVE DUTY

Reserve Category Liberalized

Pursuant to the authority vested in me by section 672(a) of title 10 U.S.C., I have determined to amend §§ 1690.3 and 1690.11 of Selective Service regulations (32 CFR 1690.3 and 1690.11). The amendment of § 1690.3 eliminates an obsolete cross-reference. The amendment of § 1690.11 liberalizes the requirements for Category III–R: Reservist not available for order to active duty because of dependency of others.

Now therefore by virtue of the authority vested in me by section 672(a) of title 10 U.S.C., the Selective Service regulations, constituting a portion of Chapter XVI of title 32 of the Code of Federal Regulations, are hereby amended, effective 11:59 p.m. e.d.s.t. on June 30, 1973, as follows:

§ 1690.3 [Amended]

Section 1690.3 *Quorum, meetings, and disqualification of local board and its members,* is amended by deleting the figures "1604.52a."

Section 1690.11 is revised as follows.

§ 1690.11 Category III–R: Reservist not available for order to active duty because of dependency of others.

(a) In Category III–R shall be placed any reservist who is found to be not available for order to active duty solely because his performance of active duty in the Armed Forces in time of war or national emergency declared by the Congress

(1) Would result in extreme hardship to his wife when she alone is dependent upon him for support;

(2) Would not be advisable because his child, parent, grandparent, brother or sister is dependent upon him for support; or

(3) Would not be advisable because his wife and his child, parent, grandparent, brother or sister are dependent upon him for support.

(b) As used in this section

(1) The term "child" shall include any person under 18 years of age who is a legitimate or an illegitimate child from the date of its conception, a stepchild, a foster child, or a child legally adopted;

(2) The term "parent" shall include any person who has stood in the place of a parent to the registrant for at least five years preceding the eighteenth anniversary of the registrant's date of birth.

(3) The term "support" includes but is not limited to financial assistance.

BYRON V. PEPITONE,
Director.

JUNE 19, 1973.

[FR Doc.73-12899 Filed 6-26-73;8:45 am]

Title 39—Postal Service

CHAPTER I—U.S. POSTAL SERVICE

PART 912—PROCEDURES TO ADJUDICATE CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING OUT OF THE OPERATION OF THE U.S. POSTAL SERVICE

Reconsideration of Final Denial of Tort Claims

Section 912.9 is amended to indicate the circumstances and procedures which apply to the reconsideration of a previously denied claim, filed under the Federal Tort Claims Act, for personal injury or property damage arising out of the operation of the Postal Service. Accordingly, effective June 27, 1973, § 912.9 is amended by redesignating its present text as paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 912.9 Final denial of claim.

* * * * *

(b) Prior to the commencement of suit and prior to the expiration of the 6 month period provided in 28 U.S.C. 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the postal official who issued the final denial or with the Assistant General Counsel, Claims Division, U.S. Postal Service, Washington, D.C. 20260, for a reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration, the Postal Service shall have 6 months from the date of filing in which to make a disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of a request for reconsideration. Final Postal Service action on a request for reconsideration shall be effected in accordance with this part.

(28 U.S.C. 2671-2680; 28 CFR 14.1-14.11; 39 U.S.C. 401, 409, 2008.)

ROGER P. CRAIG,
Deputy General Counsel.

JUNE 21, 1973.

[FR Doc.73-12891 Filed 6-26-73;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

PART 10—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

Pursuant to the Federal Tort Claims Act, as amended (28 U.S.C. sections 2671-2680), the Environmental Protection Agency (EPA) is amending Title 40 CFR by the addition of a new Part 10, Administrative Claims under Federal Tort Claims Act.

These regulations establish the means whereby persons who believe they have a valid tort claim against EPA can present that claim to EPA, and the procedures under which the Agency will process that claim, compromise the claim after consulting the Department of Justice, or reject the claim and inform the claimant of his right to bring suit on the claim in Federal court. The regulations specify the evidence that may have to be submitted in support of a claim, and the time limits that must be obeyed. The regulations are very similar to those of several other agencies, and are designed to conform to and supplement both the requirements of the Federal Tort Claims Act and the regulations issued by the Department of Justice concerning it, which are set forth at 28 CFR Part 14.

ROBERT W. FRI,
Acting Administrator.

JUNE 22, 1973.

Subpart A—General

Sec.
10.1 Scope of regulations.

Subpart B—Procedures

10.2 Administrative claim; when presented; place of filing.
10.3 Administrative claim; who may file.
10.4 Administrative claim; evidence to be submitted.
10.5 Investigation, examination, and determination of claims.
10.6 Final denial of claim.
10.7 Payment of approved claims.
10.8 Release.
10.9 Penalties.
10.10 Limitations on Environmental Protection Agency's authority.
10.11 Relationship to other Agency regulations.

AUTHORITY: Sec. 1, 80 Stat. 306; 28 U.S.C. 2672; 28 CFR Part 14.

Subpart A—General

§ 10.1 Scope of regulations.

The regulations in this part shall apply only to claims asserted under the Federal Tort Claims Act, as amended, 28 U.S.C. sections 2671-2680, accruing on or after January 18, 1967, for money damages against the United States for damages to or loss of property or personal injury or death, caused by the negligent or wrongful act or omission of any employee of the Environmental Protection Agency (EPA) while acting within the scope of his office of employment.

Subpart B—Procedures

§ 10.2 Administrative claim; when presented; place of filing.

(a) For purpose of the regulations in this part, a claim shall be deemed to have been presented when the Environmental Protection Agency receives, at a place designated in paragraph (c) of this section, an executed Standard Form 95 or other written notification of an incident accompanied by a claim for money damages in a sum certain for damage to or loss of property, for personal injury, or for death, alleged to have occurred by reason of the incident. A claim which should have been presented to EPA, but which was mistakenly addressed to or filed with another Federal agency, shall be deemed to be presented to EPA as of the date that the claim is received by EPA. A claim mistakenly addressed to or filed with EPA shall forthwith be transferred to the appropriate Federal agency, if ascertainable, or returned to the claimant.

(b) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final action by the Administrator, or his designee, or prior to the exercise of the claimant's option to bring suit under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, EPA shall have 6 months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675 (a) shall not accrue until 6 months after the filing of an amendment.

(c) Forms may be obtained and claims may be filed with the office, local, regional, or headquarters, of the constituent organization having jurisdiction over the employee involved in the accident or incident, or with the EPA Claims Officer, Waterside Mall Building, 401 M Street SW., Washington, D.C. 20460.

§ 10.3 Administrative claims; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property interest which is the subject of the claim, his duly authorized agent, or his legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or his legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually as their respective interests appear, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 10.4 Evidence to be submitted.

(a) *Death*—In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decendent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payments for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(b) *Personal Injury*—In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed or designated by EPA. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that the claimant has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees in writing to make available to EPA any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, hospital and related expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected duration of and expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on the responsibility of the United States for either the personal injury or the damages claimed.

(c) *Property Damage*. In support of a claim for damage to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, market value of the property as of date of damage, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on the responsibility of the United States either for the injury to or loss of property or for the damage claimed.

(d) *Time Limit*. All evidence required to be submitted by this section shall be furnished by the claimant within a reasonable time. Failure of a claimant to furnish evidence necessary to a determination of his claim within three months after a request therefor has been mailed to his last known address may be deemed an abandonment of the claim. The claim may be thereupon disallowed.

§ 10.5 Investigation, examination, and determination of claims.

When a claim is received, the constituent unit out of whose activities the claim arose shall make such investigation as may be necessary or appropriate for a determination of the validity of the claim.

A full account of this investigation, together with all pertinent documentary materials, the claim itself, and a recommendation based on the merits of the case, shall be forwarded through regular supervisory channels to the EPA Claims Officer, Washington, D.C. 20460, to whom authority has been delegated to adjust, determine, compromise, and settle tort claims under the direction of the Director, Facilities and Support Services Division, and with the advice of the General Counsel or his designee.

§ 10.6 Final denial of claim.

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with EPA's action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period after the date of mailing by certified or registered mail of notice of final denial of the claim as provided in 28 U.S.C. 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the EPA for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration, EPA shall have 6 months from the date of filing in which to make a final disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) to bring suit shall not accrue until 6 months after the filing of a request for reconsideration. Final action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a) of this section.

§ 10.7 Payment of approved claim.

(a) Upon allowance of his claim, claimant or his duly authorized agent shall sign the voucher for payment, Standard Form 1145, before payment is made.

(b) When the claimant is represented by an attorney, the voucher for payment (SF 1145) shall designate both the claimant and his attorney as "payees." The check shall be delivered to the attorney whose address shall appear on the voucher.

(c) No attorney shall charge fees in excess of 25 percent of a judgment or settlement after litigation, or in excess of 20 percent of administrative settlements (28 U.S.C. 2678).

§ 10.8 Release.

Acceptance by the claimant, his agent or legal representative of any award, compromise or settlement made hereunder, shall be final and conclusive on the claimant, his agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of all claims against either the United States or any employee of the Government arising out of the same subject matter.

§ 10.9 Penalties.

A person who files a false claim or makes a false or fraudulent statement in a claim against the United States may be liable to a fine of not more than $10,000 or to imprisonment of not more than 5 years, or both (18 U.S.C. 287,1001), and, in addition, to a forfeiture of $2,000 and a penalty of double the loss or damage sustained by the United States (31 U.S.C. 231).

§ 10.10 Limitation on Environmental Protection Agency's authority.

(a) An award, compromise or settlement of a claim hereunder in excess of $25,000 shall be effected only with the prior written approval of the Attorney

General or his designee. For the purposes of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised or settled hereunder only after consultation with the Department of Justice when, in the opinion of the Environmental Protection Agency:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and the Agency is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised, or settled by EPA hereunder only after consultation with the Department of Justice when EPA is informed or is otherwise aware that the United States or an employee, agent, or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 10.11 Relationship to other agency regulations.

The regulations in this part supplement the Attorney General's regulations in Part 14 of Chapter 1 of Title 28, Code of Federal Regulations, as amended. Those regulations, including subsequent amendments thereto, and the regulations in this part apply to the consideration by the Environmental Protection Agency of administrative claims under the Federal Tort Claims Act.

Each of the four pre-existing agencies that contributed parts of its organization to the Environmental Protection Agency had published regulations to govern the administrative disposition of claims under the Federal Tort Claims Act at the time Reorganization Plan No. 3 of 1970 became effective: namely, Department of the Interior (43 CFR 22); Department of Health, Education, and Welfare (45 CFR 35); Department of Agriculture (7 CFR 1, subchapter D); and Atomic Energy Commission (10 CFR 14). These regulations that are currently applicable to the various constituent units of the Environmental Protection Agency are hereby superseded upon publication of the Agency's regulations with respect to claims asserted under the Federal Tort Claims Act involving employees of the Agency within scope of employment.

[FR Doc.73-12856 Filed 6-26-73;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 3—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 3-50—ADMINISTRATIVE MATTERS

Subpart 3-50.6—Incremental Funding of Cost-Reimbursement, Research and Development Contracts

Chapter 3, Title 41, Code of Federal Regulations is amended as set forth below. The purpose of these amendments is to establish the policies and procedures for the incremental funding of cost-reimbursement, research and development contracts.

It is the general policy of the Department of Health, Education, and Welfare, to allow time for interested parties to participate in the rule making process. However, the amendments herein involve administrative matters. Therefore, the public rule making process is deemed unnecessary in this instance.

1. The following is added to the table of contents:

Subpart 3-50.6—Incremental Funding of Cost-Reimbursement, Research and Development Contracts

Sec.
3-50.600 Scope of subpart.
3-50.601 Definition.
3-50.602 Policy.
3-50.603 General.
3-50.604 Procedures.

AUTHORITY: The provisions of this Subpart 3-50 are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

2. Subpart 3-50.6 is added to read as follows:

Subpart 3-50.6—Incremental Funding of Cost-Reimbursement, Research and Development Contracts.

§ 3-50.600 Scope of subpart.

This subpart provides policies and procedures for the use of incremental funding in cost-reimbursement research and development contracts.

§ 3-50.601 Definition.

An incrementally funded contract is one in which a total effort or job is described over a multiple year period and under which funds are allotted as they become available, to cover increments of performance. This method of funding permits the award of contracts for periods in excess of one year even though total funds expected ultimately to be obligated against the contract are not available at the time of contract award.

§ 3-50.602 Policy.

It is HEW policy in connection with projects of multiple year duration that:

(a) Resulting contracts will be fully funded whenever possible to cover the entire period of performance.

(b) In the alternative, cost-reimbursement research and development (R & D) incrementally funded contracts, may be entered into whenever:

(1) An approved program anticipates that a R & D project will be multiple year in duration but funds are not currently available to cover the entire project or period of performance.

(2) The need for the R & D project is a valid requirement of the fiscal year in which the contract is executed and of succeeding fiscal years for which additional funds may be obligated by increasing the funds allotted to the contract.

(3) The R & D project or requirement is of such significance to the approved program it relates to that there is a reasonable assurance that it will command a high priority for anticipated appropriations for the entire multiple year contract period.

(4) The work requirement is specific and defined in separable increments or phases at the end of which, progress can be effectively measured. Further, the requirements should be accomplishable during the multiple year period.

§ 3-50.603 General.

The following guidelines are applicable to incrementally funded contracts:

(a) The estimated dollar value of the entire project (all planned increments) will determine requirements to be met before entering into an incrementally funded contract (justification for noncompetitive procurement, approval of award, etc. See FPR 1-1.403).

(b) The RFP will include a work statement for the entire project over the projected multiple year period of performance.

(c) Offerors are expected to respond with technical and pricing proposals for the entire project and total period of performance, broken down to reflect time phased increments of work.

(d) Negotiations will proceed on the basis of work for the total multiple year project, including phased increments.

(e) The resulting contract statement of work will describe the total project, but time-phased consistent with planned increments and allotments.

(f) The performance period recited in the basic contract will reflect the total estimated time to complete the entire project.

(g) Sufficient funds must be obligated under the basic contract to cover no less than the first year of performance.

(h) There is maximum flexibility under an incrementally funded contract to expand or scale down the statement of work, or even to terminate the contract at the end of, or within, an allotment period if program priorities change; appropriations fall short of expectations, or the progress of the contractor proves to be unsatisfactory. However, a Program review is required prior to making any major change under an

incrementally funded contract; the contracting officer and project officer, individually or jointly, may not make major decisions affecting basic requirements without Program's approval.

(i) Because of the breadth of workscope and overall period of performance under an incrementally funded contract, there is a critical need for careful advance Program planning. Such planning should include appropriate surveillance of the contractor's performance and controls to ensure that projected funding will not impinge on Program's ability to support, within anticipated appropriations, other equally important contract or grant programs.

(j) An incrementally funded contract should contain precise requirements for progress reports to enable the project officer to monitor the contract effectively. Moreover, the project officer should prepare periodic performance evaluation reports to facilitate Program's ultimate decision whether to allot additional funds under the contract.

§ 3-50.604 **Procedures.**

(a) The request for proposal (RFP) should inform offerors of the Government's intention to enter into an incrementally funded contract. The following provision should be inserted in the RFP whenever incremental funding is contemplated:

INCREMENTAL FUNDING

(1) Sufficient funds are not presently available to cover the totality of work over the entire period of performance under the proposed contract. It is the Government's intention to negotiate and award a contract within incremental funding features as described in the attached General Provision entitled: "Limitation of Funds." Under this article, which will be included in the contract as awarded, an initial amount will be obligated under the basic contract covering the first year of performance. Additional funds will be allotted from time to time by contract modification up to the full estimated cost of the contract. While it is the Government's intention to progressively fund this contract up to the full estimated amount over the entire period of performance, the Government will not be obligated to reimburse the contractor for costs in excess of periodic allotments, nor will the contractor be obligated to continue performance in excess of amounts allotted.

(2) The "Limitation of Funds" article to be included in the contract as awarded, will supersede the "Limitation of Cost" article in the preprinted General Provisions.

(b) (1) The contract as awarded should contain an appropriately worded "Consideration" article reciting the initial funding allotment as set forth below:

BASIC CONTRACT ARTICLE

Article Consideration

(A) *Estimated Cost and Fixed Fee.* (1) It is estimated that the total cost to the Government for full performance of this contract will be $2,500,000, of which the sum of $2,350,000 represents the estimated reimbursable costs, and of which $150,000 represents the fixed fee. (Note: All figures and dates are for the purpose of illustration only—§ 3-50.604 (b) (1) and (c).)

(2) Total funds currently available for payment and allotted to this contract is $800,000 of which $752,000 represents the estimated reimbursable costs, and of which $48,000 represents the fixed fee. For further provisions on funding, see the General Provisions entitled: "Limitation of Funds."

(3) It is estimated that the amount currently allotted will cover performance of phase I which is scheduled to be completed September 30, 1973.

(B) Etc. (Continue with usual reimbursement, and direct and indirect cost guidance.)

(The above article should be appropriately reworded for straight cost-reimbursement contracts.)

(2) A reference to the applicable General Provision entitled "Limitation of Funds" should also be included in the contract. The General Provision shall read as follows:

LIMITATION OF FUNDS

(a) It is estimated that the cost to the Government for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost.

(b) The amount presently available for payment and allotted to this contract, the items covered thereby, and the period of performance which it is estimated the allotted amount will cover, are specified in the Schedule. It is contemplated that from time to time additional funds will be allotted to this contract up to the full estimated cost set forth in the Schedule, exclusive of any fee. The Contractor agrees to perform or have performed work on this contract up to the point at which the total amount paid and payable by the Government pursuant to the terms of this contract approximates but does not exceed the total amount actually allotted to the contract.

(c) If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to any costs previously incurred, will exceed seventy-five percent (75%) of the total amount then allotted to the contract, the Contractor shall notify the Contracting Officer in writing to that effect. The notice shall state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. Sixty (60) days prior to the end of the period specified in the Schedule the Contractor advises the Contracting Officer in writing as to the estimated amount of additional funds, if any, that will be required for the timely performance of the work under the contract or for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the Schedule or an agreed date substituted therefor, the Contracting Officer will, upon written request by the Contractor, terminate this contract pursuant to the provisions of the Termination clause on such date. If the Contractor, in the exercise of his reasonable judgment, estimates that the funds available will allow him to continue to discharge his obligations hereunder for a period extending beyond such date, he shall specify the later date in his request and the Contracting Officer, in his discretion, may terminate this contract on that later date.

(d) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the total amount from time to time allotted to the contract, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the amount allotted to the contract, unless and until the Contracting Officer has notified the Contractor in writing that such allotted amount has been increased and has specified in such notice an increased amount constituting the total amount then allotted to the contract. To the extent the amount alloted exceeds the estimated cost set forth in the Schedule, such estimated cost shall be correspondingly increased. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the amount allotted to this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the total amount then allotted to the contract, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the amount allotted to the contract has been increased, any costs incurred by the Contractor in excess of the amount previously allotted shall be allowable to the same extent as if such costs had been incurred after such increase in the amount allotted; *unless* the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(e) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the amount allotted in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the amount allotted.

(f) Nothing in this clause shall affect the right of the Government to terminate this contract. In the event this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

(g) In the event that sufficient funds are not allotted to this contract to allow completion of the work contemplated by this contract, the Contractor shall be entitled to that percentage of the fee set forth in the Schedule equivalent to the percentage of completion of the work contemplated by this contract.

(c) Because the contractor's obligation under the basic contract is limited to the amount allotted under the initial award, subsequent allotments must be accomplished by bilateral supplemental agreement. However, no negotiations are anticipated prior to entering into the Supplemental Agreement, unless new work is involved over and above that described in the basic contract. The language to be included in the Supplemental Agreement should read as follows:

PURPOSE: To allot additional funds to the contract under the "Limitation of Funds" article.

Amount:	*Total Funds Allotted*
Prior to this Modification	$800,000
This Modification	900,000
	$1,700,000

EXPIRATION DATE: Total performance period unchanged. It is estimated that the new funds allotted will cover performance through September 1974.

CONTRACT TYPE: CPFF.

NEGOTIATED UNDER THE AUTHORITY OF: 41 U.S.C. 252(c)(11). The Government and the Contractor mutually agree as follows:

Article Consideration, is amended as follows:

Paragraph A 2—In accordance with the General Provisions entitled "Limitation of Funds," the contract is hereby amended to allot additional funds in the amount of $900,000.

For clarification, the following schedule is given:

	Funds Allotted for Estimated Reimbursable Costs	Funds Allotted For Fee	Total Funds Allotted
Prior to this Modification	$752,000	$48,000	$800,000
This Modification (Increase)	846,000	54,000	900,000
	$1,598,000	$102,000	$1,700,000

Paragraph A3—It is estimated that funds allotted will cover performance through phase II which is scheduled to be completed September 30, 1974.

Dated: June 21, 1973.

/s/ N. B. HOUSTON,
Deputy Assistant Secretary for Administration.

[FR Doc.73-12920 Filed 6-26-73;8:45 am]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 204—GENERAL ADMINISTRATION—SOCIAL AND REHABILITATION SERVICE GRANT PROGRAMS

State Plans; Format

Notice of proposed rulemaking was published in the FEDERAL REGISTER on March 7, 1973 (38 FR 6193), specifying that any State plan submitted for Social and Rehabilitation Service approval must be prepared in the format prescribed by the Service. The proposal was issued in support of the intention to convert State plans to preprinted format to the extent possible.

Ten State agencies expressed approval and made a number of suggestions related to implementation of the preprinted plan system. These will be taken into account in developing plans for the individual programs.

One of the agencies suggested that the regulation include a proviso that implementing instructions must be received by States at least 90 days prior to the date set by SRS for plan submittal.

We have adopted this suggestion in modified form by including a statement indicating that time limits for submittal will be adequate. We do not believe it is appropriate to include a specific time period in the regulation since the time needed varies depending on whether the material to be submitted is an entire plan or an amendment, and on its complexity.

Two State agencies objected strongly to the proposal, on grounds of interference with State authority and possible deprivation of State options granted by law.

We believe these comments indicate some misconception of the content of preprints. The change from current State plans is one of format, not substance. All policy options open to the State will be provided for in the preprint through several devices—checking the appropriate item in a list of choices, submitting attachments describing State policies, etc. Changes in Federal policy affecting State plans will be made through legislation or regulation and then implemented in the preprint. Plan amendments reflecting changes in State policy can be submitted for approval at any time, just as they are now.

A local community action agency objected to the conversion to preprinted format on grounds that this precludes use of the State plan as a "planning and operating document" and as a working tool for local agencies. It would prefer a narrative format describing how the agency operates, funding mechanisms, goals and objectives, etc.

Under the plan simplification concept, the State plan is not a detailed plan of operations but a commitment by the State to meet Federal requirements. Information on State goals, objectives and plans for achieving them are generally contained in other documents. A major purpose of the simplification effort is to eliminate the need to process numerous State plan changes, permitting the freed time to go into substantive program planning and improvement of operations. This, it is anticipated, will benefit all involved in the program at the local, State and Federal levels.

A State agency for the blind and a national organization representing such agencies objected to a standardized format since it might force on States an undesirable standardization of program and might also be impractical procedurally. The conversion to preprints, as indicated above, is a change in format only; any policy changes must be made in the usual manner. With regard to the method for preparation of preprints, each program will be reviewed individually to determine the most practical and efficient procedure.

Accordingly, the regulations as proposed are hereby adopted with the modification set forth below.

Part 204 of Chapter II, Title 45, is amended by adding the following new § 204.2:

§ 204.2 State plans—format.

State plans for Federally-assisted programs for which the Social and Rehabilitation Service has responsibility must be submitted to the Service in the format and containing the information prescribed by the Service, and within time limits set in implementing instructions issued by the Service. Such time limits will be adequate for proper preparation of plans and submittal in accordance with the requirements for State Governors' review (see § 204.1 of this chapter).

(Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302; sec. 7(b), 68 Stat. 658, 29 U.S.C. 37(b); sec. 139, 84 Stat. 1323, 42 U.S.C. 2677b)

Effective date: Effective on June 27, 1973.

Dated May 25, 1973.

FRANCIS D. DEGEORGE,
Acting Administrator.

Approved: June 20, 1973.

CASPAR W. WEINBERGER,
Secretary, Health, Education, and Welfare.

[FR Doc.73-12919 Filed 6-26-73;8:45 am]

CHAPTER X—OFFICE OF ECONOMIC OPPORTUNITY

PART 1061—CHARACTER AND SCOPE OF SPECIFIC COMMUNITY ACTION PROGRAMS

PART 1067—FUNDING OF COMMUNITY ACTION PROGRAMS

PART 1068—COMMUNITY ACTION PROGRAM GRANTEE FINANCIAL MANAGEMENT

PART 1069—COMMUNITY ACTION PROGRAM GRANTEE PERSONNEL MANAGEMENT

Miscellaneous Amendments

Correction

In FR Doc. 73-10815 appearing on page 14172 in the issue of Wednesday, May 30, 1973, the following changes should be made: References to §§ 1067.4, 1067.5, 1067.6, 1061.4, 1068.7, 1069.5, 1069.6, and 1069.3 should be changed to refer to subparts 1067.4, 1067.5, 1067.6, 1061.4, 1068.7, 1069.5, 1069.6, and 1069.3.

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

[OST Docket No. 32]

PART 85—CARGO SECURITY ADVISORY STANDARDS

Seal Accountability and Procedures

By notice published in the FEDERAL REGISTER of March 26, 1973 (38 FR 7814), the Department of Transportation proposed the issuance of its first Cargo Security Advisory Standard, on Seal Accountability and Procedures, and invited public comment on the advisory standard. Numerous comments were received, and the advisory standard has been changed in light of some of these comments.

Swift Line Transfer Co., Inc., suggests that placing a seal through a latch hole twice makes the task of reading the seal letters and numbers difficult, if not impossible. The Department agrees, and § 85-1.45(a) has been revised to exclude this provision. The Association of American Railroads (AAR) raises the same point, as does Burlington Northern Railroad, which subscribes in total to the comments of AAR.

AAR proposes 11 substantive changes to the advisory standard, ranging from a single definitional change to comprehensive revisions of entire sections. A summary of the proposed changes and the Department's responses thereto follow:

Section 85–1.3 *Definitions.* "Transportation unit" has been substituted for "trailer" where the term indicates trailers, containers, trucks, and box cars, both in this section and throughout the advisory standard.

Sections 85–1.13 through 85–1.23. AAR proposes an entire revision of these sections in order to "streamline" the advisory standard. The Department feels that the proposed language is oversimplified and would defeat the purpose of the advisory standard, which is to present a thorough and detailed procedure; hence, AAR's proposal has not been adopted.

Section 85–1.15 *Company identification.* The phrase "or the carrier" has been added both to make the section consistent with the definition in § 85–1.3(6) and with AAR's rules governing the application, inspection, recording, and care of seals. The seals should have sufficient marks, whatever the form, to enable ascertaining the point at which they are applied. The revision proposed by AAR and adopted by the Department affords the carrier the option of providing its own seals to the shipper.

Subpart C—Seal Records. AAR maintains that recordation of seal serial numbers in other than seal record logs is wasteful of clerical time and would cause delay of shipments at interchange/interline points. The Department does not agree with this position. Procedures vary by mode, and recordation of seal serial numbers on load charts, gate passes, and other documents is necessary in some operations. As stated in § 85–1.1(b), the provisions of this advisory standard are general and each may not apply to every mode. Totally to rule out such effort at recordation would be counterproductive to the objective of the standard.

Section 85–1.41 *Time of seal application.* AAR proposes a revision of this section which the Department has adopted.

Section 85–1.43 *Authority to apply seals.* AAR proposes a revision of this section which the Department feels is oversimplified; hence, it has not been adopted.

Section 85–1.45 *Application.* As discussed above, paragraph (a) of this section has been revised to exclude the provision of putting the seal through the latch hole twice.

Section 85–1.61 *Truck trailers.* The word "highway" in paragraph (b) of this section has been substituted for the word "road" to avoid confusion.

Section 85–1.63 *Container and piggyback operations.* AAR proposes that the provision of this section to check seal serial numbers on and off flatcars be eliminated. The Department feels that this procedure is both practical and necessary; hence, the proposal has not been adopted.

Section 1.77 *Destination procedure.* AAR recommends elimination of the seal examination procedure at interchange points. The Department believes that this procedure is both practical and beneficial, and has retained it in the final version of the advisory standard.

Subpart G—Shipper's Load and Count (SL&C). AAR proposes deletion of this subpart for the sake of simplicity. The Department, however, believes that it is desirable to remain specific throughout the advisory standard and has retained the subpart.

Section 85–1.81 *U.S. Government and "in bond" seals.* The Department has adopted AAR's recommendation that the provisions of this section be included in a new Subpart H, and has adopted AAR's recommended wording of the subpart.

Archer Daniels Midland Company (ADM) comments that railroads have great difficulty in keeping track of individual and, at times, blocks of cars; the suggestion, therefore, that every rail car be inspected at every interchange point to ascertain correct seals is impractical. The proposed advisory standard suggested that this be done consistent with manpower and available time, but at the very least when high value/high risk shipments are involved (§ 85–1.65). It is common practice among some rail carriers to check seals at interchange points on boxcars containing high value/high risk shipments. The Department feels that both efforts are worthwhile and practical, and has retained the section unchanged in the final version of the advisory standard.

The Department recognizes that there is within the transportation industry opposition to the series of Cargo Security Advisory Standards which the Department intends to issue. In view of this opposition, the assistance which the industry has given in the development of this first advisory standard is gratifying, and evidences a sincere willingness to cooperate in combatting the serious problem of cargo loss which the advisory standards seek to address.

In consideration of the foregoing, effective (June 27, 1973), Part 85 of Title 49 of the Code of Federal Regulations is amended by adding Part 85–1 of the Appendix thereto, to read as follows:

APPENDIX—CARGO SECURITY ADVISORY STANDARDS

PART 85–1—SEAL ACCOUNTABILITY AND PROCEDURES

SUBPART A—GENERAL

Sec.
85–1.1 Purpose.
85–1.3 Definitions.

SUBPART B—DISTRIBUTION AND ACCOUNTABILITY

85–1.11 Purpose.
85–1.13 Ordering seals from the manufacturer.
85–1.15 Company identification.
85–1.17 Storage.
85–1.19 Records.
85–1.21 Employee accountability.
85–1.23 Accountability at terminals.

SUBPART C—SEAL RECORDS

Sec.
85–1.31 Purpose.
85–1.33 Seal serial numbers.
85–1.35 Broken seals.
85–1.37 Use of guards.

SUBPART D—SEAL APPLICATION

85–1.41 Time of seal application.
85–1.43 Authority to apply seals.
85–1.45 Application.
85–1.47 Final check.

SUBPART E—DESTINATION REMOVAL

85–1.51 Authority to remove seals.
85–1.53 Discrepancies.

SUBPART F—ROAD PROCEDURES

85–1.61 Truck trailers.
85–1.63 Container and piggyback operations.
85–1.65 Rail cars.

SUBPART G—SHIPPER'S LOAD AND COUNT (SL&C)

85–1.71 General.
85–1.73 Application.
85–1.75 Removal for inspection.
85–1.77 Destination procedure.
85–1.79 Responsibility of the driver.

SUBPART H—U.S. GOVERNMENT AND "IN BOND" SEALS

85–1.81 General.

AUTHORITY: Sec. 9(e)(1), Department of Transportation Act (80 Stat. 944, 49 U.S.C. 1657(e)(1)); sec. 85.3 of the Regulations of the Office of the Secretary of Transportation (49 CFR 85.3).

SUBPART A—GENERAL

SEC. 85–1.1 *Purpose.* (a) The purpose of this Part is to set forth minimum procedures and guidelines that should be observed in order to institute and maintain an effective seal program.

(b) The provisions herein are general and each may not apply to every transportation mode.

SEC. 85–1.3 *Definitions.* As used in this Part—

"Seal" means a device applied to a rail car, trailer, marine container, or air cargo container door fastening which—

(1) Indicates whether the door has been opened or the fastening tampered with, and, if so, at what point in the chain of custody the tampering occurred;

(2) Is easily applied to all types of fastenings;

(3) Readily shows when it is not properly fastened;

(4) Is of sufficient strength to resist accidental breaking;

(5) Cannot be made to appear intact when broken;

(6) Has sufficient letters to identify the carrier or shipper; and

(7) Is serially numbered to facilitate identification of the person who applied the seal.

"Transportation unit" means a container, piggyback trailer, or standard semi-trailer used by a motor carrier.

SUBPART B—DISTRIBUTION AND ACCOUNTABILITY

SEC. 85–1.11 *Purpose.* The purpose of this subpart is to suggest measures designed to assure that seals are strictly accounted for from receipt from the manufacturer to time of application. Resources devoted to a seal program are wasted unless this goal is achieved.

SEC. 85–1.13 *Ordering seals from the manufacturer.* (a)(1) To simplify security control for both the company using the seals

and the manufacturer, all seals should be ordered from the manufacturer by one person or office, preferably in company headquarters, regardless of the number of terminals or other locations involved.

(2) The manufacturer can send the necessary seals directly to the individual terminals, but only at the request of the person or office identified in subparagraph (1) of this paragraph.

(b) Seals should be ordered for each terminal in such a way that the terminal responsible for a particular group of seals is readily identifiable. This can be done by assigning specific blocks of numbers to each terminal, or, more easily in most cases, by using terminal prefix numbers.

SEC. 85-1.15 *Company identification.* In addition to a prefix and a serial number, the name or initials of the company using the seal or of the carrier should be stamped on each seal.

SEC. 85-1.17 *Storage.* (a) The purpose of storage is to prevent seals from being acquired by unauthorized persons for substitution or other illegal use.

(b) Seals should be stored in a locked room, cabinet or drawer, depending on the number of seals to be stored.

SEC. 85-1.19 *Records.* (a) If seals are sent from the manufacturer to a central office for further distribution to terminals, precise records, by seal serial number, should be maintained showing how many seals were sent to each location.

(b) When the terminals or other locations receive seals, either directly from the manufacturer or from company headquarters, a log should be maintained showing the lowest serial number and highest serial number of any seal received, and the date the seals were received.

SEC. 85-1.21 *Employee accountability.* (a) To maintain positive accountability, each employee authorized to apply seals should be required to sign or initial for the seals he applies, by their serial numbers.

(b) The person responsible for dispensing seals at a terminal should maintain a Seal Application Log showing, for each seal, the (1) Date the seal is applied; (2) Number of the transportation unit to which it is applied;

(3) Name of the person to whom the seal is issued; and

(4) Name of the person applying the seal to the transportation unit, if other than the person to whom the seal is issued.

SEC. 85-1.23 *Accountability at terminals.* The manager of the terminal where seals are applied should assign one person responsibility for the safekeeping, issuance, and record keeping of seals applied at that terminal. This is the most important step in an effective seal program.

SUBPART C—SEAL RECORDS

SEC. 85-1.31 *Purpose.* (a) Common sense and the particular circumstances of each company dictate the types of records necessary. The goal of seal records is to pinpoint where in the chain of custody a transportation unit's security was breached, in order to simplify determination of where the loss occurred, who was responsible, and other information necessary to prevent future losses. Problem areas cannot be pinpointed unless there are adequate accountability and complete records.

(b) The purpose of this subpart is to suggest measures designed to determine—

(1) Who had custody of each seal;

(2) When, where, and to which unit each seal was applied; and

(3) When, where, and by whom each seal was broken.

SEC. 85-1.33 *Seal serial numbers.* (a) Record should be maintained of the serial numbers of seals—

(1) Received at each terminal; and

(2) Issued to authorized employees for application to transportation units.

(b) In addition to being entered in seal record books, forms, and logs used by a company, seal serial numbers should also be entered on all pertinent documents (e.g., manifests, load charts or diagrams, travel orders, gate passes, bills of lading, freight bills).

SEC. 85-1.35 *Broken seals.* When necessary to break a seal en route or at an intermediate terminal, the following minimum information should be entered on the manifest (and seal log, if used):

(a) Date and time seal was broken;

(b) Name of person who broke seal;

(c) Reason seal was broken;

(d) Serial number of the seal replacing the broken seal (and the serial number of the broken seal, if a seal log is used);

(e) Name of person applying the replacement seal; and

(f) Names of witnesses.

SEC. 85-1.37 *Use of guards.* Where a gate guard is used, he should check the seal serial number against the gate pass and travel order and, ideally, enter in a gate log the serial number of—

(a) Each seal;

(b) The transportation unit to which the seal is applied; and

(c) The tractor to which a trailer is attached.

SUBPART D—SEAL APPLICATION

SEC. 85-1.41 *Time of seal application.* (a) Seals should be applied—

(1) As soon as the transportation unit has been loaded, or

(2) As soon as a loaded unsealed or improperly sealed unit is detected, or

(3) After a necessary opening en route, as soon as the reason for the opening has been accomplished. A "necessary opening en route" may be dictated by either an authorized person or an emergency situation.

(b) Application of seals should be supervised. Failure to supervise or allowing the hostler to move an unsealed transportation unit to a staging area offers opportunity to—

(1) Pilfer prior to applying the seal; or

(2) Apply a bogus seal, break the seal later, remove cargo, and then apply the legitimate seal.

SEC. 85-1.43 *Authority to apply seals.* (a) The manager of the terminal should authorize specific persons on each shift to apply seals at that terminal, and only those so authorized should be permitted to apply seals.

(b) The number of persons who should be authorized to apply seals depends on the particular circumstances at each terminal. The number should be kept to a minimum to facilitate adequate supervision to assure that operational expediency does not permit application of seals by unauthorized persons.

SEC. 85-1.45 *Application.* Locking device nuts on trailers and containers should be spot welded to prevent release of the locking handle without disturbing the seal.

SEC. 85-1.47 *Final check.* (a) The seal should be checked by the line haul or interline driver before the vehicle to which it is applied leaves the terminal.

(b) If there is a guard at the gate, he should ensure that the seal is legitimate and intact before releasing the vehicle to which it is applied.

SUBPART E—DESTINATION REMOVAL

SEC. 85-1.51 *Authority to remove seals.* (a) The terminal manager should authorize specific persons to remove seals from inbound transportation units, and, except as otherwise provided in paragraph (b) of this section, only those so authorized should be permitted to remove seals.

(b) To insure before unloading that the seal removed is the original, if a hostler has to break and remove a seal on a swing-door transportation unit before spotting it at the dock, the breaking of the seal should be witnessed from the dock by an authorized person described in paragraph (a) of this section, who should physically check the serial number on the seal against the seal serial number entered on the pertinent documents. A hostler should not be permitted to break a seal prior to spotting the transportation unit to which it is applied when the breaking cannot be observed from the dock.

SEC. 85-1.53 *Discrepancies.* (a) A seal removed from a transportation unit should be kept with the manifest and bills until the transportation unit is stripped.

(b) If there is not a discrepancy between the manifest and the cargo the seal may be discarded; if there is a discrepancy, especially in tail-loaded freight, the seal should be sent with a report on the discrepancy to the security section.

(c) A discrepancy between the serial number on the seal and the seal serial number entered on the manifest should be reported immediately to a supervisor and a notation of the details made on the manifest and other pertinent documents.

SUBPART F—ROAD PROCEDURES

SEC. 85-1.61 *Truck trailers.* (a) Each seal should be checked prior to leaving the terminal and at each stop en route to destination, including truck stops, diners, and other service areas.

(b) If a highway unit's seal has been tampered with, the driver should immediately contact home terminal, central dispatch, or the nearest company terminal for instructions.

SEC. 85-1.63 *Container and piggyback operations.* (a) In a container or piggyback operation each seal should be checked at each transfer point and the serial number on each seal recorded.

(b) As used in this section, "transfer" includes—

(1) Movement of containers on and off vessels;

(2) Movement of trailers on and off flat cars; and

(3) Trailer-on-flat-car movements from one railroad to another.

SEC. 85-1.65 *Rail cars.* Consistent with manpower and available time, but at the very least when high value/high risk shipments are involved, each seal on a rail car should be checked at each interchange point to establish the responsibility of individual railroads for losses that occur.

SUBPART G—SHIPPER'S LOAD AND COUNT (SL&C)

SEC. 85-1.71 *General.* It is to the advantage of carriers in every mode to insure the security of Shipper's Load and Count Seals. This could be accomplished by use of "seal locks", offering both physical and liability protection, or, at a minimum, strong wire or cable in addition to a normal seal. This precaution increases the time and effort necessary to break into a rail car, container, or trailer, with concomitant protection to a carrier against errors in count by shipper and/or consignee.

SEC. 85-1.73 *Application.* (a) The Shipper's Load and Count Seal should be applied at the shipper's premises by the shippr's representative.

(b) The seal serial number should be recorded on all copies of the bill of lading and transcribed to the waybill.

SEC. 85-1.75 *Removal for inspection.* When a Shipper's Load and Count Seal is removed to inspect the load, the following minimum information should be entered in the bill of lading and freight bills;

(a) Date seal was removed;

(b) Name of person who broke the original seal and applied the new seal;

(c) Reason the seal was broken;

(d) Serial number of the seal which replaced the broken seal; and

(e) Location where seal was broken.

SEC. 85-1.77 *Destination procedure.* At destination, whether interline or consignee, the person receiving a trailer or rail car sealed with a Shipper's Load and Count Seal should examine the seal and record its serial number above his signature on the delivery receipt and/or interchange agreement.

SEC. 85-1.79 *Responsibility of the driver.* (a) A driver should not break a Shipper's Load and Count (SL&C) Seal under any circumstances unless he is so directed by the consignee or his representative and the person so directing witnesses the breaking of the seal.

(b) If the consignee or his representative directs a driver to break an SL&C seal—

(1) The consignee or his representative should examine the broken seal; and

(2) The consignee or his representative, or if necessary, the driver, should record the seal serial number on the delivery receipt.

SUBPART H—U.S. GOVERNMENT AND "IN BOND" SEALS

SEC. 85-1.81 *General.* Notwithstanding any other provision of this Part, neither a U.S. Government seal nor any "in bond" seal applied under U.S. Customs supervision should be broken without adhering to the rules and regulations pertaining thereto.

Issued in Washington, D.C., on June 20, 1973.

RICHARD P. LALLY,
Director of Transportation Security.

[FR Doc.73-12843 Filed 6-26-73;8:45 am]

CHAPTER I—DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A—HAZARDOUS MATERIALS REGULATIONS BOARD

[Docket No. HM-80; Amdt. No. 173-68]

PART 173—SHIPPERS

Phosphorus Pentasulfide

On January 15, 1973, the Hazardous Materials Regulations Board published Docket No. HM-80; Amendment Nos. 172-18 and 173-68 (38 FR 1507) identifying phosphorus pentasulfide by name as a flammable solid and prescribing packaging requirements for its transportation.

The Board has received petitions for reconsideration of Note 1 following § 173.225(b)(2) as published in the amendment. This note authorizes non-DOT specification metal portable tanks similar to specification 53 or 56 to be used until August 30, 1973. After this date, DOT specification tanks would be required. The petitioners stated that due to the following conditions, more time was needed to obtain, or convert tanks to, DOT specification 56 portable tanks:

1. Larger than anticipated numbers of tanks are being removed from service since they are being considered as unacceptable by the petitioners themselves for conversion to DOT-56.

2. The necessity to replace these unacceptable tanks with new ones has required new capital appropriations with attendant delays.

3. Modification of large numbers of tanks has placed an overwhelming demand on the supplier's conversion hardware and replacement parts so that delivery dates have had to be extended resulting in the extension of work schedules.

The Board individually contacted the petitioners in writing and asked, as a condition of extension of the August 30, 1973 date, a written commitment that every reasonable effort would be made to have tanks modified as early as practicable under the circumstances. The Board has received such commitments from the petitioners and believes an eight-month extension is reasonable and justified.

One petitioner requested "grandfathering" of the tanks not meeting the DOT-56 specification until all bins are modified. The petitioner did not establish that an unlimited extension of the date in Note 1 to § 173.225(b)(2) would be justified; therefore that portion of his petition is hereby denied.

Accordingly, § 173.225(b)(2), Note 1 is changed to read as follows:

§ 173.225 Phosphorus sesquisulfide.

* * * * *

(b) * * *

(2) * * *

NOTE 1: Non-DOT specification metal portable tanks or bins similar to specification 53 or 56 may be used until April 30, 1974.

* * * * *

All other amendments previously issued under this docket continue to be mandatorily effective June 30, 1973. However, voluntary compliance with the regulations as amended in this docket continues to be authorized.

Issued in Washington, D.C. on June 21, 1973.

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

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

[FR Doc.73-12915 Filed 6-26-73;8:45 am]

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 69-19; Notice 6]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Lamps, Reflective Devices, and Associated Equipment

This notice amends the requirements of Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment* applicable to trailers that are either less than 6 feet in overall length or 30 inches in overall width.

On October 25, 1972 the National Highway Traffic Safety Administration proposed (Docket No. 69-19; Notice 3, 37 FR 22801) as part of a comprehensive rulemaking action that small trailers need not be equipped with the complement of lighting devices required of larger trailers. The agency proposed that a trailer less than 30 inches wide may be equipped with only one of each of the following devices located at or near its vertical centerline: tail lamp, stop lamp, and rear reflex reflector. The NHTSA also proposed that a trailer that is less than 6 feet in overall length, including the trailer tongue, need not be equipped with front side marker lamps and front side reflex reflectors. In the opinion of the NHTSA this equipment is sufficient to meet the needs of motor vehicle safety. Commenters generally agreed, and Standard No. 108 is being amended as proposed. Two suggested that two rear reflectors be required. The amendment, which is phrased as an option, does not preclude a two-reflector configuration if the manufacturer wishes. In accordance with several comments, the amendments, which relieve a restriction, are being made effective on July 27, 1973.

Several amendments of Standard 108 are also being made by this notice to reflect the expiration of the stated period for certain compliance options. Paragraphs S4.1.1.13, S4.1.1.14, S4.1.1.15 of Standard 108 deferred compliance with amended backup lamp and license plate lamp requirements, and with turn signal requirements for motorcycles, until January 1, 1973, at the manufacturer's option. Since these options are no longer permissible, the paragraphs are being deleted. Rather than redesignating the succeeding subparagraphs of S4.1.1 as has been the practice in the past, the NHTSA, in order to eliminate confusion, intends to maintain the current order and adopt new numbers in successive order for new requirements. A similar policy has been adopted with respect to footnotes in the Tables. Thus, the trailer lighting amendments adopted by this notice are designated S4.1.1.17 and S4.1.1.18. S4.1.1.16 is amended to delete the expired option allowing use of Class B turn signals on vehicles less than 80 inches wide designed to complete a durability test of 100,000 cycles. Appropriate amendments reflecting these deletions are made to the footnotes and references in Tables I, III, and IV of the standard.

In consideration of the foregoing, 49 CFR § 571.108, Motor Vehicle Safety Standard No. 108, is amended as follows:

1. In paragraph S4.1.1, the opening phrase "Except as provided in S4.1.1.1 through S4.1.1.16," is deleted and a new phrase adopted to read "Except as provided in succeeding paragraphs of S4.1.1".

2. Paragraphs S4.1.1.13, S4.1.1.14, and S4.1.1.15 are deleted as set forth below.

4. Paragraph S4.1.1.16 is revised to read as set forth below.

3. New paragraphs S4.1.1.17 and S4.1.1.18 are adopted to read as set forth below.

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment. (Effective Jan. 1, 1972)

* * * * *

S4. Requirements.

S4.1 Required motor vehicle lighting equipment.

* * * * *

S4.1.1.13 [Removed]
S4.1.1.14 [Removed]
S4.1.1.15 [Removed]

S4.1.1.16 All passenger cars and multipurpose passenger vehicles, trucks, and buses of less than 80 inches overall width shall be equipped with turn signal operating units designed to complete a durability test of 100,000 cycles.

S4.1.1.17 A trailer that is less than 30 inches in overall width may be equipped with only one of each of the following lamps and reflective devices, located at or near its vertical centerline: Tail lamp, stop lamp, and rear reflex reflector.

S4.1.1.18 A trailer that is less than 6 feet in overall length, including the trailer tongue, need not be equipped with front side marker lamps and front side reflex reflectors.

* * * * *

5. In Table I, footnotes 5 and 6 are deleted. In the table, the references to footnote 5 following the specification for license plate lamps on motor vehicles covered by the table are deleted; the reference to footnote 6 following the specification for backup lamps on multipurpose passenger vehicles, trucks and buses is deleted.

6. In Table III, footnotes 10, 11, and 12 are deleted. A new footnote 14 is added to read "See S4.1.1.17". A new footnote 15 is added to read "See S4.1.1.18". In the table, the reference to footnote 10 following the specification for license plate lamps for vehicles covered by the table is deleted; the reference to footnote 11 following the specification for backup lamps on passenger cars, multipurpose passenger vehicles, trucks, and buses is deleted; the reference to footnote 13 following the specification for turn signal operating unit on motorcycles is deleted. A reference to footnote 14 is added following the specification for tail lamps, stop lamps, and reflex reflectors for trailers in Column 3. A reference to footnote 15 is added following the specification for reflex reflectors and side marker lamps for trailers in Column 3.

7. In Table IV, a new footnote 2 is added to read "See S4.1.1.18". In the table, a reference to footnote 2 is added following the location requirements of tail lamps, stop lamps and reflex reflectors in Column 2.

Effective date: July 23, 1973. Because the amendment in part relieves a restriction and creates no additional burden, and in part is administrative in nature, it is found for good cause shown that an effective date earlier than 180 days after issuance is in the public interest.

(Section 103, 119, Pub. L. 89-563, 80 Stat. 718, 15 USC 1392, 1407; delegation of authority at 38 F.R. 12147).

Issued on June 15, 1973.

JAMES E. WILSON,
Associate Administrator,
Traffic Safety Programs.

[FR Doc.73-12842 Filed 6-26-73;8:45 am]

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 130—COST OF LIVING COUNCIL PHASE III REGULATIONS

Special Rules Applicable to Food Industry

Part 130 is amended in Subpart F by the addition of § 130.58(c) to exclude certain pay adjustments from the meaning of "Pay adjustments affecting employees in the food industry" as defined in § 130.58(b). Section 130.58(c) generally excludes pay adjustments with respect to employees engaged on a regular and continuing basis in the operation of eating places or drinking places. The terms "eating place" and "drinking place" means those establishments covered by the 1972 Standard Industrial Classification (SIC) Codes 5812 (Eating Places) or 5813 (Drinking Places—Alcoholic Beverages). SIC Code 5812 (Eating Places) covers establishments primarily engaged in the retail sale of prepared food and drinks for consumption on the premises, and includes the following types of establishments:

Automats (eating places)
Beaneries
Box lunch stands
Buffets (eating places)
Cafes
Cafeterias
Carry-out restaurants—retail
Caterers
Commissary restaurants
Dairy bars—retail
Diners (lunch stands)
Drive-in restaurants
Frozen custard stands
Grills (eating places)
Hot dog (frankfurter) stands
Ice cream stands
Lunch bars
Lunch counters
Lunch rooms
Luncheonettes
Oyster bars
Pizzerias
Refreshment stands
Restaurants
Restaurants, carry-out
Sandwich bars or shops—retail
Soda fountains
Soft drink stands—retail
Tea Rooms

SIC Code 5813 (Drinking Places—Alcoholic Beverages) covers establishments primarily engaged in the retail sale of alcoholic beverages for consumption on the premises, and includes the following types of establishments:

Bars (drinking places)
Beer gardens (drinking places)
Bottle clubs (drinking places)
Cabarets
Discotheques
Drinking places
Night clubs
Saloons (drinking places)
Tap rooms (drinking places)
Taverns (drinking places)

Under strict application of SIC code terminology, an eating place or drinking place that is operated as a "subordinate service facility" by another type of establishment is ordinarily classified under the SIC Code applicable to the parent establishment, and not under SIC Code 5812 or 5813. Section 130.58(c) does not apply to pay adjustments to employees engaged in the operation of an eating place or drinking place that is part of or that is controlled, directly or indirectly, by a manufacturer, service organization, wholesaler, or retailer, if, of the total annual sales or revenues of such manufacturer, service organization, wholesaler, or retailer (excluding sales or revenues attributable to eating places and drinking places), at least 20 percent or at least $50 million is attributable to the sales of food. However, if an eating place or drinking place is controlled by a manufacturer, service organization, wholesaler, or retailer, of whose total annual sales or revenues (excluding sales or revenues attributable to eating places and drinking places) less than 20 percent and less than $50 million is attributable to the sales of food, then the exclusion does apply to the employees engaged in the operation of the eating place or drinking place. For example, the pay adjustments of employees who work in a restaurant or cafeteria operated by a department store or hotel whose non-restaurant revenues from food sales in all other departments (e.g., candy, specialty foods, etc.) amount to less than $50 million and comprise less than 20 percent of total non-restaurant revenues would be excluded from the meaning of "pay adjustments affecting employees in the food industry" as set forth in § 130.58(b). The pay adjustments of employees who work in a snack bar operated by a retail food store would ordinarily remain included within the meaning of "pay adjustments affecting employees in the food industry."

This action is in accordance with a recommendation which was adopted by the Food Industry Tripartite Wage and Salary Committee at a meeting of the Committee held on May 23, 1973, and forwarded to the Director of the Council at that time.

The action is taken for the following reasons: The Council has determined that a substantial majority of the employees of eating places and drinking places earn less than $3.50 per hour. Pay adjustments to these employees are exempt from control under the provisions of the 1973 amendments to the Economic Stabilization Act. Further, a large number of eating places and drinking places were exempt from economic controls pursuant to the Small Business Exemption from May 2, 1972, until March 29, 1973, when a ceiling was imposed on meat prices and the Small Business Exemption was removed with respect to meat prices and all pay adjustments affecting employees in the food industry. Wage increases paid to employees of eating places and drinking places do not contribute significantly to inflation. Finally, excluding such wage increases from the scope of mandatory Phase III controls will relieve the Council of a substantial administrative burden and will

permit the Council to direct its resources toward more significant sources of inflationary pressure in the economy.

This amendment has the effect of restoring, with respect to pay adjustments of employees of eating or drinking places, the coverage of the Small Business Exemption (§ 130.40) which was withdrawn on March 29, 1973. Those pay adjustments which were not previously covered by the exemption are now subject to the rules for voluntary compliance with the Phase III controls.

Because the purpose of this amendment is to provide immediate guidance as to Cost of Living Council policy, I find that publication in accordance with normal rulemaking procedures is impracticable and that good cause exists for making these regulations effective in less than 30 days. Interested persons may submit comments regarding these regulations. Communications should be addressed to the Office of General Counsel, Cost of Living Council, Washington, D.C. 20508.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11695, 38 FR 1473; E.O. 11723, 38 FR 15765; Cost of Living Council Order No. 14, 38 FR 1489).

In consideration of the foregoing, § 130.58 of Title 6 of the Code of Federal Regulations is amended as set forth herein, effective June 25, 1973.

Issued in Washington, D.C. on June 25, 1973.

WILLIAM N. WALKER,
Acting Deputy Director
Cost of Living Council.

Section 130.58 of Subpart F is amended by inserting a clause in the introductory material of paragraph (b), and by adding a paragraph (c) to read as follows:

§ 130.58 Pay adjustments.

* * * * *

(b) For purposes of paragraph (a) of this section, and except as provided in paragraph (c) of this section, "Pay adjustments affecting employees in the food industry" means pay adjustments by any manufacturer, service organization, wholesaler, or retailer which is subject to the mandatory price controls of this subpart F, or which would be subject to such price controls except for the operation of subpart E, with respect to:

* * * * *

(c) On and after June 25, 1973, for purposes of paragraph (b) of this section, "Pay adjustments affecting employees in the food industry" does not include pay adjustments with respect to employees engaged on a regular and continuing basis in the operation of an eating place (described in Standard Industrial Classification Code 5812) or drinking place (described in Standard Industrial Classification Code 5813), unless—

(1) Such eating place or drinking place is part of or is controlled, directly or indirectly, by a manufacturer, service organization, wholesaler, or retailer, and

(2) At least 20 percent or at least $50 million of the total annual sales or revenues of such manufacturer, service organization, wholesaler, or retailer, excluding sales or revenues attributable to eating places and drinking places, is attributable to the sales of food.

[FR Doc.73-13012 Filed 6-25-73;11:40 am]

PART 140—COST OF LIVING COUNCIL FREEZE REGULATIONS

Special Freeze Group Questions and Answers No. 6

These "Questions and Answers", which are issued by the Cost of Living Council's Freeze Group, are designed to provide immediate guidance in understanding and applying the new freeze regulations (Part 140 of Title 6 of the Code of Federal Regulations). To achieve the broadest publication, these are hereby added to Appendix A of Part 140. Since they provide guidance of general applicability and are subject to clarification, revision or revocation, they do not constitute legal rulings with respect to specific fact situations.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11723, 38 FR 15765; Cost of Living Council Order No. 30, 38 FR 16267)

Issued in Washington, D.C., on June 25, 1973.

JAMES W. MCLANE,
Director, Special Freeze Group.

Appendix A of Part 140 is amended by adding the following:

SPECIAL FREEZE GROUP

QUESTIONS AND ANSWERS
NO. 6

1. Q. Farmers deposit their products with their local farmers' cooperative association. These products are of a type sold for ultimate consumption in their original physical form. The association accepts the products on consignment and sells them on behalf of the farmer, but does not perform any processing. Are the sales by the farmers cooperative association subject to the freeze?

A. No. The regulations provide an exemption for the first sale by the producer or grower of those agriculture products which are of a type sold for ultimate consumption in their original physical form. A consignment is not a sale; it is the depositing of goods with another for the purpose of sale. Therefore, the sale by the co-op is the first sale and is exempt. On the other hand, if the association had taken title to the products, then the transaction between the farmer and the association would constitute the first sale and the subsequent sale by the co-op would not be exempt.

2. Q. A farmers' cooperative association accepts agricultural products on consignment from the farmers, processes the products and then sells the processed products on behalf of the farmers. Are the sales by the farmers' cooperative association subject to the freeze?

A. Yes. Agricultural products which have been processed by canning, freezing, slaughtering, milling or otherwise changing their physical form are not exempt from the freeze rules. Packaging, however, is not considered a processing activity.

[FR Doc.73-13069 Filed 6-25-73;4:41 pm]

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rulemaking prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 923]

HANDLING OF SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Expenses and Rate of Assessment for Fiscal 1973–74

Consideration is being given to the following proposals submitted by the Washington Cherry Marketing Committee, established under the marketing agreement and Order No. 923 (7 CFR Part 923) regulating the handling of sweet cherries grown in designated counties in Washington, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), as the agency to administer the terms and provisions thereof:

(1) That expenses that are reasonable and likely to be incurred by said committee, during the period April 1, 1973, through March 31, 1974, will amount to $17,681.

(2) That there be fixed, at $0.90 per ton of sweet cherries the rate of assessment payable by each handler in accordance with § 923.41 of the aforesaid marketing agreement and order.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals shall file the same, in quadruplicate, with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, D.C., 20250, not later than July 6, 1973. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: June 22, 1973.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.73-12934 Filed 6-26-73;8:45 am]

[7 CFR Part 1063]

MILK IN THE QUAD CITIES-DUBUQUE MARKETING AREA

Notice of Proposed Suspension of Certain Provisions of the Order

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), the suspension of certain provisions of the order regulating the handling of milk in the Quad Cities-Dubuque marketing area is being considered for the months of July and August 1973.

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension should file the same with the Hearing Clerk, Room 112-A, Administration Building, United States Department of Agriculture, Washington, D.C. 20250, not later than July 2, 1973. All documents filed should be in quadruplicate.

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

The provisions proposed to be suspended are as follows:

In § 1063.14, the proviso which reads: "*Provided*, That in any of the months of July through January milk diverted from the farm of a producer on more than the number of days that milk was delivered to a pool plant from such farm during the month shall not be deemed to have been received by the diverting handler."

STATEMENT OF CONSIDERATION

The proposed suspension would permit unlimited diversion of producer milk under the Quad Cities-Dubuque order during the months of July and August 1973.

The suspension action is requested by Mississippi Valley Milk Producers Association, Inc., to accommodate the handling of reserve milk on the market. The producer association claims that unless the suspension action is taken much of the reserve milk of the market will be moved from farms to pool plants and then reshipped to manufacturing plants rather than being moved directly from farms to manufacturing plants. It is contended that the additional labor and hauling costs involved with such milk movements would adversely affect economical handling of milk in excess of fluid requirements.

Signed at Washington, D.C., on June 22, 1973.

JOHN C. BLUM,
Deputy Administrator, Regulatory Programs.

[FR Doc.73-12933 Filed 6-26-73;8:45 am]

Agricultural Stabilization and Conservation Service (Agricultural Adjustment)

[7 CFR Part 725]

FLUE-CURED TOBACCO

Notice of Determination To Be Made With Respect to the Flue-Cured Tobacco Acreage Allotment and Marketing Quota Regulations, 1973–74 and Subsequent Marketing Years

Pursuant to the authority contained in provisions of the Agricultural Adjustment Act of 1938, as amended, (7 U.S.C. 1281 et seq.) the Department is preparing to issue regulations for the determination of acreage allotments and marketing quotas for 1973–74 and subsequent marketing years. It is proposed that the regulations (35 FR 1084 including amendments and corrections thereto) currently in effect for establishing the farm acreage allotments and marketing quotas, the issuance of marketing cards, the identification of marketings of tobacco, the collection of refund of penalties and the records and reports incident thereto for flue-cured tobacco for the 1970–71 and subsequent marketing years be reissued as provided herein and become applicable to the 1973–74 and subsequent marketing years.

Significant changes are as follows:

1. The definition of green weight, hogshead, pool, processed, production record, strip, scrap, and stem are added to define terms in connection with the processing of producer carryover tobacco.

2. The term false identification is defined and expanded to clarify the allotment reduction and penalty provisions relating to violations where a producer falsely identifies or fails to identify marketings of tobacco as to the farm on which produced.

3. Paragraph (b) of § 725.63 is amended to provide where a tract is being separated by the contribution method from a farm and a preliminary yield has not been established for such tract, the preliminary yield would be the same as for the parent farm.

4. Subparagraph (c)(4) of § 725.72 is amended to provide that a late filed transfer by lease may be approved where the producer was prevented from timely filing for reasons beyond his control.

5. Paragraph (j) of § 725.72 is amended to provide that after June 14, transfer by lease may be approved either to or from a farm even though a transfer may have been approved either to or from the farm prior to June 15.

6. Section 725.85 is amended to provide that tobacco produced in the same area as a kind of tobacco subject to marketing quotas shall be considered as a kind subject to marketing quotas unless it is classified by an AMS inspector as a kind which is not subject to marketing quotas prior to its removal from the area in which the kind subject to marketing quotas is produced.

7. Section 725.94 is amended to provide that penalty will be due from dealers or buyers if the sale is not recorded on the producer's marketing card.

8. Sections 725.95 and 725.98 are amended to provide that penalties for false identification and failure to account and allotment reductions for false identification need not be applied where the pounds of violation are very small when compared to the effective farm marketing quota and no adverse effect on the program in the area would result.

9. Section 725.99 is amended to provide that sale bills and basket tickets of tobacco represented to be nonquota tobacco shall show the producer's name, address, and the State and county code and farm number on which the tobacco was produced.

10. Sections 725.99 and 725.100 are amended to provide that the warehouseman dealer shall file a MQ-79, Dealer's Record at the end of each sales day during the auction season for the warehouse.

11. Section 725.99 is amended to provide that nonauction purchases and resales column totals from the MQ-79, Dealer's Record shall be entered on the MQ-80, Daily Warehouse Sales Summary.

12. Sections 725.99 and 725.100 are amended to provide that any warehouse leaf account, floor sweepings, or other dealer owned tobacco that is processed into a form not marketed by producers shall be entered on the MQ-79, Dealer's Record as a resale at the time it is processed.

13. Section 725.100 is amended to provide that where tobacco, represented to be a nonquota kind, is displayed for AMS inspection, a basket ticket and sale bill shall be prepared which identifies the farm on which the tobacco was produced.

14. Section 725.102 is amended to exempt dealers from reporting their total purchases and resales of tobacco in a form normally marketed by producers on the MQ-79, Dealer's Record where five percent or less of such tobacco is resold in the form normally marketed by producers unless the resales exceeding five percent are due to order buying and prior approval is obtained from the Director, Commodity Stabilization Division.

15. Sections 725.103 and 725.104 are added to provide recordkeeping and reporting requirements where producer tobacco is delivered for processing or storage.

It is proposed that a new sub-part—Flue-cured tobacco, 1973-74 and subsequent marketing years—be issued to read as follows:

Subpart—Flue-Cured Tobacco, 1973-74 and Subsequent Marketing Years

GENERAL

Sec.
725.50 Basis and purpose.
725.51 Definitions.
725.52 Location of farm for administrative purposes.
725.53 Extent of determinations, computations, and rule for rounding fractions.
725.54 Supervisory authority of State ASC Committee.
725.55 Instructions and forms.

ACREAGE ALLOTMENT, HISTORY ACREAGE, MARKETING QUOTAS, AND YIELDS FOR OLD FARMS

725.56 Determination of preliminary farm acreage allotments.
725.57 Determination of preliminary farm yields.
725.58 Determination of farm acreage allotments and effective farm acreage allotments.
725.59 Determination of farm yields.
725.60 Determination of effective farm marketing quotas.
725.61 Determination of undermarketings and overmarketings for farms with allotments covered by a Cropland Adjustment Program agreement.
725.62 Determination of undermarketings and overmarketings for allotments while in eminent domain pool.
725.63 Determination of allotments and yields for divided farms.
725.64 Determination of allotments and yields for combined farms.
725.65 Determination of undermarketings and overmarketings for reconstituted farms.
725.66 Correction of errors and adjusting inequities in acreage allotments for old farms.
725.67 Time for making reduction of acreage allotment for violation of the marketing quota regulations.
725.68 Allotments and yields for farms acquired under right of eminent domain.
725.69 Determination of acreage allotments for new farms.
725.70 Approval of allotments and marketing quotas, notices to farm operators.
725.71 Application for review.
725.72 Lease and transfer of tobacco marketing quotas.
725.73 Determining tobacco history acreages.
725.74 Transfer of farm marketing quotas.
725.75 Transfer of tobacco farm acreage allotment for farms affected by a natural disaster.
725.76-725.84 [Reserved]

IDENTIFICATION OF TOBACCO, MARKETING AND OTHER DISPOSITION OF TOBACCO, AND PENALTIES

725.85 Identification of kinds of tobacco.
726.86 Disposition of tobacco produced on excess acres.
725.87 Issuance of marketing cards.
725.88 Claim stamping and replacing marketing cards.
725.89 Invalid cards.
725.90 Misuse of marketing cards.
725.91 Identification of marketings.
725.92 Rate of penalty.
725.93 Persons to pay penalty.
725.94 Penalties considered to be due from warehousemen, dealers, buyers, and others excluding producers.
725.95 Producers penalties; false identification; failure to account; canceled allotments; overmarketing proportionate share.
725.96 Payment of penalty.
725.97 Request for return of penalty.

RECORDS AND REPORTS

725.98 Producer's records and reports.
725.99 Warehouseman's records and reports.
725.100 Dealer's records and reports.
725.101 Dealer purchases of damaged tobacco for later resale.
725.102 Dealers exempt from regular records and reports on MQ-79, and season report for dealers.
725.103 Recordkeeping and reporting requirements for processed producer carryover tobacco.
725.104 Recordkeeping and reporting requirements for unprocessed producer carryover tobacco.
725.105 Records and reports of truckers and firms redrying, prizing or stemming tobacco and storage firms.
725.106 Separate records and reports from persons engaged in more than one business.
725.107 Failure to keep records and make reports or making false report or record.
725.108 Registration of warehousemen and dealers.
725.109 Duties of Kansas City ASCS Data Processing Center.
725.110 Examination of records and reports.
725.111 Length of time records and reports are to be kept.
725.112 Information confidential.
725.113 Determination of discount varieties.
725.114 Determination of use of DDT and TDE.
725.115 Warehouses authorized to retain producer marketing cards between sales.

AUTHORITY: Section 301, 313, 314, 316, 317, 363, 372-275, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 75 Stat. 469, as amended, 79 Stat. 66, 52 Stat. 63, as amended, 65-66, as amended, 72 Stat. 995; section 401, 63 Stat. 1054, as amended, sections 106, 112, 125, 70 Stat. 191, 195, 198, as amended, section 16 (e), 76 Stat. 606; 7 U.S.C. 1301, 1313, 1314, 1314b, 1314c, 1363, 1372-1375, 1377, 1378, 1421, 1813, 1824, 1836, 16 U.S.C. 590p(e).

§ 725.50 Basis and purpose.

The regulations contained in §§ 725.50 through 725.115 are issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.), and are applicable to flue-cured tobacco for the 1973-74 and subsequent marketing years. They govern the establishment of farm acreage allotments and marketing quotas, the issuance of marketing cards, the identification of marketings of tobacco, the collection and refund of penalties, and the keeping of records and making of reports incident thereto. Notwithstanding the above acreage allotments and marketing quotas for the 1973-74 marketing year previously established under subpart—Flue-cured tobacco 1970-71 and subsequent marketings years shall remain in effect. The applicability of the regulations for any marketing year subsequent

to the 1973–74 marketing year is contigent upon the proclamation of a national marketing quota for such year pursuant to section 312(a) of the Act.

§ 725.51 Definitions.

As used in this subpart and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires. References contained herein to other parts of this chapter or title shall be construed as references to such parts and any amendments now in effect or later issued. The following words or phrases are defined in Parts 718 or 719 of this chapter and shall have the meanings assigned to them by such regulations: "County committee", "County executive director", "community committee", "current year", "Department", "Deputy Administrator", "Director", "farm", "Federally owned land", operator", "person", "preceding year", "producer", "representative of the county committee", "representative of the State committee", "Secretary", "State committee", and "State executive director".

(a) *Act.* The Agricultural Adjustment Act of 1938, as amended.

(b) *Auction sale.* A marketing of tobacco by a sale at public auction through a warehouse in the regular course of business, including sale of all lots or baskets of tobacco at public auction in sequence at a given time.

(c) *Base period.* The five calendar years immediately preceding the year for which farm acreage allotments are currently being established.

(d) *Buyers corrections account.* The warehouse account of tobacco purchased at auction by the buyer, but not delivered to the buyer, or any tobacco returned by the buyer because of rejection by the buyer, lost ticket, or any other valid reason, which is turned back to the warehouseman and supported by an adjustment invoice from the buyer. This account shall include the pounds and amounts deducted resulting from short baskets and short weights, and pounds and amounts added resulting from long baskets and long weights, which buyers debit or credit to the warehouseman and support with adjustment invoices.

(e) *Community average yield.* The average yield in the community as determined by averaging the yields per acre for the three highest years of the five years 1959 to 1963, inclusive, except that if the yield for any of the three highest years is less than 80 percent of the average for the three years then that year or years shall be eliminated and the average of the remaining years shall be the community average yield.

(f) *Current year.* The calendar year for which acreage allotments are being established, or tobacco history acreage and yields are being determined, or the farm is being considered under the provisions of the marketing quota program.

(g) *Dealer or buyer.* A person who engages to any extent in acquiring or selling tobacco in the form normally marketed by producers.

(h) *Director.* The Director, or Acting Director, Commodity Stabilization Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(i) *Effective farm acreage allotment.* The allotment determined under § 725.58.

(j) *Effective farm marketing quota.* The quota determined under § 725.60.

(k) *Excess tobacco for a farm.* The excess tobacco on a farm for the current year shall be the quantity of tobacco marketed in the current marketing year after 110 percent of the effective farm marketing quota has been marketed.

(l) *False identification.* False identification occurs if:

(1) Tobacco was marketed or was permitted to be marketed in any marketing year as having been produced on the acreage allotment for any farm which, in fact, was produced on a different farm;

(2) Tobacco was marketed or was permitted to be marketed in any marketing year from a farm and was not identified by a tobacco marketing card for the farm;

(3) The farm operator or any other producer on a farm permits the use of the tobacco marketing card for the farm to record a marketing of tobacco when, in fact, no tobacco was marketed from the farm.

(m) *Farm acreage allotment.* The acreage determined by multiplying the preliminary farm acreage allotment by the national acreage factor.

(n) *Farm marketing quota.* The pounds determined by multiplying the farm acreage allotment by the farm yield.

(o) *Farm yield*—(1) *Old farm.* The farm yield for an old farm is that yield determined as provided in § 725.59.

(2) *New farm.* The farm yield for a new farm is that yield determined as provided in § 725.59.

(p) *Floor sweepings.* The actual quantity of scraps or leaves of tobacco which accumulate on the warehouse floor in the regular course of business: *Provided,* That floor sweepings above the pounds determined by multiplying 0.50 (five-tenths of 1 percent) percentage times the total first sales of producer tobacco at auction for the season for the warehouse, shall be deemed to be leaf account tobacco. Floor sweepings tobacco shall be kept separate from any other tobacco when sold.

(q) *Green weight.* The weight of tobacco which is in the form normally marketed by farmers prior to being redried, prized or processed.

(r) *Hogshead.* A container in which tobacco is packed and stored.

(s) *Leaf account tobacco.* All tobacco purchased or otherwise acquired by or for the account of a warehouse, and shall include but not be limited to, tobacco from buyers corrections account, sales and resales of such tobacco, floor sweepings purchased from another warehouse or dealer, and floor sweepings deemed to be leaf account tobacco under paragraph (p) of this section.

(t) *Market.* The disposition of tobacco in raw or processed form by voluntary or involuntary sale, barter, or exchange, or by gift between living persons. "Marketing" and "marketed" shall have corresponding meanings to the term "market."

(u) *Marketing recorder or field assistant.* Any employee of the U.S. Department of Agriculture, or any employee of an Agricultural Stabilization and Conservation Service county (ASCS) office, whose duties involve the preparation and handling of the records and reports pertaining to the identification of marketings of tobacco.

(v) *Marketing year.* The period beginning July 1 of the year in which the tobacco is produced and ending June 30 of the following year.

(w) *New farm.* A farm for which a tobacco allotment is established in the current year and for which there is no tobacco history acreage in the base period.

(x) *Nonauction sale.* Any first marketing of tobacco other than by a sale at auction.

(y) *Old farm.* A farm on which there is tobacco history acreage in one or more years of the base period.

(z) *Overmarketings.* The pounds by which the pounds marketed exceed the effective farm marketing quota.

(aa) *Pool.* A quantity of tobacco delivered to a marketing agent.

(bb) *Pound.* That amount of tobacco which would equal one pound standard weight.

(cc) *Preceding year.* The calendar year immediately preceding the year for which the allotments and quotas are established, or the marketing year preceding the marketing year for which the allotments and quotas are established.

(dd) *Preliminary farm acreage allotment.* The preceding year's farm acreage allotment for a farm which has tobacco history acreage in the base period.

(ee) *Preliminary farm yield.* The yield determined for a farm as provided in § 725.57.

(ff) *Processed, Processing.* A method of preparing green weight tobacco for storage in which the tobacco may be green prized, redried, stemmed, tipped or threshed and the resulting product packed in a hogshead.

(gg) *Production record.* A record prepared by a processor to account for the processing of tobacco.

(hh) *Resale.* The dispositon by sale, barter, exchange, or gift between living persons, of tobacco which has been marketed previously.

(ii) *Sale day.* The period at the end of which the warehouseman bills to buyers the tobacco purchased by them during such period.

(jj) *Scrap tobacco.* The residue which accumulates in the course of preparing tobacco for market, consisting chiefly of portions of tobacco leaves and leaves of poor quality.

(kk) *Strip, scrap, stem.* Types of products resulting from processing of tobacco where the tobacco is "tipped" and "threshed."

(ll) *Suspended sale.* Any marketing of tobacco at auction for which the sale is not identified by a producer marketing card or a dealer's identification card by the end of the sale day on which such marketing occurred.

(mm) *Tobacco.* Flue-cured tobacco, types 11, 12, 13, and 14, as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the U.S. Department of Agriculture.

(nn) *Tobacco available for marketing.* All tobacco produced on a farm which has not been marketed and which has not been disposed of so that it cannot be marketed.

(oo) *Trucker.* A person who trucks or hauls tobacco for producers, or any other persons.

(pp) *Undermarketings.* The pounds by which the effective farm marketing quota is more than the pounds marketed.

(qq) *Warehouseman.* A person who engages in the business of holding sales of tobacco at public auction.

§ 725.52 Location of farm for administrative purposes.

(a) *County.* The location of a farm in a county for administrative purposes shall be as provided in Part 719 of this chapter.

(b) *Community.* (1) A farm that is geographically located entirely within one community shall be assigned to that community.

(2) A farm that is geographically located in one county and in more than one community shall be assigned to the community (i) where the principal dwelling is located, or (ii) where the largest amount of cropland is located, if there is no such dwelling.

(3) A farm that is geographically located in more than one county and in more than one community shall be assigned to the community in the county in which the farm is located for administrative purposes under Part 719 of this chapter in which the principal dwelling is located, or if the principal dwelling is not located in such county, or there is no such dwelling, to the community in such county having the largest amount of cropland.

§ 725.53 Extent of determinations, computations, and rule for rounding fractions.

(a) *General.* If rounding is prescribed herein, computations shall be carried to two decimal places beyond the number of decimal places required and digits of 50 or less beyond the required number of decimal places shall be dropped; if 51 or more, the last required decimal place shall be increased by one.

(b) *Allotments.* Farm acreage allotments shall be determined in hundredths and any allotment of less than 0.01 acre shall be increased to 0.01 acre. For example, 2.5536 equals 2.55; 2.550 equals 2.55; 2.5551 equals 2.56; 2.5582 equals 2.56; and 0.0001 equals 0.01.

(c) *Yields.* Yields shall be determined in whole pounds. For example, 2006.50 equals 2006; and 2006.51 equals 2007.

(d) *Percentage reduction for violation.* A percentage of reduction in an allotment due to a violation shall be determined in tenths percent and calculations thereof rounded to the nearest tenth percent.

§ 725.54 Supervisory authority of State ASC committee.

The State committee may take any action required by these regulations which has not been taken by a county committee. The State committee may also (a) correct, or require a county committee to correct, any action taken by a county committee which is not in accordance with these regulations, or (b) require a county committee to withhold taking any action which is not in accordance with these regulations.

§ 725.55 Instructions and forms.

The Director shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions with respect to internal management as are necessary for carrying out the regulations in this part. The forms and instructions shall be approved by and the instructions shall be issued by the Deputy Administrator.

ACREAGE ALLOTMENTS, HISTORY ACREAGE, MARKETING QUOTA AND YIELDS FOR OLD FARMS

§ 725.56 Determination of preliminary farm acreage allotments.

(a) *Farms with history acreage in base period.* A preliminary farm acreage allotment shall be determined for each farm which has tobacco history acreage, as defined and explained in § 725.73 of this part, in the base period, except that no preliminary farm acreage allotment shall be established in the current year under any one of the following conditions: (1) a new farm allotment was established in any prior year but was canceled for the year preceding the current year, (2) an allotment was pooled under Part 719 of this chapter but was canceled, or (3) the county committee determines that the cropland in the farm has been retired from agricultural production and was not and could not have been acquired under the right of eminent domain by the person or agency that acquired it: *Provided,* That this paragraph shall not preclude the determination of a preliminary farm acreage allotment for (i) an old farm that is returned to agricultural production if the allotment for the retired land was not allocated to other land contained in the farm of which the retired land was a part or, (ii) a farm for which an acreage allotment may be determined under the provisions of § 725.68.

(b) *Preliminary farm acreage allotment.* The preliminary farm acreage allotment for the current year for a farm which qualifies for a preliminary farm acreage allotment under paragraph (a) of this section shall be the same as the farm acreage allotment (prior to reduction for violation, prior to adjustment for lease and transfer, and prior to adjustment for undermarketings or overmarketings) established for such farm for the immediately preceding year.

§ 725.57 Determination of preliminary farm yields.

(a) *Old farms.* The preliminary farm yield for an old farm shall be the same preliminary farm yield as was in effect for such farm in the immediately preceding year.

(b) *New farms.* The preliminary farm yield for a new farm shall be determined by dividing the farm yield determined in accordance with § 725.59(b) for such farm by the national yield factor applicable for the year in which the new farm allotment was estabilshed.

§ 725.58 Determination of farm acreage allotments and effective farm acreage allotments.

(a) *Farm acreage allotments.* The farm acreage allotment shall be determined by multiplying the current year's preliminary farm acreage allotment by the national acreage factor for the current year.

(b) *Effective farm acreage allotment.* The effective farm acreage allotment for the current year shall be determined by adjusting the farm acreage allotment for the current year as follows:

(1) *Upward adjustment.* (i) Add the farm marketing quota and the pounds undermarketed in the preceding marketing year (not to exceed 100 per centum of the preceding year farm marketing quota plus pounds leased to the farm for such year) and divide the result by the current year's farm yield. (ii) Add to the acreage computed under paragraph (b)(1)(i) of this section the acreage obtained by dividing the pounds leased and transferred to the farm for the current year by the current year's farm yield for the lessee farm.

(2) *Downward adjustment.* The farm acreage allotment, after adjustment under paragraph (b)(1) of this section, if any, shall be adjusted downward as follows: (i) Subtract from the farm marketing quota the pounds overmarketed in the preceding marketing year (plus additional pounds overmarketed in any prior marketing year for which a reduction in quotas has not been made) and divide the result by the current year's farm yield.

(ii) Subtract from the acreage computed under (i) of this subparagraph the (*a*) acreage obtained by dividing the pounds leased and transferred from the farm for the current year by the current year's farm yield for the lessor farm, and (*b*) acreage reduced because of a violation of the marketing quota regulations.

§ 725.59 Determination of farm yields.

(a) *Old farms.* The farm yield for an old farm shall be determined by multiplying the preliminary farm yield for the farm by the national yield factor for the current year.

(b) *New farms.* The farm yield for a new farm shall be that yield, not to exceed the community average yield, which the county committee determines for the farm taking into consideration (1) the

soil and other physical factors affecting the production of tobacco on the farm, and (2) the farm yields determined for other farms on which the soil and other physical factors affecting the production of tobacco are similar.

§ 725.60 Determination of effective farm marketing quotas.

The effective farm marketing quota for a farm for the current year shall be the farm marketing quota determined by multiplying the farm acreage allotment for the current year by the farm yield established for the current year, adjusted as follows:

(a) *Upward adjustment.* The farm marketing quota shall be adjusted upward by adding (1) the pounds undermarketed in the preceding marketing year, not to exceed 100 percent of the farm marketing quota for the preceding marketing year, plus pounds leased and transferred to the farm in such year, and (2) the pounds leased and transferred to the farm for the current year.

(b) *Downward adjustment.* The farm marketing quotas, after adjustment, if any, under paragraph (a) of this section, shall be adjusted downward by subtracting (1) the pounds overmarketed in the preceding marketing year plus additional pounds overmarketed in any prior year for which a reduction in quota has not been made, (2) the pounds reduced for violation of the tobacco marketing quota regulations for a prior year, and (3) the pounds leased and transferred from the farm for the current year.

§ 725.61 Determination of undermarketings and overmarketings for farms with allotments covered by a cropland adjustment program agreement.

The farm marketing quota established for a farm, which is covered by a cropland adjustment program agreement, shall be considered as zero for the purpose of determining undermarketings and overmarketings for such farm.

§ 725.62 Determination of undermarketings and overmarketings for allotments while in eminent domain pool.

The farm marketing quota established for an allotment which is in the eminent domain pool for the current year shall be considered as zero for the purpose of determining undermarketings and overmarketings.

§ 725.63 Determination of allotments and yields for divided farms.

(a) *Allotments.* Farm acreage allotments for divided farms shall be divided pursuant to the provisions of Part 719 of this chapter. History acreages and other basic data shall be apportioned among the divided tracts as provided in Part 719 of this chapter, except as provided in paragraphs (b) and (c) of this section.

(b) *Preliminary farm yields*—(1) *Where contribution method is used.* Where a tract is separated from the parent farm and the tobacco acreage allotment is divided by the contribution method, the preliminary farm yield shall be determined as follows:

(i) Where a preliminary farm yield was established for the tract prior to the time the tract became part of the parent farm such yield shall be the preliminary farm yield for the tract.

(ii) Where the tract is one for which a preliminary farm yield has never been established, the preliminary farm yield shall be the same as the preliminary farm yield for the parent farm.

(2) *Where the contribution method is not used.* When a farm is divided and the allotments are divided by any method other than the contribution method, the preliminary farm yield for such tract shall be the same as the preliminary farm yield established for the parent farm.

(c) *Farm yield.* The farm yield for a tract separated from a parent farm by division shall be determined by multiplying the preliminary farm yield by the national yield factor for the current year.

§ 725.64 Determination of allotments and yields for combined farms.

(a) *Allotments.* Farm acreage allotments and history acreages and other basic data for combined farms shall be computed for the base period in accordance with Part 719 of this chapter, except as provided in paragraph (b) of this section.

(b) *Yields.* The farm yield for a combined farm shall be the weighted average of the farm yields established for the parent farms. The preliminary farm yield for the combined farm shall be determined by dividing the farm yield for the combined farm by the national yield factor for the current year.

§ 725.65 Determination of undermarketings and overmarketings for reconstituted farms.

(a) *Divisions.* Undermarketings and overmarketings of the parent farms shall be apportioned among the divided tracts in the same ratio as the marketing quotas are established for the divided tracts.

(b) *Combinations.* Undermarketings of the parent farm shall be the total undermarketings of the combined farms and overmarketings of the parent farm shall be the total overmarketings of the combined farms.

§ 725.66 Correction of errors and adjusting inequities in acreage Allotments for old farms.

(a) *General.* Notwithstanding the limitations contained in any other section of this subpart, the farm acreage allotment established for an old farm may be increased to correct an error or adjust an inequity if the county committee determines, with the approval of a representative of the State committee, that the increase is necessary to establish an allotment for such farm which is fair and equitable in relation to the allotments for other old farms in the community in which the farm is located. The reserve acreage for adjusting allotments under this paragraph will be prorated based on the relationship of each State's preliminary acreage allotment to the national total. The national office will advise State offices of the amount.

(b) *Basis for adjustment.* Acreage increases to adjust inequities in acreage allotments shall be made on the basis of the past farm acreage and past farm acreage allotments of tobacco, making due allowances for failed acreage and acreage prevented from being planted because of a natural disaster as determined under Part 718 of this chapter; land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco. Not to exceed 1 percent of the national acreage allotment minus that part of the national reserve set aside for establishing new farm allotments shall be made available for adjusting inequities and correction of errors. The total of all adjustments in old farm allotments under this paragraph shall not exceed the acreage apportioned the county for such purpose.

(c) *CAP farms.* The allotment for a farm under a cropland adjustment program agreement shall be given the same consideration under this section as the allotments for other old farms.

(d) *Approved acreage.* Acreage approved for a farm under this section becomes a part of the farm acreage allotment. The farm marketing quota for such farm shall be adjusted by multiplying the adjusted farm acreage allotment by the farm yield.

§ 725.67 Time for making reduction of acreage allotment for violation of the marketing quota regulations.

Any reduction in the farm acreage allotment for a farm for the current year required for any of the reasons provided in § 725.98 shall be made no later than April 1 of the current year. If the reduction is not made by such date for the current year, the reduction shall be in the farm acreage allotment next established for the farm, but no later than by April 1 in the subsequent year: *Provided,* That no reduction shall be made in the acreage allotment for any farm for a violation if the acreage allotment for such farm for any prior year was reduced on account of the same violation.

§ 725.68 Allotments and yields for farms acquired under right of eminent domain.

(a) *Allotments and marketing quotas.* The determination of allotments for farms acquired by an agency having the right of eminent domain, the transfer of such allotments to a pool, and reallocation from the pool shall be administered as provided in Part 719 of this chapter. Where all or a part of an allotment is pooled, all or a proportionate part of the farm marketing quota shall be pooled.

(b) *Yields for receiving farms.* The farm yield for a farm to which pooled acreage allotment and marketing quota are transferred shall be determined by dividing the farm marketing quota (including the transferred farm marketing

quota) by the farm acreage allotment (including the transferred farm marketing quota) by the farm acreage allotment (including the transferred farm acreage allotment). The preliminary farm yield shall be determined by dividing the farm yield by the national yield factor for the current year.

(c) *Undermarketings and overmarketings.* Undermarketings of the farm acquired by eminent domain shall be added to the marketing quota for the receiving farm and overmarketings of the acquired farm shall be subtracted from the marketing quota of the receiving farm.

(d) *Release and reapportionment.* The displaced owner of a farm may not later than the date specified in Part 731 of this chapter, release in writing to the county committee for the current year all or part of the acreage for the farm in a pool under Part 719 of this chapter for reapportionment for the current year by the county committee to other farms in the county having allotments for flue-cured tobacco. The marketing quota for the pooled acreage shall be adjusted downward by the amount determined by multiplying the acreage released by the farm yield for the farm acquired by eminent domain. The county committee may reapportion, not later than the date specified in Part 731 of this chapter the released acreage or any part of it to other farms in the county on the basis of past acreage of tobacco, land, labor, and equipment available for the production of tobacco, crop rotation practices, and soil and other physical factors affecting the production of tobacco. The marketing quota for the farm to which released acreage is reapportioned shall be adjusted upward by multiplying the reapportioned acreage by the farm yield for such farm. The allotment acreage reapportioned shall not, for purposes of establishing future farm allotments, be regarded as planted on the farm to which the allotment was reapportioned. No release and reapportionment of allotment acreage hereunder shall be the result of any private negotiations between individuals. Any acreage released shall be released to the county committee and such acreage shall be reapportioned only by the county committee.

§ 725.69 Determination of acreage allotments for new farms.

The acreage allotment, other than an allotment made under § 725.68, for a new farm shall be that acreage which the county committee, with approval of the State committee, determines is fair and reasonable for the farm, taking into consideration the past tobacco experience of the farm operator, the land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided*, That the acreage allotment so determined shall not exceed 50 percent of the average of the acreage allotments established for two or more but not more than five old farms which are similar with respect to land, labor, and equipment available for the production of tobacco, crop rotation practices, and the soil and other physical factors affecting the production of tobacco: *And provided further*, That, if an acreage is not planted to tobacco on a new tobacco farm, such allotment shall be automatically reduced to zero.

(a) *Written application.* The farm operator must file an application for a new farm allotment at the office of the county committee where the farm is administratively located on or before February 15 of the year for which the new farm allotment is requested.

(b) *Eligibility requirements for operator.* A new farm allotment may be established if each of the following conditions is met:

(1) *Owner and operator of the farm.* The operator shall be the sole owner of the farm. For the purpose of applying this subparagraph (1) a person who owns only a part of a farm cannot be considered the owner of the farm except that both husband and wife shall be considered the owner and operator of a farm which they jointly own.

(2) *Interest in another farm.* The farmer operator shall not own or operate any other farm in the United States for which a tobacco allotment or quota for any kind of tobacco is established for the current year.

(3) *Availability of equipment and facilities.* The operator must own, or have readily available, adequate equipment and any other facilities of production necessary to the production of tobacco on the farm.

(4) *Income requirement.* The operator must expect to obtain during the current year more than 50 percent of his income from the production of agricultural commodities or products.

(i) *Computing operator's income.* The following shall be considered in computing operator's income:

(a) *Income from farming.* Income from farming shall include the estimated return from home gardens, livestock and livestock products, poultry or other agricultural products produced for home consumption or other use on the farm. The estimated return from the production of the requested new farm allotment shall not be included.

(b) *Income from nonfarming.* Nonfarming income shall include but shall not be limited to salaries, commissions, pensions, social security payments, and unemployment compensations.

(c) *Spouse's income.* The spouse's farm and nonfarm income shall be used in the computation.

(ii) *Operator a partnership.* If the operator is a partnership, each partner must expect to obtain more than 50 percent of his current year income from farming.

(iii) *Operator a corporation.* If the operator is a corporation, it must have no other major corporate purpose other than ownership or operation of the farm. Farming must provide its officers and general manager with more than 50 percent of their expected income. Salaries and dividends from the corporation shall be considered as income from farming.

(iv) *Special provision for low-income farmers.* The county committee may waive the income provisions in this section provided they determine that the farm operator's income, from both farm and nonfarm sources, is so low that it will not provide a reasonable standard of living for the operator and his family, and a State committee representative approves such action. In waiving the income provisions the county committee must exercise good judgment to see that their determination is reasonable in the light of all pertinent factors, and that this special provision is made applicable only to those who qualify. In making their determination, the county committee shall consider such factors as size and type of farming operations, estimated net worth, estimated gross family income, estimated family off-farm income, number of dependents, and other factors affecting the individual's ability to provide a reasonable standard of living for himself and his family.

(5) *Experience.* Operator must have had experience in producing, harvesting, and marketing the kind of tobacco requested. Such experience must have been gained by being a sharecropper, tenant, or farm operator (bona fide tobacco production experience gained by a person as a member of a partnership shall be accepted as experience gained in meeting this requirement) during at least two of the 5 years immediately preceding the year for which the new farm allotment is requested. If the operator was in the armed services during the 5-year period, the period shall be extended 1 year for each year of military service during the 5 years. The experience must have been gained on a farm having a tobacco allotment for such years for the kind of tobacco requested in the application.

(c) *Eligibility requirements for the farm.* A new farm allotment may be established if each of the following conditions is met:

(1) *Current allotment or quota.* The farm must not have on the date of approval of a new farm acreage allotment an allotment or quota for any kind of tobacco.

(2) *Available land, type of soil, and topography.* The available land, type of soil, and topography of the land on the farm must be suitable for tobacco production. Also continuous production of tobacco must not result in an undue erosion hazard.

(3) *Entire allotment designated by owner where farm reconstituted.* A farm which includes land which has no tobacco allotment because the owner did not designate a tobacco allotment for such land when the parent farm was reconstituted pursuant to Part 719 of this chapter shall not be eligible for a new farm tobacco allotment for a period of 5 years beginning with the year in which the reconstitution became effective.

(4) *Eminent domain acquisition.* A farm which includes land acquired by an agency having the right of eminent

domain for which the entire tobacco allotment was pooled pursuant to Part 719 of this chapter, which is subsequently returned to agricultural production, shall not be eligible for a new farm allotment for a period of 5 years from the date the former owner was displaced.

(5) *Downward adjustment.* The acreage allotments established as provided in this section for each kind of tobacco shall be subject to such downward adjustment as is necessary to bring such allotments in line with the total acreage available for allotment to all new farms.

(6) *False information.* Any new farm acreage allotment which was determined by the county committee on the basis of incomplete or inaccurate information knowingly furnished by the applicant shall be canceled by the county committee as of the date the allotment was established. When incomplete or inaccurate information was unknowingly furnished by the applicant, the allotment shall be canceled effective for the current crop year except where the provisions of § 725.70(d) apply.

§ 725.70 Approval of allotments and marketing quotas, and notices to farm operators.

(a) *Review by State committee.* All farm acreage allotments, yields, and marketing quotas shall be determined by the county committee of the county in which the farm is located and shall be reviewed by a representative of the State committee. The State committee may revise or require revision of any determination made under these regulations. All acreage allotments, yields, and marketing quotas shall be approved by a representative of the State committee, and no official notice of acreage allotment and marketing quota shall be mailed to a farm operator until such allotment and marketing quota has been so approved, except that revised notices without such prior approval may be mailed in cases (1) resulting from reconstitutions that do not involve the use of additional acreage or marketing quota, or (2) of allotment reductions due to failure to return marketing cards where a satisfactory report of disposition of tobacco is not otherwise furnished.

(b) *Notice to farm operator.* An official notice of the effective farm acreage allotment and the effective farm marketing quota shall be mailed to the operator of each farm shown by the records of the county committee to be entitled to an allotment. The notice to the operator of the farms shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which the allotment is established. Insofar as practical, all notices shall be mailed in time to be received prior to the date of any tobacco marketing quota referendum. A copy of such notice containing thereon the date of mailing or a printout summary of such data shall be maintained for not less than 30 days in a conspicuous place in the county office and shall thereafter be kept available for public inspection in the office of the county committee. A copy of the notice of allotment and marketing quota certified as true and correct shall be furnished without charge to any person interested in the farm for which the allotment is established.

(c) *Mailing notices.* If the records of the county committee indicate that the acreage allotment and marketing quota established for any farm may be changed because of (1) a violation of the marketing quota regulations for prior marketing year, (2) removal of the farm from agricultural production, (3) division of the farm, or (4) combination of the farm, the mailing of the notices may be delayed: *Provided,* That the notice of allotment and marketing quota for any farm shall be mailed no later than April 1 of the current year.

(d) *Allotment erroneous notice.* If the official written notice of the farm acreage allotment and marketing quota issued for any farm erroneously stated an acreage allotment larger than the correct effective farm acreage allotment, the acreage allotment shown on the erroneous notice shall be deemed to be the tobacco acreage allotment for the farm for the current marketing year only, if the county committee determines (with the approval of the State executive director) that (1) the error was not so gross as to place the operator on notice thereof, and (2) the operator, relying upon such notice and acting in good faith (i) materially changes his position to enable him to produce the allotment crop (for example obligated expenditures of funds for land preparation, additional equipment and labor) and (ii) has planted an acreage of tobacco in excess of the correct effective farm acreage allotment.

(e) *Marketing quota erroneous notice.* If the official notice of acreage allotment and marketing quota issued for a farm erroneously stated a marketing quota larger than the correct effective farm marketing quota, the marketing quota shown on the erroneous notice shall be deemed to be the marketing quota and the basis for marketing quota penalty computation for the farm for the current marketing year only, if the county committee determines (with approval of the State executive director) that (1) the error was not so gross as to place the operator on notice thereof, and (2) that the operator, relying upon such notice and acting in good faith (i) materially changed his position to enable him to produce the allotment crop (for example obligated expenditures of funds for land preparation, additional equipment and labor) or (ii) had planted tobacco on the farm and was not notified of the correct farm marketing quota prior to planting the tobacco. Undermarketings and overmarketings for farms for which the erroneous notice of marketing quota is applied shall be determined based on the correct effective farm marketing quota for the farm.

§ 725.71 Application for review.

(a) *If marketing quotas are in effect.* Any producer who is dissatisfied with the farm acreage allotment and farm marketing quota established for his farm may, within 15 days after mailing of the official notice of the farm acreage allotment and marketing quota, file application in writing with the ASCS county office to have such allotment and quota reviewed by a review committee. The procedure governing the review of farm acreage allotments and marketing quotas is contained in Part 711 of this chapter, which is available at the ASCS county office.

(b) *If marketing quotas are not in effect.* Any producer who is dissatisfied with the farm acreage allotment may request reconsideration of such allotment in accordance with Part 780 of this chapter, Appeal Regulations, and amendments thereto, which are available in the county ASCS office.

§ 725.72 Lease and transfer of tobacco marketing quotas.

(a) *General.* For the 1970 and subsequent crop years, notwithstanding the provisions of §§ 725.51 through 725.71, but subject to the limitations provided in this section, the owner and operator (acting together if different persons) of any farm for which an old farm tobacco acreage allotment is established for the current year may lease and transfer all or any part of the farm marketing quota established for such farm to any other owner or operator of a farm in the same county with a current year's allotment (old or new farm) for flue-cured tobacco for use on such farm. The allotment established for a farm as pooled allotment under Part 719 of this chapter may be leased and transferred during the 3-year life of the pooled allotments. The lease and transfer of marketing quotas shall be recognized and considered valid by the county committee subject to the conditions set forth in this section.

(b) *Leased agreement period.* Any lease shall be made for such term of years not to exceed five as the parties thereto agree, and on such other terms and conditions, except as otherwise provided in this section, as the parties thereto agree.

(c) *Filing and approval of transfer agreement*—(1) *General.* The approval or disapproval of an agreement to transfer all or any part of an effective farm marketing quota shall be the responsibility of the county committee. Notwithstanding this paragraph, the county committee may redelegate authority to approve transfers to the county executive director or other county office employees. In addition, county office employees in market town locations designated by the State committee shall have authority to approve annual transfers under the terms and conditions of this section even though the farms involved (which must be located in the same county) may be from a different county or State than the county committee supervising the market town location, subject to the review of the county committee for the county where the farms are administratively located.

(2) *Filing transfer agreements.* The transfer by lease of an effective farm

marketing quota or any part thereof shall not be effective until a copy of the lease, determined by the county committee to be in compliance with the provisions of this section, is filed by the parties to the transfer with the county committee of the county where the farms are administratively located or with a designated county office employee at a market town location not later than November 30 of the current crop year. The filing of a properly executed record of transfer of allotment or quota, Form ASCS-375, will be considered to meet the requirements of this paragraph.

(3) *Record of transfer on ASCS-375.* No lease and transfer of any quota under this section for 1972 and subsequent crops shall become effective until a record of transfer has been executed on Form ASCS-375 and filed with the county committee by the parties to the transfer: *Provided*, That county office employees in market town locations designated by the State committee shall have authority to approve annual leases and transfers under the terms and conditions of this section even though the farms involved (which must be located in the same county) may be from a different county or State than the county committee supervising the market town location, subject to review of the county committee for the county where the farms are administratively located. If the owner and operator of the farm from which transfer by lease is made are different persons, both owner and operator shall execute the record of transfer; however, only the signature of the owner or operator of the receiving farm is required. A State or county committee member or employee must witness the signature of either the owner or operator of the transferring farm and the owner or operator of the receiving farm. If such signatures cannot be witnessed in the county office where the farm is administratively located or in a market town location, they may be witnessed in any State or county office convenient to the owner's or operator's residence. The requirement that signatures be witnessed for producers who are ill, infirm, reside in distant areas, or similar hardship cases may be met by mail, provided a request is made by the producer.

(4) *Approval of transfer agreement filed after June 14.* Notwithstanding paragraphs (c)(1) through (3) of this section, the approval of a transfer by lease of any marketing quota filed after June 14 of the current crop year shall be subject to the following:

(i) If the lessor's farm marketing quota is 2,000 pounds or less, any transfers may be approved subject to other conditions and limitations in this section; or

(ii) If the lessor's farm marketing quota exceeds 2,000 pounds, the transfer shall not be approved unless the acreage of tobacco planted on both the lessee's and lessor's farm during the current year was at least 50 percent of the farm acreage allotment in effect for each of such farms at the time of certification of acreage except where the county committee with approval of a State committee representative determines that the parties to the transfer were prevented from timely filing for reasons beyond their control. In the case of a revised certification of acreage for the farm, the last certification filed shall be the one used for determining if the farm meets the 50 percent planting provision, applicable to leases and transfers filed after June 14.

(5) *Approval of transfer agreements filed after final certification date.* Approval of any transfer agreement filed after the final certification date for the county shall be limited to 1 year. The 50 per centum of cropland limitation in paragraph (d) of this section shall not apply to 1-year leases approved under this subparagraph.

(6) *Approval of leases for pyramiding quota prohibited.* The county committee shall not approve a lease and transfer to a farm where it is determined that the primary purpose of the transfer is to pyramid the quota on the farm (Pyramiding for the purpose of this subparagraph means leasing to and from the farm for a period of 2 or more years to protect and increase the quota with no satisfactory evidence of plans for producing the quota during such period.)

(d) *Marketing quota basis for lease and transfer.* Marketing quota, pound for pound, shall be the basis for lease and transfer under the acreage-poundage program. The computed acreage for pounds leased and transferred to a lessee farm (the sum of its own allotment and the upward adjustment in acreage for lease and transfer) shall not exceed 50 per centum of the cropland acreage in the lessee farm, but this proviso shall not apply to transfers approved under subparagraph (5) of paragraph (c) of this section. The maximum marketing quota that may be leased and transferred from a farm shall be limited to the effective farm marketing quota for the lessor farm.

(e) *Adjustment of acreage allotment.* The acreage allotment for a farm involved in a lease and transfer agreement shall be adjusted as follows:

(1) The acreage allotment for the lessee farm shall be adjusted upward by the number of acres obtained by dividing the pounds leased and transferred to the farm by the current year's farm yield for the lessee farm.

(2) The acreage allotment for the lessor farm shall be adjusted downward by the number of acres obtained by dividing the pounds leased and transferred from the farm by the current year's yield for the lessor farm.

(f) *Allotment acreage considered fully planted.* For purpose of establishing allotments for subsequent years, the tobacco acreage computed for pounds transferred from a lessor farm shall be considered to have been planted on the lessor farm.

(g) *Marketing quota for a new farm.* Marketing quota established for a new farm shall not be transferred by lease.

(h) *Pooled allotments.* Marketing quotas established for allotments in a pool pursuant to Part 719 of this subchapter may be eligible for transfer during the 3-year life of the pooled allotment. An agreement to transfer shall not serve to extend the life of such pooled allotment.

(i) *Limitation on transfer to and from a farm (subleasing).*—(1) *Filed before June 15.* The county committee shall not approve any transfer filed for the current year before June 15 where after approval a transfer would be in effect both to and from the same farm: *Provided*, That a transfer may be approved where an allotment and quota is temporarily transferred from a farm for one or more years and the farm is subsequently combined with another farm that is otherwise eligible to receive allotment and quota by transfer.

(2) *Filed after June 14.* The county committee may approve a transfer filed for the current year after June 14 either to or from the same farm (but not both) irrespective of whether any transfer filed before June 15 is in effect for the farm.

(j) *Revised notices.* A revised notice showing the effective farm acreage allotment and effective farm marketing quota after transfer shall be issued by the county committee to each of the operators of all farms involved in the transfer agreement.

(k) *Violations.* If consideration of a violation is pending which may result in an allotment reduction for a farm for the current year, the county committee shall delay approval of any lease and transfer from the farm until the violation is cleared or the allotment reduction is made. However, if the allotment reduction in such a case cannot be made effective for the current crop year before April 1, a 1-year transfer from the farm may be approved by the county committee. In any case, if, after a transfer of a tobacco marketing quota has been approved by the county committee, it is determined that the allotment for the farm from which the marketing quota is leased is to be reduced for a violation, the allotment reduction for such farm shall be delayed until the following year unless the allotment and quota after any reduction due to overmarketings or transfer is equal to or greater than the reduction for violation.

(l) *Marketing quota after transfer approval.* The acreage allotment and marketing quota finally determined (after transfer) for a farm under the provisions of this section shall be the allotment and marketing quota for such farm for the current year only for the purposes of determining: (1) Excess acreage, (2) the amount of penalty to be collected on marketings of excess tobacco, (3) eligibility for price support, (4) undermarketings and overmarketings, and (5) the amount of reduction in allotment and quota for violation of the tobacco marketing quota regulations. Notwithstanding this paragraph (1), a transfer after the farm has certified to acreage planted shall not be considered in determining excess acreage or eligibility for price support. The amount of reduction determined as applicable when the violation

occurred shall be applied to the allotment being reduced prior to any lease and transfer.

(m) *Cancellation, dissolution, or revision of transfer*—(1) *Cancellation.* Any transfer of allotment and quota under this section which was approved in error or on the basis of incorrect information furnished by the parties to the agreement shall be canceled by the county committee.

(i) Such cancellation shall be effective as of the date of approval for purposes of determining overmarketings and undermarketings from the farms, and for purposes of determining eligibility for price support and marketing quota penalties except that such cancellation shall not be effective for the current marketing year for price support and marketing quota penalties purposes if (*a*) the transfer approval was made in error or on the basis of incorrect information unknowingly furnished by the parties to the leasing agreement; and (*b*) the parties to the transfer agreement were not notified of the cancellation before the marketings for the receiving farm exceed the correct effective farm marketing quota. The provisions of this paragraph (m)(1)(i) of this section shall not preclude application of the erroneous notice provisions under § 725.70 where such provisions are applicable.

(ii) Where a transfer of allotment and quota is canceled because of fraud on the part of the owner or operator of the transferring farm but without fault on the part of the owner or operator of the receiving farm, such cancellation shall be effective as of the date of approval except for purposes of determining eligibility for price support and marketing quota penalties for the receiving farm. In such case the overmarketings shall be charged against the farm from which the transfer of allotment and quota was made if such farm, after any such reconstitution as may be necessary as a result of the fraud, is assigned an allotment and quota against which the overmarketings could be charged; otherwise, the overmarketings shall be charged against any other farm involved in the fraud having an allotment and quota after any reconstitution required by such fraud: *Provided*, That any overmarketings on the receiving farm which is in excess of the amount of quota involved in the canceled lease shall be charged against the receiving farm.

(2) *Dissolution or revision.* A transfer agreement may be dissolved or minor revisions made where a request by all parties to the agreement is made in writing to the county committee by November 30 of the current crop year. In such case, an official notice of the effective farm acreage allotment and effective farm marketing quota, reflecting the dissolution or revision, shall be issued by the county committee to each of the operators involved in the transfer agreement. If the request to dissolve or revise the lease is made after November 30 of the current crop year, but prior to the last crop year for which the transfer agreement is effective, the next allotments and quotas established for the farms shall reflect the dissolution or revision.

(n) *Reconstitutions after transfer.* Allotments for reconstituted farms shall be divided or combined in accordance with Part 719 of this chapter. For this purpose, the farm acreage allotment being divided or combined for a farm in the current year shall be the allotment after transfer has been made. However, in the case of a division, the county committee may allocate, under Part 719 of this chapter, the transferred quota involved to the tracts involved in the division as the parent farm owner and operator designate in writing. In the absence of a written designation, the county committee shall apportion the leased quota.

(o) *Consent of lienholder.* No transfer of allotment other than by annual lease shall be made from a farm subject to a mortgage or other lien unless the transfer is agreed to in writing by the lienholder.

(p) *Recomputation of allotment and quota for other than annual transfers.* The acreage allotment and marketing quota transferred shall be recomputed and adjusted where appropriate each year the transfer is in effect.

(q) *Allotment and marketing quota on land under restrictive lease.* No transfer under this section shall be made from any land owned by the United States, or any agency or instrumentality wholly owned by the United States, except that the transfer may be approved in cases where the land is leased back with uninterrupted possession to the former owner after acquisition under right of eminent domain. For such transfers, the Government agency or instrumentality is not required to sign the record of transfer.

§ 725.73 Determining tobacco history acreages.

Tobacco history acreage shall be determined for each farm for which a tobacco farm acreage allotment has been established for the current year.

(a) *Farm acreage allotment fully preserved.* The farm acreage allotment is fully preserved as tobacco history acreage for the current year if:

(1) In the current year or either of the 2 preceding years (i) the sum of (*a*) the final tobacco acreage (including failed acreage and acreage prevented from being planted because of a natural disaster) as determined under Part 718 of this chapter, (*b*) the acreage computed for pounds leased and transferred from the farm under lease and transfer provisions, and (*c*) the acreage regarded as planted to tobacco under the conservation programs and practices determined pursuant to Part 719 of this chapter, was as much as 75 per centum of the farm's history allotment (basic allotment minus acreage reduced for (*1*) overmarketings and (2) violation of marketing quota regulations), or (ii) the farm acreage allotment is or was in the eminent domain allotment pool; or

(2) The farm consists of federally owned land for which a restrictive lease is in effect prohibiting the production of tobacco.

(b) *Computed history acreage.* If the farm acreage allotment is not fully preserved as tobacco history acreage under paragraph (a) of this section, the tobacco history acreage shall be the sum of the acreage (not to exceed the farm acreage allotment) as follows:

(1) Final tobacco acreage (including failed acreage and acreage prevented from being planted because of a natural disaster) as determined under Part 718 of this chapter.

(2) Acreage computed for pounds leased and transferred from the farm.

(3) Acreage regarded as planted to tobacco under the conservation programs and practices.

§ 725.74 Transfer of farm marketing quotas.

There shall be no transfer of farm marketing quotas except as provided in §§ 725.72, 725.75, and Part 719 of this chapter.

§ 725.75 Transfer of tobacco farm acreage allotment for farms affected by a natural disaster.

(a) *Designation of counties affected by a natural disaster.* The Deputy Administrator shall determine for any year beginning with the 1970 crop, those counties affected by a natural disaster (including but not limited to hurricane, rain, flash flood, hail, drought, and any other severe weather) which prevents the timely planting or replanting of any or all of the tobacco acreage allotments for any farm in the county. The county committee shall post in the county office a notice of any such determination affecting the county and, to the extent practicable, shall give general publicity in the county to such determination.

(b) *Application of transfer.* The owner or operator of a farm in a county designated for any year under paragraph (a) of this section may file a written application for transfer of tobacco acreage within the farm tobacco allotment for such year to another farm or farms in the same county or in an adjoining county in the same or another State if such acreage cannot be timely planted or replanted because of the natural disaster determined for such year. The application shall be filed with the county committee for the county in which the farm affected by such disaster is located. If the application involves a transfer to an adjoining county, the county committee for the adjoining county shall be consulted before action is taken by the county committee receiving the application.

(c) *Amount of transfer.* The acreage to be transferred shall not exceed the smaller of (1) the farm allotment established under this part less such acreage planted to tobacco and not destroyed by the natural disaster, or (2) the acreage requested to be transferred.

(d) *County committee approval.* The county committee shall approve the transfer if it finds that the following conditions have been met:

(1) All or part of the farm allotment for the farm from which the acreage is to be transferred could not be timely planted or replanted because of the

natural disaster and planting was not prohibited by the lease in the case of lands owned by the Federal Government.

(2) One or more of producers of tobacco on the farm from which the acreage is to be transferred will be a bona fide producer engaged in the production of tobacco on the farm to which the acreage is to be transferred and will share in the crop or in the proceeds of the tobacco.

(e) *Cancellation of transfers.* If a transfer is approved under this section and it is later determined that the conditions in paragraph (d) of this section have not been met, the county committee, State committee, or the Deputy Administrator may cancel such transfer. Action by the county committee to cancel a transfer shall be subject to the approval of the State committee or its representative.

(f) *Acreage history credits and eligibility as an old tobacco farm.* Any acreage transferred under this paragraph shall be considered for the purpose of determining future allotments to have been planted to tobacco on the farm from which such allotment is transferred.

(g) *Closing dates.* The closing date for filing applications for transfers with the county committee shall be July 15 of the current year. Notwithstanding such closing date requirement, the county committee may accept applications filed after the closing date upon a determination by the county committee that the failure to timely file an application was the result of conditions beyond the control of the applicant and a representative of the State committee approves such determination.

§§ 725.76—725.84 [Reserved]

IDENTIFICATION OF TOBACCO, MARKETING AND OTHER DISPOSITION OF TOBACCO, AND PENALTIES

§ 725.85 Identification of kinds of tobacco.

Any tobacco that has the same characteristics and corresponding qualities, colors, and lengths of a kind and type shall be considered such kind and type without regard to any factor or historical or geographical nature which cannot be determined by examination of the tobacco. The term "tobacco" with respect to any farm located in an area in which one or more of a kind and type of tobacco classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the U.S. Department of Agriculture, is normally produced shall include all acreage of tobacco, excluding other kinds subject to marketing quotas and Georgia Florida cigar wrapper, on a farm unless the county committee with the approval of the State committee determines from satisfactory proof furnished by the operator of the farm that a part or all of the production of such acreage has been certified by the Agricultural Marketing Service, U.S. Department of Agriculture, under the Tobacco Inspection Act (7 U.S.C. 511), and regulations issued pursuant thereto, as a kind of tobacco not subject to marketing quotas. Any tobacco produced in the same area as a kind of tobacco which is subject to marketing quotas (except Georgia Florida cigar wrapper) shall be considered as a kind subject to marketing quotas unless it is classified by an AMS Inspector as a kind which is not subject to marketing quotas prior to its removal from the area in which the kind of tobacco subject to marketing quotas is produced.

§ 725.86 Disposition of tobacco produced on excess acres.

Disposition of tobacco produced on excess acreage prior to harvest shall be subject to the provisions of Part 718 of this chapter.

§ 725.87 Issuance of marketing cards.

(a) *General.* (1) A marketing card (MQ-76) shall be issued for the current marketing year for each farm having tobacco available for marketing. Cards shall be issued in the name of the farm operator except that (i) cards issued for tobacco grown for experimental purposes only shall be issued in the name of the experiment station, and (ii) cards issued to a successor-in-interest shall be issued in the name of the successor-in-interest. The face of the marketing card may show the name of other interested producers. For cards issued in Florida, North Carolina, South Carolina, and Virginia, the harvested acreage shall be shown on the face of the card. A marketing card may be issued in the name of a producer who is not the farm operator if the county committee determines pursuant to the procedure in paragraph (a)(2) of this section that such producer has been or likely will be deprived of the right to use the marketing card issued for the farm to market his proportionate share of the crop.

(2) If the county committee has reason to believe that one or more producers on the farm have been or likely will be deprived of the right to use such marketing card to market his or their proportionate share of the crop, a hearing shall be scheduled by the county committee and the operator of the farm and the producer or producers involved shall be invited to be present, or to be represented, at which time they shall be given the opportunity to substantiate their claims concerning the use of the farm marketing card to market each such producer's proportionate share of the effective farm marketing quota for such crop. At least two members of the county committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice. A summary of the evidence presented at the hearing shall be prepared for use of the county committee. If the farm operator or other producer(s) on the farm do not attend the hearing, or are not represented, the county committee may take whatever action it deems proper on the basis of information available to it. If the county committee finds that any producer on the farm has been or likely will be deprived of the right to use the marketing card issued for the farm to market his proportionate share of the crop, the marketing card issued for the farm shall be recalled and a separate marketing card, showing 110 percent of the producer's proportionate share of effective farm marketing quota shall be issued to each such producer who it is determined has been or likely will be deprived of the opportunity to market his proportionate share of the crop and another marketing card (or other cards if considered preferable by the county committee) shall be issued showing 110 percent of the balance of the effective farm marketing quota to enable the other producers on the farm to market their proportionate shares. The marketing cards issued pursuant to this subparagraph shall reflect the proportionate pounds, if any, already marketed by each producer.

(3) The procedure in paragraph (a)(2) of this section shall not apply to a person who was a producer on the farm in a prior year but who is not a producer on the farm during the current crop year.

(b) *Person authorized to issue marketing cards.* The county executive director shall be responsible for the issuance of marketing cards.

(c) *Rights of producers and successors-in-interest.* (1) Each producer having a share in tobacco available for marketing from a farm shall be entitled to the use of the marketing card for marketing his proportionate share.

(2) Any person who succeeds, other than as a dealer, in whole or in part to the share of a producer in the tobacco available for marketing from a farm, shall, to the extent of such succession, have the same rights to the use of the marketing card and bear the same liability for penalties as the original producer.

(d) *Farms not eligible for price support.* The marketing card issued for a farm shall have the notation "No Price Support" where either of the following conditions exist:

(1) The farm is determined not to be in compliance with the tobacco allotment therefor under the provisions of Part 718 of this chapter.

(2) Tobacco is produced on land owned by the Federal Government in violation of a lease restricting the production of tobacco, even though the allotment for the farm is not exceeded.

(3) The county committee has determined that the tobacco was treated with DDT or TDE after being transplanted in the field or after being harvested from the farm.

(e) *Cards for tobacco grown by publicly owned experiment stations.* A marketing card shall be issued to identify tobacco grown for experimental purposes by or for publicly owned experiment stations.

(f) *Farm quota data entered on marketing card and supplemental card.* (1) Any marketing card issued to market tobacco shall show when issued, in the space provided on the reverse side, the pounds computed by multiplying 110 percent

times the effective farm marketing quota: *Provided*, That, if the tobacco available for marketing from the farm is determined by the county committee or the county executive director to be less than the effective farm marketing quota and the quota is not eligible to be transferred from the farm under the provisions of § 725.72, the pounds determined to be available for marketing shall for purposes of issuing a marketing card and showing thereon the farm's 110 percent of quota data, be considered the effective farm marketing quota for the farm: *Provided further*, That if any producer on the farm shows to the satisfaction of the county committee or county executive director that there are available for marketing from the farm pounds of tobacco above the pounds considered as the effective farm marketing quota under the provisions above, the data shown on the marketing card shall be increased accordingly but not to exceed the pounds which were or would have been computed under paragraph (f)(1) of this section.

(2) Where the farm operator requests, a supplemental marketing card bearing the same name and identification as shown on the original marketing card may be issued for a farm upon return to the county office of an original marketing card or a supplemental marketing card. The pounds computed as the balance of 110 percent of quota from prior marketing card shall be shown in the first space on the reverse side of the marketing card.

(3) Two or more marketing cards may be issued for a farm if the farm operator so requests in writing and specifies in writing the number of pounds to be assigned to each card. In such case, each marketing card shall show the assigned quota plus 10 percent of such assigned quota in the space "110 percent of quota."

(4) If, when authorized under Part 1421 of this title, a producer requests and obtains from the county committee an interim advance of CCC funds on part or all of his flue-cured tobacco crop prior to marketing thereof, the estimated quantity of tobacco upon which the interim advance was made shall be entered in parentheses on the reverse side of the marketing card in the space for recording sales. Any poundage balance of the "110 percent of quota" data shall be entered below the estimated pounds upon which an interim advance was made.

(g) *Marketing cards for producers of registered or certified flue-cured tobacco seed.* Any producer of registered or certified flue-cured tobacco seed may devote flue-cured tobacco acreage to seed production without such tobacco being charged against the farm's allotment, affecting the farm's eligibility for price support or affecting the farm's status in determining marketing penalties. A marketing card may be issued for a farm without regard to the tobacco acreage which is being produced for seed purposes if an agreement is signed by the farm operator, and the producer if different from the operator which provides:

(1) For the destruction of all tobacco produced on the acreage designated for seed production and that no tobacco produced on such acreage will be harvested.

(2)(i) For paying the cost of compliance visits to a farm by representatives of the county committee under Part 718 of this chapter in connection with the determination of the acreage designated for seed production. During the first compliance visit to the farm the acreage designated for seed production shall be determined and staked off.

(ii) The producer(s) signing the agreement shall agree to timely notify the county office when the tobacco seed has been harvested so that arrangements can be made for a representative of the county committee to determine that no acreage designated for seed production has been harvested and to witness destruction of the tobacco leaves.

(3) That the planting of the tobacco acreage for seed production will not create history acreage for the purpose of establishing future farm allotments.

(4) That if the county committee determines that any of the terms and conditions of the agreement have been violated or any material misrepresentation in connection with the agreement has been made, any marketing card issued for the farm in recognition of the agreement shall be recalled and canceled, and a marketing card shall be issued to reflect all the tobacco produced on the farm and that the tobacco produced on the farm is not eligible for price support.

(h) *Other data entered on marketing cards and supplemental card.* Other data specified in instructions issued by the Deputy Administrator shall be entered on the marketing card.

(i) *Lease only marketing card.* A marketing card for lease only may be issued in the name of the farm operator for a farm where there is no tobacco available for marketing in the current year if the farm is otherwise eligible to lease marketing quota. A lease only card shall not be issued for any farm where a marketing card was issued in the current year based on a determination by the county committee or the county executive director that the tobacco available for marketing from the farm was less than the effective farm marketing quota for the current year.

§ 725.88 Claims stamping and replacing marketing cards.

(a) *Stamping to show claims.* (1) If any producer on a farm is indebted to the United States and such indebtedness is listed on the county debt record, the face of the marketing card issued for the farm shall bear the notation "U.S. Claim" followed by the amount of indebtedness. The name of the indebted producer if different from the farm operator, shall be recorded directly under the claim notation. A notation showing indebtedness to the United States shall constitute notice to any warehouseman or loan organization that, subject to prior liens, the net proceeds from any price support loan due the debtor shall be paid to the United States to the extent of the indebtedness shown. The acceptance and use of a marketing card bearing a notice and information of indebtedness to the United States shall not constitute a waiver by the producer of any right to contest the validity of such indebtedness by appropriate administrative appeal or legal action and the producer may reject price support from which such indebtedness would be deductible. As claim collections are made, the amount of the claim shown on the card shall be revised to show the claim balance, and the tobacco sale bill shall show the amount collected. A claim free marketing card shall be issued when the claim has been paid.

(2) Any marketing card may be marked for the purpose of notifying warehousemen or loan organizations that the tobacco being marketed pursuant to such card is subject to a lien held by the United States.

(b) *Replacing, exchanging, or issuing additional marketing cards.* Subject to the approval of the county executive director, two or more marketing cards may be issued for any farm. Upon the return to the county office of a marketing card which has been used in its entirety and before the marketing of tobacco from the farm has been completed, a new marketing card bearing the same name, information, and identification as the used card shall be issued for the farm. A new marketing card shall be issued to replace a card which has been determined by the county executive director who issued the card to have been lost, destroyed, or stolen.

§ 725.89 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid under any one of the following conditions:

(1) It is not issued or delivered in the form and manner prescribed.

(2) Any entry is omitted or is incorrect.

(3) It is lost, destroyed, stolen, or become illegible.

(4) Any erasure or alteration has been made and not properly initiated by the county executive director or a marketing recorder.

(b) *Validating invalid cards.* If any entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initiated by the county executive director who issued the card, or by a marketing recorder, then such card shall become valid.

(c) *Returning valid cards.* In the event any marketing card becomes invalid (other than by loss, destruction, or theft, or by omission, alteration, or incorrect entry, which has not been corrected by the county executive director who issued the card or by a marketing recorder), the farm operator, or the person having the card in his possession, shall return it to the county office at which it was issued.

§ 725.90 Misuse of marketing card.

Any information which causes a marketing recorder, a member of a State,

county, or community committee, or an employee of the State or county office to believe that any tobacco which actually was produced on one farm has been or is being marketed under the marketing card issued for another farm, shall be reported immediately by such person to the county or State office.

§ 725.91 **Identification of marketings.**

(a) *Identification of producer marketings.* Each auction and non-auction marketing of tobacco (except for Georgia Florida cigar wrapper) from a farm in a quota area in the current year shall be identified by a marketing card, Form MQ-76, issued for the farm unless prior to marketing an AMS certification shows it to be nonquota tobacco. The reverse side of the marketing card shall show in pounds: (1) 110 percent of quota, (2) balance of 110 percent of quota after each sale, and (3) date of each sale. Each producer sale at auction shall be recorded o na Form MQ-72-1, Report of Tobacco Auction Sale, and each producer sale at nonauction shall be recorded on Form MQ-72-2, Report of Tobacco Nonauction Purchase. For producer sales at nonauction, the dealer purchaser shall executed Form MQ-72-2 and shall enter the data on MQ-76. For producer sales at auction, Form MQ-72-1 and Form MQ-76 shall be executed only by the ASCS marketing recorder.

(b) *Verification of penalty by warehousemen or dealers.* Each sale of tobacco by a producer which is subject to penalty and which has been recorded by a marketing recorder shall be verified by a warehouseman or dealer to determine whether the amount of penalty shown to be due has been correctly computed. Such warehouseman or dealer shall not be relieved of any liability for the amount of penalty due because of any error which may occur in computing the penalty and recording the sale.

(c) *Check register.* The serial number of the tobacco sale bill(s) shall be recorded by the warehouseman on the check register or check stub for the check written covering the auction sale of tobacco by a producer.

(d) *Identification of dealer marketings of resale tobacco.* Each auction and nonauction marketing of resale tobacco in the current year shall be identified by a dealer identification card, Form MQ-79-2, issued to the dealer.

(e) *Separate display on auction warehouse floor.* Any warehouseman upon whose floor more than one kind of tobacco is offered for sale at public auction shall for each different kind of tobacco:

(1) Display it in separate areas on the auction warehouse floor.

(2) Identify each basket by a distinguishably different basket ticket clearly showing the kind of tobacco except where the tobacco is represented to be a nonquota kind the basket ticket shall have imprinted thereon the type designation for the kind of quota tobacco normally marketed in the area.

(3) Make and keep records that will insure a separate accounting and reporting of each of such kinds of tobacco (quota and nonquota) sold at auction over the warehouse floor.

(f) *Cross-reference of tobacco sale bill number to prior tobacco sale bill covering tobacco identified by the same marketing card to be sold the same day.* Each warehouseman shall for each lot of tobacco weighed in on his floor for sale the same day cross-reference the tobacco sale bill to each prior tobacco sale bill for tobacco identified by the same marketing card. To accomplish the cross-reference, each other tobacco sale bill number shall be entered by the warehouseman in the "Remarks" space on the tobacco sale bill, on all copies, at the time he weighs in the tobacco at the warehouse.

(g) *Identification of returned first sale (producer) tobacco.* When resold at auction, tobacco which has been previously sold and returned to the warehouse by the buyer is resale tobacco. When such tobacco is resold by the warehouseman, it shall be identified as leaf account resale tobacco.

§ 725.92 **Rate of penalty.**

(a) *Basic rate.* The basic penalty rate shall be equal to seventy-five (75%) percent of the average market price for the immediately preceding marketing year as determined by the Crop Reporting Board, Statistical Reporting Service, U.S. Department of Agriculture. The rate of penalty will be determined for each marketing year and announced by the regulations in this subpart or amendment thereto.

(b) *Average market price.* Will be supplied by amendment.

(c) *Rate of penalty per pound.* Will be supplied by amendment.

§ 725.93 **Persons to pay penalty.**

The persons to pay the penalty due on any marketing of tobacco subject to penalty shall be determined as follows:

(a) *Auction sale.* The penalty due on marketings by a producer through an auction sale shall be paid by the warehouseman who may deduct an amount equivalent to the penalty from the price paid to the producer.

(b) *Nonauction sale.* The penalty due on tobacco acquired directly from a producer, other than at an auction sale, shall be paid by the person acquiring the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer in the case of a sale.

(c) *Marketing outside the United States.* The penalty due on marketings by a producer directly to any person outside the United States shall be paid by the producer.

§ 725.94 **Penalties considered to be due from warehousemen, dealers, buyers, and others excluding the producer.**

Any marketing of tobacco under one of the following conditions shall be considered to be a marketing of excess tobacco.

(a) *Auction sale without marketing card.* Any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card at the time of marketing shall be considered to be a marketing of excess tobacco and the penalty thereon shall be collected and remitted by the warehouseman unless prior to marketing, an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(b) *Nonauction sale.* Any nonauction marketing of tobacco which:

(1) is not identified by a valid marketing card and recorded at the time of marketing on MQ-79, Dealer's Report, the marketing card, and MQ-72-2, Report of Tobacco Nonauction Purchase; or,

(2) if purchased prior to the opening of the local auction market for the current year, is not identified by a valid marketing card and recorded on MQ-79, the marketing card, and MQ-72-2, Report of Tobacco Nonauction Purchase not later than the end of the calendar week which includes the first sale day of the local auction markets, shall be considered a marketing of excess tobacco. The penalty thereon shall be collected by the purchaser of such tobacco, and remitted with MQ-79, unless prior to marketing an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(c) *Leaf account tobacco.* If part or all of any marketing of leaf account tobacco (including tobacco from the buyers correction account), when added to prior leaf account resales, is in excess of prior leaf account purchases, such marketing shall be considered to be a marketing of excess tobacco unless and until such warehouseman furnishes proof acceptable to the State committee showing that such marketing is not a marketing of excess tobacco. The actual quantity of floor sweepings which the State executive director determines have been properly identified as floor sweepings and sold and reported as such by the warehouseman shall be considered acceptable proof that such marketings are not marketings of excess tobacco if the amount thereof for the warehouse does not exceed the maximum allowable floor sweepings for the season determined by multiplying the limitation set forth in § 725.51 (p) by total first sales at auction.

(d) *Dealer's tobacco*—(1) *Excess resale rule for mixed reporting of data.* If during any marketing year a warehouseman or a dealer has transactions in more than one kind of tobacco and his reports of marketings result in excess resales, penalty of such excess resales shall be due from such dealer at the highest rate of penalty applicable to any kind of tobacco reported or due to be reported under these regulations.

(2) *Excess resales above purchases.* The part or all of any marketing of tobacco by a dealer which such dealer represents to be a resale, which, when added to prior resales by such dealer (as shown or due to be shown on Form MQ-79), is in excess of his total prior

purchases (as shown or due to be shown on such Form MQ-79) shall be considered to be a marketing of excess tobacco. The penalty thereon shall be paid by the dealer.

(i) During the auction marketing season the penalty due from the dealer shall be withheld by the warehouseman from the proceeds due the dealer and immediately transmitted by the warehouseman to a marketing recorder.

(ii) Penalty due from a dealer which was not withheld by a warehouseman under paragraph (d)(2)(i) of this section shall be remitted weekly by him to the State office with his reports on Form MQ-79.

(e) *Resales not reported.* Any resale of tobacco which is required to be reported by a warehouseman or dealer, but which is not so reported within the time and in the manner required, shall be considered to be a marketing of excess tobacco, unless and until such warehouseman or dealer furnishes a report of such resale which is acceptable to the State executive director. The penalty thereon shall be paid by the warehouseman or dealer who fails to make the report as required.

(f) *Marketings falsely identified by a person other than the producer.* If any marketing of tobacco by a person other than the producer is identified by a marketing card other than the marketing card issued for the farm on which such tobacco was produced, such marketing shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by such person.

(g) *Carryover tobacco.* Any tobacco on hand and reported or due to be reported under § 725.99(g)(16) for warehousemen and § 725.100(c)(4) for dealers shall be included as a resale in determining whether an account has excess resales. Unless the warehouseman furnishes proof acceptable to the State committee and unless the dealer furnishes proof acceptable to the State executive director, showing that such account does not represent excess tobacco, penalty at the full rate shall be paid thereon by such warehouseman or dealer.

§ 725.95 Producers penalties; false identifications; failure to account; canceled allotments; overmarketing proportionate share.

(a) *Penalties for marketing over 100 percent of farm quota.* Penalty at the full rate shall be due on any marketings which exceed 110 percent of the effective farm marketing quota.

(b) *Penalties for false identification or failure to account.* If any producer falsely identifies or fails to account for the disposition of any tobacco, produced on a farm, penalty at the full rate shall be due on the larger of: (1) The actual marketings above 110 percent of the effective farm marketing quota, or (2) the amount of tobacco equal to 25 percent of the effective farm marketing quota plus the amount determined by multiplying the farm yield times the number of acres harvested in excess of the effective farm acreage allotment. The requirements of this paragraph need not be applied if it is determined by the State and county committees that the pounds in violation are very small when compared to the effective quota, and no adverse effect on the operation of the tobacco program in the area would result.

(c) *Cancelled allotment.* If part or all of the tobacco produced on a farm has been marketed and the allotment for the farm is canceled, any penalty due on the marketings shall be paid by the producers.

(d) *Overmarketing proportionate share of effective farm marketing quota.* If the county committee determines that the farm operator or another producer on the farm has marketed more than 110 percent of his proportionate share of the effective farm marketing quota with intent to deprive some other producer on the farm from marketing his proportionate share of the same crop of tobacco, such operator or other producer shall be liable for marketing penalties at the full rate per pound for each pound marketed above 110 percent of his proportionate share of the effective farm marketing quota: *Provided,* That the sum of such penalties shall not exceed the total penalty due on total marketings above 110 percent of the effective farm marketing quota for the farm on which such tobacco was produced. Before assessment of penalty pursuant to this paragraph (c), a hearing shall be scheduled by the county committee and the operator and affected producers shall be invited to be present, or to be represented, to determine whether the operator or another producer on the farm has marketed more than 110 percent of his proportionate share of the effective farm marketing quota. The notice of the hearing shall request the farm operator and affected producers to bring to the hearing floor sheets and other relevant supporting documents. At least two members of the county committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice and any action taken to impose penalty shall be taken after the hearing. If the farm operator or other affected producer does not attend the hearing, or is not represented, the county committee may take whatever action it deems necessary to assess penalty against the proper producers. If a hearing under § 725.87(a) is being held, and it is practicable to do so, such hearing and the hearing under this paragraph may be combined.

(e) *Penalties not to be assessed.* Where the operator or another producer on the farm markets a quantity of tobacco above 110 percent of the effective marketing quota for the farm and such overage is found to have been caused by the failure to record or improper recording of tobacco poundage data on the marketing card, that amount of the penalty as was due to such failure to record or improper recording will not be required to be paid by the farm operator or other producer on the farm if: (1) For amounts of $10 or less, the county committee, and (2) for amounts above $10, the county committee, with the approval of the State committee, determines that each of the following conditions is applicable: (i) the failure to record or incorrect recording resulted from action or inaction of a marketing recorder or another ASCS employee, and (ii) the farm operator or another producer on the farm had no knowledge of such failure or error. Overmarketings for a farm for which the marketing penalty will not be paid pursuant to the provisions of this paragraph (d) shall be determined based upon the correct effective farm marketing quota and correct actual marketings of tobacco from the farm.

§ 725.96 Payment of penalty.

(a) *Date due.* Penalties shall become due at the time the tobacco is marketed, except that in the case of false identification or failure to account for disposition of tobacco, the penalty shall be due on the date of such false identification or failure to account for disposition. The penalty shall be paid by remitting the amount due to the ASCS State office not later than the end of the calendar week in which the tobacco becomes subject to penalty. A draft, money order, or check drawn payable to the Agricultural Stabilization and Conservation Service may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

(b) *Auction sale—net proceeds.* If the penalty due on any auction sale of tobacco by a producer is in excess of the net proceeds of such sale (gross amount for all lots included in the sale less usual warehouse charges), the amount of the net proceeds accompanied by a copy of the warehouse bill covering such sale may be remitted as the full penalty due. Usual warehouse charges shall not include (1) advances to producer, (2) charges for hauling, or (3) any other charges not usually incurred by producers in marketing tobacco through a warehouse.

(c) *Nonauction sale.* Nonauction sales of excess tobacco shall be subject to the full rate of penalty and shall be paid in full even though the penalty may exceed the proceeds for the sale of tobacco.

§ 725.97 Request for return of penalty.

Any producer of tobacco and any other person who bore the burden of the payment of any penalty after the marketing of all tobacco available for marketing from the farm may request the return of the amount of such penalty which is in excess of the amount required to be paid. Such request shall be filed on Form MQ-85, Farm Record and Account, with the county office within 2 years after the payment of the penalty. Approval of return of penalty to producers shall be by the county committee, subject to the approval of the State executive director.

RECORDS AND REPORTS

§ 725.98 Producer's records and reports.

(a) *Failure to file reports or filing false reports.* If any producer on a farm files an incomplete or incorrect report, fails to file a report, or files or aids or acquiesces in the filing of any false report

with respect to (1) the acreage of tobacco grown on the farm or (2) the amount of tobacco produced on or marketed from the farm, the tobacco allotment, next established for any such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (i) the failure to file, filing of, or aiding or acquiescing in the filing of, such report was not intentional on the part of any producer on the farm and that no producer on the farm could reasonably have been expected to know that the report was false: *Provided*, That the failure to file or the filing of or aiding or acquiescing in the filing of the report will be construed as intentional unless a correct report is filed and any penalty is paid in full, or (ii) no person connected with the farm for the year for which the allotment is being established caused, aided, or acquiesced in the filing of the false report or failure to file a report. If a farm operator in a certification county (as defined in Part 718 of this chapter) files a certification of tobacco acreage on the farm and, after a farm visit and measurement of the acreage, it is determined by the county committee (with approval of the State committee) that the certification was false (either under certification or over certification) in what amounts to a scheme or device to defeat the purpose of the program, the allotment next established for the farm shall be reduced. If the condition in paragraph (a)(2) (i) and (ii) of this section are not applicable, the next established allotment shall be reduced by the pounds computed as follows: The acreage falsely certified (difference between certified and measured acreage) shall, for the year of the violation, be multiplied by the farm yield. Such method of determining the amount of allotment reduction also is provided for in paragraph (h) of this section.

(b) *Report of tobacco grown for experimental purposes.* For farms on which tobacco is being grown for experimental purposes only, the director of a publicly owned agricultural experiment station shall furnish the State ASCS office, prior to the beginning of the harvesting of tobacco from any farm on which experimental tobacco is being grown, a report for each current year showing the following information:

(1) Name and address of the publicly owned agricultural experiment station.

(2) Name of the owner, and name of the operator if different from the owner, of each farm on which tobacco is grown for experimental purposes only.

(3) The amount of acreage of tobacco grown on each farm for experimental purposes only.

(4) A certification signed by the Director of the publicly owned agricultural experiment station to the effect that such acreage of tobacco was grown on each farm for experimental purposes only, the tobacco was grown under his direction, and the acreage of each plot was considered necessary for carrying out the experiment.

(c) *Harvesting second crop tobacco from the same acreage.* If, in the same calendar year more than one crop of tobacco was grown from (1) the same tobacco plants, or (2) different tobacco plants, and is harvested for marketing from the same acreage of a farm, the acreage allotment next established for such farm shall be reduced by an amount equivalent to the acreage from which more than one crop of tobacco was so grown and harvested.

(d) *False identification.* If tobacco was was marketed or was permitted to be marketed in any marketing year as having been produced on the acreage allotment for any farm which, in fact, was produced on a different farm, the acreage allotments next established for both such farms and kind of tobacco shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) no person on such farm intentionally participated in such marketing or could have reasonably been expected to have prevented such marketing: *Provided*, That the marketing shall be construed as intentional, unless all tobacco from the farm is accounted for and payment of all additional penalty is made, or (2) no person connected with such farm for the year for which the allotment is being established caused, aided or acquiesced in such marketing. The requirements of this paragraph need not be applied if it is determined by the State and county committees that the pounds in violation are very small when compared to the effective quota, and no adverse effect on the operations of the tobacco program in the area would result.

(e) *Report on marketing card.* The operator of each farm on which tobacco is produced shall return to the ASCS county office each marketing card issued for the farm whenever marketings from the farm are completed, and, in no event, later than 20 days, in the year of issuance of the card, after the close of the tobacco auction markets for the locality in which the farm is located. Failure to return the marketing card within 15 days after written request by certified mail from the county executive director shall constitute failure to account for disposition of all tobacco marketed from the farm unless disposition of tobacco marketed from the farm is otherwise accounted for to the satisfaction of the county committee. Upon failure to satisfactorily account to the county committee for disposition of flue-cured tobacco marketed from the farm the allotment next established for such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county committee and a representative of the State committee, that (1) the failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition: *Provided*, That such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made; or (2) no person connected with such farm for the year for which the allotment is being established, caused, aided, or acquiesced in the failure to furnish such proof.

(f) *Report of production and disposition.* In addition to any other reports which may be required by this subpart, the operator on each farm or any producer on the farm (even though the harvested acreage does not exceed the acreage allotment or even though no allotment was established for the farm) shall, upon written request by certified mail from the State or county committee, within 15 days after deposit of such request in the U.S. mail, addressed to such person at his last known address, furnish the Secretary on MQ-108, Report of Production and Disposition, a written report of the acreage, production and disposition of all tobacco produced on the farm by sending the same to the State or county committee showing, as to the farm at the time of filing such report: (1) The number of fields (patches or areas) from which tobacco was harvested from the farm, (2) the total pounds of tobacco produced, (3) the amount of tobacco on hand and its location, (4) as to each lot of tobacco marketed, the name and address of the warehouseman, dealer, or other person to or through whom such tobacco was marketed, and the number of pounds marketed, the gross price paid and the date of the marketings, and (5) the complete details as to any tobacco disposed of other than by sale. The operator on each farm or any producer on the farm (even though the harvested acreage does not exceed the acreage allotment or even though no allotment was established for the farm) shall, upon written request on Form MQ-108-1 from the county committee, within the 15 days after deposit of such request in the U.S. mail, addressed to such person at his last known address, furnish the Secretary on MQ-108-1 a written report of the amount of tobacco produced on the farm which is unmarketed at the end of the marketing season and its location, and the amount of tobacco produced on any other farm which is unmarketed at the end of the marketing season and which is stored on the farm and its location. Failure to file the MQ-108 or MQ-108-1 as requested, the filing of an MQ-108 or MQ-108-1 which is found by the State or county committee to be incomplete or incorrect shall, to the extent that it involves tobacco produced on the farm constitute failure of the producer to account for disposition of tobacco produced on the farm and the quota next established for such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county or State committee that failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition: *Provided*, That (1) such failure will be construed as intentional unless such proof

of disposition is furnished and payment of all additional penalty is made, or (ii) no person connected with such farm for the year for which the quota is being established caused, aided, or acquiesced in the failure to furnish such proof.

(g) *Amount of allotment reduction.* The amount of reduction in the allotment for the current year for a violation described in paragraph (a), (d), (e), or (f) of this section shall be that percentage which the amount of tobacco involved in the violation is of the respective effective farm marketing quota for the farm for the year in which the violation occurred. Such percentage shall then be applied after application of the national factor to the preliminary allotment, but before adjusting for over or undermarketings. Where the amount of tobacco involved in the violation(s) equals or exceeds the amount of the farm marketing quota, the amount of reduction shall be 100 percent and no deduction will be made in subsequent years for the violation(s). The quantity of tobacco in violation shall be the amount of tobacco as determined by the county committee. If the actual quantity of tobacco is known, such quantity shall be determined by the county committee to be the amount of tobacco involved in the violation. If the actual quantity of tobacco is not known, such quantity shall be determined by taking into consideration the condition of the crop during production, if known, and the actual yield per acre of tobacco on other farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar: *Provided,* That the determination of the total production of tobacco on the farm shall not exceed the harvested acreage of tobacco on the farm multiplied by the average actual yield on farms in the locality on which the soil and other physical factors affecting the production of tobacco are similar. The yield per acre as so determined by the county committee shall be deemed to be the actual production per acre. Where the actual quantity of tobacco produced on acreage not included in a report of acreage is not known, such quantity shall be determined by the county committee to be the quantity resulting from multiplying the yield per acre for the farm determined as aforesaid, by the acreage not shown on a report of acreage. Where the amount of tobacco produced on or marketed from a farm is not known, such quantities shall be determined by the county committee to be the quantity of tobacco remaining after deducting from the total production on the farm as determined aforesaid, the quantity of tobacco for which proof of production and marketing has been furnished. The acreage reductions required under this section shall be in addition to any other adjustments made under these regulations and any amendments thereto later issued.

(h) *Allotment reductions for combined farms.* If the farm involved in the violation is combined with another farm prior to the reduction, the reduction shall be applied as heretofore provided in this section to that portion of the allotment for which a reduction is required.

(i) *Allotment reduction for divided farms.* If the farm involved in the violation has been divided prior to the reduction, the reduction shall be applied as heretofore provided in this section to the allotments for the divided farms required to be reduced. Allotment reductions are applicable, except under paragraph (c) of this section, unless the violating producer has no interest in the current tobacco crop.

(j) *Quota reduction.* If an acreage allotment reduction is made under this section, the farm marketing quota shall be reduced to reflect such reduction in an amount determined by multiplying the acreage reduction by the farm yield.

(k) *Unauthorized erasure on marketing card.* Any unauthorized erasure or alteration of any information or data on a marketing card may be considered a violation of the U.S. Criminal Statutes.

(l) *County administrative hearings in connection with violations.* Except for the failure to return a marketing card to the county office or failure to file MQ-108-1, the allotment for any farm shall not be reduced for a violation under this section until after the operator of the farm has been notified in writing by the county executive director of the time and place of a hearing to determine the nature and extent of the violation. The notice of the hearing shall request the farm operator to bring to the hearing warehouse bills (floor sheets) and other relevant supporting documents. At least two members of the county committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice and any action taken on the violation shall be taken after the hearing. If the farm operator does not attend the hearing or is not represented, the county committee may take whatever action it deems proper.

(m) *Sequence of allotment reduction where the farm allotment is to be reduced because of a violation and overmarketings.* If the tobacco allotment for a farm is to be reduced in the current year because of both (1) a violation and (2) overmarketings in a prior year, the reduction in the allotment for the violation shall be made before making the reduction for overmarketings.

(n) *Correction of farm production records.* Where farm data for actual marketings is determined to be incorrect because of a violation, the records shall be corrected for each farm on which the tobacco was produced, and for each farm whose card was used to identify the marketings.

(o) *Report on Form MQ-92, Estimate of Production.* In order to provide a basis for a determination under the first proviso in § 725.87(e)(1) and as 73-Flue-Cured Tobacco, 1973-74 and Subsequent Marketing Years an aid to discouraging, thwarting, and discovering violations by producers and to enforcing the provisions of the flue-cured tobacco marketing quota program, an estimate of production, Form MQ-92, shall be obtained in accordance with instructions issued by the Deputy Administrator.

§ 725.99 Warehouseman's records and reports.

Each warehouse shall keep the records and make the reports separately for each kind of tobacco (quota and nonquota) as provided in this section.

(a) *Record of marketing*—(1) *Auction sale.* Each warehouseman shall keep such records as will enable him to furnish the State office with respect to each auction sale of tobacco made at his warehouse the following information:

(i) The name of the operator of the farm on which the tobacco was produced and the name of the seller, in the case of a sale by a producer, and in the case of a resale, the name of the seller.

(ii) Date of sale.

(iii) Number of pounds sold.

(iv) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer; and, in addition, with respect to each individual basket or lot of tobacco constituting the auction sale, the following information:

(a) Name of purchaser.

(b) Number of pounds sold.

(c) Gross sale price.

(2) *Separate account records.* Records of all purchases and resales of tobacco by the warehouseman shall be maintained to show a separate 74-Flue-Cured Tobacco, 1973-74 and Subsequent Marketing Years account for:

(i) Nonauction sales by farmers of tobacco purchased by or on behalf of the warehouseman.

(ii) Purchases and resales of leaf account tobacco. The resale record shall include separate data for leaf account tobacco and floor sweeping tobacco.

(3) *Buyers corrections account.* Each warehouseman shall keep such records including negative adjustment invoices as will enable him to furnish a weekly report on Form MQ-71 to the State ASCS office showing the total pounds of the debits (for returned baskets, short baskets, and short weights of tobacco) and the credits (for long baskets, and long weights of tobacco) to the buyers corrections account. Where the warehouseman returns to the seller tobacco debited to the buyers corrections account, the warehouseman shall prepare an adjustment invoice to the seller. This invoice shall be the basis for a credit entry for the warehouse in the buyers corrections account and a corresponding purchase (debit entry) in the case of a dealer on his MQ-79, Dealer's Report. Any balancing figure reflected on the warehouseman's summary of bill-outs shall not be included in the buyers corrections account.

(4) *Tobacco sale bill and Daily Warehouse Sales Summary.* Each warehouseman shall use tobacco sales bills furnished at his expense showing, as a minimum, the following information:

(i) Tobacco sale bill number;

(ii) Registration number assigned the warehouse by the Department;

(iii) Name and address of warehouse where sale is held;

(iv) Identification of other producers having an interest in the tobacco;

(v) Check block to show tied if tobacco marketed in tied form;

(vi) Date of sale;

(vii) Number of pounds in each basket or sheet;

(viii) Name and address of seller and (a) farm number (including State and county codes) for producer tobacco, and (b) dealer registration number for resale tobacco;

(ix) Identification number, if available, for each basket or sheet of tobacco to be offered for sale;

(x) Poundage balance before sale based on 110 percent of farm quota;

(xi) Name or symbol of purchaser of each basket or sheet which is sold;

(xii) Gross number of pounds sold;

(xiii) Sales price for each basket or sheet and gross sale price for all baskets or sheets sold;

(xiv) Nonauction purchases by the warehouse holding the sale;

(xv) Tobacco grade for tobacco consigned to price support;

(xvi) Marketing quota penalty collected; and

(xvii) Amount withheld from sale to cover claims due the United States.

A copy of a suggested format for the tobacco sale bill has been filed (34 FR 1761) at the Office of the Federal Register. Copies of the suggested format may be obtained from the Director. The warehouseman shall not weigh in any tobacco for sale unless a marketing card (MQ-76 for producers, MQ-79-2 for dealers) is furnished the weighman or the tobacco is represented to be a nonquota kind which is required to be displayed in a separate area on the warehouse floor under § 725.91 (e) of these regulations. The buyer and grade space on the tobacco sale bill shall show nonauction purchases by the warehouse, tobacco grade for tobacco consigned to price support, and the symbol for tobacco bought by private buyers. At the end of each sale day, the tobacco sale bills shall be sorted and filed in numerical order by sale dates, and basket tickets shall be filed in an orderly manner by sale dates or by numerical order. A copy of the executed Form MQ-80, Daily Warehouse Sales Summary, shall be furnished to marketing recorder for the Kansas City Data Processing Center (KCDPC).

(5) *Report of farm scrap resulting from grading tobacco for farmers.* Any warehouseman or any other person who grades tobacco for farmers shall maintain records which will enable him to furnish the State ASCS office the name of the farm operator and the approximate amount of scrap tobacco obtained from the grading of tobacco from each farm.

(6) *Report of farm scrap resulting from furnishing curing or stripping space for tobacco from farmers.* Any warehouseman or any other person who provides tobacco curing space or stripping space for farmers shall maintain records which will enable him to furnish the State ASCS office the name of the farm operator and the approximate amount of scrap tobacco obtained from each farm resulting from providing such space.

(7) *Labeling tobacco sale bill for resale tobacco.* In the case of resales, each sale bill shall show resale and: (i) For dealers, the name of the dealer making each resale; and (ii) for the warehouse, the name of the warehouse and either "floor sweepings" or "leaf account" tobacco.

(8) *Nonquota tobacco or quota tobacco of a different kind.* Should tobacco be presented for sale that is represented to be nonquota tobacco or there is question as to what kind of quota tobacco is being offered, an inspection shall be obtained from the Agricultural Marketing Service of this Department (AMS) after the tobacco is weighed and in line for sale. Both the basket ticket and sale bill shall show the producers name and address and the State and county code and farm number on which the tobacco was produced. If an AMS inspection shows that a basket of lot of tobacco is of a different kind than that identified by the basket ticket after it is weighed in and a sale bill prepared, such tobacco shall be deleted from the original sale bill and a revised sale bill prepared. Copies of the basket ticket and sale bill shall be furnished to the State office at the end of the sale day.

(b) *Identification of producer sales of tobacco—tobacco sale bill.* The State and county codes and the farm serial number on the marketing card identifying the tobacco to be marketed at auction shall be recorded by the warehouseman on the tobacco sale bill at the time the tobacco is weighed in and the warehouseman shall retain the marketing card where tobacco is to be sold at auction only until the producer has been paid for the sale of the tobacco or the tobacco is removed from the warehouse by the producer. In any case where a producer's marketing card is found in the possession of a warehouseman and no producer on the farm for which the card is issued has tobacco on the floor for sale or to be settled for such card will be picked up by an ASCS representative for return to the producer. The warehouseman shall be responsible for the safekeeping and proper use of the marketing card during his retention of it. Each tobacco sale bill issued to cover an auction sale of tobacco from a farm for which a marketing card is issued bearing the notation "No Price Support" shall bear the same notation. A separate tobacco sale bill shall be executed to cover any tobacco which represents more than 110 percent of the effective farm marketing quota and the notation, "No Price Support" shall be shown on such tobacco sale bill. The sale of such tobacco shall be considered a separate sale. The letters, "NA" shall be shown on each line of a tobacco sale bill on which there is recorded tobacco purchased by or for the warehouse at nonauction sale and there shall be recorded on all such tobacco sale bills the farm serial number on the marketing card identifying the tobacco marketed at the time the tobacco is purchased at nonauction sale. A copy of the tobacco sale bill bearing the letters, "NA" shall be furnished the producer for any lot or basket of such tobacco purchased by the warehouseman.

(c) *Marketing card.* Each marketing of tobacco from a farm in the flue-cured tobacco producing area shall be identified by a marketing card issued for the farm on which the tobacco was produced (unless prior to the marketing of such tobacco an AMS inspection certificate is obtained showing that the tobacco offered for sale is a kind of tobacco not subject to marketing quotas).

The card shall be executed as follows:

(1) *Auction sale.* A marketing card used to cover an auction sale shall show on the reverse side the poundage balance of the "110 percent of quota". At the time of weigh-in the tobacco sale bill shall show the poundage balance of 110 percent of the farm's quota. The tobacco sale bill shall show the pounds on which penalty is due, and the amount of the penalty.

(2) *Nonauction sale to a warehouseman at the warehouse.* A marketing card used to cover a nonauction sale of tobacco to a warehouseman shall show on the reverse side the poundage balance of the "110 percent of 80-Flue-Cured Tobacco, 1973-74 and Subsequent Marketing Years quota". If the tobacco sale bill includes both an auction sale and a nonauction sale such combined pounds shall be used to compute and reflect the balance of the "110 percent of quota". The tobacco sale bill shall show the pounds on which penalty is due and the amount of the penalty.

(3) *Nonauction sale (country purchase) to a warehouseman.* A marketing card used to cover a nonauction sale (country purchase) at the farm shall show on the reverse side the poundage balance of the "110 percent of quota". Each warehouseman shall record each nonauction purchase of tobacco made by him on MQ-79 and on Form MQ-72-2, Report of Tabacco Nonauction Purchase. The data to be reported on Form MQ-72-2 is set forth in § 725.100(c)(3).

(4) *Tobacco under interim advance.* If tobacco is marketed from a farm, part or all of which is tobacco upon which an interim advance was made pursuant to Part 1421 of this chapter, the tobacco sale bill and the marketing card issued for the farm shall show in parenthesis the poundage balance of the tobacco upon which an interim advance was made, and the poundage balance of any other tobacco. As the interim advance is repaid on any tobacco the quantity shown on the marketing card as that upon which an advance was made shall be reduced proportionately.

(d) *Suspended sale record.* (1) Any tobacco sale bill covering sale of tobacco for which a valid marketing card or dealer identification card was not presented shall be given to a marketing recorder who shall stamp such bills, "Suspended."

(2) When cleared, such suspended sale shall show "suspended—cleared" and date cleared. Such tobacco sale data shall be submitted to KCDPC after the sale is cleared. If a suspended sale is not cleared from suspension by the last auction sale day for the warehouse for the season, it shall be considered a sale of excess tobacco and penalty at the full rate shall be remitted by the warehouseman.

(e) *Warehouseman's entries on other dealer's report.* Each warehouseman shall record, or have the dealer record, on MQ-79, the total purchases and resales made by each such dealer or other warehouseman during each sale day at the warehouse. If any tobacco resold by the dealer is tobacco bought by him and carried over by him from a crop produced prior to the current crop, the entry on MQ-79 shall clearly show such fact.

(f) *Record and report of warehouseman's leaf account purchases and resales not on his floor.* Each warehouseman shall keep a record and make reports on MQ-79, Dealer's Report, showing:

(1) All nonauction purchases of tobacco, except nonauction purchases at his warehouse which are reported on MQ-80.

(2) All purchases and resales of tobacco at public auction through warehouses other than his own.

(3) All purchases of tobacco from dealers other than warehousemen and resales of tobacco to dealers other than warehousemen.

Form MQ-79 shall be prepared and a copy, including copies of Form MQ-72-2 for all nonauction purchases, forwarded to the State ASCS office not later than the end of the calendar week (at the end of each sale day during the auction season for such warehouse) in which such tobacco was purchased or resold: *Provided*, That, if tobacco is purchased prior to the opening of the local auction market, an MQ-79 shall be prepared and a copy, together with copies of MQ-72-2 for all nonauction purchases, forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale day of the local auction markets. A remittance for all penalties shown by the entries on MQ-79 and Form MQ-72-2 to be due shall be forwarded to the State ASCS office with the original copy of MQ-79.

(g) *Daily warehouse sales summary.* Each warehouseman shall prepare at the end of each sale day a report on MQ-80, Daily Warehouse Sales Summary, showing for each sale day:

(1) For each manufacturer, buyer, order buyer and Flue-Cured Tobacco Cooperative Stabilization Corporation (stabilization), pounds of tobacco purchases at auction (consigned in the case of stabilization).

(2) The sum of the items for subparagraph (1) of this paragraph.

(3) Resales at auction for each person listed under subparagraph (1) of this paragraph.

(4) For each dealer subject to reporting purchases and resales on MQ-79, as originally billed, the total pounds of tobacco purchased at auction, and resales at auction.

(5) The total pounds purchased at auction for the leaf account.

(6) The total pounds purchased at nonauction at the warehouse for the leaf account.

(7) The sum of the total pounds for subparagraphs (5) and (6) of this paragraph.

(8) (i) The total leaf account resales and (ii) a separate account for total floor sweeping resales.

(9) The sum of the total purchases for paragraph (g) (2), (4) and (7) of this section.

(10) The sum of the total resales for paragraph (g)(3), (4), and (8) of this section.

(11) The totals of the purchases column on the MQ-79 representing the nonauction purchases for the warehouse leaf account.

(12) The totals of the resales column on the MQ-79 representing the nonauction resales (including floor sweepings nonauction sales) for the warehouse leaf account.

(13) For each warehouse sale of excess tobacco from a farm, the applicable farm number with daily remittance of the penalty due to accompany Form MQ-72-1.

(14) For each dealer, at time of settlement having excess resale tobacco, the applicable dealer identification number with daily remittance of the penalty due.

(15) As to the information required to be entered on MQ-80, Daily Warehouse Sales Summary, by the marketing recorder, the warehouseman shall keep and make available such records as will enable the marketing recorder to enter thereon: (i) The total number of Forms MQ-72-1 for the sale day and the sum of pounds sold and shown on Forms MQ-72-1, and (ii) the total number of suspended sale bills and the sum of such pounds sold.

(16) At the end of the season, each warehouseman shall: (i) Report on his final MQ-80 for the season the quantity of leaf account tobacco and floor sweepings, if any, on hand and its location, (ii) permit its inspection by a representative of ASCS, and (iii) provide for the weighing of such tobacco (to be witnessed by ASCS) and furnished to ASCS at that time a certification as to the actual weight of such tobacco. After the weight of such tobacco has been obtained as provided in subdivision (iii) of this subparagraph, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

(h) *Report to county office of long weights and long baskets.* Each warehouseman shall report to the county ASCS office or marketing recorder long weights and long baskets of producer tobacco (first sales) for which the farmer has been paid.

(i) *Report on Form MQ-78, Tobacco Warehouse Organization.* Each warehouseman shall annually, prior to opening of auction markets, furnish ASCS an executed Form MQ-78 showing:

(1) Form of business organization.

(2) Names and addresses of warehouse officials and bookkeeper.

(3) Names and addresses of other warehouses in which the officials and bookkeeper have a financial interest.

(4) Name and address of custodian of warehouse records, including their location.

(j) *Payee to be shown an auction warehouse check.* Any auction warehouse which issues a check to cover the auction or nonauction sale of tobacco shall issue such check only in the name of the payee. A warehouse check shall not be issued in the name of the seller and bearer, for example "John Doe or Bearer".

(k) *Basket, sheet or pile identification and cross referencing between tobacco sale bill, basket ticket and bill to buyer.* Each warehouseman shall, after each basket, sheet or pile is weighed in record such tobacco on the standardized tobacco sale bill, enter the bill number and line number on the basket ticket. Also, after sale by auction and when the tobacco is billed to the buyer the tobacco sale bill number and line number of the entry shall be recorded on the bill-out invoice to the buyer. In addition, the bill-out invoice shall show the warehouse registration number (warehouse code).

(l) *Handling rejected (Producer) sale after bill-out.* Where a producer rejects the sale of a basket of tobacco, and the tobacco has been billed out and bills presented to the buyer, the warehouseman shall not change the (i) MQ-76 or (ii) MQ-80 reporting the sale. If the warehouseman gains possession of the tobacco, and it is resold by such warehouseman, it shall be identified as resale tobacco.

(m) *Maintaining copies of bill-out invoices to purchaser or daily summary journal sheet to reflect daily transactions.* For each marketing year, the warehouseman shall maintain copies of the bill-out invoice to the purchaser by grades showing the pounds purchased. In lieu of this requirement, the warehouseman may prepare and maintain for each sale day on a current basis a daily summary journal sheet to reflect for each purchaser (including warehouse leaf account or other similar account) pounds and dollar amounts for:

(1) Tobacco originally billed to the purchaser.

(2) Mathematical billing errors and corrections (added and deducted) from purchaser's adjustment invoices.

(3) Short (deducted) and long (added) weights from purchaser's adjustment invoices.

(4) Short (deducted) and long (added) baskets from purchaser's adjustment invoices.

(5) Net tobacco received and paid for by purchaser.

(n) *Reporting of processed leaf account or floor sweepings tobacco.* Any

warehouseman who delivers tobacco to a firm for the purpose of redrying, processing or stemming of such tobacco shall by the end of the week in which such tobacco was delivered report to the State office on MQ-79, Dealer's Report: (1) the date delivered; (2) name and address of the firm to which the tobacco was delivered and (3) the pounds of tobacco (green weight) delivered which shall be entered in the resales pounds column. Such tobacco shall be considered a resale on the date of delivery for the purpose of balancing the warehouse account and collection of penalties where penalties are due.

§ 725.100 Dealer's records and reports.

Each dealer, except as provided in § 725.102, shall keep the records and make the reports separately for each kind (quota and nonquota) of tobacco as provided by this section. Adjustment invoices, including the adjustment invoices for any sale day for which there is no adjustment to be made, required to be furnished to an auction warehouse shall be identified by the warehouse identification number and the reporting dealer's identification number as well as the names of the warehouse and dealers involved in the transaction.

(a) *Record of marketing.* Each dealer shall keep such records as will enable him to furnish the State ASCS office with respect to each lot of tobacco purchased by him the following information:

(1) (i) The name of the warehouse through which the tobacco was purchased in the case of a warehouse sale, (ii) the name of the operator of the farm on which the tobacco was produced and the name of the seller in the case of a nonauction sale, including the records and reports for farm scrap tobacco, and (iii) the name of the seller in the case of nonauction purchases from warehousemen and dealers.

(2) Date of purchase.

(3) Number of pounds purchased.

(4) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer and as to each lot of tobacco sold by him the following information:

(i) Name of the warehouse through which the tobacco was sold in the case of a warehouse sale, and the name of the purchaser if other than an auction warehouse sale.

(ii) Date of sale.

(iii) Number of pounds sold.

(iv) In the event of a resale of tobacco bought by him and carried over from a crop produced prior to the current crop, the fact that such tobacco was so bought and carried over.

(b) *Nonauction sale (country purchase) to a dealer.* (1) (i) Each purchase of tobacco from a producer from a flue-cured tobacco producing area shall be identified by a marketing card issued for the farm on which the tobacco was produced unless prior to purchase an AMS inspection certificate is obtained showing that the tobacco offered for sale is of a kind of tobacco not subject to marketing quotas. The reverse side of the marketing card shall show the poundage balance of the "110 percent of quota". (ii) In addition a Form MQ-72-2, Report of Tobacco Nonauction Purchase, shall be prepared and shall show: (*a*) Date of purchase, (*b*) identification number of buyer, (*c*) identification of producer selling the tobacco as shown on the marketing card, including his name and address and complete farm number, (*d*) type code 10, (*e*) pounds purchased, and (*f*) amount of penalty collected. The dealer shall record each nonauction purchase of tobacco made by him on MQ-79.

(2) If tobacco is marketed from a farm part or all of which is tobacco upon which an interim advance was made pursuant to Part 1421 of this chapter, the tobacco sale bill and the marketing card issued for the farm shall show in parenthesis the poundage balance of the tobacco upon which an interim advance was made and the poundage balance of any other tobacco. As the interim advance is repaid on any tobacco the quantity shown on the marketing card as that upon which an advance was made shall be reduced proportionately.

(c) *Record and report of purchases and resales.* (1) Except as provided in subparagraph (2) of this paragraph, each dealer shall keep a record and make reports on MQ-79, showing all purchases and resales of tobacco made by or for the dealer, and in the event of purchase or resale of tobacco bought from a crop produced prior to the current crop, the fact that such tobacco was bought by him and carried over from a crop produced prior to the current crop.

(2) Form MQ-79 shall be prepared and a copy, together with executed copies of MQ-72-2 for all nonauction purchases, forwarded to the State ASCS office not later than the end of the calendar week (for warehouseman dealer, at the end of each sale day during the auction season for such warehouse) in which such tobacco was purchased or resold, except as follows: (i) If tobacco is purchased prior to the opening of the local auction market, an MQ-79 shall be prepared and a copy, together with executed copies of Form MQ-72-2 for all nonauction purchases, forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale day of the local auction markets; (ii) if tobacco is resold in a State other than where produced, and the auction markets at such locations opens earlier than those where the tobacco would normally be sold at auction by farms, reports shall be prepared and forwarded, together with executed copies of MQ-72-2 for all nonauction purchases, not later than the end of the calendar week which would include the first sale day of the local auction market where the resale takes place.

(3) The data to be entered on MQ-72-2, Report of Tobacco Nonauction Purchase, for nonauction purchases from a producer shall be that enumerated under paragraph (b)(1)(ii) of this section. For nonauction purchases from a dealer, the data to be entered on MQ-72-2 shall be the following: (i) Date of purchase; (ii) identification number of buyer; (iii) identification number of dealer making the sale; (iv) type code 10; and (v) pounds purchased.

(4) At the end of the dealer's marketing operation, but not later than March 1, he shall for each kind of tobacco: (i) Show the word "final" on his final report, MQ-79, for the season, (ii) report on such final MQ-79 for the season the quantity of tobacco on hand and its location, (iii) permit its inspection by a representative of ASCS, and (iv) provide for weighing of such tobacco (to be witnessed by ASCS) and furnish to ASCS at that time a certification as to the actual weight of such tobacco. After the weight of such tobacco has been determined as provided in subdivision (iv) of this subparagraph, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

(5) Notwithstanding the provisions of paragraph (c)(4) of this section, any dealer having tobacco transactions after March 1 shall make reports on MQ-79 at the end of each week, as provided in subparagraph (2).

(d) *Daily report to warehousemen for buyers corrections account.* Notwithstanding the provisions of § 725.102, reports shall be made as follows:

(1) Any dealer, buyer, or any other person receiving tobacco from or through a warehouseman at an auction sale or otherwise, which is not invoiced to him or which is incorrectly invoiced to him by the warehouseman, shall furnish to the warehouseman on a daily sales basis an adjustment invoice or buyers settlement sheet.

(2) Each dealer who purchases tobacco on a warehouse floor for any sale day in which there is no adjustment required in the account as shown on the warehouse bill-out invoice for that sale day, shall file a negative report with the warehouseman for that sale day.

(3) Such reports as required under subparagraphs (1) and (2) of this paragraph shall be furnished daily, if practicable (otherwise, they shall be furnished at the end of each week), and shall show the identification number of the purchasing dealer and the identification number of the warehouse where the purchase was made.

(e) *Reporting of processed tobacco.* Any dealer who delivers tobacco to a firm for the purpose of redrying, processing or stemming of such tobacco shall by the end of the week in which such tobacco was delivered report to the State office on MQ-79 Dealer's Report: (1) the date delivered; (2) name and address of the firm to which the tobacco was delivered; and (3) the pounds of tobacco (green weight) delivered which shall be entered in the resales pounds column. Such tobacco shall be considered as a resale on the date of delivery for the purpose of balancing the dealer account and collection of penalties where penalties are due.

(f) *Tobacco represented to be nonquota kind.* Any dealer who his displayed for AMS inspection prior to purchase at nonauction tobacco from a farm in a quota area that is represented to be tobacco of a nonquota kind shall:

(1) Execute a basket ticket which shall have imprinted thereon the type designation for the kind of tobacco normally marketed in the area which shows: (i) the name and address of the producer, (ii) the pounds of tobacco in the basket and (iii) the State and county code and farm number on which produced;

(2) Execute a sale bill which shows; (i) the name and address of the producer; (ii) the State and county code and farm number on which produced; (iii) the pounds in each basket and total pounds for the farm; and shall furnish a copy of each basket ticket and sale bill to the State office at the end of the sale day.

§ 725.101 Dealer purchases of damaged tobacco for later resale.

Any dealer, warehouseman, or other person who plans to purchase tobacco in the form normally marketed by produces for resale that was damaged by such things as, but not limited to fire and water shall prior to purchase report such plans to the State ASCS office issuing MQ-79, Dealer Record Book. Such report shall be timely made so as to allow prior inspection for the marketable value of such damaged tobacco, and the weighing and removal of such tobacco to be witnessed by representatives of the State ASCS office. Any damaged tobacco purchased prior to reporting such plans to the State ASCS office and subsequent inspection by an ASCS representative shall be considered excess tobacco if later resold.

§ 725.102 Dealers exempt from regular records and reports on MQ-79; and season report for dealers.

(a) Any dealer or buyer who acquires tobacco and resells, in the form in which tobacco ordinarily is sold by farmers, 5 percent or less of any such tobacco shall not be subject to the requirements of § 725.100 except for the requirements which relate to the reporting of nonauction purchases from producers and the requirements of paragraph (d) of § 725.100. A dealer or buyer whose resales in the form ordinarily sold by farmers exceed 5 percent of its purchases as a direct result of order buying for another dealer for a service fee may report under paragraph (b) of this section in lieu of § 725.100 (except for requirements which relate to nonauction purchases from producers and requirements of paragraph (d) of § 725.100), provided prior approval is obtained from the Director, Commodity Stabilization Division.

(b) For the 1973-74 and subsequent marketing years, each dealer or buyer shall also make a report not later than March 1 of each year to the Director, Commodity Stabilization Division, showing by States where acquired, source and pounds of all tobacco purchased in the form normally marketed by farmers received by him as a result of auction or nonauction sale, including tobacco received which was not billed to him. The report shall show:

(1) For purchases at auction for each warehouse (i) USDA registration number (warehouse code), (ii) name and address of warehouse, (iii) gross pounds originally billed to the buyer, (iv) gross pounds billed to the buyer for which payment was made, (v) gross pounds from the company correction account deducted for short baskets and short weights and returned baskets, and (vi) gross pounds from the company correction account added for long baskets and long weights.

(2) For purchases at nonauction (i) name and address of seller (dealer or farmer), (ii) seller's number (dealer's registration number or farm number, including State and county code), and (iii) pounds purchased.

§ 725.103 Recordkeeping and reporting requirements for processed producer carryover tobacco.

(a) *General.* Since carryover producer tobacco, which is processed and stored, may be in excess of 110 percent of a farm's marketing quota for the current year, the determination of the date of marketing and the terms and conditions under which the tobacco is processed and stored is important. Any contract or agreement between the farm operator and the warehouseman (or marketing agent) or between the warehouseman (or marketing agent) and the processor or storage firm may be submitted to the State executive director for an opinion as to whether the agreement when executed may be considered as constituting a marketing of tobacco. Even though a favorable opinion may have been given on an agreement or contract, any act or verbal agreement which alters the terms or conditions of the agreement or contract submitted for opinion may be considered as a marketing of tobacco.

(b) *Applicability.* The provisions of this section provide the recordkeeping and reporting requirements for firms which act as marketing agent, process, or store processed producer carryover tobacco.

(c) *Pounds to be charged to farm quota.* The pounds (green weight) delivered for processing shall be charged to the farm's marketing quota when marketed.

(d) *Marketing agent records and reports.* Each marketing agent shall keep such records that will enable him to fulfill the requirements of this section. In addition, the marketing agent shall keep all records relating to the receiving, processing, storage and sale of producer tobacco delivered to him for processing.

(1) *Basket ticket and warehouse floor sheet or other delivery receipt.* The marketing agent shall prepare a basket ticket for each basket of tobacco received from a farm. In addition, the marketing agent shall prepare a warehouse floor sheet or other delivery receipt showing as a minimum the following information:

(i) Floor sheet or delivery receipt number;

(ii) Name and address of marketing agent;

(iii) Date tobacco is received;

(iv) Number of pounds in each basket and total pounds green weight received;

(v) State and county code and farm number on which the tobacco was produced; and

(vi) Farm operator's name and address.

The marketing agent shall not receive any tobacco from a farm unless a current year marketing card or a document, which shows the State and county code and farm number, is furnished the weighman, certified by the executive director of the county office serving the farm.

(2) *Furnishing floor sheet or delivery receipt to the State office.* The marketing agent shall by the end of the calendar week in which the tobacco was received furnish to the State office of the State in which the marketing agent's business is located a copy of each floor sheet or delivery receipt for tobacco received during that calendar week. The marketing agent shall attach to the floor sheets or delivery receipts a transmittal memorandum showing:

(i) Transmittal number (numbered, beginning with number one, in sequence until all floor sheets or delivery receipts are transmitted for a marketing year);

(ii) Date of transmittal;

(iii) Number of floor sheets or delivery receipts submitted in transmittal; and

(iv) Total pounds green weight on floor sheets or delivery receipts delivered by such transmittal.

(3) *Furnishing floor sheet or delivery receipt and basket ticket to processor.* The marketing agent shall furnish two copies of each floor sheet or delivery receipt to the processor when the tobacco identified by such floor sheet or delivery receipt is delivered for processing. One or more copies of each basket ticket shall remain with the respective basket of tobacco.

(4) *Storage warehouse receipts.* The marketing agent is responsible for arranging for the storage and subsequent sale of the tobacco and shall not authorize release of the processed tobacco from storage until such tobacco is sold.

(5) *Sales report.* The marketing agent shall by the end of the calendar week in which processed producer tobacco is sold furnish a sales report to the State office of the State in which his business is located showing:

(i) Purchaser's name, address, and dealer number;

(ii) Date of purchase;

(iii) Date and delivery order number authorizing the storage firm to deliver the tobacco to the purchaser;

(iv) Sale report number (number beginning with number one for each crop year in sequence until all the tobacco for which the marketing agent is responsible is sold);

(v) For each hogshead the hogshead number, grade and original net (processed) weight;

(vi) Total original net processed weight of sale; and

(vii) Percentage (rounded to thousandths of a percent) pounds (original processed net weight) sold is of total net (original processed) weight of pooled tobacco processed.

(6) *Summary sheet.* The marketing agent shall, by the end of the week in which processed producer tobacco is sold, furnish to the State office of the State in which his business is located, a summary sheet for each farm, having tobacco in the pool showing:

(i) Date of sale;

(ii) Purchaser's name, address, and dealer number;

(iii) Processed pounds sold and percentage sale is of total pounds processed rounded to thousandths of a percent;

(iv) Sales report number on which included; and

(v) Total pounds (green weight) sold for subject farm as of that summary computed by multiplying the farm's green weight pounds delivered for processing by a factor determined by adding (*a*) the percent which the pounds (original weight) of stems sold in all sales is to the total pounds net weight processed, and (*b*) the percent which the pounds (original weight) of strips and scrap sold in all sales is to the net weight of the strips and scrap processed; and by subtracting from the sum so determined, the lesser of the percent determined in paragraph (d)(6)(v)(*a*) of this section, or the percent determined in paragraph (d)(6)(v)(*b*) of this section, multiplied by the percent which the original weight of the strips and scrap processed is to the total pounds net weight processed. If all processed tobacco (strips, stems and scrap) is not sold to the same buyer on the same date, the marketing agent shall prepare separate summary sheets for each.

(7) *Retention of records.* The marketing agent shall keep all records including those specified in this paragraph for three years following completion of processed tobacco sales for a crop year pool.

(e) *Processor records and reports.* Each processor of producer-owned tobacco, in addition to the records and reports required by § 725.105, shall keep such records that will enable him to satisfy the requirements of this section. In addition, the processor shall keep all records relating to the receiving, processing, storage and sale of producer carryover tobacco delivered to him for processing.

(1) *Furnishing copy of floor sheet or delivery receipt to State office.* The processor shall furnish a copy of each floor sheet or delivery receipt to the State office of the State in which his business is located by the end of each calendar week in which tobacco represented by such floor sheets or delivery receipts was delivered for processing. The processor shall attach a transmittal memorandum to the floor sheets showing:

(i) Transmittal number (numbered beginning with number one, in sequence until all floor sheets or delivery receipts are transmitted for a marketing year);

(ii) Date of transmittal;

(iii) Number of floor sheets or delivery receipts submitted in transmittal; and

(iv) Total pounds green weight on floor sheets or delivery receipts delivered by such transmittal.

(2) *Production record.* The processor shall prepare a production record and furnish a copy to the marketing agent showing the:

(i) Hogshead number for strips, stems and scrap (the grade, gross, tare, and net weight shall be shown by the processor for each); and

(ii) Total pounds net processed weight for tobacco received for processing from such marketing agent.

(3) *Summary of tobacco processed.* The processor shall, by the end of the month in which producer tobacco is processed, furnish the marketing agent and State office of the State in which his business is located a summary showing the pounds green weight:

(i) Delivered for processing; and

(ii) Processed.

(4) *Retention of records.* The processor shall keep all records relating to processing producer tobacco, including those specified in this paragraph, for three years following the year in which such tobacco is processed.

(f) *Storage firm records and reports.* Any firm storing processed producer owned tobacco, in addition to the records and reports required by § 725.105, shall:

(1) Issue to the marketing agent a blanket warehouse receipt with a detailed listing showing for each hogshead of processed producer tobacco stored the hogshead number, grade, gross, tare and net weight; and

(2) Keep records relating to the storage transaction for three years following the year in which the last hogshead for a respective crop year is released by the marketing agent from storage.

(g) *Dealer buyer report.* Any dealer who purchases producer processed tobacco shall, by the end of the calendar week in which such tobacco was purchased, furnish the State office of the State in which his business is located by name of marketing agent for each hogshead purchased the: (1) grade; (2) crop year, and (3) original net processed weight of each.

(h) *Processed pounds reflected on marketing card.* The county committee shall deduct the pounds green weight delivered for processing from 110 percent of the following year's marketing quota for the farm and reflect the balance on any marketing card issued for the farm.

§ 725.104 Recordkeeping and reporting requirements for unprocessed producer carryover tobacco.

(a) *General.* Since carryover producer tobacco may be in excess of 110 percent of a farm's marketing quota for the current year, the determination of the date of marketing and the terms and conditions under which the tobacco is stored is important. Any contract or agreement between the storage firm and the producer may be submitted to the State executive director for an opinion an to whether the agreement when executed may be considered as constituting a marketing of tobacco. Even though a favorable opinion may have been given on an agreement or contract, an act or verbal agreement which alters the terms or conditions of the agreement or contract submitted for opinion may be considered as a marketing of tobacco.

(b) *Applicability.* The provisions of this section provide the recordkeeping and reporting requirements for firms which act as marketing agent or store unprocessed producer carryover tobacco.

(c) *Pounds to be charged to farm quota.* The pounds green weight delivered for marketing or storage shall be charged to the farm marketing quota when marketed.

(d) *Storage firm records and reports.* Any storage firm storing unprocessed producer owned tobacco, in addition to the records and reports required by § 725.105, shall keep such records that will enable him to satisfy the requirements of this section. In addition, the storage firm shall keep all records related to receiving and storage of producer tobacco.

(1) *Basket ticket and delivery receipt.* The storage firm shall prepare a basket ticket for each basket of tobacco received from a farm. In addition, the storage firm shall prepare a delivery receipt showing as a minimum the following information:

(i) Delivery receipt number;

(ii) Name and address of storage firm;

(iii) Date tobacco is received;

(iv) Number of pounds in each basket and total pounds received from each farm;

(v) State and county code and farm number on which the tobacco was produced; and

(vi) Farm operator's name and address.

The storage firm shall not receive any tobacco from a farm unless a current year marketing card or a document which shows the State and county code and farm number, certified by the executive director of the county office serving the farm, is furnished when the tobacco is delivered.

(2) *Furnishing delivery receipt to the State office.* The storage firm shall, by the end of the calendar week in which tobacco was received, furnish to the State office of the State in which the business is located a copy of each delivery receipt for tobacco received during that calendar week. The storage firm shall attach to the delivery receipts a transmittal memorandum showing:

(i) Transmittal number (numbered, beginning with number one, in sequence until all delivery receipts are transmitted for a marketing year);

(ii) Date of transmittal;

(iii) Number of delivery receipts submitted in transmittal; and

(iv) Total pounds on delivery receipts submitted by the transmittal.

(3) *Identification of tobacco while stored.* Each basket of tobacco, until removal from storage, shall be identified by a basket ticket attached to the respective basket of tobacco showing the:

(i) Farm operator's name and address;

(ii) State and county code and farm number for the farm; and

(iii) Pounds of tobacco in each basket.

(4) *Storage firm reports.* The storage firm shall furnish to the State office of the State in which the business is located a report by storage location and crop year showing (i) by farms the pounds of unprocessed tobacco and (ii) the total pounds of unprocessed producer tobacco at that location. Should any tobacco be moved from one storage location to another, an amended report shall be furnished by the end of the week in which such tobacco was moved. When tobacco is removed from storage, in addition to any other requirements of this subpart, the storage firm, by the end of the week in which such tobacco was removed from storage, shall furnish the State office a report showing by farm from which received:

(*a*) The pounds removed from storage;

(*b*) The name and address of the person receiving such tobacco; and

(*c*) Date on which removed.

(5) *Retention of records.* All records relating to the storage of producer tobacco including those required by this section shall be retained by the storage firm for 3 years following the removal of such tobacco for a respective crop year from storage.

§ 725.105 Records and reports of truckers, firms redrying, prizing, or stemming tobacco, and storage firms.

(a) Each trucker shall keep such records as will enable him to furnish the State ASCS office a report with respect to each lot of tobacco received by him showing:

(1) The name and address of the producer.

(2) The date of receipt of the tobacco.

(3) The number of pounds received.

(4) The name and address of the person to whom it was delivered and the date delivered.

(b) Each firm engaged in the business of redrying, prizing, or stemming tobacco shall keep records with respect to each lot of tobacco received by such firm showing:

(1) The name and address of producer, dealer, warehouseman, marketing agent, or other person for whom the tobacco was received.

(2) The date of receipt of tobacco.

(3) The number of pounds (green weight) received.

(4) The purpose for which tobacco was received (redrying, stemming or prizing).

(5) The amount of any advance or loan made by him on the tobacco.

(6) The disposition of the tobacco including the net weight of the tobacco (following redrying, prizing or stemming), and number of hogsheads by classification (strips, stems, scrap, leaf).

(7) Person to whom delivered, pounds involved, and date delivered.

Any such firm shall report this information to the State ASCS office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and tobacco purchased by him at auction or for which he had previously reported on Form MQ-79. Where such firm qualifies for the exemption in paragraph (a) of § 725.102, he is required to report only such tobacco received that does not belong to him.

(c) Each firm engaged in storing unprocessed tobacco shall keep records with respect to each lot of unprocessed tobacco received by such firm showing:

(1) The name and address of producer, dealer, warehouseman, marketing agent or other person for whom the tobacco was received;

(2) The date of receipt of the tobacco;

(3) The number of pounds received;

(4) The amount of any advance or loan made by him on the tobacco;

(5) The disposition of the tobacco;

(6) The person to whom delivered, the pounds involved and date delivered.

Any such firm shall report this information to the State ASCS office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and tobacco purchased by him at auction or for which he had previously reported on Form MQ-79. Where such firm qualifies for the exemption in paragraph (a) of section 725.102, he is required to report only such tobacco received for storage that does not belong to him.

§ 725.106 Separate records and reports from persons engaged in more than one business.

Any person who is required to keep any record or make any report as a warehouseman, processor, dealer, buyer, trucker, or as a person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco for producers, and who is engaged in more than one such business, shall keep such records as will enable him to make separate reports for each such business in which he is engaged to the same extent for each such business as if he were engaged in no other business.

§ 725.107 Failure to keep records and make reports or making false report or record.

(a) *Warehousemen and dealers*—(1) *Failure to keep records or make reports.* Under the provisions of section 373(a) of the act, any warehouseman, processor, buyer, dealer, trucker, or person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco for producers who fails to make any report or keep any record as required, or who makes any false report or record, is guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $500 for each offense. In addition, any tobacco warehouseman, dealer, or buyer who fails, upon being requested to do so, to remedy a violation by submitting complete reports and keeping accurate recorders shall be subject to an additional fine, not to exceed $5,000.

(2) *Failure to obtain producer's marketing card or dealer identification card.* The failure of (i) any dealer or warehouseman to obtain a producer's marketing card, MQ-76, to identify a sale of producer tobacco or (ii) any dealer or warehouseman who fails to obtain a dealer identification card, MQ-79-2, to cover a resale of tobacco, shall constitute a failure to make a report.

(b) *False representations—warehousemen, dealers, and producers.* In addition to the monetary penalties prescribed in §§ 725.94 and 725.95, the penalties designated in paragraph (a)(1) of this section are in addition to penalties prescribed by other criminal statutes including United States Code, title 18, section 1001, which provides for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, for a person convicted of knowingly and willingly committing such acts as making a false acreage report, altering a marketing card, falsely identifying tobacco or buying and selling unused "110 percent of quota poundage" on marketing cards.

§ 725.108 Registration of warehousemen and dealers.

Any dealer or warehouseman dealing in flue-cured tobacco shall be registered with the U.S. Department of Agriculture. Such registration will be handled by the North Carolina State ASCS Office, Raleigh, N.C. Any person desiring to register as a dealer or warehouseman shall complete an "Application for Dealer Indentification Card" and submit it to the State office. Warehousemen will be assigned a three-digit identification number and dealers will be assigned a four-digit identification number. Persons requesting it will be issued a dealer identification card, Form MQ-79-2.

§ 725.109 Duties of Kansas City ASCS Data Processing Center.

Numerous recordkeeping and reporting provisions required by these regulations are the responsibility of the Kansas City ASCS Data Processing Center (also referred to as KCDPC). The duties of the Center are set forth in writing in frequent issuances of internal procedures.

§ 725.110 Examination of records and reports.

For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining the information required to be furnished, in any report, but not so furnished, any warehouseman, processor, dealer, buyer, trucker, or person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco for producers, shall make available at one place for examination by representatives of the State executive director and by employees of the Office of the Inspector

General, and of the Commodity Stabilization Division and Tobacco Division of the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, upon written request by the State executive director, all such books, papers, records, basket tickets, tobacco sale bills, buyer adjustment invoices, accounts, canceled checks, check register, check stubs, correspondence, contracts, documents, warehouse bill-out invoices or daily summary journal sheet, the tissue copy of Form MQ-72-1, Report of Tobacco Auction Sale, journal of producer marketing cards retained at warehouse and memoranda as the State executive director or the Director has reason to believe are relevant and are within the control of such person.

§ 725.111 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained by him for 3 years after the end of the marketing year. Records shall be kept for such longer period of time as may be requested in writing by the State executive director, or the Director.

§ 725.112 Information confidential.

All data reported to or acquired by the Secretary pursuant to the provisions of this subpart shall be kept confidential by all officers and employees of the U.S. Department of Agriculture, and by all members of county and community committees, and all county office employees and only such data so reported or acquired, as the Deputy Administrator deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under title III of the act.

§ 725.113 Determination of discount varieties.

(a) *Definition.* "Discount Variety" means any of the flue-cured tobacco seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, or Dixie Bright 244, or a mixture or strain of such seed varieties, or any breeding line of flue-cured tobacco seed varieties, including, but not limited to, 187-Golden Wilt (also designated by such names as No-Name, XYZ, Mortgage Lifter, Super XYZ), having the quality and chemical characteristics of the seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, or Dixie Bright 244: *Provided,* That where there is growing in a field offtype plants of not more than 2 percent, such offtype plants shall not be considered in certifying the flue-cured tobacco variety being produced. Flue-cured tobacco which is not certified to be discount variety shall be considered as "acceptable variety".

(b) *Producer's report.* (1) For each farm on which flue-cured tobacco is produced in the current year, the farm operator or any producer on the farm shall file with the county office a report on MQ-32, Certification of Flue-Cured Tobacco Varieties Planted, showing whether or not discount variety tobacco was planted on the farm.

(2) If the farm operator or any producer on a farm certified on MQ-32 that there was not planted on the farm any discount variety of flue-cured tobacco, all of the flue-cured tobacco produced on such farm shall be considered by the county committee to be acceptable variety tobacco. If the farm operator or any producer thereon has executed and filed a report with the county office on MQ-32, which shows there was not planted on such farm(s) in the current year, any of the discount varieties of flue-cured tobacco, and the operator or a producer on the farm wishes to change the MQ-32 to show there was planted on such farm(s) a discount variety he may, at any time prior to the issuance of a marketing card for the farm, be permitted to file a new MQ-32 which shall supersede and replace the first MQ-32.

(3) If the farm operator or any producer on a farm certifies on MQ-32 that there was planted on the farm any discount variety of flue-cured tobacco, all of the flue-cured tobacco produced on such farm shall be considered by the county committee to be discount variety tobacco.

(c) *Failure to file report.* If the operator of a farm on which flue-cured tobacco is being produced in the current year fails or refuses, within 7 days after a request of the county committee on MQ-34-1, Notice of Action Required Regarding Determination of Seed Varieties of Flue-Cured Tobacco, to file a report on MQ-32, showing whether or not there was planted any of the discount varieties of flue-cured tobacco on such farm, all flue-cured tobacco produced on such farm shall be considered by the county committee to be discount variety tobacco, unless the county committee finds that failure to comply with the request was due to circumstances beyond the control of the farm operator.

(d) *Notice to farm operator.* The farm operator having discount variety tobacco shall be given written notice by certified mail on MQ-34-2, Notice of Determination of Discount Variety of Flue-cured Tobacco. The notice to the farm operator shall constitute notice to all persons who as owner, operator, landlord, tenant, or sharecropper, are interested in the tobacco being grown on the farm.

(e) *Producer's right to recertify.* Any producer on a farm who received a Form MQ-34-2 notifying him that the farm has discount variety tobacco when in fact an acceptable variety is being produced may recertify on Form MQ-32.

(f) *Issuance of marketing cards*—(1) *Notation on card.* If a farm is considered to have discount variety tobacco available for marketing and the farm is eligible for price support, the county executive director shall issue MQ-76, bearing the notation "Discount Variety—Limited Price Support". If the farm is considered to have discount variety tobacco but it is not eligible for price support, the county executive director shall issue MQ-76, bearing the notation "Discount Variety—No Price Support".

(2) *Exchange of cards.* (i) Where an MQ-76, bearing the notation "Discount Variety—Limited Price Support" is issued for a farm, the card may be exchanged at the county office for an MQ-76 without the notation, or (ii) where an MQ-76, bearing the notation "Discount Variety—No Price Support" is issued for a farm the card may be exchanged at the county office for an MQ-76 with the notation "No Price Support": *Provided,* That the farm operator establishes to the satisfaction of the county committee that there has been no commingling or substitution of discount variety tobacco produced on the farm or on any other farm operated by him, and that all discount variety tobacco has been marketed or satisfactorily disposed of, or accounted for.

(3) *Cards for publicly owned experiment stations.* MQ-76 issued to identify marketings of tobacco grown for experimental purposes by or for publicly owned experiment stations shall bear the notation "Discount Variety—Limited Price Support" if such tobacco is discount variety tobacco.

(g) *Identification of flue-cured leaf account tobacco as acceptable variety and reports on MQ-79-1, Flue-Cured.* Whenever the Director determines there is a significant amount of discount variety tobacco available for marketing in any marketing year he may cause to be initiated the provisions of this paragraph. In addition, the Director may terminate any action initiated hereunder when he determines no discount variety of flue-cured tobacco remains available for sale during the remainder of the current marketing season. Notification to warehousemen of action required under this paragraph shall be by the State executive director.

(1) *Warehousemen.* (i) Each warehouseman who offers for auction sale any leaf account flue-cured tobacco on a warehouse floor other than his own, and who requests the other warehouseman to identify such tobacco as being "acceptable variety" shall execute MQ-79-1 (Flue-Cured), Dealer's Certification—Resale Tobacco.

(ii) Each warehouseman who is participating in the Commodity Credit Corporation price support program, and who identifies resale tobacco with a "certified" basket ticket indicating that such tobacco, by virtue of an executed MQ-79-1 (Flue-Cured) is of an acceptable variety shall at the time the tobacco is weighed in have such tobacco covered by an executed MQ-79-1.

(iii) Each executed MQ-79-1 (Flue-Cured) shall show the following information with respect to each lot of resale tobacco:

(*a*) Crop year.

(*b*) Name and address of warehouse where the tobacco is being offered for sale.

(*c*) Tobacco sale bill number and date.

(*d*) Date, signature of dealer and current address, and dealer identification number.

(2) *Dealer.* (i) Each dealer or any other person who offers for auction sale any resale flue-cured tobacco on a warehouse floor which is participating in the

Commodity Credit Corporation price support program and on which floor eligible resale flue-cured tobacco is identified with a "certified" basket ticket, and who requests the warehouseman to identify his tobacco as being an "acceptable variety", shall execute MQ-79-1 (Flue-Cured), Dealer's certification—Resale Tobacco.

(ii) Each executed MQ-79-1 (Flue-Cured) shall show the following information with respect to resale tobacco:

(a) Crop year.

(b) Name and address of warehouse where the tobacco is being offered for sale.

(c) Date, signature of dealer and current address, and dealer identification number.

(d) Tobacco sale bill number and date.

(iii) Each dealer or any person who acquires acceptable variety tobacco in a manner which would make it ineligible for certification on MQ-79-1, or who has on hand both discount variety tobacco and acceptable variety tobacco, and desires to dispose of acceptable variety tobacco prior to disposing of the discount variety tobacco, may apply in writing to the State executive director for a special authorization to have the acceptable variety tobacco certified when offered for auction sale.

(h) *Estimate of production.* For any farm on which discount variety tobacco is being grown, a Form MQ-92, Estimate of Production, shall be obtained.

§ 725.114 Determination of use of DDT and TDE.

(a) *Definition.* DDT means a pesticide bearing the chemical, or a mixture of 1,1,1-trichloro-2,2-bis (p-chlorophenyl) ethane and 1,1,1-trichloro-2-(o-chlorophenyl) - 2 - (p-chlorophenyl) ethane. TDE means a pesticide bearing the chemical or a mixture of 1,1-dichloro-2, 2-bis (p-chlorophenyl) ethane. In addition, DDT or TDE shall include any products containing derivatives of such.

(b) *Producer's report.* For each farm on which flue-cured tobacco is produced, the farm operator or any producer on the farm shall for each year file with the county office a report on MQ-38, Certification of Use or Nonuse of DDT or TDE on Tobacco, showing whether or not DDT or TDE was used on the tobacco in the field or after being harvested.

(c) *Failure to file report.* If the operator of a farm on which flue-cured tobacco is being produced fails or refuses, within 7 days after a request of the county committee to file a report on MQ-38, Certification of Use or Nonuse of DDT or TDE on Tobacco, showing whether or not DDT or TDE was used on such tobacco, all flue-cured tobacco of such crop produced on such farm shall be considered by the county committee to have been subjected to such a pesticide unless the county committee finds that failure to file the report was due to circumstances beyond the control of the farm operator.

(d) *Producers right to recertify.* Any producer on a farm shall have the right to recertify on MQ-38 to the use or nonuse of DDT or TDE if the recertification is filed with the county committee prior to the time any tobacco has been marketed from the farm or a request has been made to collect a sample of cured leaves.

(e) *Collection of samples for chemical analysis.* Samples shall be collected from selected producer tobacco crops during weigh-in at the auction warehouse. Samples shall also be collected on any farm where the county committee has reason to believe the producer used DDT or TDE on the tobacco and the producer certified to nonuse of DDT or TDE on the crop.

(f) *Producer refusal to permit sampling.* If a producer or producer representative refuses to permit the sampling of a tobacco crop all tobacco of such crop produced on the farm shall be considered by the county committee to have been treated with DDT or TDE.

(g) *Chemical analyzation of samples.* Each sample shall be analyzed for residues of DDT, TDE, and their metabolites.

(h) *Notice to farm operator.* A written notice shall be furnished to the operator of each farm where the county committee determines that tobacco, after being transplanted in the field or after being harvested from a farm, was treated with DDT or TDE. Such determination by the county committee shall be based on (1) the certification on MQ-38, or (2) failure to file MQ-38, or (3) refusal to permit sampling, or (4) chemical analysis showing total DDT-TDE residue to be greater than or equal to 3 parts per million. The notice to the farm operator shall constitute notice to all persons who as owner, operator, landlord, tenant, or sharecropper, are interested in the tobacco being grown on the farm.

(i) *Producer's right to appeal.* Any producer on a farm who believes that the DDT-TDE determination for the farm by the county committee is not correct may file an appeal with the county committee asking for reconsideration of such determination. The request for appeal and facts constituting a basis for such reconsideration must be submitted in writing and postmarked or delivered to the county committee within 7 days after the date of mailing of the notice of such determination. The request for appeal must be signed by the person making the appeal. If the appellant believes that the county committee's determination on such appeal is not correct, he may appeal to the State committee within 7 days after the date of mailing of the notice of the decision of the county committee. The decision of the State committee shall be final.

§ 725.115 Warehouses authorized to retain producer marketing cards between sales.

Notwithstanding any other provision of this part, to facilitate the scheduling of farmers' tobacco to the warehouse, marketing cards with the permission of the producer may be retained at the warehouse between sales even though no producer on the farm for which the card is issued has tobacco on the floor for sale or to be settled for, as provided in this section.

(a) *Warehouses eligible to retain producer marketing cards between sales.* A warehouse shall be eligible to retain producer marketing cards between sales if the operator thereof shall:

(1) Execute and file on a form approved by ASCS a written request with the State committee (or county committee if designated by the State Committee.).

(2) Agree to be responsible to ASCS for an amount of money equal to the amount that may be assessed against any producer as marketing quota penalties, if the marketing that is the basis of assessment of penalty occurred while the warehouse was authorized to have custody of the marketing card, for:

(i) Overmarketings resulting from errors made at the warehouse in entering "balance after sale" pounds on the producer's marketing card or failure to deduct pounds sold on producer's marketing card.

(ii) Tobacco falsely identified for marketing by use of the producer's marketing card.

(iii) Producer's failure to account for any tobacco marketed by use of the producer's marketing card.

(iv) Tobacco marketed at the warehouse in excess of 110 percent of quota as shown on the producer's marketing card.

(3) Agree to maintain an accurate and up-to-date journal containing a listing of all producer marketing cards retained by the warehouse to facilitate the scheduling of farmer's tobacco. The journal shall show for each card retained the:

(i) Name of farm operator;

(ii) Serial number of farm;

(iii) Date marketing card obtained from producer; and

(iv) Date marketing card returned to producer.

Such journals shall be maintained for the length of time and under the conditions required for other warehouse records.

(4) Agree to return the marketing card to the producer at any time the producer may so request or, in the absence of a request, return it to the producer within seven (7) days after the close of the warehouse for the season.

(5) Agree that this authorization may be terminated by ASCS for failure to comply with provisions of this agreement.

(b) *Penalties considered to be the responsibility of warehouseman.* Notwithstanding any other provision of this part, a warehouse operator who executes and files a written request with the State committee (or county committee if designated by the State committee) for authorization to retain producers' marketing cards at the warehouse, with grower permission, shall be responsible to ASCS for an amount of money equal to the amount that may be assessed against producer as marketing quota penalties, provided the marketing that is the basis of such assessment occurred while the warehouse was authorized to have custody of the marketing card, for:

(1) Overmarketings resulting from errors made at the warehouse in entering "balance after sale" pounds on the producer's marketing card or failure to deduct pounds sold on the producer's marketing card. Except that no warehouse operator shall be responsible for any penalty under this subparagraph, if such penalty would not have been assessed against the producer in accordance with paragraph (d) of § 725.95.

(2) Tobacco falsely identified for marketing by use of the producer's marketing card.

(3) Producer's failure to account for any tobacco marketed by use of the producer's marketing card.

(4) Tobacco marketed at the warehouse in excess of 110 percent of quota as shown on the producer's marketing card.

Prior to the issuance of the proposed changes in the regulations, data, views or recommendations pertaining thereto which are submitted to the Director, Commodity Stabilization Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250, will be given consideration. To be sure of consideration, such submission should be postmarked not later than July 12, 1973. All written submissions made pursuant to this notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 3629 South Building, 14th and Independence Avenue SW., Washington, D.C.

Signed at Washington, D.C. on June 20, 1973.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

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[7 CFR Part 726]

BURLEY TOBACCO

Notice of Determination To Be Made With Respect to Burley Tobacco Marketing Quota Regulations, 1971–72 and Subsequent Marketing Years

Pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended (7 USC 1281 et. seq.), the Department is preparing to amend the burley tobacco marketing quota regulations pertaining to establishing farm marketing quotas, the identification of marketings and records and reports incident thereto.

The purpose of this document is to give notice of the proposed changes in the regulations which are as follows:

1. The definitions of green weight, hogshead, pool, processed, production record, strip, scrap and stem are added to define terms used in two new sections relating to the processing and storage of producer carryover tobacco.

2. The term false identification is defined and expanded to clarify the allotment reduction and penalty provisions relating to violations where a producer falsely identifies or fails to identify marketings of tobacco as to the farm on which produced.

3. A new paragraph is added to § 726.52 relating to the extent of determination and rule for rounding percentages used to reduce tobacco farm marketing quotas after it has been determined that a violation has occurred.

4. Section 726.64 is amended to refer to part 731 of this chapter for release and reapportionment closing dates.

5. Section 726.68 is amended to permit transfers by lease or owner after July 31 to be approved either to or from a farm even though a transfer may have been approved either to or from the farm prior to August 1 and to provide that a farm marketing quota may be reduced for a violation after a transfer is approved if the quota after transfer is equal to or greater than the amount of the reduction.

6. Section 726.85 is amended to provide that basket tickets used for tobacco represented to be a nonquota kind and which is offered for sale in an area where a quota kind of tobacco is normally marketed shall be imprinted with the type designation representing the kind of quota tobacco normally marketed in the area.

7. Section 726.88 is amended to provide that penalty will be due from dealers or buyers of tobacco from producers if the pounds sold are not reflected on the producer's marketing card.

8. Sections 726.89 and 726.92 are amended to provide that penalties for false identification and failure to account and quota reductions for false identification need not be applied where the pounds of violation are very small when compared to the effective farm marketing quota and no adverse effect on the tobacco program in the area would result.

9. Section 726.93 is amended to provide that sale bills and basket tickets of tobacco represented to be nonquota tobacco shall show the producer's name, address, and the State and county code and farm number on which the tobacco was produced.

10. Sections 726.93 and 726.94 are amended to provide that the warehouseman dealer shall file a MQ–79, Dealer's Report at the end of each sales day during the auction season for the warehouse.

11. Section 726.93 is amended to provide that nonauction purchases and resales column totals from the MQ–79, Dealer's Report shall be entered on the MQ–80, Daily Warehouse Sales Summary.

12. Sections 726.93 and 726.94 are amended to provide that any warehouse leaf account, floor sweepings, or other dealer-owned tobacco that is processed into a form not normally marketed by producers shall be entered on the MQ–79, Dealer's Report as a resale at the time it is processed.

13. Section 726.94 is amended to provide that where tobacco, represented to be a nonquota kind is displayed for AMS inspection, a basket ticket and sale bill shall be prepared which identifies the farm on which the tobacco was produced.

14. Section 726.95 is amended to exempt dealers from reporting their total purchases and resales of tobacco in the form normally marketed by producers on the MQ–79, Dealer's Record where five percent or less of such tobacco is resold in the form normally marketed by producers and where the resales exceeding five percent are due to order buying and prior approval is obtained from the Director, Commodity Stabilization Division.

15. Section 726.96 is amended to clarify the information which a processor or storage firm is required to report at the end of the marketing year for tobacco handled by him which he does not own.

16. Sections 726.105 and 726.106 are added to provide recordkeeping and reporting requirements where producer owned tobacco is delivered for processing or storage.

The proposed changes are set forth as follows:

1. Paragraphs (k) through (pp) of § 726.51 are amended to read:

§ 726.51 Definitions.

* * * * *

(k) *False identification.* False identification occurs if:

(1) tobacco was marketed or was permitted to be marketed in any marketing year as having been produced on the acreage allotment for any farm which, in fact, was produced on a different farm;

(2) tobacco was marketed or was permitted to be marketed in any marketing year from a farm and was not identified by a tobacco marketing card for the farm;

(3) the farm operator or any other producer on a farm permits the use of the tobacco marketing card for the farm to record a marketing of tobacco when, in fact, no tobacco was marketed from the farm.

(l) *Farm acreage allotment.* The allotment established for 1970, after any permanent adjustment and prior to any temporary adjustment.

(m) *Farm marketing quota*—(1) *Old farm.* The pounds determined by multiplying the preliminary farm marketing quota by the national factor, adjusted as required by the minimum provisions, of § 726.57(a), plus any permanent quota adjustment.

(2) *New farm.* The pounds for the farm determined by the county committee with the approval of the State committee.

(n) *Farm yield.* The farm yield determined as provided in § 726.55 or § 726.65.

(o) *Floor sweepings.* The actual quantity of scraps or leaves of tobacco which accumulate on the warehouse floor in the regular course of business: *Provided,* That floor sweepings above the pounds determined by multiplying 0.0024 by the total first sales of tobacco at auction for the season for the warehouse, shall be deemed to be leaf account tobacco. Floor sweeping tobacco shall be kept separate from any other tobacco when sold.

(p) *Green weight.* The weight of tobacco which is in the form normally

marketed by farmers prior to being redried, prized, or processed.

(q) *Hogshead.* A container in which tobacco is packed and stored.

(r) *Leaf account tobacco.* All tobacco purchased or otherwise acquired by or for the account of a warehouse, and shall include but not be limited to, tobacco from Buyers Corrections Account, sales and resales of such tobacco, floor sweepings purchased from another warehouseman or dealer, and floor sweepings deemed to be leaf account tobacco under paragraph (o) of this section.

(s) *Market.* The disposition of tobacco in raw or processed form by voluntary or involuntary sale, barter, or exchange, or by gift between living persons. "Marketing" and "marketed" shall have corresponding meanings to the term "market."

(t) *Marketing recorder or field assistant.* Any employee of the U.S. Department of Agriculture, or any employee of an Agricultural Stabilization and Conservation Service county (ASCS) office, whose duties involve the preparation and handling of the records and reports pertaining to the identification of marketings of tobacco.

(u) *Marketing year.* The period beginning October 1 of the year in which the tobacco is produced and ending September 30 of the following year.

(v) *New farm.* A farm for which a marketing quota is established in the current year which did not previously have a quota established for the current year.

(w) *Nonauction sale.* Any first marketing of tobacco other than by a sale at auction.

(x) *Old farm*—(1) *1971 through 1975 crop years.* A farm which had a 1970 farm acreage allotment or there was burley tobacco planted or considered planted in 1 or more years of the base period.

(2) *1976 or later crop years.* A farm which had burley tobacco planted or considered planted in the base period.

(y) *Overmarketings.* The pounds by which the pounds marketed exceed the effective farm marketing quota.

(z) *Penalty-free carryover tobacco.* The pounds of unmarketed tobacco produced before calendar year 1971 which could have been marketed without penalty during the 1970–71 marketing year.

(aa) *Planted or considered planted.* Credit assigned in the current year for a farm with an established farm marketing quota when:

(1) Burley tobacco is planted on the farm,

(2) Quota is: (i) Leased and transferred from the farm, (ii) in the eminent domain pool, or (iii) preserved under conservation programs or practices, as provided in Part 719 of this chapter,

(3) A restrictive lease on federally owned land is in effect prohibiting tobacco production, or

(4) Effective quota is zero because of overmarketings or a violation of regulations.

(bb) *Pool.* A quantity of tobacco delivered to a marketing agent.

(cc) *Preliminary farm marketing quota*—(1) *1971 crop year.* The pounds determined by multiplying the 1970 farm acreage allotment by the farm yield.

(2) *1972 and later crop years.* The farm marketing quota for the preceding year.

(dd) *Processed, processing.* A method of preparing green weight tobacco for storage in which the tobacco may be green prized, redried, stemmed, tipped or threshed and the resulting product packed in hogsheads.

(ee) *Production record.* A record prepared by a processor to account for the processing of tobacco.

(ff) *Quota adjustments*—(1) *Temporary.* (i) Effective undermarketings, (ii) overmarketings from any prior year, (iii) reapportioned quota from eminent domain pool, (iv) quota transferred by lease or by owner, (v) pounds in violation of the regulations for a prior year, and (vi) for 1971 only, pounds of penalty-free carryover tobacco.

(2) *Permanent.* (i) Old farm adjustment from reserve, and (ii) pounds transferred to the farm from the eminent domain pool.

(gg) Resale. The disposition by sale, barter, exchange, or gift between living persons, of tobacco which has been marketed previously.

(hh) *Sale day.* The period at the end of which the warehouseman bills to buyers the tobacco purchased by them during such period.

(ii) *Scrap tobacco.* The residue which accumulates in the course of preparing tobacco for market, consisting chiefly of portions of tobacco leaves and leaves of poor quality.

(jj) *Strip, scrap, stem.* Types of products resulting from processing of tobacco where the tobacco is "tipped" and "threshed."

(kk) *Suspended sale.* Any marketing of tobacco at auction for which the sale is not identified by a producer marketing card or a dealer's identification card by the end of the sale day on which such marketing occurred.

(ll) *Tobacco.* Burley tobacco, type 31, as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the U.S. Department of Agriculture.

(mm) *Tobacco available for marketing.* All tobacco produced on a farm which has not been marketed and which has not been disposed of so that it cannot be marketed.

(nn) *Trucker.* A person who trucks or hauls tobacco for producers or other persons.

(oo) *Undermarketings*—(1) *Actual.* The pounds by which the effective farm marketing quota is more than the pounds marketed.

(2) *Effective.* The smaller of actual undermarketings or the sum of the previous year's farm marketing quota plus pounds leased to the farm for the previous year.

(pp) *Warehouseman.* A person who engages in the business of holding sales of tobacco at public auction.

2. In § 726.52 a new paragraph (c) is added to read as follows:

§ 726.52 Extent of determinations, computations, and rule for rounding fractions.

* * * * *

(c) *Percentage reduction for violation.* A percentage of reduction in a tobacco farm marketing quota due to a violation shall be determined in tenths percent and calculations thereof rounded to the nearest tenth percent.

3. The last sentence of paragraph (e) of § 726.64 is amended to read as follows:

§ 726.64 Marketing quotas and yields for farms acquired under the right of eminent domain.

* * * * *

(e) *Closing date for release and reapportionment.* * * * The dates will be determined and announced under Part 731 of this chapter.

4. § 726.68 is amended by revoking paragraph (m) and amending paragraphs (n) and (v) to read as follows:

§ 726.68 Transfer of burley tobacco farm marketing quota by lease or owner.

* * * * *

(m) [Reserved]

(n) *Limitation on transfer to and from a farm (subleasing).* (1) *Filed before August 1.* The county committee shall not approve any transfer filed for the current year before August 1 where, after approval, a transfer would be in effect both to and from the same farm: *Provided,* that a transfer may be approved where an allotment and quota are temporarily transferred from a farm for one or more years and the farm is subsequently combined with another farm that is otherwise eligible to receive allotment and quota by transfer.

(2) *Filed after July 31.* The county committee may approve a transfer filed for the current year after July 31 either to or from the same farm (but not both) irrespective of whether any transfer filed before August 1 is in effect for the farm.

* * * * *

(v) *Violations.* If consideration of a violation is pending which may result in a quota reduction for a farm for the current crop year, the county committee shall delay approval of any transfer from the farm until the violation is cleared or the quota reduction is made. However, if the quota reduction in such a case cannot be made effective for the current crop year before April 1 in the States of Alabama, Georgia, North Carolina, South Carolina and Virginia and May 1 for all other States, an annual transfer from the farm may be approved by the county committee. In any case, if, after a transfer of quota has been approved by the county committee, it is determined that the quota for the farm from which the marketing quota is leased is to be reduced

for a violation, the allotment reduction for such farm shall be delayed until the following year unless the quota after any reduction due to overmarketings or transfer is equal to or greater than the reduction for violation.

5. In § 726.85 subparagraph (2) of paragraph (e) is amended to read as follows:

§ 726.85 Identification of marketing.

* * * * *

(e) *Separate display on auction warehouse floor.* * * * (2) Identify each basket by a distinguishably different basket ticket clearly showing the kind of tobacco except where the tobacco is represented to be a nonquota kind the basket ticket shall have imprinted thereon the type designation for the kind of quota tobacco normally marketed in the area.

6. In § 726.88 paragraphs (a) and (b) are amended to read as follows:

§ 726.88 Penalties considered to be due from warehousemen, dealers, buyers, and others excluding the producer.

* * * * *

(a) *Auction sale without marketing card.* Any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card at the time of marketing shall be considered to be a marketing of excess tobacco and the penalty thereon shall be collected and remitted by the warehouseman unless prior to marketing an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

(b) *Nonauction sale.* Any nonauction marketing of tobacco which:

(1) is not identified by a valid marketing card and recorded at the time of marketing on MQ-79, Dealer's Report, the marketing card and MQ-72-2 Report of Nonauction Purchase; or

(2) if purchased prior to the opening of the local auction market for the current year, is not identified by a valid marketing card and recorded on MQ-79, the marketing card, and MQ-72-2 report of tobacco nonauction purchase not later than the end of the calendar week which includes the first sale day of the local auction markets, shall be considered a marketing of excess tobacco. The penalty thereon shall be collected by the purchaser of such tobacco, and remitted with MQ-79 unless prior to marketing an AMS inspection certificate is obtained showing that the tobacco is of a kind not subject to marketing quotas.

7. § 726.89 is revised to read as follows:

§ 726.89 Producers penalties; false identification; failure to account, canceled quotas; overmarketing proportionate share.

(a) *Penalties for marketing over 110 percent of quota.* Penalty at the full rate shall be due on any marketings which exceed 110 percent of the effective farm marketing quota.

(b) *Penalties for false identification or failure to account.* If any producer falsely identifies or fails to account for the disposition of any tobacco produced on a farm, penalty at the full rate shall be due on the larger of: (1) The actual marketings above 110 percent of the effective farm marketing quota, or (2) the amount of tobacco equal to 25 percent of the effective farm marketing quota. The requirements of this paragraph need not be applied if it is determined by the State and county committees that the pounds in violation are very small when compared to the effective quota, and no adverse effect on the operation of the tobacco program in the area would result.

(c) *Canceled quota.* If part or all of the tobacco produced on a farm has been marketed and the quota for the farm is canceled, any penalty due on the marketings shall be paid by the producers.

(d) *Overmarketing proportionate share of effective farm marketing quota.* If the county committee determines that the farm operator or another producer on the farm has marketed more than 110 percent of his proportionate share of the effective farm marketing quota with intent to deprive some other producer on the farm from marketing his proportionate share of the same crop of tobacco, such operator or other producer shall be liable for marketing penalties at the full rate per pound for each pound marketed above 110 percent of his proportionate share of the effective farm marketing quota: *Provided,* That the sum of such penalties shall not exceed the total penalty due on total marketings above 110 percent of the effective farm marketing quota for the farm on which such tobacco was produced. Before assessment of penalty pursuant to this paragraph (d), a hearing shall be scheduled by the county committee and the operator and affected producers shall be invited to be present, or to be represented, to determine whether the operator or another producer on the farm has marketed more than 110 percent of his proportionate share of the effective farm marketing quota. The notice of the hearing shall request the farm operator and affected producers to bring to the hearing tobacco sale bills and other relevant supporting documents. At least two members of the county committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice and any action taken to impose penalty shall be taken after the hearing. If the farm operator or other affected producer does not attend the hearing, or is not represented, the county committee may take whatever action it deems necessary to assess penalty against the proper producers. If a hearing under § 726.81(a) is being held, and it is practicable to do so, such hearing and the hearing under this paragraph may be combined.

(e) *Penalties not to be assessed.* Where the operator or another producer on the farm markets a quantity of tobacco above 110 percent of the effective marketing quota for the farm and such overage is found to have been caused by the failure to record, or improper recording of tobacco poundage data on the marketing card, that amount of the penalty as was due to such failure to record or improper recording will not be required to be paid by the farm operator or other producer on the farm if: (1) For amounts of $10 or less the county committee, and (2) for amounts above $10 the county committee, with the approval of the State committee, determines that each of the following conditions is applicable: (i) The failure to record or incorrect recording resulted from action or inaction of a marketing recorder or another ASCS employee, and (ii) the farm operator or another producer on the farm had no knowledge of such failure or error. Overmarketing for a farm for which the marketing penalty will not be paid pursuant to the provisions of this paragraph (e) shall be determined based upon the correct effective farm marketing quota and correct actual marketings of tobacco from the farm.

8. In § 726.92, a new sentence is added to the end of paragraph (c) and paragraph (e) is revised to read as follows:

§ 726.92 Producer's records and reports.

* * * * *

(c) *False identification.* * * * The requirements of this paragraph need not be applied if it is determined by the State and county committees that the pounds in violation are very small when compared to the effective quota, and no adverse effect on the operation of the tobacco program in the area would result.

* * * * *

(e) *Report of production and disposition.* In addition to any other reports which may be required by this subpart, the operator on each farm or any producer on the farm (even though no quota was established for the farm) shall, upon written request by certified mail from the State or county committee, within 15 days after deposit of such request in the U.S. mail, addressed to such person at his last known address, furnish the Secretary on MQ-108, Report of Production and Disposition, a written report on the production and disposition of all tobacco produced on the farm by sending the same to the State or county committee showing, as to the farm at the time of filing such report, (1) the total pounds of tobacco produced, (2) the amount of tobacco on hand and its location, (3) as to each lot of tobacco marketed, the name and address of the warehouseman, dealer, or other person to or through whom such tobacco was marketed and the number of pounds marketed, the gross price paid and the date of marketings, and (4) the complete details as to any tobacco disposed of other than by sale. The operator on each farm or any producer on the farm (even though no quota was established for the farm) shall, upon written request on Form MQ-108-1 from the county committee, within 15 days after deposit of such request in the U.S. mail, addressed to such person at his last known address, furnish the Secretary on MQ-108-1 a written report of the amount of tobacco produced on the farm

which is unmarketed at the end of the marketing season and its location, and the amount of tobacco produced on any other farm which is unmarketed at the end of the marketing season and which is stored on the farm and its location. Failure to file the MQ-108 or MQ-108-1 as requested, the filing of an MQ-108 or MQ-108-1, which is found by the State or county committee to be incomplete or incorrect shall, to the extent that it involves tobacco produced on the farm, constitute failure of the produced to account for disposition of tobacco produced on the farm and the quota next established for such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county or State committee that (i) failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition: *Provided*, That such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or (ii) no person connected with such farm for the year for which the quota is being established caused, aided, or acquiesced in the failure to furnish such proof.

9. In § 726.93, subparagraph (8) of paragraph (a), subparagraph (3) of paragraph (f) and subparagraphs (11), (12), (13), and (14), of paragraph (g) are amended and new subparagraphs (15) and (16) of paragraph (g) and a new paragraph (m) are added to read as follows:

§ 726.93 Warehouseman's records and reports.

* * * * *

(8) *Nonquota tobacco or quota tobacco of a different kind.* Should tobacco be presented for sale that is represented to be nonquota tobacco or there is question as to what kind of quota tobacco is being offered, an inspection shall be obtained from the Agricultural Marketing Service (AMS) after the tobacco is weighed and in line for sale. Both the basket ticket and sale bill shall show the producer's name and address and the State and county code and farm number on which the tobacco was produced. If an AMS inspection shows that a basket or lot of tobocco is of a different kind than that identified by the basket ticket after it is weighed in and a sale bill prepared, such tobacco shall be deleted from the original sale bill and a revised sale bill prepared. Copies of the basket ticket and sale bill shall be furnished to the State office at the end of the sale day.

* * * * *

(f) *Record and report of warehouseman's leaf account purchases and resales not on his floor.* * * *

(3) For all purchases of tobacco from dealers other than warehousemen and resales of tobacco to dealers other than warehousemen, Form MQ-79 shall be prepared and a copy, including copies of Form MQ-72-2 for all nonauction purchases, forwarded to the State ASCS office not later than the end of the calendar week (at the end of each sales day during the auction season for such warehouse) in which such tobacco was purchased or resold: *Provided*, That, if tobacco is purchased prior to the opening of the local auction market, an MQ-79 shall be prepared and a copy, together with copies of MQ-72-2 for all nonauction purchases, forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale day of the local auction markets. A remittance of all penalties shown by the entries on MQ-79 and Form MQ-72-2 to be due shall be forwarded to the State ASCS office with the original copy of MQ-79.

(g) *Daily warehouse sales summary.* * * *

(11) The totals of the purchases column total on the MQ-79 representing the nonauction purchases for the warehouse leaf account.

(12) The totals of the resales column on the MQ-79 representing the nonauction sales (including floor sweepings nonauction sales) for the warehouse leaf account.

(13) For each warehouse sale of excess tobacco from a farm, the applicable farm number with daily remittance of the penalty due to accompany Form MQ-72-1.

(14) For each dealer, at time of settlement having excess resale tobacco, the applicable dealer identification number with daily remittance of the penalty due.

(15) As to the information required to be entered on MQ-80, Daily Warehouse Sales Summary, by the marketing recorder, the warehouseman shall keep and make available such records as will enable the marketing recorder to enter thereon: (i) The total number of Forms MQ-72-1 for the sale day and the sum of pounds sold and shown on Forms MQ-72-1, and (ii) the total number of suspended sale bills and the sum of such pounds sold.

(16) At the end of the season, each warehouseman shall: (i) Report on his final MQ-80 for the season the quantity of leaf account tobacco and floor sweepings, if any, on hand and its location, (ii) permit its inspection by a representative of ASCS, and (iii) provide for the weighing of such tobacco (to be witnessed by ASCS) and furnish to ASCS at that time a certification as to the actual weight of such tobacco. After the weight of such tobacco has been obtained as provided in paragraph (g)(15)(iii) of this section, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

* * * * *

(m) *Reporting of processed leaf account or floor sweepings tobacco.* Any warehouseman who delivers tobacco to a firm for the purpose of redrying, processing, or stemming of such tobacco shall by the end of the week in which such tobacco was delivered report to the State office on MQ-79, Dealer's Report: (1) the date delivered; (2) name and address of the firm to which the tobacco was delivered and (3) the pounds of tobacco (green weight) delivered which shall be entered in the resales pounds column. Such tobacco shall be considered as a resale on the date of delivery for the purpose of balancing the warehouse account and collection of penalties where penalties are due.

10. In § 726.94, subparagraph (2) of paragraph (c) is amended and new paragraphs (f) and (g) are added to read as follows:

§ 726.94 Dealer's records and reports.

* * * * *

(c) *Record and report of purchases and resales.* * * *

(2) Form MQ-79 shall be prepared and a copy, together with executed copies of MQ-72-2 for all nonauction purchases, forwarded to the State ASCS office not later than the end of the calendar week (for a warehouseman dealer, at the end of each sales day during the auction season for such warehouse) in which such tobacco was purchased or resold, except as follows: (i) If tobacco is purchased prior to the opening of the local auction market, an MQ-79 shall be prepared and a copy, together with executed copies of Form MQ-72-2 for all nonauction purchases, forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale day of the local auction markets; (ii) if tobacco is resold in a State other than where produced, and the auction markets at such locations opens earlier than those where the tobacco would normally be sold at auction by farms, reports shall be prepared and forwarded, together with executed copies of MQ-72-2 for all nonauction purchases, no later than the end of the calendar week which would include the first sale day of the local auction market where the resale takes place.

* * * * *

(f) *Reporting of processed tobacco.* Any dealer who delivers tobacco to a firm for the purpose of redrying, processing or stemming of such tobacco shall by the end of the week in which such tobacco was delivered report to the State office on MQ-79, Dealer's Report: (1) the date delivered; (2) name and address of the firm to which the tobacco was delivered, and (3) the pounds of tobacco (green weight) delivered which shall be entered in the resales pounds column. Such tobacco shall be considered as a resale on the date of delivery for the purpose of balancing the dealer account and collection of penalties where penalties are due.

(g) *Tobacco represented to be nonquota kind.* Any dealer who has displayed for AMS inspection prior to purchase at nonauction tobacco from a farm in a quota area that is represented to be tobacco of a nonquota kind shall:

(1) Execute a basket ticket which shall have imprinted thereon the type designation for the kind of tobacco normally marketed in the area which shows: (i) the name and address of the producer, (ii) the pounds of tobacco in the basket

and (iii) the State and county code and farm number on which produced.

(2) Execute a sale bill which shows: (i) the name and address of the producer; (ii) the State and county code and farm number on which produced; (iii) the pounds in each basket and total pounds for the farm; and shall furnish a copy of each basket ticket and sale bill to the State office at the end of the sale day.

11. § 726.95 is amended to read as follows:

§ 726.95 Dealers exempt from regular records and reports on MQ-79; and season report for dealers.

(a) Any dealer or buyer who acquires tobacco and resells, in the form in which tobacco ordinarily is sold by farmers, 5 percent or less of any such tobacco shall not be subject to the requirements of § 726.94 except for the requirements which relate to the reporting of nonauction purchases from producers and the requirements of paragraph (d) of § 726.94. A dealer or buyer whose resales in the form ordinarily sold by farmers exceed 5 percent of its purchases as a direct result of order buying for another dealer for a service fee may report under paragraph (b) of this section in lieu of § 726.94 (except for requirements which relate to nonauction purchases from producers and requirements of paragraph (d) of § 726.94), provided prior approval is obtained from the Director, Commodity Stabilization Division.

(b) For the 1971-72 and subsequent marketing years, each dealer or buyer shall also make a report not later than April 1 of each year to the Director, Commodity Stabilization Division, showing by States where acquired, source and pounds of all tobacco purchased in the form normally marketed by farmers, received by him as a result of auction or nonauction sale, including tobacco received which was not billed to him. The report shall show:

(1) For purchases at auction for each warehouse (i) USDA registration number (warehouse code), (ii) name and address of warehouse, (iii) gross pounds originally billed to the buyer, (iv) gross pounds for which payment was made, (v) gross pounds from the company correction account deducted for short baskets, short weights and returned baskets and, (vi) gross pounds from the company correction account added for long baskets and long weights.

(2) For purchases at nonauction (i) name and address of seller (dealer or farmer), (ii) seller's number (dealer's registration number or farm number, including State and county code), and (iii) pounds purchased.

12. In § 726.96 paragraph (b) is amended and a new paragraph (c) is added to read as follows:

§ 726.96 Records and reports of truckers, persons redrying, prizing, or stemming tobacco, and storage firms.

* * * * *

(b) Each firm engaged in the business of redrying, prizing, or stemming tobacco shall keep records with respect to each lot of tobacco received by such firm showing:

(1) The name and address of producer, dealer, warehouseman or other person for whom the tobacco was received.

(2) The date of receipt of tobacco.

(3) The number of pounds (green weight) received.

(4) The purpose for which (tobacco was received (redrying, stemming, or prizing.)

(5) The amount of any advance or loan made by him on the tobacco.

(6) The disposition of the tobacco including the net weight of the tobacco following redrying, prizing, or stemming and number of hogsheads by classification (strips, stems, scrap or leaf).

(7) Person to whom delivered and pounds involved.

Any such firm shall report this information to the State ASCS office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program, and tobacco purchased by him at auction or for which he has previously reported on Form MQ-79. Where such firm qualifies for the exemption in paragraph (a) of § 726.95, he is required to report only such tobacco received that does not belong to him.

(c) Each firm engaged in storing unprocessed tobacco shall keep records with respect to each lot of unprocessed tobacco received by such firm showing:

(1) The name and address of producer, dealer, warehouseman, marketing agent or other person for whom the tobacco was received;

(2) The date of receipt of the tobacco;

(3) The number of pounds received;

(4) The amount of any advance or loan made by him on the tobacco;

(5) The disposition of the tobacco; and

(6) The person to whom delivered and the pounds involved.

Any such firm shall report this information to the State ASCS office of the State in which the business is located within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program and tobacco purchased by him at auction or for which he had previously reported on Form MQ-79. Where such firm qualifies for the exemption in paragraph (a) of § 726.95 of this part, he is only required to report such tobacco received for storage that does not belong to him.

13. A new § 726.105 is added to read as follows:

§ 726.105 Recordkeeping and reporting requirements for processed producer carryover tobacco.

(a) *General.* Since carryover producer tobacco, which is processed and stored, may be in excess of 110 percent of a farm's marketing quota for the current year, the determination of the date of marketing and the terms and conditions under which the tobacco is processed and stored is important. Any contract or agreement between the farm operator and the warehouseman (or marketing agent) or between the warehouseman (or marketing agent) and the processor or storage firm may be submitted to the State executive director for an opinion as to whether the agreement when executed may be considered as constituting a marketing of tobacco. Even though a favorable opinion may have been given on an agreement or contract, an act or verbal agreement, which alters the terms or conditions of the agreement or contract submitted for opinion, may be considered as a marketing of tobacco.

(b) *Applicability.* The provisions of this section provide the recordkeeping and reporting requirements for firms which act as marketing agent, process, or store processed producer carryover tobacco.

(c) *Pounds to be charged to farm quota.* The pounds (green weight) delivered for processing shall be charged to the farm's marketing quota when marketed.

(d) *Marketing agent records and reports.* Each marketing agent shall keep such records that will enable him to fulfill the requirements of this section. In addition, the marketing agent shall keep all records relating to the receiving, processing, storage, and sale of producer tobacco delivered to him for processing.

(1) *Basket ticket and warehouse floor sheet or other delivery receipt.* The marketing agent shall prepare a basket ticket for each basket of tobacco received from a farm. In addition, the marketing agent shall prepare a warehouse floor sheet or other delivery receipt showing as a minimum the following information:

(i) Floor sheet or delivery receipt number;

(ii) Name and address of marketing agent;

(iii) Date tobacco is received.

(iv) Number of pounds in each basket and total pounds green weight received;

(v) State and county code and farm number on which the tobacco was produced; and

(vi) Farm operator's name and address.

The marketing agent shall not receive any tobacco from a farm unless a current year marketing card or a document, which shows the State and county code and farm number, is furnished the weighman, certified by the executive director of the county office serving the farm.

(2) *Furnishing floor sheet or delivery receipt to the State office.* The marketing agent shall by the end of the calendar week in which the tobacco was received furnish to the State office of the State in which the marketing agent's business is located a copy of each floor sheet or delivery receipt for tobacco received during that calendar week. The marketing agent shall attach to the floor sheets or delivery receipts a transmittal memorandum showing:

(i) Transmittal number (numbered, beginning with number one, in sequence until all floor sheets or delivery receipts are transmitted for a marketing year);

(ii) Date of transmittal;

(iii) Number of floor sheets or delivery receipts submitted in transmittal; and

(iv) Total pounds green weight on floor sheets or delivery receipts delivered by such transmittal.

(3) *Furnishing floor sheet or delivery receipt and basket ticket to processor.* The marketing agent shall furnish two copies of each floor sheet or delivery receipt to the processor when the tobacco identified by such floor sheet or delivery receipt is delivered for processing. One or more copies of each basket ticket shall remain with the respective basket of tobacco.

(4) *Storage warehouse receipts.* The marketing agent is responsible for arranging for the storage and subsequent sale of the tobacco and shall not authorize release of the processed tobacco from storage until such tobacco is sold.

(5) *Sales report.* The marketing agent shall by the end of the calendar week in which processed producer tobacco is sold furnish a sales report to the State office of the State in which his business is located showing:

(i) Purchaser's name, address, and dealer number;

(ii) Date of purchase;

(iii) Date and delivery order number authorizing the storage firm to deliver the tobacco to the purchaser;

(iv) Sale report number (numbered beginning with number one for each crop year in sequence until all the tobacco for which the marketing agent is responsible is sold);

(v) For each hogshead the hogshead number, grade and original net (processed) weight;

(vi) Total original net processed weight of sale; and

(vii) Percentage (rounded to thousandths of a percent) pounds (original processed net weight) sold is of total net (original processed) weight of pooled tobacco processed.

(6) *Summary sheet.* The marketing agent shall, by the end of the week in which processed producer tobacco is sold, furnish to the State office of the State in which his business is located, a summary sheet for each farm having tobacco in the pool, showing:

(i) Date of sale;

(ii) Purchaser's name, address, and dealer number;

(iii) Processed pounds sold and percentage sale is of total pounds processed rounded to thousandths of a percent;

(iv) Sales report number on which included; and

(v) Total pounds (green weight) sold for subject farm as of that summary computed by multiplying the farm's green weight pounds delivered for processing by a factor determined by adding (*a*) the percent which the pounds (original weight) of stems sold in all sales is to the total pounds net weight processed, and (*b*) the percent which the pounds (original weight) of strips and scrap sold in all sales is to the net weight of the strips and scrap processed; and by subtracting from the sum so determined, the lesser of the percent determined in paragraph (d)(6)(v)(*a*) of this section, or the percent determined in paragraph (d)(6)(v)(*b*) of this section, multiplied by the percent which the original weight of the strips and scrap processed is to the total pounds net weight processed. If all processed tobacco (strips, stems and scrap) is not sold to the same buyer on the same date, the marketing agent shall prepare separate summary sheets for each.

(7) *Retention of records.* The marketing agent shall keep all records, including those specified in this paragraph, for three years following completion of processed tobacco sales for a crop year pool.

(e) *Processor records and reports.* Each processor of producer-owned tobacco, in addition to the records and reports required by § 726.96, shall keep such records that will enable him to satisfy the requirements of this section. In addition, the processor shall keep all records relating to the receiving, processing, storage and sale of producer carryover tobacco delivered to him for processing.

(1) *Furnishing copy of floor sheet or delivery receipt to States office.* The processor shall furnish a copy of each floor sheet or delivery receipt to the State office of the State in which his business is located by the end of each calendar week in which tobacco represented by such floor sheets or delivery receipts was delivered for processing. The processor shall attach a transmittal memorandum to the floor sheets showing:

(i) Transmittal number (numbered beginning with number one, in sequence until all floor sheets or delivery receipts are transmitted for a marketing year);

(ii) Date of transmittal;

(iii) Number of floor sheets or delivery receipts submitted in transmittal; and

(iv) Total pounds green weight on floor sheets or delivery receipts delivered by such transmittal.

(2) *Production record.* The processor shall prepare a production record and furnish a copy to the marketing agent showing the:

(i) Hogshead number for strips, stems and scrap (the grade, gross, tare, and net weight shall be shown by the processor for each); and

(ii) Total pounds net processed weight for tobacco received for processing from such marketing agent.

(3) *Summary of tobacco processed.* The processor shall, by the end of the month in which producer tobacco is processed, furnish the marketing agent and State office of the State in which his business is located a summary showing the pounds green weight:

(i) Delivered for processing; and

(ii) Processed.

(4) *Retention of records.* The processor shall keep all records relating to processing producer tobacco, including those specified in this paragraph, for three years following the year in which such tobacco is processed.

(f) *Storage firm records and reports.* Any firm storing processed producer-owned tobacco, in addition to the records and reports required by § 726.96, shall:

(1) Issue to the marketing agent a blanket warehouse receipt with a detailed listing showing for each hogshead of processed producer tobacco stored, the hogshead number, grade, gross, tare and net weight; and

(2) Keep records relating to the storage transaction for three years following the year in which the last hogshead for a respective crop year is released by the marketing agent from storage.

(g) *Dealer buyer report.* Any dealer who purchases producer processed tobacco shall, by the end of the calendar week in which such tobacco was purchased, furnish the State office of the State in which his business is located by name of marketing agent for each hogshead purchased the: (1) grade; (2) crop year, and (3) original net processed weight of each.

(h) *Processed pounds reflected on marketing card.* The county committee shall deduct the pounds green weight delivered for processing from 110 percent of the following year's marketing quota for the farm and reflect the balance on any marketing card issued for the farm.

(i) *Tobacco residue accumulated by marketing agent from producer tobacco delivered for processing.* Bits or parts of leaves which accumulate in loading, unloading, and display areas during the time that tobacco is delivered to the marketing agent, weighed, and loaded out to the processor, not to exceed .2 percent of the total pounds of tobacco delivered for processing, may be marketed by the marketing agent. Such tobacco shall be kept separate and apart from any other tobacco in the possession of the marketing agent. The marketing agent shall weigh such tobacco residue accumulation in the presence of an ASCS representative and furnish the ASCS representative at such time a certified statement as to the total weight of such tobacco residue. When tobacco residue accumulated by marketing agent from producer tobacco delivered for processing is marketed it shall, by the end of the calendar week in which marketed, be reported on a separate MQ-79, Dealers Report, to the State ASCS office of the State in which the business is located.

14. A new § 726.106 is added to read as follows:

§ 726.106 Recordkeeping and reporting requirements for unprocessed producer carryover tobacco.

(a) *General.* Since carryover producer tobacco may be in excess of 110 percent of a farm's marketing quota for the current year, the determination of the date of marketing and the terms and conditions under which the tobacco is stored is important. Any contract or agreement between the storage firm and the producer may be submitted to the State executive director for an opinion as to whether the agreement when executed may be considered as constituting a marketing of tobacco. Even though a favorable opinion may have been given on an

agreement or contract, an act or verbal agreement which alters the terms or conditions of the agreement or contract submitted for opinion may be considered as a marketing of tobacco.

(b) *Applicability.* The provisions of this section provide the recordkeeping and reporting requirements for firms which act as marketing agent or store unprocessed producer carryover tobacco.

(c) *Pounds to be charged to farm quota.* The pounds green weight delivered for marketing or storage shall be charged to the farm marketing quota when marketed.

(d) *Storage firm records and reports.* Any storage firm storing unprocessed producer-owned tobacco, in addition to the records and reports required by § 726.96 of this part, shall keep such records that will enable him to satisfy the requirements of this section. In addition the storage firm shall keep all records related to receiving and storage of producer tobacco.

(1) *Basket ticket and delivery receipt.* The storage firm shall prepare a basket ticket for each basket of tobacco received from a farm. In addition, the storage firm shall prepare a delivery receipt showing as a minimum the following information:

(i) Delivery receipt number;

(ii) Name and address of storage firm;

(iii) Date tobacco is received;

(iv) Number of pounds in each basket and total pounds received from each farm;

(v) State and county code and farm number on which the tobacco was produced; and

(vi) Farm operator's name and address.

The storage firm shall not receive any tobacco from a farm unless a current year marketing card or a document which shows the State and county code and farm number, certified by the executive director of the county office serving the farm is furnished when the tobacco is delivered.

(2) *Furnishing delivery receipt to the State Office.* The storage firm shall, by the end of the calendar week in which tobacco was received, furnish to the State office of the State in which the business is located a copy of each delivery receipt for tobacco received during that calendar week. The storage firm shall attach to the delivery receipts a transmittal memorandum showing:

(i) Transmittal number (numbered, beginning with number one, in sequence until all delivery receipts are transmitted for a marketing year);

(ii) Date of transmittal;

(iii) Number of delivery receipts submitted in transmittal; and

(iv) Total pounds on delivery receipts submitted by the transmittal.

(3) *Identification of tobacco while stored.* Each basket of tobacco until removal from storage, shall be identified by a basket ticket attached to the respective basket of tobacco showing the: (i) Farm operator's name and address; (ii) State and county code and farm number for the farm; and (iii) pounds of tobacco in each basket.

(4) *Storage firm reports.* The storage firm shall furnish to the State office of the State in which the business is located a report by storage location and crop year showing (i) the pounds of unprocessed tobacco, and (ii) the total pounds of unprocessed producer tobacco. Should any tobacco be moved from one storage location to another, an amended report shall be furnished by the end of the week in which such tobacco was moved. When tobacco is removed from storage, in addition to any other requirements of this subpart, the storage firm, by the end of the week in which such tobacco was removed from storage, shall furnish the State office a report showing by farm from which received:

(a) The pounds removed from storage;

(b) The name and address of the person receiving such tobacco; and

(c) Date on which removed.

(5) *Retention of records.* All records relating to the storage of producer tobacco including those required by this section shall be retained by the storage firm for three years following the removal of such tobacco for a respective crop year from storage.

Prior to the issuance of the proposed change in the regulation, data, views, or recommendations pertaining thereto which are submitted to the Director, Commodity Stabilization Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250, will be given consideration. To be sure of consideration, such submission should be postmarked not later than July 27, 1973. All written submissions made pursuant to this notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday thru Friday, in Room 3629 South Building, 14th and Independence Avenue, SW., Washington, D.C.

Signed at Washington, D.C. on June 20, 1973.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.73-12890 Filed 6-26-73;8:45 am]

Farmers Home Administration

[7 CFR Part 1832]

[FHA Instruction 441.2]

LOANS PRIMARILY FOR PRODUCTION PURPOSES

Emergency Loan Policies and Authorizations

Notice is hereby given that the Farmers Home Administration has under consideration a proposed amendment of Part 1832, Subpart A, § 1832.3, Title 7, Code of Federal Regulations (37 FR 7293) to provide for State and local government participation in determining designated areas for Emergency loans.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amendment by close of business July 13, 1973, to the Deputy Administrator Comptroller, Farmers Home Administration, United States Department of Agriculture, room 5007, South Building, Washington, D.C. 20250.

All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Deputy Administrator Comptroller during regular business hours (8:15 a.m. to 4:45 p.m.).

As proposed, § 1832.3 reads as follows:

§ 1832.3 Making EM loans available.

EM loans will be made available in counties named by OEP (or its successor) as eligible for Federal assistance under a major disaster declaration by the President; in counties designated by the Secretary; and in counties authorized by State Directors for isolated production loss loans.

(a) *Designation by the President.* Designation by the Secretary is not necessary for making EM loans available in counties determined by OEP to be eligible for Federal assistance under a major disaster declared by the President. Therefore, where there is a Presidential major disaster declaration, the National Office will notify the State Director and the Director of the Finance Office. The notification will specify the names of the counties determined by OEP (or its successor) to be eligible for Federal assistance; the termination date for receiving EM applications; the major disaster designation number; and the date loan activity reporting will commence.

(1) State Directors will notify the appropriate County Supervisors immediately and instruct them to make EM loans available. Notification will be confirmed by a State requirement prescribed by the State Director, or a revision thereof, as soon as possible. The State Director will also notify the State USDA Emergency Board Chairman and will make such public announcements as appear to be appropriate.

(2) Immediately upon receiving notice about counties under his jurisdiction, the County Supervisor will notify the governing body of the county, the appropriate County USDA Emergency Board Chairman, and make such public announcements as appear to be appropriate. Also, the County Supervisor will explain the assistance available under this program to other agricultural lenders and leaders in the area.

(b) *Designation by the Secretary.* (1) The Secretary of Agriculture may designate a county as an EM loan area when unusual and adverse weather conditions have resulted in severe production losses and/or damage or losses to livestock, farm machinery, farmland, or buildings; when there exists in the county a general need for agricultural credit due to the natural disaster which cannot be met for temporary periods by private, cooperative, or other responsible sources and there are more than 25 farmers who have had losses which

require them to obtain EM loans in order to continue in their farming operations; when a formal written request of the governing body of the county or its authorized representative has been transmitted through the Governor of the State with his endorsement to the Secretary; and when recommended to the Secretary by his Emergency Review Committee.

(2) Designations may be based on damages caused by hurricanes, tornadoes, excessive rainfall and floods, earthquakes, blizzards, freezes, electrical storms, snowstorms, drought, excessively high temperatures and hail; insects where abnormal weather contributed substantially to the spreading and flourishing of such insects; fires resulting from lightning, and fires of other origins which could not be controlled because of abnormal weather; and plant and animal diseases where abnormal weather contributed substantially to such diseases spreading into epidemic stages.

(3) When a county is designated by the Secretary, the National Office will notify the State Director and the Director of the Finance Office. The notification will specify the name of the counties designated; the termination date for receiving EM loan applications; and the Secretarial disaster designation number. The Governor, each Senator and Congressman representing the State involved will be notified simultaneously of the designations and dates of termination.

(i) State Directors will immediately notify the appropriate County Supervisors and this notification will be confirmed by a State requirement prescribed by the State Director, or a revision thereof, as soon as possible. The State Director will also notify the State USDA Emergency Board Chairman and the governing body of the county who will make such public announcements as appear to be appropriate.

(ii) Immediately upon receiving notice of the designation of county or counties under his jurisdiction, the County Supervisor will notify the appropriate County USDA Emergency Board Chairman and also explain the assistance available under the EM loan program to other agricultural lenders and leaders in the area.

(c) *Isolated production losses.* If the State Director finds in any county that the requirements of paragraph (b) (1) and (2) of this section are met, and that 25 or less farmers have had severe production losses which will require them to obtain EM loans in order to continue in their farming operation, loans may be authorized by the State Director. The authority to make EM loans available by the State Director will only be exercised after the governing body of the county affected has made a formal written request for such action to the State Director and prior notice has been given to the National Office. This authorization may not be used to make EM loans available immediately in anticipation of a later designation by the Secretary based on the same natural disaster.

(1) The State Director's authorization will be based on severe production losses and will establish the following termination dates for receiving EM applications:

(i) For damages to real or chattel property or losses of livestock and equipment, the termination date will be 60 days from the date of his letter to the County Supervisor making the authorization.

(ii) For crop losses the termination date will be 9 months from the date of his letter making the authorization.

(2) Applications for EM loans will be received by County Supervisors only after authorization by the State Director.

(3) The State Director will advise the National Office immediately by telephone followed by forwarding a copy of each letter authorizing a County Supervisor to receive applications for EM loans in counties he has designated, together with a copy of the County Supervisor's report. The report will be made using the format available in all FHA offices when an area designation is made.

(4) The State Director will direct appropriate County Supervisors to take initial EM loan applications in counties he has authorized, simultaneously with his notification to the State USDA Emergency Board Chairman and the governing body of the county. The State Director will immediately request the governing body of the county to make appropriate public announcements.

(5) Immediately upon receiving notice of the authorization of isolated production loss loans for a county or counties under his jurisdiction, the County Supervisor will notify the appropriate County USDA Emergency Board Chairman and also explain the assistance available under the EM loan program to other agricultural lenders and leaders in the area.

(d) *Reporting natural disasters*—(1) *Purpose.* To provide a systematic procedure for rapid reporting of natural disasters which may result in a request for designation by the Secretary from local governing bodies or their authorized representatives and the Governor of the State.

(2) *Background.* It is important that adequate information on the nature and scope of a natural disaster or impending disaster be available as soon as possible both in the State and National Offices. It is equally important to know what steps are being taken or considered by Farmers Home Administration (FHA) to alleviate the disaster effects.

(3) *Action.* The following action will be taken:

(i) County Supervisor: County Supervisors will immediately report to the State Director and to the governing body the name of the county affected, the occurrence of any natural disaster causing substantial property loss or damage or injury, including severe production losses in his County Office area, regardless of whether EM loans will be needed. He will send a detailed report as soon as possible to the State Director and the governing body of the county affected, except that in urgent situations the report may be made by telephone, followed by the written report. The report will be based on information obtained from his personal knowledge and from farmers, agricultural and community leaders, representatives of other agricultural agencies, agricultural lenders and through any other means available. When letters or copies of reports are received from those sources contacted, they also will be submitted with the report. The County Supervisor will advise the Chairman of the County USDA Emergency Board of any information he has on the disaster and also provide him with a copy of the report and any attachments thereto.

(ii) State Directors: State Directors will inform the National Office of each natural disaster as soon as possible. He will forward the original of the County Supervisor's report with any attachments to the National Office supplemented by his comments, including any additional information he may have, and his recommendations as to the need for EM loans. In urgent situations he should report to the National Office by telephone and immediately thereafter send a written report to the National Office. The State Director will advise the Chairman of the State USDA Emergency Board of any information he receives on the natural disaster and also provide him with a copy of the County Supervisor's report and any attachments thereto.

(iii) National Office: When the National Office is advised by a State Director of the occurrence of natural disasters, the Division responsible for EM loans will advise the Executive Secretary of the USDA Emergency Review Committee; the Director of the Single Family Housing Division; and the Office of Emergency Preparedness (or its successor) of the natural disaster and of any action planned or taken by the FHA. The National Office will also provide the same information to members of Congress if so requested.

(iv) The above action will be taken even if the Governor of the State has requested the President to declare the county a disaster area.

(e) *Subsequent loans.* Subsequent EM loans are defined as EM loans made to borrows who are indebted for an EM loan(s) balance. Subsequent EM loans may be made within the limitations, policies, and authorities contained in this paragraph without regard to the termination date for making initial loans. This applies when the applicant is unable to obtain credit from other sources because of the natural disaster or major disaster which caused need for the initial loan, and when the subsequent loan is necessary to protect the Government's interest in EM loans previously made, including Production Emergency, Economic Emergency, Special Emergency, and Special Livestock loans. In any event, there must

be reasonable assurance that the subsequent loan will be repaid and the balances owed on previous loans will be repaid or substantially reduced within a reasonable period. However, the period during which additional loans will be made must be consistent with the objectives of EM loans as described in § 1832.2. The following points will be considered in arriving at the required determination that a subsequent EM loan is needed to protect the Government's interest in EM loans previously made.

(1) Will FHA lose control of future farm or ranch income that ordinarily would be available for payment on the EM loan balance if the subsequent EM loan is not made?

(2) Will FHA's security position be weakened if the subsequent EM loan is not made?

(3) Will FHA take a financial loss if the borrower is forced out of farming or ranching because he could not get financed by a regular lender?

The County Supervisor will comment on these points in the Running Case Record of the borrower's County Office case file to show justification for a subsequent EM loan before it is approved.

(7 U.S.C. 1989, (Con. Act); 42 U.S.C. 1480, (Housing); delegation of authority by the Sec. of Agri., 38 FR 14944, 14948, 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 38 FR 14944, 14952, 7 CFR 2.70)

Dated June 21, 1973.

J. R. HANSON,
Acting Administrator,
Farmers Home Administration.

[FR Doc.73-12941 Filed 6-26-73;8:45 am]

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Part 516]

AGRICULTURAL LABOR

Records To Be Kept by Employers

Proposed clarification of employment status of and recordkeeping requirements for agricultural labor supplied by crew leaders where the farmer has the power to direct, control or supervise the work of, or to determine the pay rates or method of payment for, laborers.

Pursuant to the Fair Labor Standards Act of 1938 (Pub. L. 75-718, 52 Stat. 1060, 29 U.S.C. 201 et seq.) as amended, Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp. p. 1004) and Secretary's Orders Nos. 13-71 and 15-71 (36 FR 8755-6), I propose to amend Part 516 of title 29 of the Code of Federal Regulations. This amendment would conform it to the recently decided cases of Hodgson v. Okada (C.A. 10), 20 WH Cases 1107 and Hodgson v. Griffin & Brand (C.A. 5), 20 WH Cases 1051. See also Mitchell v. Hertzke, 234 F. 2d 183, 12 WH Cases 877 (C.A. 10). These decisions hold a farmer to be a joint employer where, in addition to the advantages of harvest accruing to him as owner of the crop from the work of the laborers, he has the power to direct, control or supervise their work, or to determine their pay rates or method of payment.

Interested persons are invited to submit written data, views or comments regarding the proposed amendment to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 on or before July 27, 1973.

As revised § 516.33 would read as follows:

§ 516.33 Employees employed in agriculture.

(a) No records, except as required under paragraph (f) of this section, need be maintained by an employer who did not use more than 500 man-days of agricultural labor in any quarter of the preceding calendar year, unless it can reasonably be anticipated that more than 500 man-days of agricultural labor (including agricultural workers supplied by crew leaders if the farmer has the power to direct, control or supervise the work, or to determine pay rates or method of payment) will be used in at least one calendar quarter of the current calendar year.

(b) If it can reasonably be anticipated that the employer will use more than 500 man-days of agricultural labor (including agricultural workers supplied by crew leaders if the farmer has the power to direct, control or supervise the work, or to determine pay rates or methods of payment, but not counting members of the employer's immediate family and hand harvest laborers as defined in section 13(a)(6)(B) of the Act), the employer shall maintain and preserve payroll records containing the following information with respect to each worker:

* * *

(g) Where a farmer and a bona fide independent contractor or crew leader are joint employers of agricultural laborers, each employer is responsible for maintaining and preserving the records required by this section. Duplicate records of hours and earnings are not required. The requirements will be considered met if the employer who actually pays the employees maintains and preserves the records specified in § 516.33(c).

(52 Stat. 1060, as amended; 29 U.S.C. 201 et seq.)

Signed at Washington, D.C., June 21, 1973.

BEN P. ROBERTSON,
Acting Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc.73-12895 Filed 6-26-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 51]

IDENTITY STANDARDS FOR CANNED VEGETABLES

Optional Use of Margarine as a Seasoning Ingredient

The National Association of Margarine Manufacturers, 1725 K Street, NW., Washington, D.C. 20016, has submitted a petition proposing amendment to the standards of identity for canned peas (21 CFR 51.1), canned green beans (21 CFR 51.10), canned corn (21 CFR 51.20), and canned vegetables other than those specifically regulated (21 CFR 51.990) to provide for the optional use of margarine as a seasoning ingredient. The proposal provides for the use of margarine on the same basis that butter is now permitted, in a quantity not less than 3 percent by weight of the finished food and with appropriate label declaration.

Among others, grounds given in support of the proposal are that butter is presently permitted as an optional seasoning ingredient in canned peas, canned green beans, canned corn, and canned vegetables other than those specifically regulated. In addition the petitioner cites the American Frozen Food Institute's proposal for an identity standard for frozen peas published in the FEDERAL REGISTER of October 5, 1972 (37 FR 21109) which permits the optional use of margarine as a formulated sauce ingredient in an amount not more than necessary to produce the desired seasoning effect.

On the basis of the support provided in the petition and as margarine is widely used in the home to season canned vegetables, frozen vegetables, and many other foods, the Commissioner of Food and Drugs is of the opinion that reasonable grounds in support of the proposal have been submitted by the petitioner.

In addition to the amendments proposed by the petitioner, the Commissioner proposes to update the labeling provisions for the optional ingredients used in each of the affected standards in accordance with § 3.88, published in the FEDERAL REGISTER on January 19, 1973 (38 FR 2137), § 1.12, published in the FEDERAL REGISTER on January 19, 1973 (38 FR 2139), and § 1.18d, published in the FEDERAL REGISTER on March 14, 1973 (38 FR 6950). The existing specific label statements for declaring spices, flavorings, and seasonings in these canned vegetable standards have been deleted.

The FEDERAL REGISTER of April 26, 1973 (38 FR 10274) published a proposed amendment to 21 CFR 10.1 defining "safe and suitable" ingredients. Accordingly, the Commissioner is deleting the "safe and suitable" definition appearing in each of the cited canned vegetable standards.

Adopting the proposed amendment will result in margarine being permitted in canned dry peas, canned wax beans, and canned field corn by cross-reference.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055-1056, as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371) and in accordance with authority delegated to the Commissioner (21 CFR 21.120), it is proposed that Part 51 be amended:

1. In § 51.1 by revising paragraph (c)(7), and paragraphs (d) and (e), and by adding new paragraphs (f) and (g) as follows:

§ 51.1 Canned peas; identity; label statement of optional ingredients.

* * * * *

(c) * * *

(7) Butter or margarine in a quantity not less than 3 percent by weight of the finished food. When butter or margarine is added, safe and suitable emulsifiers or stabilizers, or both, may be added. When butter or margarine is added, no spice, flavoring, or coloring simulating the flavor or color imparted by butter or margarine is used.

(d) The name of the optional pea ingredient is "early" or "June" or "early June", "sweet" or "sweet wrinkled" or "sugar".

(e) If artificial coloring is present, the label shall state that fact in such manner and form as provided in § 51.2(c) of this chapter.

(f) The name of the food is "peas". The name of the food shall include a declaration of any flavoring that characterizes the product as specified in § 1.12 of this chapter, and a declaration of any spice or seasoning that characterizes the product; for example, "with added spice", "seasoned with red peppers", "seasoned with butter". Whenever the name "peas" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the name of the optional pea ingredient present as specified in paragraph (d) of this section, shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter, except that the specified varietal name of the peas may so intervene.

(g) Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 1 of this chapter.

2. In § 51.4 by revising paragraph (c) as follows:

§ 51.4 Canned dry peas; identity; label statement of optional ingredients.

* * * * *

(c) The name of the food is "cooked dry peas" or "soaked dry peas". The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The optional pea ingredient names specified by § 51.1(d) of this chapter shall not be used on labels.

3. In § 51.10, by revising paragraph (c)(7) and paragraph (e), by deleting paragraphs (d)(6), (7), and (8), and by adding a new paragraph (f) as follows:

§ 51.10 Canned green beans; identity; label statement of optional ingredients.

* * * * *

(c) * * *

(7) Butter or margarine in a quantity not less than 3 percent by weight of the finished food. When butter or margarine is added, safe and suitable emulsifiers or stabilizers, or both, may be added. When butter or margarine is added, no spice or flavoring simulating the color or flavor imparted by butter or margarine is used.

* * * * *

(e) The name of the food is "green beans". The name of the food shall include a declaration of any flavoring that characterizes the product as specified in § 1.12 of this chapter, and a declaration of any spice or seasoning that characterizes the product; for example, "with added spice", "seasoned with red peppers", "seasoned with butter". Further, whenever the name "green beans" appears on the label so conspicuously as to be easily seen under the customary conditions of purchase, the words and statements prescribed by paragraph (d)(1) through (5) shall immediately and conspicuously precede or follow such name without intervening written, printed, or graphic matter except that there may intervene (i) the designation of the length of cut, (ii) the varietal name, which may include the word "stringless", and (iii) the description of the green beans, as "stringless", which may also be used between the words "green" and "beans", where the beans are in fact stringless.

(f) Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 1 of this chapter.

4. In § 51.20 by revising paragraphs (d)(7) and (e)(2), and paragraph (f) as follows:

§ 51.20 Canned corn, canned sweet corn, canned sugar corn; identity; label statement of optional ingredients.

* * * * *

(d) * * *

(7) Butter or margarine in a quantity not less than 3 percent by weight of the finished food. When butter or margarine is added, safe and suitable emulsifiers or stabilizers, or both, may be added. When butter or margarine is added, no spice or flavoring simulating the color or flavor imparted by butter or margarine is used.

(e) * * *

(2) The parts of the name as specified in paragraph (e)(1) of this section may be arranged in any order of precedence. The varietal name of the corn used may intervene between parts of the name of the food. For the purpose of arrangement of the name, the words "sweet" and "corn" may be treated as separate parts of the name. When the varietal name immediately precedes or follows the name or intervenes between parts of the name of the food and it accurately designates the color of the corn ingredient, no other designation of the color group need be made. The name of the food shall include a declaration of any flavoring that characterizes the product as specified in § 1.12 of this chapter and a declaration of any spice, seasoning or garnishing that characterizes the product; for example, "with added spice", "seasoned with red peppers", "seasoned with butter".

(f) Each of the optional ingredients used shall be declared on the label as required by the applicable sections of 21 CFR Part 1.

5. In § 51.990 by revising paragraph (c)(3)(xiii), by deleting paragraphs (f)(4), (5), (6), (7), (8), (9), (10), (11), and (12), and existing paragraph (g), and by adding new paragraphs (g) and (h) as follows:

§ 51.990 Canned vegetables other than those specifically regulated; identity; label statement of optional ingredients.

* * * * *

(c) * * *

(3) * * *

(xiii) Butter or margarine in a quantity not less than 3 percent by weight of the finished food. When butter or margarine is added, safe and suitable emulsifiers or stabilizers, or both, may be added. When butter or margarine is added, no spice or flavoring simulating the color or flavor imparted by butter or margarine is used.

* * * * *

(g) The name of the food shall include a declaration of any flavoring that characterizes the product as specified in § 1.12 of this chapter, and a declaration of any spice or seasoning that characterizes the product; for example, "with added spice", "seasoned with red peppers", "seasoned with butter". Wherever the name of the vegetable appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words and statements specified in paragraphs (e) and (f)(1) through (3) of this section shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter, except that the varietal name of the vegetable may so intervene.

(h) Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 1 of this chapter.

Interested persons may, on or before August 27, 1973, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: June 19, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73-12879 Filed 6-26-73;8:45 am]

Social and Rehabilitation Service

[45 CFR Parts 233, 248]

CITIZENSHIP AND ALIENAGE

Notice of Proposed Rulemaking

Notice of proposed rulemaking to implement the Supreme Court decision in Graham v. Richardson was published in the FEDERAL REGISTER on June 16, 1972 (37 FR 11977). The regulations would have required as a condition for approval of State plans under title I, IV-A, X, XIV, XVI or XIX of the Social Security Act, that such plans not exclude any

otherwise eligible individual on the basis of his citizenship or alien status.

At the time of the Graham decision, eight States had citizenship requirements for some Federally funded assistance programs. Five of those required, as an alternative to citizenship, residence in the United States for a period of time ranging from 10 to 25 years. Since that decision, four States have revised their plans to eliminate durational residence requirements.

Comments were received from 59 persons, 50 of which were opposed to the granting of assistnace to aliens who have not been lawfully admitted to this country. The objections came from a total of 17 States (27 from a single State), and were based primarily on:

1. The belief that the Supreme Court decision and the "equal protection" clause of the Constitution are not applicable to aliens not lawfully admitted to the United States.

2. The fear that this policy would raise caseloads beyond the State's fiscal capacity or require a corresponding reduction in assistance to citizens and lawfully admitted aliens.

3. The belief that assistance to such aliens, if provided at all, should be fully financed from Federal funds, since the Federal government has responsibility for immigration and naturalization. Recent congressional action, e.g., the exclusion of "illegal" aliens from the Supplemental Security Income program, coincides with the public response.

After consideration of the views presented, and of the thrust of recent legislation, we are changing the proposal to require that a State plan must include any otherwise eligible resident of the United States who is either a citizen or an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law; and must exclude any individual who is not lawfully in this country.

Prior to the adoption of the proposed regulations, consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, 330 Independence Avenue, S.W., Washington, D.C. 20201, on or before July 27, 1973. Comments received will be available for public inspection in Room 5121 of the Department's offices at 301 C Street, S.W., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (area code 202-963-7361).

(Section 1102, 49 Stat. 647, 42 U.S.C. 1302)

Dated June 13, 1973.

FRANCIS D. DEGEORGE,
Acting Administrator, Social and Rehabilitation Service.

Approved: June 21, 1973.

CASPAR W. WEINBERGER,
Secretary of Health, Education and Welfare.

Sections 233.50 and 248.50 of Chapter II of Title 45 of the Code of Federal Regulations are revised to read as follows:

§ 233.50 Citizenship and alienage.

Conditions for plan approval. A State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act shall include an otherwise eligible individual who is a resident of the United States but only if he is either (a) a citizen or (b) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

§ 248.50 Citizenship and alienage.

Conditions for plan approval. A State plan under title XIX of the Social Security Act shall include an otherwise eligible individual who is a resident of the United States but only if he is either (a) a citizen or (b) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

[FR Doc.73-12918 Filed 6-26-73;8:45 am]

[45 CFR, Part 249]

SERVICES AND PAYMENT IN MEDICAL ASSISTANCE PROGRAMS

Reassignment of Claims—Medicaid Programs

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare. The proposed regulations implement section 236(b) of the Social Security Amendments of 1972, Public Law 92-603. This section provides that, with certain exceptions, payments for services provided under a State medical assistance plan may be made only to the provider or recipient of the service and may not be made to an assignee.

Prior to the adoption of the proposed regulations, consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington, D.C. 20201, on or before July 27, 1973. Comments received will be available for public inspection in room 5121 of the Department's offices at 301 C Street SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (area code 202-963-7361).

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).)

Dated May 24, 1973.

FRANCIS D. DEGEORGE,
Administrator, Social and Rehabilitation Service.

Approved June 18, 1973.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

A new § 249.31 is added to part 249 to read as follows:

§ 249.31 Prohibition against reassignment of claims to benefits.

(a) *State plan requirements.*—A State plan for medical assistance under title XIX of the Social Security Act must provide that no payment under the plan for any care or service provided to an individual by a physician, dentist, or other individual practitioner shall be made to anyone other than such individual (who is eligible to receive such payments in accordance with § 249.32) or to such physician, dentist, or practitioner, except that direct payment may be made:

(1) To the employer of the physician, dentist, or other practitioner if the practitioner is required as a condition of his employment to turn over his fees to his employer; or

(2) Where the care or service was provided in a hospital or other facility, to the facility in which the care or service was provided, if there is a contractual arrangement between the practitioner and the facility whereby the facility submits the claim for reimbursement; or

(3) To a foundation, plan, or similar organization which furnishes health care through an organized health care delivery system if there is a contractual arrangement between the organization and the person furnishing the service under which the organization bills for such person's services.

(b) *Meaning of terms.*—For purposes of this section, a facility is a hospital or other institution which makes provision for furnishing health care services to inpatients. A health care delivery system includes, but is not limited to, an organized medical group clinic and a group practice prepayment plan.

[FR Doc.73-12592 Filed 6-26-73;8:45 am]

Social Security Administration

[20 CFR Part 404]

[Regs. No. 4]

FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

Amount of Disability Insurance Benefit Reduction

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 552 et seq.), that the amendment to the regulations set forth in tentative form

below is proposed by the Acting Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. Under certain conditions a disability insurance benefit to which an individual is entitled is reduced if he is also entitled to a workmen's compensation benefit for the same month. The amount of the reduction is the amount by which the total of his social security benefits and workmen's compensation benefits exceeds the higher of (1) 80 percent of his average current earnings, or (2) the total of all social security benefits payable on his earnings record. Prior to the 1972 amendments to the Social Security Act the individual's average current earnings meant (1) the higher of the average monthly wage upon which his disability insurance benefit was based, or (2) his average monthly earnings for the 5 consecutive calendar years after 1950 for which his earnings were highest. The 1972 amendments (P.L. 92-603) provide a third alternative. For benefits for months after December 1972 "average current earnings" means the highest of three alternative amounts—the two applicable to benefits for months prior to January 1973 and, in addition, the average monthly earnings determined on the basis of one-twelfth of the individual's earnings for the calendar year of highest earnings during a period consisting of the year his disability began and the preceding 5 years. The proposed amendment to the regulations reflects this change in the law.

Prior to the final adoption of the proposed amendment to the regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue SW., Washington, D.C. 20201, on or before June 27, 1973.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue SW., Washington, D.C. 20201.

The proposed amendments are to be issued under the authority contained in sections 205, 224, and 1102, 53 Stat. 1368, as amended, 79 Stat. 406, as amended, 49 Stat. 647, as amended; 42 U.S.C. 405, 424, and 1302.

Dated: May 25, 1973.

ARTHUR E. HESS,
Acting Commissioner of Social Security.

Approved: June 20, 1973.

CASPAR W. WEINBERGER,
Secretary of Health, Education and Welfare.

Section 404.408 is amended by revising paragraph (c)(3) through subdivision (ii)(*a*) to read as follows:

§ 404.408 Reduction of benefits based on disability on account of receipt of workmen's compensation.

* * * * *

(c) *Amount of reduction.* * * *

(3) *Average current earnings defined*—(i) *In general*—(*a*) *For benefits for months prior to January 1973.* An individual's "average current earnings" for purposes of this section means the larger of:

(*1*) The average monthly wage used for purposes of computing the individual's disability insurance benefit under section 223 of the Act, or

(*2*) One-sixtieth of the total of such individual's wages and earnings from self-employment without the limitations under sections 209(a) and 211(b)(1) of the Act for the 5 consecutive calendar years after 1950 for which such wages and earnings from self-employment were highest. The extent by which such individual's wages and earnings from self-employment exceed the limitations under sections 209(a) and 211(b)(1) of the Act for any calendar year after 1950 is computed in accordance with the provisions of subdivision (ii) of this subparagraph. Any amount so computed which is not a multiple of $1 is reduced to the next lower multiple of $1.

(*b*) *For benefits for months after December 1972.* An individual's "average current earnings" for purposes of this section means the largest of:

(*1*) The amount arrived at under paragraph (c)(3)(i)(*a*)(*1*) of this section, or

(*2*) The amount arrived at under paragraph (c)(3)(i)(*a*)(*2*) of this section, or

(*3*) One-twelfth of the total of such individual's wages and earnings from self-employment, without the limitations under sections 209(a) and 211(b)(1) of the Act, for the calendar year in which he had the highest such wages and earnings from self-employment during the period consisting of the calendar year in which he became disabled and the 5 years immediately preceding that year. The extent by which such individual's wages and earnings from self-employment exceed the limitations under sections 209(a) and 211(b)(1) of the Act is computed in accordance with the provisions of subdivision (ii) of this subparagraph. Any amount so computed which is not a multiple of $1 is reduced to the next lower multiple of $1.

(ii) *Method of determining calendar year earnings in excess of the limitations under sections 209(a) and 211(b)(1) of the Act*—(*a*) *In general.* For the purposes of paragraph (c)(3)(i)(*a*)(2) and (i)(*b*)(2) and (3) of this section the extent by which the wages or earnings from self-employment of an individual exceed the maximum amount of earnings creditable under sections 209(a) and 211(b)(1) of the Act in any calendar year after 1950 will ordinarily be estimated on the basis of the earnings information available in the records of the Administration. (See Subpart I of this Part.) If an individual adduces satisfactory evidence of his actual earnings in any year, the extent, if any, by which his earnings exceed the limitations under sections 209(a) and 211(b)(1) of the Act shall be determined by the use of such evidence instead of by the use of estimates.

* * * * *

[FR Doc.73-12917 Filed 6-26-73;8:45 am]

[20 CFR, Part 405]

FEDERAL HEALTH INSURANCE FOR THE AGED

Assignment of Right To Receive Payment Under Supplementary Medical Insurance Plan

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 552 et seq.) that the amendments to the regulations set forth in tentative form are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. The proposed amendments to the regulations reflect and implement amendments to the Social Security Act made by the Social Security Amendments of 1972 (Public Law 92-603) enacted October 30, 1972. The proposed amendments provide that a person who is furnished medical or other health services covered under the supplementary medical insurance plan may assign the right to receive payment for such services only to the physician or other person who furnished the services, except that payment may be made under specified conditions set forth in the proposed amendments, to (1) the employer of the person who furnished the service, or (2) the hospital or other facility in which the service was provided, or (3) a foundation, plan, or similar organization which furnishes health care through an organized health care delivery system.

Prior to the final adoption of the proposed amendments to the regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue SW., Washington, D.C., 20201, on or before July 27, 1973.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health, Education, and Welfare, North Building, room 4146, 330 Independence Avenue SW., Washington, D.C. 20201.

The proposed regulations are to be issued under the authority contained in sections 1102, 1842, and 1871, 49 Stat. 647,

as amended, 79 Stat. 309, as amended; 42 U.S.C. 1302, 1395 et seq.

Dated April 26, 1973.

ARTHUR E. HESS,
Acting Commissioner of Social Security.

Approved June 18, 1973.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Subpart P of regulations No. 5 is amended as set forth below.

1. Section 405.1675 is amended by revising paragraph (a)(1) to read as follows:

§ 405.1675 Assignment of right to receive payment under the supplementary medical insurance benefits plan.

(a)(1) When an individual is furnished covered medical or other health services (other than physicians' and ambulance services furnished outside the United States and emergency outpatient services) for which he may receive direct payment of supplementary medical insurance benefits on the basis of reasonable charges (see § 405.1672(b)), he may assign the right to such payment to the physician or other person who furnished the services. (See § 405.1680 concerning payment of assigned benefits to an employer, facility, or health care delivery system with which the physician or other person furnishing the service has a contractual arrangement.) The claim must be completed in accordance with the instructions prescribed by the Social Security Administration (see § 405.1678). In accepting the assignment, the physician or other person who furnished the services agrees that the reasonable charge, as determined by the carrier or the Social Security Administration, as appropriate, shall be his full charge for the service and, aside from the benefit payment, he will not charge or collect from the individual or any other source an amount in excess of the applicable unmet deductible (see §§ 405.245 and 405.246) applied to the reasonable charge and 20 percent of the remaining reasonable charge.

* * * * *

2. Section 405.1680 is amended to read as follows:

§ 405.1680 Payment of assigned benefits.

(a) *General.*—Benefits payable under § 405.1675 or § 405.1684 may be paid only to the physician or other person who furnished the service, except that, subject to the conditions set forth in § 405.1675 or § 405.1684, as appropriate, payment may be made to the following:

(1) The employer of the person who furnished the service, if such person is required as a condition of his employment to turn over to his employer his fees for his services;

(2) The facility in which the service is provided if there is a contractual arrangement between the facility and the person furnishing the service under which the facility bills for such person's services; or

(3) A foundation, plan, or similar organization which furnishes health care through an organized health care delivery system if there is a contractual arrangement between the organization and the person furnishing the service under which the organization bills for such person's services.

(b) *Meaning of terms.*—For purposes of this section, a facility is a hospital or other institution which makes provision for furnishing health care services to inpatients. A health care delivery system includes, but is not limited to, an organized medical group clinic and a group practice prepayment plan.

(c) *Effective date.*—The provisions of this section are effective with respect to claims for benefits filed after October 30, 1972.

[FR Doc.73-12593 Filed 6-26-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72-CE-29]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Red Oak, Iowa.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received on or before July 27, 1973, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106.

A new public use instrument approach procedure is being developed for the Red Oak, Iowa Municipal Airport. Consequently, it is necessary to provide controlled airspace protection for aircraft executing this new approach procedure by designating a transition area at Red Oak, Iowa.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

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

RED OAK, IOWA

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Red Oak Municipal Airport (latitude 41°00'40" N., longitude 95°15'25" W.); and within 3 miles each side of a 335° bearing from the Red Oak Municipal Airport, extending from the 6-mile radius to 9½ miles northwest of the airport; and that airspace extending from 1,200 feet above the surface within 4½ miles southwest and 9½ miles northeast of the 335° bearing from the Red Oak, Iowa Airport extending from the airport to 18½ miles northwest of the airport.

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

Issued in Kansas City, Missouri, on June 1, 1973.

JOHN M. CYROCKI,
Director, Central Region.

[FR Doc.73-12848 Filed 6-26-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-SW-35]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation regulations to alter controlled airspace in the Monroe, La., terminal area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before July 27, 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, Texas. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Divison.

It is proposed to amend Part 71 of the Federal Aviation Regulations at hereinafter set forth.

In Section 71.181 (38 FR 435), the Monroe, La., transition area is amended to read:

MONROE, LA.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Monroe Municipal Airport (latitude 32°30'30" N., longitude 92°02'20" W.); within 5 miles NW and 8 miles SE of the Monroe ILS localizer SW course extending from 5 miles NE to 12 miles SW of the LOM and 4.5 miles each side of the Monroe VORTAC (latitude 32°31'00" N., longitude 92°02'09" W.) 308° T (301°M) radial extending from the 6-mile radius area to 18 miles NW of the VORTAC.

Alternation of the Monroe, La., transition area is necessary to provide controlled airspace for instrument approach procedures predicated on the Monroe VORTAC which is being relocated to a site on the Monroe Municipal Airport. Alteration is also necessary to provide controlled airspace for aircraft departing the Municipal Airport.

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

Issued in Fort Worth, TX., on June 15, 1973.

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

[FR Doc.73-12852 Filed 6-26-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-SW-37]

DESIGNATION OF TRANSITION AREA

Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation regulations to designate a 700-foot transition area at Port Isabel, 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 July 27, 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, Texas. 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), for following transition area is added:

PORT ISABEL, TEX.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Port Isabel, Cameron County Airport (latitude 26°10'00" N., longitude 97°20'45" W.) and within 2 miles each side of the Brownsville, Tex., VORTAC 006° T (358° M) radial extending from the 5-mile radius area to 10 miles north of the Brownsville VORTAC.

The proposed transition area will provide controlled airspace for aircraft executing the proposed VORTAC RWY 17 original instrument approach to Cameron County Airport.

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

Issued in Fort Worth, TX., on June 15, 1973.

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

[FR Doc.73-12853 Filed 6-26-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-SO-38]

TRANSITION AREAS

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Dillon and Bennettsville S.C., transition areas.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before July 27, 1973, will be considered before action is taken on the proposed amendment. No 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 light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 724, 3400 Whipple Street, East Point, Ga.

The Dillon transition area described in § 71.181 (38 FR 435) would be amended as follows: "* * * 16 miles northeast of the VORTAC * * *" would be deleted and "* * * 16 miles northeast of the VORTAC; within 3 miles each side of the 245° bearing from Dillon RBN (Lat. 34°27'01" N, Long. 79°22'09" W), extending from the 6.5-mile radius area to 8.5 miles southwest of the RBN * * *" would be substituted therefor.

The Bennettsville transition area described in § 71.181 (38 FR 435) would be amended as follows: "* * * Long. 79° 43'57" W.) * * *" would be deleted and "* * * Long. 79°43'57" W.); within 3 miles each side of the 239° bearing from Bennettsville RBN (Lat. 34°17'39" N., Long. 79°43'53" W.), extending from the 6.5-mile radius area to 8.5 miles southwest of the RBN, excluding the portion within the Darlington, S.C. transition area * * *" would be substituted therefor.

The proposed alterations are required to provide controlled airspace protection for IFR aircraft executing the NDB RWY 6 Instrument Approach Procedures to Dillon County and Bennettsville Airports, utilizing the Dillon (private) and Bennettsville (private) nondirectional radio beacons respectively.

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

Issued in East Point, Ga., on June 13, 1973.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.73-12850 Filed 6-26-73;8:45 am]

[Airspace Docket No. 73-SO-39]

ALTERATION OF TRANSITION AREAS

Notice of Proposed Rule Making

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Cheraw and Sumter, S.C., transition areas.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, P.O. Box 20636, Atlanta, Ga. 30320. All communications received within thirty days after publication of this notice in the Federal Register will be considered before action is taken on the proposed amendment. No 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 light of comments received.

The official docket will be available for examination by interested persons at the

Federal Aviation Administration, Southern Region, Room 724, 3400 Whipple Street, East Point, Ga.

The Cheraw and Sumter transition areas described in § 71.181 (38 FR 435) would be amended as follows:

In the Cheraw, S.C. transition area "* * * to the VOR * * *" would be deleted and "* * * to the VOR; within 3 miles each side of the 259° bearing from Cheraw RBN (Lat. 34°42'30" N, Long. 79°57'46" W), extending from the 5-mile radius area to 8.5 miles west of the RBN * * *" would be substituted therefor.

In the Sumter, S.C. transition area "* * * excluding the portion within Columbia transition area * * *" would be deleted and "* * * within 3 miles each side of the 028° bearing from Sumter RBN (Lat. 33°59'24" N, Long. 80°-21'38" W), extending from the 5-mile radius area to 8.5 miles northeast of the RBN; excluding the portion within the Columbia transition area * * *" would be substittued therefor.

The proposed alterations are required to provide controlled airspace protection for IFR aircraft executing the proposed NDB RWY 7 Instrument Approach Procedure to Cheraw Municipal Airport and the NDB RWY 22 Instrument Approach Procedure to Sumter Municipal Airport, utilizing the Cheraw (private) and Sumter (private) Nondirectional Radio Beacons respectively.

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

Issued in East Point, Ga., on June 13, 1973.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.73-12851 Filed 6-26-73;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 73-SO-40]

DESIGNATION OF TRANSITION AREA

Notice of Proposed Rule Making

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Laurens, S.C., transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, P.O. Box 20636, Atlanta Ga. 30320. All communications received on or before July 27, 1973, will be considered before action is taken on the proposed amendment. No 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 light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 724, 3400 Whipple Street, East Point, Ga.

The Laurens transition area would be designated as:

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Laurens Municipal Airport (Lat. 34°30'15" N, Long. 81°57'00" W); within 3 miles each side of the 244° bearing from Laurens RBN (Lat. 34°30'37" N, Long. 81°-56'33" W), extending from the 6.5-mile radius area to 8.5 miles southwest of the RBN.

The proposed designation is required to provide controlled airspace protection for IFR operations at Laurens Municipal Airport. A prescribed instrument approach procedure to this airport, utilizing the Laurens (private) Nondirectional Radio Beacon, is proposed in conjunction with the designation of this transition area.

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

Issued in East Point, Ga., on June 14, 1973.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.73-12849 Filed 6-26-73;8:45 am]

Federal Highway Administration

[23 CFR Part 1]

[Docket No. 73-1; Notice No. 1]

ENVIRONMENTAL IMPACT STATEMENTS FOR FEDERAL-AID HIGHWAY PROJECTS

Notice of Proposed Amendment to Policy and Procedure Memorandum; Effective Dates

The Federal Highway Administrator is considering amending paragraph 5 of Policy and Procedure Memorandum (PPM) 90-1 (37 FR 21809) to specify new effective dates, after which Federal-aid highway project submissions by the States must be accompanied by environmental impact statements.

Under the proposal, the Administrator is considering two alternatives: (1) Requiring an impact statement on all major Federal-aid highway projects significantly affecting the environment if the plans, specifications, and estimates for those projects are submitted for approval on or after the new effective date; or (2) requiring an impact statement on all major Federal-aid highway projects significantly affecting the environment if a request for approval of advertisements for bids is submitted on or after the new effective date. It is proposed that the new effective date be no later than January 1, 1974.

The Administrator will consider all reasonable suggestions regarding the date upon which the PPM should be made effective and the stage of the highway construction process at which its provisions should become applicable. He will also consider varying the applicability of PPM 90-1 to different projects depending upon the type, size, or class of project involved, or any other relevant factors.

Requiring environmental impact statements on all projects receiving approval of PS&E after July 1, 1973, would cause some 875 projects having a value of $2.9 billion to be delayed 1 year or more. In some States as much as half of the projected total State highway construction program for fiscal year 1974 would be affected. The impact on the construction industry and on the motoring public would be severe. Such an abrupt action would compound an already serious unemployment problem in a number of States. In addition, most State highway departments that would be affected lack sufficient skilled manpower to immediately absorb the extremely heavy additional workload that would be required to prepare the additional environmental impact statements.

Interested persons are invited to submit written data, views, or arguments pertaining to this proposal. All comments submitted should refer to the docket number and notice number appearing at the top of this document and should be submitted in three copies to the Office of Environmental Policy (HEV-1), Federal Highway Administration, Washington, D.C., 20590. All comments received before the close of business on August 10, 1973, will be considered before further action is taken on this proposal. Comments will be available for examination in the office of the Chief of the Environmental Development Division, Room 3246, 400 Seventh Street, SW., Washington, D.C., both before and after the closing date for comments.

This notice of proposed rulemaking is issued under the authority of 23 U.S.C. 315 and the delegation of authority by the Secretary of Transportation in 49 CFR 1.48.

Issued on: June 18, 1973.

NORBERT T. TIEMANN,
Federal Highway Administrator.

[FR Doc.12844 Filed 6-26-73;8:45 am]

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

[33 CFR Part 401]

ASSESSMENT, MITIGATION OR REMISSION OF PENALTIES

Proposed; Seaway Regulations and Rules

The purpose of this document is to propose a new Subpart C to Part 401, Regulations and Rules of the Saint Lawrence Seaway Development Corporation. These procedures would provide for the assessment, mitigation or remission of penalties as authorized by Title I of the Ports and Waterways Safety Act of 1972, P.L. 92-340. The Secretary of Transportation delegated his authority under Section 106 of the Act as it applies to the Saint Lawrence Seaway to the Administrator of the Corporation in 49 CFR 1.50a

and this document would further delegate that authority relating to penalty assessment, mitigation or remission to the Resident Manager and the General Counsel of the Corporation.

Specifically, the proposal states that violators of Seaway regulations and rules will be notified of the fact of the violation and the administrative procedure to be used in processing civil penalty cases. This procedure sets out the actions which will be taken and the time periods allowed for petitions and appeals and provides for referral of cases to the United States Attorney under certain circumstances.

Further, the proposal authorizes the Corporations, General Counsel to determine whether or not a violation is justified in being referred to the United States Attorney who will decide whether to institute criminal proceedings and finally, § 401.206 outlines the procedure for payment of civil penalties.

The full text of the proposed addition is as follows:

Subpart C—Assessment, Mitigation or Remission of Penalties

Sec.
401.201 Delegation of authority.
401.202 Statute providing for assessment, mitigation or remission of Civil penalties.
401.203 Reports of violations of seaway regulations or rules and instituting and conducting civil penalty proceedings.
401.204 Criminal penalties.
401.205 Civil and criminal penalties.
401.206 Procedure for payment of civil penalty for violation of seaway, a regulation or rule.

AUTHORITY: 68 Stat. 93–97, 33 U.S.C. 981–990, as amended; sec. 104, Pub. L. 92–340, 86 Stat. 424, 49 CFR 1.50a (37 FR 21943).

§ 401.201 Delegation of Authority.

(a) The Secretary of Transportation, by 49 CFR 1.50a, has delegated to the Administrator of the Saint Lawrence Seaway Development Corporation the authority vested in him under the Ports and Waterways Safety Act of 1972, P.L. 92–340.

(b) The Administrator hereby authorizes the Corporation's Resident Manager to administer this statute in accordance with the procedures set forth in this subpart.

§ 401.202 Statute providing for assessment, mitigation or remission of civil penalties.

Title I of the Ports and Waterways Safety Act of 1972 authorizes the assessment and collection of a civil penalty of not more than $10,000 from anyone who violates a regulation issued under that Title.

§ 401.203 Reports of violations of Seaway regulations or rules and instituting and conducting civil penalty proceedings.

(a) Violations of Seaway regulations and rules, Subparts A and B of this Part, will be brought to the attention of the alleged violator at the time of detection whenever possible. When appropriate, there will be a written notification of the fact of the violation. This notification will set forth the time and nature of the violation and advise the alleged violator relative to the administrative procedure employed in processing civil penalty cases. The alleged violator will be advised that he has 15 days in which to appear before the Resident Manager or submit a written statement for consideration. The Resident Manager shall, upon expiration of the 15-day period, determine whether there has been a violation of the Seaway regulations or rules.

(b) If the Resident Manager decides that a violation of Seaway regulations or rules has occurred, a determination will be made as to whether to invoke no penalty at all and close the case or whether to invoke a part or full statutory penalty. In either event, a written notice of the decision shall be given to advise the violator. If a penalty is assessed, such notice will advise the violator of his right to petition for relief within 15 days or such longer period as the Resident Manager, in his discretion, may allow. The Resident Manager may mitigate the penalty or remit it in full, except as the latter action is limited to paragraph (f) of this section. The violator may, if he desires, appear in person before the Resident Manager. If the violator does not apply for relief but instead maintains that he has not committed the violation(s) charged, and the Resident Manager, upon review, concludes that invocation of the penalty was proper, no remission or mitigation action will be taken. On the other hand, should the violator petition the Resident Manager for relief without contesting the determination that a violation did, in fact, occur, relief may be granted as the circumstances may warrant.

(c) When the penalty is mitigated, such mitigation will be made conditional upon payment of the balance within 15 days of the notice or within such other longer period of time as the Resident Manager in his discretion may allow.

(d) The violator may appeal to the Administrator from the action of the Resident Manager. Any such appeal shall be submitted to the Administrator through the Resident Manager within 15 days of the date of notification by the Resident Manager, or such longer period of time as the Resident Manager, in his discretion, may allow.

(e) Should the alleged violator require additional time to present matters favorable to his case at any stage of these penalty proceedings, a request for additional time shall be addressed to the Resident Manager who will grant a reasonable extension of time where sufficient justification is shown.

(f) Under the following circumstances, the Corporation's General Counsel shall forward cases involving violations of the Seaway regulations and rules to the United States Attorney with the recommendation that action be taken to collect the assessed statutory penalty:

(1) When, within the prescribed time, the violator does not explain the violation, appeal for mitigation or remission, or otherwise respond to written notices from the Resident Manager; or

(2) When, having responded to such inquiries, the violator fails or refuses to pay the assessed or mitigated penalty, or to appeal to the Administrator, within the time prescribed; or

(3) When the violator denies that the violation(s) was committed by him, the Resident Manager, upon review, disagrees and the violator thereafter fails to respond to the demand, appeal to the Administrator, or to remit payment of the assessed penalty within the time prescribed (see paragraph (b) of this section); or

(4) When the violator fails to pay within the prescribed time the penalty as determined by the Administrator after consideration of the violator's appeal from the action of the Resident Manager.

(g) If a report of boarding or an investigation report submitted by a Corporation employee or investigative body discloses evidence of violation of a Federal criminal statute, the Corporation's General Counsel, in accordance with § 401.204, shall refer the findings to the United States Attorney for appropriate action.

§ 401.204 Criminal penalties.

(a) Prosecution in the Federal courts for violations of Seaway regulations and rules enforced by the Corporation which provide, upon conviction, for punishment by fine or imprisonment is a matter finally determined by the Department of Justice. This final determination consists of deciding whether and under what conditions to prosecute or to abandon prosecution.

(b) The Corporation's General Counsel is hereby authorized to determine whether or not a violation of a Seaway regulation or rule carrying a criminal penalty is one which would justify referral of the case to the United States Attorney.

(c) The Corporation's General Counsel will identify the regulations or rules which were violated and make specific recommendations concerning the proceedings to be instituted by the United States Attorney in every case.

(d) Referral of a case to the United States Attorney for prosecution terminates the Corporation's authority with respect to the criminal aspects of a violation.

§ 401.205 Civil and criminal penalties.

(a) If a violation of a Seaway regulation or rule carries a criminal penalty, the Corporation's General Counsel is hereby authorized to determine whether to refer the case to the United States Attorney for prosecution in accordance with § 401.204, which outlines the appropriate procedure for handling criminal cases.

(b) The decision of the United States Attorney as to whether to institute criminal proceedings shall not bar the initiation of civil penalty proceedings by the Resident Manager.

§ 401.206 Procedure for payment of civil penalty for violation of Seaway regulation or rule.

(a) The payment must be by money order or certified check payable to the order of the Saint Lawrence Seaway Development Corporation when mailed to the Resident Manager. If the payment is made in person at the offices of the Saint Lawrence Seaway Development Corporation, the payment may be in cash or by postal money order or check payable to the order of the Saint Lawrence Seaway Development Corporation.

(b) The payment of any penalty is acknowledged by written receipt.

(c) If the penalty paid is determined by the Resident Manager to have been improperly or excessively imposed, the payor will be notified and requested to submit an application for a refund which should be mailed to the Saint Lawrence Seaway Development Corporation, attention of the Resident Manager. Such application must be made by the payor within one year of the date of the notification provided for in this section.

(d) In the event the alleged violator is about to leave the jurisdiction of the United States, he will be required, before being allowed to repart, to post a bond in the amount and manner suitable to the Resident Manager, from which bond any subsequent assessed or mitigated penalty may be satisfied.

Interested parties may submit written data, views or arguments in regard to the document proposed herein to the Saint Lawrence Seaway Development Corporation, Seaway Circle, Massena, New York 13662 (Attention: General Counsel). Comments received not later than July 30, 1973 will be considered. All comments received will be available for examination by interested parties at the office of the Saint Lawrence Seaway Development Corporation, Seaway Circle, Massena, New York 13662.

(68 Stat. 93-97, 33 U.S.C. 981-990, as amended, and Sec. 104, Pub. L. 92-340, 86 Stat. 424, 49 CFR 1.50a (37 F.R. 21943)).

Issued: June 20, 1973.

SAINT LAWRENCE SEAWAY,
DEVELOPMENT CORPORATION,
[SEAL] D. W. OBERLIN,
Administrator.

[FR Doc.73-12914 Filed 6-26-73;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 207, 208, 212, 214]

[Docket No. 24908; Reg. EDR-237B]

AFFINITY CHARTERS

Decision Not to Suspend Rules

By advance notice of proposed rulemaking, EDR-237, November 9, 1972, the Board instituted a rulemaking proceeding to consider whether it should propose amendments of Parts 207, 208, 212 and 214 of the Board's Economic Regulations which would suspend the "prior affinity" charter rules during the pendency of the Travel Group Charter (TGC) experiment under Part 372a. Pursuant to the advance notice, numerous comments were received on the matters upon which comment was invited.

As indicated, the primary question raised in EDR-237 is possible suspension of the affinity charter rules during the pendency of the TGC experiment. Operation of TGC's has only recently been initiated, and at this early juncture there is no assurance that TGC's under the present regulations will prove an adequate substitute for affinity charters. At the least, the Board would need to know the results of TGC operations first, for the 1973 summer season and second, for the ensuing off-peak season in order to evaluate their future prospects. On the other hand, the Board is aware that the time for marketing affinity charters for the 1974 summer season is at hand, and resolution of the question of suspending such charters during that period cannot be postponed.

Accordingly, to remove doubt as to whether affinity charters can be operated during the 1974 charter season and to enable the carriers to go forward with marketing such charters, the Board hereby gives notice that it does not plan to take any action which would have the effect of suspending the affinity charter rules for any period prior to November 1, 1974. The Board notes, however, that some European countries have indicated that they will not accept affinity charters after the end of the current year. The Board hopes this decision will be reconsidered in light of this notice.

Finally, the Board points out that this notice does not commit the Board to retaining the existing prior affinity charter rules in their present form and does not preclude amendment of such rules prior to November 1, 1974.

By the Civil Aeronautics Board.

Dated June 21, 1973.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73-12932 Filed 6-26-73;8:45 am]

VETERANS ADMINISTRATION

[38 CFR Part 17]

GRANTS AND ASSISTANCE FOR MEDICAL AND ALLIED HEALTH EDUCATION

Expansion and Improvement

The following proposed regulatory provisions relate to the implementation of the Veterans Administration Medical School Assistance and Manpower Training Act of 1972 (86 Stat. 1100), which provides for assistance in establishment of new State medical schools, and for grants and other assistance to existing medical schools and other health manpower training institutions which are affiliated with Veterans Administration hospitals. Program guidelines setting forth the details of administration of the programs of grants and other assistance authorized under this Act appear at page 16937 of this issue.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (232H), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All relevant material received before July 27, 1973 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays), during the mentioned 30-day period and for 10 days thereafter. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Assistance Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Notice is also given that it is proposed to make any regulations that are adopted effective the date of final approval by the Administrator of Veterans Affairs.

Sections 17.400 through 17.416 are added to read as follows:

GRANTS AND ASSISTANCE FOR DEVELOPMENT, EXPANSION AND IMPROVEMENT OF MEDICAL AND ALLIED HEALTH EDUCATION

Sec.
17.400 Purpose and scope of the program.
17.401 Administration.
17.402 Definitions.
17.403 Eligibility.
17.404 Application.
17.405 Agreements and grant awards.
17.406 Payments.
17.407 Expenditure of grant funds.
17.408 Nondiscrimination.
17.409 Publications and copyright.
17.410 Accountability.
17.411 Records, reports, and audit.
17.412 Additional conditions.
17.413 Early termination and withholding of payments.
17.414 Recapture provision.
17.415 Right to hearing.
17.416 Expansion of hospital education and training capacity.

GRANTS AND ASSISTANCE FOR DEVELOPMENT, EXPANSION AND IMPROVEMENT OF MEDICAL AND ALLIED HEALTH EDUCATION

§ 17.400 Purpose and scope of the program.

The provisions of §§ 17.400 through 17.416 are applicable to a program of grants and other forms of assistance under the "Veterans' Administration Medical School Assistance and Health Manpower Training Act of 1972" (38 U.S.C. Chapter 82). This Act authorizes the Administrator of Veterans' Affairs to provide certain assistance in the establishment of new State medical schools and the improvement of existing medical schools affiliated with the Veterans Administration; to develop cooperative arrangements between institutions of higher education, hospitals, and other nonprofit health service institutions affiliated with the Veterans Administration to coordinate, improve, and expand the training of professional and allied health and paramedical personnel; to develop and evaluate new health careers, interdisciplinary approaches and career advancement opportunities; to improve and expand allied and other health manpower utilization; and for other purposes.

§ 17.401 Administration.

Programs of grants and other forms of assistance which are established under the provisions of 38 U.S.C. Chapter 82 will be administered in accordance with §§ 17.400 through 17.416 and with program guides which will be issued and updated periodically by the Administrator.

§ 17.402 Definitions.

For the purpose of §§ 17.400 through 17.416 the term:

(a) The "Administrator" means the Administrator of Veterans Affairs.

(b) The "Special Medical Advisory Group" means the group of representatives of medical, dental and allied professions, appointed and functioning under 38 U.S.C. 4112(a).

(c) "Program period" means the time (not exceeding 7 years) for which the grant assistance has been approved as specified in the agreement or grant document.

(d) An "award period" means the interval of time into which an approved activity is divided for budgetary purposes, as specified in the agreement or grant document.

(e) "Extension, expansion, alteration, remodeling, improvement, or repair" as used in 38 U.S.C. 5073 and 5096 relate to existing buildings and structures. None of these is synonymous with "construction" as used in 38 U.S.C. 5083(a) which relates to the construction of new free-standing structures. Both provisions are limited to facilities and property under the control and jurisdiction of the Administrator.

(f) For the purposes of 38 U.S.C. 5071–5074: (1) "Colleges or universities" means nonprofit institutions of higher learning, which are primarily supported by the State, and are authorized to offer, and are offering, a formal 4-year program of college level studies in residence and are accredited or approved by a recognized accrediting body or bodies approved for such purposes by the Commissioner of Education of the Department of Health, Education, and Welfare.

(2) "Medical school" means a nonprofit school of medicine or osteopathy which provides a complete course of study which culminates in a degree of doctor of medicine or doctor of osteopathy; and with regard to which there has been a finding made of reasonable assurance that such a school can proceed to full accreditation as determined by the body or bodies approved for such purposes by the Commissioner of Education of the Department of Health, Education, and Welfare.

(3) "Faculty" means those individuals who have as their principal duties the instruction of students in the new medical school or the administration of the academic program of such a school.

(g) For the purposes of 38 U.S.C. 5081–5083: (1) "Medical school" means a nonprofit school of medicine or osteopathy which provides a course of study of not less than 2 years, which forms a part or whole of the necessary requirements leading to a degree of doctor of medicine or doctor of osteopathy, and which has been reviewed and accredited for its stage of development by an appropriate accrediting agency approved for such purpose by the Commissioner of Education of the Department of Health, Education, and Welfare.

(2) "Full-time student" means a student who is enrolled or is expected to be enrolled in a medical school on a full-time basis as determined by the medical school and is pursuing a course of study leading to the degree of doctor of medicine or doctor of osteopathy.

(h) For the purposes of 38 U.S.C. 5091–5093, an "eligible institution" means any nonprofit educational facility or other public or nonprofit institution, including universities, colleges, junior colleges, community colleges, school of allied health professions, State and local systems of education, hospitals, and other nonprofit health manpower institutions for the training or education of allied health or other health personnel affiliated with the Veterans Administration for the conduct of or the providing of guidance for education and training programs for health manpower.

§ 17.403 Eligibility.

(a) To be eligible for assistance under 38 U.S.C. 5071–5074, the applicant must:

(1) Be a college or university as defined in § 17.402(f)(1);

(2) Be located within a reasonable distance of an existing Veterans Administration medical facility; and

(3) Furnish the Administrator with such evidence as he may require that the college or university has prepared and presented a plan for the proposed medical school; and that in a letter dated not earlier than October 24, 1972, has received reasonable assurance of accreditation as defined in § 17.402(f)(2).

(b) To be eligible for assistance under 38 U.S.C. 5081–5083, the applicant must:

(1) Be a medical school as defined in § 17.402(g)(1); and

(2) Have been affiliated with the Veterans Administration under an agreement entered into pursuant to 38 U.S.C. 5051 for at least 12 months prior to the date of the application for a grant under this subchapter II.

(c) To be eligible for assistance under 38 U.S.C. 5091–5093, the applicant must:

(1) Be an "eligible institution" as defined in § 17.402(h); and

(2) Be affiliated with the Veterans Administration under an agreement entered into pursuant to 38 U.S.C. 5051, at the time of the award of a grant under this subchapter III.

§ 17.404 Application.

(a) Each eligible applicant desiring assistance shall submit an application in such form and at such time as the Administrator shall prescribe.

(b) Such application shall be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any agreement or award of funds.

(c) Such application shall state the purpose for which the application is made and shall contain a budget and a narrative plan by means of which the applicant intends to conduct the project or program and carry out the requirements of §§ 17.400 through 17.416.

(d) For purposes of 38 U.S.C. 5071–5074: (1) Such application shall be executed by an individual authorized to act for the applicant and to assume in behalf of the applicant, the obligations imposed by the terms and conditions of any award of funds or of any formally executed agreement, including §§ 17.400 through 17.416. When the applicant is a school or college which is not controlled by the State, the application must be countersigned by an official similarly authorized by the State agency responsible for administering the State's contribution to its support.

(2) In addition to the information required in paragraph (c) of this section, such application shall include any proposed agreement for lease of land, buildings and structures under the control of the Administrator.

(3) Such application shall be accompanied by a statement assuring that adequate financial support for the new medical school will be provided by the State or by other sources. This statement must be executed by an appropriate official of the State in which the new school is to be located.

(4) Such application shall be accompanied by a general statement regarding the conceptual plan of the State for providing health professions education and the role of the proposed school of medicine or osteopathy in that plan, including the views of the health planning entity designated under section 314(a) of the Public Health Service Act.

§ 17.405 Agreements and grant awards.

(a) For the purposes of 38 U.S.C. 5071–5074: (1) Within the limits of funds available each year for such purposes, the Administrator, upon recommendation of the Chief Medical Director and after consultation with the Special Medical Advisory Group, may enter into, or continue with, agreements to provide assistance to a total of not more than eight applicants whose proposals in his judgment best achieve the purposes of 38 U.S.C. 5071, taking into consideration:

(i) The relative merit of the applicant's overall plan for the establishment of the medical school;

(ii) The suitability of the Veterans Administration medical facility for development as medical school facilities; and the terms of any lease agreement;

(iii) The other facilities and resources available to the applicant to assure the sound establishment and continuing maintenance of the programs of the new medical school;

(iv) The arrangements to be maintained by the school with the Veterans Administration medical facility with which it is to be associated, and the extent to which they will be mutually beneficial to the mission of both; and

(v) The extent of the commitment of the State in which the new school is to be located to the provision of adequate financial support in the establishment of the school and in its continuing operation beyond the end of the program period.

(vi) The presence of existing or developing schools of medicine or osteopathy in the region to be served by the applicant.

(2) The terms of any agreement and the amount of any funds to be granted shall be determined by the Administrator on the basis of:

(i) The considerations and understandings involved in the lease;

(ii) His estimate of the sums necessary to accomplish the adequate extension, alteration, remodeling, improvement, or repair of the buildings or structures to be leased; and to adequately equip such buildings or structures for the purposes proposed; and

(iii) His estimate of the amounts necessary to assist in the payment of the cost of the salaries of faculty, the proportion will not exceed 90 percent of the salaries for the first year of operation, and a like percentage for the second and third years; 80 percent for the fourth year; 70 percent for the fifth year; 60 percent for the sixth year; and 50 percent for the seventh year.

(3) No recipient should anticipate receiving assistance in any one award year totaling more than one-eighth of the funds available for awards pursuant to 38 U.S.C. 5072 for that year.

(b) For the purposes of 38 U.S.C. 5081–5083: (1) Within the limits of funds available for such purposes, the Administrator, upon recommendation of the Chief Medical Director, after consultation with the Special Medical Advisory Group, may award grants and other assistance to those applicants whose projects or programs will in his judgment best promote the purposes of 38 U.S.C. 5081, taking into consideration:

(i) The relative merit of the project or program proposed by the applicant;

(ii) The other resources available to the applicant to supplement and complement the proposed program or project;

(iii) The capability of the applicant to carry out the proposed program or project, including the accomplishment of the increased enrollment of full-time students without threat to its accreditation as required in § 17.402(g)(1);

(iv) The extent to which the plan for program or project has been coordinated with Veterans Administration facility(s) with which the applicant is affiliated for purposes of the program or project.

(2) The amount of any award shall be determined by the Administrator on the basis of his estimate of the sum necessary for the cost of the applicant's approved program or project.

(c) For the purpose of 38 U.S.C. 5091–5093: (1) Within the limits of funds available for such purpose, the Administrator, upon recommendation of the Chief Medical Director, after consultation with the Special Medical Advisory Group, may award grants to those applicants whose projects or programs will in his judgment best promote the purposes of 38 U.S.C. 5091, taking into consideration:

(i) The relative merit of the program or project proposed by the applicant;

(ii) The other resources available to the applicant to supplement and complement the proposed program or project;

(iii) The capability of the applicant to carry out the proposed program or project, including the increase in enrollment of students, under circumstances which will not compromise the quality of education at the institution nor jeopardize the accreditation of the training program by the appropriate body or bodies recognized for such purposes by the Commissioner of Education of the Department of Health, Education, and Welfare.

(iv) The extent to which the plan for the program or project has been coordinated with Veterans Administration facility(s) with which the applicant is or proposes to become affiliated for purposes of the program or project.

(2) The amount of any award shall be determined by the Administrator on the basis of his estimate of the sum necessary for the cost of the applicant's approved program or project.

(d) For the purposes of any grant program of 38 U.S.C. Chapter 82: (1) All grant awards shall be in writing, shall set forth the total amount of assistance awarded and the total period for which it will be available for obligation by the grantee (not to exceed 7 years).

(2) Neither the approval of any project nor the award of any grant shall commit or obligate the United States in any way to make any additional supplemental, continuation, or other award with respect to the approved project or to a portion thereof. For continuation support, grantees must make a separate application annually including an annual budget and report of balances remaining from previous award periods and at such time and in such form as the Administrator may require.

(3) The adequacy of a plan for assuring priority for admission of qualified veterans in all of the health manpower education and training programs, as provided in 38 U.S.C. 5070(e) shall be considered.

§ 17.406 Payments.

Payments made pursuant to grant awards may be made in installments, and either in advance or by way or reimbursement, with necessary adjustments on account of overpayments or underpayments as the Administrator may determine.

§ 17.407 Expenditure of grant funds.

(a) For the purposes of 38 U.S.C. 5071–5074, any funds awarded shall be expended solely for the costs of assistance in the establishment of new State medical schools in accordance with the applicable provision of 38 U.S.C., Chapter 82, §§ 17.400 through 17.416, and then terms and conditions of the grant award.

(b) For the purposes of 38 U.S.C. 5081–5083, any funds granted shall be expended solely for the expansion and improvement of the training capacities of medical schools affiliated with the Veterans Administration and to permit such schools to cooperate with other public and nonprofit institutions of higher learning, hospitals and other health manpower institutions affiliated with the Veterans Administration to increase the production of professional and other health personnel in accordance with the applicable provisions of 38 U.S.C. Chapter 82, §§ 17.400 through 17.416, and the terms and conditions of the grant award.

(c) For the purposes of 38 U.S.C. 5091–5093, any funds granted shall be expended solely for the costs of assistance in the establishment of cooperative arrangements among universities, colleges, junior colleges, community colleges, schools of allied health professions, State and local systems of education, hospitals, and other nonprofit health manpower institutions affiliated with the Veterans Administration for educational and clinical projects and programs involving allied and other health manpower in accordance with applicable provisions of 38 U.S.C. Chapter 82, §§ 17.400. through 17.416, and the terms and conditions of the grant award.

(d) For the purposes of the entire chapter, 38 U.S.C., Chapter 82, any unobligated funds remaining in a grant account at the close of the award period may be carried forward and will be available during a subsequent award period within the approved program period. The amount of any subsequent award will take into consideration any unobligated balance in the grant account. At the end of the last award period of the approved program period, any unobligated funds remaining must be refunded to the Federal Government.

§ 17.408 Nondiscrimination.

(a) Grants made under 38 U.S.C. Chapter 82 shall be subject to Title IX of the "Education Amendments Act of 1972" (effective July 1, 1972) and regulations promulgated by the Department of Health, Education, and Welfare. Such title prohibits sex discrimination in all federally assisted education programs.

(b) Grants made under Public Law 92–541 (86 Stat. 1100) shall be subject to Title VI of the Civil Rights Act of 1964 (78 Stat. 252) which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. Regulations implementing such Title VI have been issued as §§ 18.1 through 18.4 of this chapter.

(c) Grant funds used for remodeling, alteration, or repairs shall be subject to the condition that the grantee shall comply with the requirements of Executive Order 11246, 30 FR 12319 (September 24, 1965), as amended, and with the applicable rules, regulations, and procedures pursuant thereto.

§ 17.409 Publications and copyright.

Except as may otherwise be provided under the terms and conditions of the award, the grantee may copyright without prior approval any publications, films, or similar materials developed or resulting from a project supported by a grant under §§ 17.400 through 17.416, subject, however, to a royalty free, nonexclusive, and irrevocable license or right in the Government to reproduce, translate, publish, use, disseminate, and dispose of such materials and to authorize others to do so.

§ 17.410 Accountability.

The recipient shall allocate expenditures from the grant award between direct and indirect costs according to generally accepted accounting procedures.

(a) *Direct grant costs.* (1) For the purpose of 38 U.S.C. 5071–5074, direct grant costs are limited to the Veterans Administration's contribution to the payment of faculty salaries. (§ 17.405(a)(2)(iii))

(2) For the purpose of 38 U.S.C. 5081–5083 and 5091–5093, direct costs may include in proportion to time and effort spent, but are not limited to, fees and costs directly paid to personnel or for fringe benefits, publications, educational programs, training, or demonstration activities carried out in connection with projects and programs by grantee institutions. In addition, grants made pursuant to 38 U.S.C. 5081–5083 may include costs of construction.

(b) *Indirect costs.* Indirect costs may be computed on a percentage basis or on the basis of a negotiated lump-sum allowance. In the method of computation used, only indirect costs shall be included which bear a reasonable relationship to the program funded by the grant and shall not exceed a percentage greater than the total institutional indirect cost is of the total direct salaries and wages paid by the institution.

§ 17.411 Records, reports, and audit.

(a) *Records.* Each recipient of assistance shall keep records which fully disclose the amount and disposition by the recipient of the proceeds of the assistance, the total cost of the project or undertaking in connection with which the assistance is made and used, the portion of the costs supplied by other public or private sources, and such other records prescribed by the Administrator as will facilitate an effective audit.

(b) *Reports.* Each recipient of assistance will furnish such periodic progress reports as the Administrator may find necessary.

(c) *Audit.* Any application for assistance shall constitute the consent of the applicant that the Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records which are pertinent to such assistance for the purposes of audit and examination.

§ 17.412 Additional conditions.

The Administrator may with respect to any grant award impose additional conditions prior to or at the time of any award when in his judgment such conditions are necessary to assure or protect advancement of the grant purposes, the interest of the Veterans Administration or the conservation of grant funds.

§ 17.413 Early termination and withholding of payments.

Whenever the Administrator finds that a grantee has failed in a material respect to comply with the applicable provisions of 38 U.S.C. Chapter 82, §§ 17.400 through 17.416, or the terms of the grant, he may, on reasonable notice to the grantee withhold further payments and take such other action, including the termination of the grant, as he finds appropriate to carry out the purposes of 38 U.S.C. Chapter 82 and §§ 17.400 through 17.416. Noncancelable obligations of the grantee properly incurred prior to the receipt of the notice of termination will be honored. The grantee shall be promptly notified of such termination in writing and given the reasons therefor.

§ 17.414 Recapture provision.

If the Administrator determines that any school established with assistance under §§ 17.400 through 17.416

(1) Is not accredited and fails to gain appropriate accreditation within a reasonable period of time;

(2) Is accredited but fails substantially to carry out the terms of the agreement entered into under 38 U.S.C. Chapter 82; or

(3) Is no longer operated for the purpose for which such assistance was granted,

he shall be entitled to recover from the recipient of assistance the facilities of such school which were established with assistance under §§ 17.400 through 17.416. In order to recover such facilities the Administrator may bring an action in the district court of the United States for the district in which such facilities are situated.

§ 17.415 Right to hearing.

The actions contemplated in §§ 17.413 and 17.414 shall not be taken until the grantee has been afforded an opportunity for a hearing. Whenever a hearing is held under this section the procedures shall be in accord with the provisions of §§ 18.9 and 18.10 of this chapter. Failure of a grantee to request a hearing or to appear at a scheduled hearing shall be deemed a waiver of the right to be heard and constitutes consent to the Administrator's decision made on the basis of available information.

§ 17.416 Expansion of hospital education and training capacity.

Expenditures, not to exceed 30 percent of the funds appropriated under 38 U.S.C. 5082 for grants to affiliated medical and other schools, may be made for the extension, expansion, alteration, improvement, remodeling, or repair of Veterans Administration buildings and structures to make them suitable for use for health manpower education and training. In addition, such expenditures may be made to Veterans Administration hospitals and facilities for the development or initiation of improved methods of education and training.

Approved June 22, 1973.

[SEAL] DONALD E. JOHNSON,
Administrator.

[FR Doc.73-12925 Filed 6-26-73;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.

FEDERAL RESERVE SYSTEM

ARLTRU BANCORPORATION

Formation of Bank Holding Company

Aritru Bancorporation, Lawrence, Massachusetts, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 80 percent or more of the voting shares of Arlington Trust Company, Lawrence, Massachusetts. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank, to be received not later than July 5, 1973.

Board of Governors of the Federal Reserve System, June 19, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73-12902 Filed 6-26-73;8:45 am]

BANCAPITAL CORP.

Formation of Bank Holding Company

Bancapital Corporation, Austin, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 per cent (less directors' qualifying shares) of the voting shares of The Capital National Bank in Austin, Austin, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank, to be received not later than July 17, 1973.

Board of Governors of the Federal Reserve System, June 19, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73-12903 Filed 6-26-73;8:45 am]

FIRST TENNESSEE NATIONAL CORP.

Acquisition of Bank

First Tennessee National Corporation, Memphis, Tennessee, 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 per cent of the voting shares of the successor by merger to the Jackson State Bank, Jackson, Tennessee. 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)).

First Tennessee National Corporation's subsidiaries are also engaged in the following nonbank activities: acting as reinsurer for underwriters of credit life insurance; and acting as a mortgage broker which manages real estate for others and develops real estate. In addition to the factors considered under section 3 of the Act (banking factors), the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of 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 July 17, 1973.

Board of Governors of the Federal Reserve System, June 19, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73-12904 Filed 6-26-73;8:45 am]

MANUFACTURERS HANOVER CORP.

Order Approving Acquisition of Bank

Manufacturers Hanover Corporation, Dover, Delaware, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire the successor by merger to The First National Bank of Olean, Olean, New York ("Bank"). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls five banks, with aggregate deposits of $10.2 billion, representing 9.4 per cent of the total deposits of commercial banks in New York.[1] Acquisition of Bank (deposits of $46.6 million) by Applicant will not significantly increase the concentration of banking resources in New York.

Bank is the third largest bank in the relevant market, controlling about 18 per cent of the deposits there.[2] No substantial existing competition between any of Applicant's banking subsidiaries and Bank would be eliminated; the closest office of any of Applicant's banking subsidiaries is over 150 miles distant from Bank. The acquisition would also not appear to have a significantly adverse effect on potential competition as Applicant's banking subsidiaries are prohibited from branching into Bank's market until 1976. The relevant banking market does not appear particularly attractive for de novo entry, as indicated by the ratios of population per banking office and per capita income for this market compared to statewide averages. There are three small banks which remain as alternative means of entry by other bank holding companies seeking to enter this market. Moreover, acquisition of Bank by Applicant would remove home office protection from the City of Olean. On the basis of the facts of record, the Board concludes that competitive considerations are consistent with approval of the application.

The managerial and financial resources and future prospects of Applicant, its subsidiary banks and Bank are regarded as generally satisfactory and consistent with approval of the application. Considerations relative to the convenience and needs of the community to be served lend some weight for approval of the application since affiliation with Applicant by Bank should enable Bank to provide an improved range of banking services. The Board concludes that approval of the acquisition is in the public interest.

On the basis of the record the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before July 18, 1973, or (b) later than September 18, 1973 Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York, pursuant to delegated authority.

[1] All banking data are as of December 31, 1972 except where otherwise indicated and represent bank holding company formations and acquisitions approved by the Board through May 31, 1973.

[2] The relevant banking market is approximated by the southern two-thirds of Allegany County and the southeastern two-thirds of Chattaraugus County. Banking data for this market are as of June 30, 1972.

By order of the Board of Governors,[1] effective June 18, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-12905 Filed 6-26-73;8:45 am]

MID-AMERICA FIDELITY CORP.

Formation of Bank Holding Company

Mid-America Fidelity Corporation, Ann Arbor, Michigan, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of all of the voting shares of the successor by merger to Ann Arbor Bank, Ann Arbor, Michigan. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than July 17, 1973.

Board of Governors of the Federal Reserve System, June 19, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73-12906 Filed 6-26-73;8:45 am]

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1972 Rev., Supp. No. 20]

NATIONAL CASUALTY CO.

Termination of Authority to Qualify as Surety on Federal Bonds

Notice is hereby given that the Certificate of Authority of National Casualty Company, Detroit, Michigan, under sections 6 to 13 of Title 6 of the United States Code (37 FR 13598, July 11, 1972), to qualify as an acceptable surety on Federal bonds is hereby terminated effective June 30, 1973.

Bond-approving officers of the Government should, in instances where such action is necessary, secure new bonds with acceptable sureties in lieu of bonds executed by National Casualty Company.

Dated: June 21, 1973.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

[FR Doc.73-12859 Filed 6-26-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bonneville Power Administration

ASSISTANT TO THE CONSTRUCTION AND SERVICES MANAGER

Redelegations of Authority

Redelegations of Authority published in the FEDERAL REGISTER on July 6, 1968 (33 FR 9784) and amended on September 13, 1968 (33 FR 12974), February 21, 1969 (34 FR 2508), August 9, 1969 (34 FR 12955), September 18, 1969 (34 FR 14534), May 1, 1971 (36 FR 8266), June 8, 1971 (36 FR 11047), July 24, 1971 (36 FR 13799), November 26, 1971 (36 FR 22689), May 6, 1972 (37 FR 9245), July 13, 1972 (37 FR 13721), and November 3, 1972 (37 FR 23463), are further amended by revising § 10.11 to read as follows:

SEC. 10.11. Construction and Clearing Contracts.

a. The Construction and Services Manager and the Assistant to the Construction and Services Manager, Division of Engineering and Construction, may execute contracts and amendments to contracts for construction or clearing.

Dated: June 15, 1973.

DONALD PAUL HODEL,
Administrator.

[FR Doc.73-12913 Filed 6-26-73;8:45 am]

Bureau of Mines

COAL MINE SAFETY

Proposed Mandatory Safety Standards for Underground Coal Mines; Findings of Fact

Background. Pursuant to the authority contained in section 101(a) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 745; 30 U.S.C. 811(a)), there was published, as proposed rulemaking, in the FEDERAL REGISTER for December 12, 1972 (37 F.R. 26422), §§ 75.524, 75.1001-1, 75.1003-2, 75.1101-23, 75.1600-1, 75.1600-2, and 75.1704-2 of Part 75, Subchapter 0, Chapter I, Title 30, Code of Federal Regulations, setting forth mandatory standards which would: (1) Establish a requirement that electric current permitted to exist between frames of electric face equipment be limited to not more than 1 ampere; (2) provide for frequent testing and calibration of devices for overcurrent protection; (3) specify requirements for movement of off-track mining equipment in areas where energized trolley wires or trolley feeder wires are present; (4) provide for instruction in the location and use of fire fighting equipment, escapeways, exits, routes of travel and for fire drills; (5) improve two-way communication between working sections and the surface; and (6) require improved escapeways and periodic drills in their use.

Interested persons were afforded a period of 45 days following publication within which to submit to the Director, Bureau of Mines, written comments, suggestions, or objections to these proposed mandatory safety standards, stating the grounds therefor, and to request a public hearing on such objections.

Written objections were timely filed with the Director Bureau of Mines, stating the grounds for objections and requesting a public hearing on proposed §§ 75.524, 75.1001-1, 75.1003-2, 75.1101-23, 75.1600-1, 75.1600-2, and 75.1704-2 of Part 75. In accordance with section 101(f) of the Act, a Notice of Objections Filed and Hearing Requested was published in the FEDERAL REGISTER for March 14, 1973 (38 F.R. 6900).

Following this notice, there was published in the FEDERAL REGISTER for March 22, 1973 (38 FR 7465), a notice of public hearing to be held for the purpose of receiving relevant evidence on the following issues:

(1) That technology is not presently available to permit compliance with the requirement in proposed 30 CFR 75.524 that electric current permitted to exist betwen frames of electric face equipment be limited to not more than 1 ampere;

(2) That the Bureau of Mines should establish ways and means to enable coal mine operators to comply with the requirements of proposed 30 CFR 75.524;

(3) That the requirements of proposed 30 CFR 75.524 should not become effective until 1 year after promulgation;

(4) That automatic circuit interrupting devices described in proposed 30 CFR 75.1001-1 should be tested and calibrated at intervals not to exceed 12 months, rather than 6 months as specified in paragraph (b) of proposed § 75.1001-1;

(5) That a certified person need not be physically present at all times during the movement of off-track mining equipment in areas where energized trolley wires or trolley feeder wires are present as prescribed in paragraph (c) of proposed 30 CFR 75.1003-2, but rather only when the height of the coal seam does not permit 12 inches of vertical clearance between the farthest projection of the equipment being moved and the energized trolley or trolley feeder wires;

(6) That in mines which utilize direct current such current should be permitted to supply the trolley wire system from inby the unit of equipment being moved rather than be restricted to being supplied from outby such equipment as specified in proposed CFR 75.1003-2(f)(1);

(7) That lower current rated fuses be permitted as an alternative to the use of circuit breakers under the conditions described in proposed paragraph (f) of § 75.1003-2;

(8) That in mines which utilize direct current supplied to the trolley wire system from inby the equipment being moved, a miner should be stationed at the control switch inby the equipment in addition to a miner stationed outby as described in proposed § 75.1003-2(f)(3), provided that the inby miner has adequate personal protective equipment;

(9) That the exclusion for equipment being transported in mine cars specified in paragraph (g) of proposed § 75.1003-2 should be extended to equipment being transported on skids if no part of the equipment extends closer to the trolley circuit than the closest projection of track-mounted equipment normally used on the haulage road;

(10) That the training required in proposed 30 CFR 75.1101-23 should be verified during the course of coal mine inspections rather than requiring the operator to submit a training program to the District Manager for approval as specified in paragraph (a) of § 75.1101-23;

(11) That communication facilities located on the surface should be installed

[1] Voting for this action: Chairman Burns and Governors Mitchell, Brimmer, Bucher and Holland. Absent and not voting: Governors Daane and Sheehan.

only near those main portals through which miners normally enter the mine rather than near all main portals as prescribed in proposed § 75.1600-1;

(12) That the responsible person described in proposed § 75.1600-1 should only be on duty during production or maintenance shifts rather than being on duty whenever men are underground;

(13) That communication facilities located on the surface should be capable of being heard or observed by the responsible person described in proposed § 75.-1600-1 rather than restricted to only being heard by such person;

(14) That communication facilities provided at working sections should be located not more than 500 feet outby the last open crosscut and not more than 800 feet from the farthest point of penetration of the working places on the working section rather than the 300 feet and 700 feet distances specified in proposed 30 CFR 75.1600-2.

(15) That designated escapeways should follow the safest routes as directly as practical to the nearest mine opening suitable for safe evacuation rather than the most direct route of travel to the nearest mine opening as specified in paragraphs (a) and (b) of proposed 30 CFR 75.1704-2;

(16) That all escapeways should not be examined weekly by a certified person as prescribed in § 75.1704-2(e)(1);

(17) That a map showing only the main escape system should be posted for the information of all miners, and that maps showing the designated escapeways from each working section to the main escape system should be posted in such working section rather than the map requirements described in proposed § 75.-1704-2(d);

(18) That the escapeway drills prescribed by proposed § 75.1704(e) should be conducted with the same frequency as the fire drills prescribed by proposed § 75.1101-23(c);

(19) That escapeway drills should require each miner only to enter the section escapeway at its junctions with the working section and the main escapeway rather than requiring travel throughout the escapeway as specified in proposed § 75.1704-2(e); and

(20) That at least two miners, including the section foreman, on each producing section should travel the designated escapeways from the working section to the main escape system once every 3 months, and to the nearest mine opening suitable for safe evacuation from the working section once every 6 months rather than traveling through the main escapeways up to the portal at least once every 5 weeks as prescribed in proposed § 75.1704-2(e).

The public hearing was held on April 10, 1973, in the Law Building, University of Kentucky, Lexington, Kentucky. Presentations were made by representatives of the U.S. Bureau of Mines, Bituminous Coal Operators' Association, Inc., Harlan County Coal Operators' Association, Eastover Mining Company, and North American Coal Company. The record remained open for a period of 14 days after April 10, 1973, to permit submission of additional data.

A verbatim transcript of the hearing is available for public inspection in the office of the Deputy Director, Health and Safety, Room 4512, Bureau of Mines, Department of the Interior, Washington, D.C. 20240.

Findings. Section 101(g) of the Act (83 Stat. 747; 30 U.S.C. 811(g)), provides, in part, that within 60 days after completion of any public hearing on proposed mandatory safety standards, the Secretary of the Interior shall make findings of fact which shall be public. On the basis of evidence presented at the hearing and on other information available to the Department, it is found that:

1. With regard to the requirement in proposed 30 CFR 75.524 that electric current permitted to exist between frames of electric face equipment be limited to not more than 1 ampere:

(a) In-mine observation, research, and experimentation by the Bureau of Mines has established that electrical arcing at current levels as low as 1.3 amperes caused by the contact of the frames of electric face equipment is capable of igniting methane.

(b) The establishment of 1 ampere as the maximum current level permitted to exist between the frames of electric face equipment will provide an adequate safety factor to insure that the current level of 1.3 amperes capable of igniting methane is not reached.

(c) Technology is presently available to permit compliance with the requirement that electric current permitted to exist between frames of electric face equipment be limited to not more than 1 ampere.

2. With regard to the requirement in proposed 30 CFR 75.1001-1 that automatic circuit interrupting devices be periodically tested and calibrated, because many such devices remain in service for long periods of time and because such devices are subject to malfunction if not properly adjusted, a regular testing and calibration program is necessary in order to ensure that such devices will cause deenergization of trolley wires or trolley feeder wires in the event of current overload.

3. With regard to the requirements in proposed 30 CFR 75.1003-2 for movement of off-track mining equipment in areas of the active workings where energized trolley wires or trolley feeder wires are present:

(a) Experience has shown that the movement of off-track equipment in areas where energized trolley wires or trolley feeder wires are present is extremely hazardous not only for the persons moving the equipment, but for all persons inby the equipment in the same ventilating current.

(b) Elimination of the possibility of contact between the frame of off-track equipment being moved and energized trolley wires and trolley feeder wires will significantly reduce the hazards involved in such equipment moves.

4. With respect to the requirements for periodic fire drills and training in the use and location of firefighting equipment, location of escapeways, exits and routes of travel to the surface, and evacuation procedures as set forth in proposed 30 CFR 75.1101-23, the ability of miners to effectively fight and escape from fires in underground coal mines will be markedly increased if they are knowledgeable in fire fighting techniques and familiar with the routes of travel and evacuation procedures necessary to reach the surface.

5. With respect to the installation and maintenance requirements for two-way communication facilities between the surface and the working sections of underground coal mines set forth in proposed 30 CFR 75.1600-1 and 75.1600-2, experience has demonstrated that:

(a) Communication facilities located close to the working places within each working section are necessary to assure effective communication between the surface and miners working on a section;

(b) Ordinary methods of signaling an incoming call are not sufficient in the working section of the mine due to the noisy and dark environment in working sections;

(c) Alternative methods of powering two-way communication systems must be provided in the event that the main electric power source is shut off.

6. With respect to the requirements for escapeway locations, escapeway examinations, escapeway maps, and escapeway drills set forth in proposed 30 CFR 75.1704-2, rapid exit from a mine will be more likely if miners are familiar with escapeway routes and if such routes are located in a more direct route to surface openings.

It should be noted that because the evidence presented at the public hearing and other information available to the Department is inconclusive in many respects, the findings above do not cover all of the issues raised by the written suggestions, comments and objections to the notice of proposed rulemaking. Such matters not responded to above are still undergoing consideration and evaluation by Bureau of Mines experts. Section 101 (g) of the Act requires that in the event the Secretary determines that a proposed mandatory safety standard should not be promulgated or should be modified he shall within a reasonable time publish his reasons for his determination. It is anticipated that the reasons for accepting or rejecting any suggestions, comments or objections not answered by the above findings of fact will be set forth in the notice promulgating these mandatory standards.

JOHN B. RIGG,
Deputy Assistant Secretary of the Interior.

JUNE 21, 1973.

[FR Doc.73-12923 Filed 6-26-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

OFFICER IN CHARGE, NATIONAL WAREHOUSE SERVICE CENTER; PRAIRIE VILLAGE, KANS.

Amendment of Delegation of Authority

Pursuant to authority delegated to me by order of the Director, Transportation and Warehouse Division, Consumer and Marketing Service (now Agricultural

Marketing Service), dated May 27, 1965, (30 FR 7295) functions vested in me are hereby redelegated to the Officer in Charge, National Warehouse Service Center, Prairie Village, Kans., as follows:

1. The issuance of licenses authorized under sections 4, 9, and 11 of the United States Warehouse Act (7 U.S.C. 244, 248, and 252);

2. The modification or extension of licenses authorized by section 5 of the United States Warehouse Act (7 U.S.C. 245);

3. Upon written request and a satisfactory statement of reasons therefor, submitted by a licensee, the suspension, revocation, or cancellation of the license held by the licensee as authorized in applicable regulations.

No delegation made herein shall preclude the Chief, Warehouse Service Branch, from performing any of the duties or exercising any of the functions or powers delegated hereby. The delegations made hereby are subject at all times to withdrawal or amendment by the branch chief.

This delegation shall be effective July 1, 1973, and supersedes the delegation of authority issued June 2, 1965, 30 FR 7295 and revised May 2, 1968, 33 FR 6790 by the Chief, Warehouse Service Branch.

Done at Washington, D.C., May 18, 1973.

GERALD L. OIEN,
Acting Chief,
Warehouse Service Branch.

[FR Doc.73-12887 Filed 6-26-73;8:45 am]

RELIGIOUS DIETARY EXEMPTION FOR POULTRY

Animal and Plant Health Inspection Service

Reversal of Previous Decision

Statement of Considerations. Pursuant to the Poultry Products Inspection Act, as amended (21 U.S.C. 451 et seq.), a notice was published in the December 14, 1971, issue of the FEDERAL REGISTER (36 FR 23728) regarding a request made on behalf of a Rabbinical Union to allow poultry slaughterers and processors who apply for a religious dietary exemption under the poultry products inspection regulations to be exempt from the feather removal requirements for dressed poultry in former §§ 81.1 and 81.49(d) of the regulations and the cooling and chilling requirements of former § 81.50 of said regulations. The request was based on the contention that the availability of fully feathered, warm-dressed poultry was necessary to enable compliance with a religious dietary requirement under rabbinical law by persons of the Jewish faith. It was contended that denial of the exemption would make it impossible for certain members of the Jewish faith to obtain such poultry.

The notice afforded interested persons an opportunity to present data, views, or arguments pertaining thereto not later than 30 days after its publication in the FEDERAL REGISTER, and consideration was given to all comments received. After consideration of all relevant matters including those comments received during the allotted 30-day period, an administrative decision was made denying the request and such notice was published in the November 17, 1972, issue of the FEDERAL REGISTER (37 FR 24434).

Since that time, additional new and relevant information has been presented to the Department regarding this matter. In light of this new information and following consultation with persons knowledgeable in this area, the Department's position in this matter has been reconsidered. Therefore, the notice of denial of the request for exemption published in the November 17, 1972, issue of the FEDERAL REGISTER is revoked and such exemption will be considered upon application under the provisions of § 381.11 of the poultry products inspection regulations (9 CFR 381.11).

Done at Washington, D.C., June 20, 1973.

CLAYTON YEUTTER,
Assistant Secretary,
Marketing and Consumer Services.

[FR Doc.73-12936 Filed 6-26-73;8:45 am]

Office of the Secretary

NATIONAL ADVISORY COUNCIL ON CHILD NUTRITION

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby being given that the National Advisory Council on Child Nutrition, which was established to make a continuing study of the child nutrition programs of the Department of Agriculture, is scheduled to hold a meeting on July 19-20, 1973, from 9:30 a.m. to 4:00 p.m. the first day and from 9:00 a.m. to 1:00 p.m. the second day. The meeting will be held in Room 645, 500 12th Street, S. W., Washington, D.C.

The meeting will include a review of recent program developments, section 6(3) nutritional training and survey projects, and the child nutrition program budget for fiscal 1974. The meeting will be open to the public. Additional information can be obtained by contacting the executive secretary, Herbert D. Rorex, at 202-447-8130.

Date June 21, 1973.

CLAYTON YEUTTER,
Assistant Secretary and Chairman, National Advisory Council on Child Nutrition.

[FR Doc.73-12935 Filed 6-26-73;8:45 am]

Soil Conservation Service

MUSH CREEK WATERSHED PROJECT, ALA.

Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Soil Conservation Service, U.S. Department of Agriculture has prepared a draft environmental statement for the Mush Creek Watershed Project, Dallas and Lowndes Counties, Ala., USDA-SCS-ES-WS-(ADM)-73-41(D).

The environmental statement concerns a plan for watershed protection and flood prevention. The planned works of improvement include conservation land treatment and critical area treatment, supplemented by two floodwater retarding structures.

Copies are available during regular working hours at the following locations:

Soil Conservation Service, USDA, South Agriculture Building, room 5227, 14th and Independence Avenue SW., Washington, D.C. 20250.

Soil Conservation Service, USDA, Wright Building, 138 South Gay Street, Auburn, Ala. 36830.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151. Please use name and number of statement when ordering. The estimated cost is $3.25.

Copies of the draft environmental statement have been sent for comment to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines. Comments are also invited from others having knowledge of or special expertise on environmental impacts.

Comments concerning the proposed action or requests for additional information should be addressed to William B. Lingle, State Conservationist, Soil Conservation Service, P.O. Box 311, Auburn, Ala. 36830.

Comments must be received on or before August 17, 1973, to be considered in the preparation of the final environmental statement.

(Catalog of Federal Register Domestic Assistance Program No. 10.904, National Archives Reference Services.)

WILLIAM B. DAVEY,
Deputy Administrator for Water Resources Soil Conservation Service.

JUNE 12, 1973.

[FR Doc. 73-12888 Filed 6-26-73;8:45 am]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-363]

ATLANTIC RICHFIELD CO. AND TEXAS CITY TANKERS CORP.

Notice of Multiple Applications

Notice is hereby given that Atlantic Richfield Company has filed an application for an operating-differential subsidy contract and Texas City Tankers Corporation has filed an amended application dated May 9, 1973, to modify its Operating-Differential Subsidy Contract No. MA/MSB-215 with respect to the carriage of bulk cargoes. The bulk cargo carrying vessels proposed to be subsidized and the trades in which each proposes to engage are presented also.

Applicant's Name and Address	Type of Ship	Name of Ship
Atlantic Richfield Company, 515 South Flower Street Los Angeles, California 90071.	Tanker.	DAVID E. DAY
	"	ATLANTIC COMMUNICATOR
	"	SINCLAIR TEXAS
	"	ARCO PRUDHOE BAY
	"	ARCO ANCHORAGE
Texas City Tankers Corporation, P.O. Box 1271 Texas City Texas 77590.	"	SS WILLIAM T. STEELE

The foregoing applications may be inspected in the Office of the Secretary, Maritime Subsidy Board, Martime Administration, U.S. Department of Commerce, Washington, D.C., during regular working hours.

These vessels are to engage in the carriage of export bulk raw and processed agricultural commodities in the foreign commerce of the United States (U.S.) from ports in the U.S. to ports in the Union of Soviet Socialist Republics (U.S.S.R.), or other permissible ports of discharge. Liquid and dry bulk cargoes may be carried from U.S.S.R. and other foreign ports inbound to U.S. ports during voyages subsidized for carriage of export bulk raw and processed agricultural commodities to the U.S.S.R.

Full details concerning the U.S.-U.S.S.R. export bulk raw and processed agricultural commodities subsidy program, including terms, conditions and restrictions upon both the subsidized operators and vessels, appear in the regulations published in part 294, title 46, chapter II, Code of Federal Regulations.

For purposes of section 605(c), Merchant Marine Act, 1936, as amended (Act), it should be assumed that each vessel named will engage in the trades described on a full-time basis. Each voyage must be approved for subsidy before commencement of the voyage. The Maritime Subsidy Board (Board) will act on each request for a subsidized voyage as an administrative matter under the terms of the individual operating-differential subsidy contract for which there is no requirement for further notices under section 605(c) of the Act.

Any person having an interest in the granting of one or any of such applications and who would contest a finding of the Board that the service now provided by vessels of U.S. registry for the carriage of cargoes as previously specified is inadequate, must, on or before July 3, 1973, notify the Board's Secretary, in writing, of his interest and of his position, and file a petition for leave to intervene in accordance with the Board's rules of practice and procedure (46 CFR Part 201). Each such statement of interest and petition to intervene shall state whether a hearing is requested under Section 605(c) of the Act and with as much specificity as possible the facts that the intervenor would undertake to prove at such hearing. Further, each such statement shall identify the applicant or applicants against which the intervention is lodged.

In the event a hearing under section 605(c) of the Act is ordered to be held with respect to any application(s), the purpose of such hearing will be to receive evidence relevant to (1) whether the application(s) hereinabove described is one with respect to vessels to be operated in an essential service, served by citizens of the U.S. which would be in addition to the existing service, or services, and if so, whether the service already provided by vessels of U.S. registry is inadequate and (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Board will take such action as may be deemed appropriate.

Dated June 22, 1973.

By order of the Maritime Subsidy Board.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.73-12946 Filed 6-26-73;8:45 am]

National Oceanic and Atmospheric Administration

[Doc. No. Sub-B-50]

Notice of Hearing

PAN-ALASKA FISHERIES, INC.

Pan-Alaska Fisheries, Inc., has applied for permission to transfer the operations of the 267.4' registered length ROYAL SEA, constructed with the aid of a fishing vessel construction-differential subsidy, from the fishery for bottomfish, hake and herring in the North Pacific Ocean and the freezing and transportation of salmon in the North Pacific Ocean and the freezing and transportation of salmon in the North Pacific Ocean and herring in the North Pacific Ocean and the catching, processing and transporting of snow crab (Tanner crab) in the Bering Sea.

Notice is hereby given pursuant to the provisions of the U.S. Fishing Fleet Improvement Act (Public Law 88-498) and Notice and Hearing on Subsidies (50 CFR Part 257) that a hearing on the above entitled matter will be held on July 27, 1973, at 10 a.m. d.s.t., in the penthouse of Page Building 1, 2001 Wisconsin Avenue, N.W., Washington, D.C. Any person desiring to intervene must file a petition of intervention with the Director, National Marine Fisheries Service, as prescribed in 50 CFR Part 257 at least 10 days prior to the date set for the hearing. If such petition of intervention is granted, the place of the hearing may be changed to a field location. Telegraphic notice will be given to the parties in the event of such a change along with the new location.

JOSEPH A. SLAVIN,
Acting Director.

[FR Doc.73-13063 Filed 6-26-73;8:45 am]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for licensing in accordance with the GSA patent licensing regulations.

Copies of patent applications, either paper copy (PC) or microfiche (MF), can be purchased from the National Technical Information Service (NTIS), Springfield, Va. 22151, at the prices cited. Requests for copies of patent applications must include the patent application number and the title. Requests for licensing information should be directed to the address cited with each copy of the patent application.

Paper copies of patents cannot be purchased from NTIS but are available from the Commissioner of Patents, Washington, D.C. 20231, at $0.50 each. Requests for licensing information should be directed to the address cited below for each agency.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. ATOMIC ENERGY COMMISSION, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent 3,702,565: Method for Measuring the Height of Atmospheric Aerosol Air; filed Sept. 21, 1970, patented Nov. 14, 1972; not available NTIS.

U.S. DEPARTMENT OF COMMERCE, Assistant General Counsel for Administration, Washington, D.C. 20230.

Patent 3,484,970: Automatic Sheet Turner Using a Rotating Vacuum Head; filed Mar. 22, 1968, patented Dec. 23, 1969; not available NTIS.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md. 20014.

Patent application 330,675: The Effect of Ascorbate on the Maintenance of 2,3-Diphosphoglycerate (2,3-DPG) in Stored Erythrocytes; filed Feb. 8, 1973; PC $3/MF $1.45.

Patent application 287,802: High-Resolution Lensless Holographic Microscopy; filed Sept. 11, 1972; PC $3/MF $1.45.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA, Code GP-2, Washington, D.C. 20546.

Patent application 315,068: Wing Upper Surface Flap; filed Dec. 14, 1972; PC $3/MF $1.45.

Patent application 341,662: Three Axes Controller; filed Mar. 15, 1973; PC $3.25/MF $1.45.

Patent application 343,308: Flame Detector Operable in Presence of Proton Radiation; filed Mar. 21, 1973; PC $3.75/MF $1.45.

Patent application 341,621: Reduced Gravity Fecal Collector Seat and Urinal; filed Mar. 15, 1973; PC $3/MF $1.45.

Patent application 338,484: Decision Feedback Loop for Tracking a Phase Modulated Carrier; filed Mar. 6, 1973; PC $3.50/$3/MF $1.45.

Patent application 335,201: A System for Stabilizing Cable Phase Delay; filed Jan. 31, 1973; PC $3/MF $1.45.

Patent application 240,871: Microwave Power Transmission System; filed Mar. 13, 1973; PC $3/MF $1.45.

Patent application 340,791: A Device for Monitoring a Change in Mass; filed Mar. 13, 1973; PC $3/MF $1.45.

Patent application 346,483: Journal Bearings; filed Mar. 30, 1973; PC $3/MF $1.45.

Patent application 346,341: Hollow Rolling Element Bearings; filed Mar. 30, 1973; PC $3/MF $1.45.

Patent application 280,030: Electrical Resistance Spot Welding and Brazing Techniques for Metal Bonding; filed Aug. 11, 1972; PC $3/MF $1.45.

Patent application 340,863: Method of Producing I-123; filed Mar. 13, 1973; PC $3/MF $1.45.

Patent application 344,410: Exhaust Noises in Jet Engines; filed Mar. 23, 1973; PC $3.25/MF $1.45.

Patent application 340,865: Anti-Meteroroid Device; filed Mar. 13, 1973; PC $3/MF $1.45.

Patent application 336,319: Solid Medium Thermal Engine; filed Feb. 27, 1973; PC $3.25/MF $1.45.

Patent 3,715,092: Delayed Simultaneous Release Mechanism; patented Feb. 6, 1973; not available NTIS.

Patent 3,715,600: Stacked Solar Cell Arrays; patented Feb. 6, 1973; not available NTIS.

Patent 3,715,663: Doppler Compensation by Shifting Transmitted Object Frequency within Limits; patented Feb. 6, 1973; not available NTIS.

Patent 3,715,660: Determining Distance to Lighting Strokes from a Single Station; patented Feb. 6, 1973; not available NTIS.

Patent 3,715,723: Frequency Division Multiplex Technique; patented Feb. 6, 1973; not available NTIS.

Patent 3,714,645: Rate Data Encoder; patented Jan. 30, 1973; not available NTIS.

Patent 3,714,588: Self-Tuning Bandpass Filter; patented Jan. 30, 1973; not available NTIS.

Patent 3,715,693: Gyrator Employing Field Effect Transistors; patented Feb. 6, 1973; not available NTIS.

Patent 3,714,405: Function Generator for Synthesizing Complex Vibration Mode Patterns; patented Jan. 30, 1973; not available NTIS.

Patent 3,718,863: A M-Ary Linear Feedback Shift Register with Binary Logic; patented Feb. 27, 1973; not available NTIS.

Patent 3,714,833: Test Stand System for Vacuum Chambers; patented Feb. 6, 1973; not available NTIS.

Patent 3,714,624: Display System; patented Jan. 30, 1973; not available NTIS.

Patent 3,714,432: Infrared Horizon Locator; patented Jan. 30, 1973; not available NTIS.

Patent 3,714,821: Material Fatigue Testing System; patented Feb. 6, 1973; not available NTIS.

Patent 3,715,590: Micrometeoroid Analyzer; patented Feb. 6, 1973; not available NTIS.

Patent 3,712,132: Droplet Monitoring Probe; patented Jan. 23, 1973; not available NTIS.

Patent 3,713,967: Apparatus for Recovering Matter Adhered to a Hoist Surface; patented Jan. 30, 1973; not available NTIS.

Patent 3,715,915: Light Intensity Strain Analysis; patented Feb. 13, 1973; not available NTIS.

Patent 3,715,152: Multiple Pass Reimaging Optical System; patented Feb. 6, 1973; not available NTIS.

[FR Doc.73-12753 Filed 6-26-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DESI 50183]

CHLORAMPHENICOL CREAM FOR TOPICAL USE

Drugs for Human Use; Drug Efficacy Study Implementation; Follow-Up Notice

In a notice (DESI 50183) published in the FEDERAL REGISTER of November 28, 1970 (35 FR 18218), the Commissioner of Food and Drugs announced his conclusions pursuant to evaluation of a report from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group on the following drug:

NDA 50-183; Chloromycetin Cream containing chloramphenicol; Parke, Davis and Company, Joseph Campau at the River, Detroit, MI 48232.

The notice stated that the drug was regarded as probably effective for its labeled indication.

Based upon further review and evaluation of additional data submitted by Parke, Davis, the Commissioner concludes that the drug is effective for the following indication:

INDICATION

For the treatment of superficial skin infections caused by bacteria susceptible to chloramphenicol. Deeper cutaneous infections should be treated with appropriate systemic antibiotics.

Batches of such drug for which certification or release is requested should bear labeling in accord with the indication set forth above.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetics Act (secs. 502, 507, 52 Stat. 1050-51, as amended, 59 Stat. 463, as amended; 21 U.S.C. 352, 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated June 20, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-12881 Filed 6-26-73;8:45 am]

[Docket No. FDC-D-636; NADA 13-091V]

VINELAND POULTRY LABORATORIES

Vineland Egg Dip Formula 112; Notice of Opportunity for a Hearing

In an announcement published in the FEDERAL REGISTER of August 5, 1970 (35 FR 12493, DESI 13091V), the Commissioner of Food and Drugs announced the conclusions of the Food and Drug Administration following evaluation of a report received from the National Academy of Sciences—National Research Council, Drug Efficacy Study Group, on Vineland Egg Dip Formula 112 (a product containing erythromycin thiocyanate and riboflavin-5'-phosphate sodium), new animal drug application (NADA) No. 13-091V; marketed by Vineland Poultry Laboratories, Post Office Box 70, Vineland, NJ 08360.

Said announcement invited the holder of said new animal drug application and any other interested persons to submit pertinent data on the drugs effectiveness. No supplemental new animal drug application or other data have been submitted in response to said announcement.

Therefore, notice is given to the holder of the NADA and to any other interested person that the Commissioner proposes to issue an order under section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) withdrawing approval of NADA No. 13-091V and all amendments and supplements thereto on the grounds that new information before him with respect to the drug, evaluated together with the evidence available to him at the time of approval of the application, shows that there is a lack of substantial evidence that the drug will have all the effects it purports or is represented to have under the conditions of use prescribed, recommended or suggested in the labeling.

All identical, related, or similar products not the subject of an approved new animal drug application are covered by the NADA reviewed. Any manufacturer or distributor of such an identical, related, or similar product is an interested person who may in response to this notice submit data and information, request that the NADA not be withdrawn, request a hearing, and participate as a party in any hearing. Any person who wishes to determine whether a specific product is covered by this notice should write to the Bureau of Veterinary Medicine, Division of Compliance, 5600 Fishers Lane, Rockville, MD 20852.

In accordance with the provisions of section 512 of the Act and the regulations promulgated thereunder (21 CFR Part 135), the Commissioner hereby gives the applicant and any other interested person an opportunity for a hearing to show why approval of the NADA should not be withdrawn.

The applicant and any interested person is required to file, on or before July 27, 1973 with the Hearing Clerk, Food and Drug Administration, Room 6-88, 5600 Fishers Lane, Rockville, MD 20852, a written appearance electing whether or not to avail himself of the opportunity for a hearing. Failure of an applicant or any other interested person to file a written appearance of election by July 27, 1973 will constitute an election by him not to avail himself of the opportunity for a hearing.

If no person elects to avail himself of the opportunity for a hearing, the Commissioner without further notice will enter a final order withdrawing approval of the application.

If an applicant or any other interested person elects to avail himself of the opportunity for a hearing, he must file, on or before July 27, 1973 a written appearance requesting the hearing, giving the reasons why approval of the NADA should not be withdrawn together with a well organized and full factual analysis of the data he is prepared to prove in support to his opposition. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing (21 CFR 135.15(b)).

If review of the data submitted by an applicant or any other interested person warrants the conclusion that there exists substantial evidence demonstrating efficacy of the product for the labeling claims involved, the Commissioner will rescind this notice of opportunity for a hearing.

If review of the data in the application and the data submitted by the applicant or any other interested person in a request for a hearing, together with the reasoning and factual analysis in a request for a hearing, warrants the conclusion that no genuine and substantial issue of fact precludes the withdrawal of approval of the application, the Commissioner will enter an order of withdrawal

making findings and conclusion on such data.

If, upon the request of the new animal drug applicant or any other interested person, a hearing is justified, the issues will be defined, an administrative law judge will be named, and he shall issue as soon as practicable after July 27, 1973, a written notice of the time and place at which the hearing will commence. All persons interested in identical, related, or similar products covered by the NADA will be afforded an opportunity to appear at the hearing, file briefs, present evidence, cross-examine witnesses, submit suggested findings of fact, and otherwise participate as a party. The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process the Commissioner finds entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in his appearance.

Requests for a hearing and/or elections not to request a hearing may be seen in the Office of the Hearing Clerk (address given above) during regular business hours, Monday through Friday.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 343–351; 21 U.S.C. 360b(e)), and under the authority delegated to the Commissioner (21 CFR 2.120).

Dated June 20, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-12880 Filed 6-26-73;8:45 am]

Office of the Secretary

OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

Statement of Organization, Functions, and Delegations of Authority

Part 1 of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare is hereby amended to establish a new chapter 1T1003, Office of Equal Employment Opportunity. The new chapter includes 1) the HEW Federal Women's Program and the HEW Equal Employment Opportunity Staff formerly with the Immediate Office of the Assistant Secretary for Administration and Management, and 2) the 16-Point Spanish-Surnamed Program formerly with the Office of Personnel and Training. The new Chapter reads as follows:

SEC. 1T1003.00 *Mission.* The Equal Employment Opportunity Program, the Federal Women's Program and the 16-Point Program for Spanish Surnamed Americans comprise a staff office accountable directly to the Deputy Director of Equal Employment Opportunity for the Department. The Assistant Secretary for Administration and Management is designated as Deputy Director of EEO. The Under Secretary is designated as Director of EEO for the Department.

SEC. 1T1003.10 *Organization.* The Office of Equal Employment Opportunity consists of the following components:

HEW Federal Women's Program
HEW Equal Employment Opportunity Staff
Sixteen-Point Spanish-Surnamed Americans Program

SEC. 1T1003.20 *Functions.* A. *The HEW Federal Women's Program* plans, coordinates, and provides leadership to programs and activities related to the status of women in the Department. The functions of the program are:

1. Reviews and analyzes studies, reports, and other sources of broad program implications and policy guidance and develops recommendations of policies, programs, and activities related to the status of women employed by the Department.

2. Provides technical advice and guidance to the operating agencies and regional offices in developing their plans and programs for the HEW Federal Women's Program.

3. Maintains liaison with agency management officials and agency and regional Federal Women's Program coordinators and coordinates Office of the Secretary and agency plans of action to ensure consistency of operations within the provisions of the Department program.

4. Makes continuing reviews, analyses, and evaluations of Department programs and plans, and identifies problem areas needing resolution to assure that the program at all times recognize the responds through shifting emphasis to the changing of women in the work force.

5. Maintains liaison with the Women's Action Program and participates in the work of the Secretary's Advisory Committee on Women's Rights.

B. *Sixteen-Point Spanish-Surnamed Americans Program* serves as a focal point to assure that Spanish-Surnamed Americans have a full and fair opportunity to compete with their fellow Americans for employment and advancement in the Department in the Federal Service. Its functions are:

1. Provides leadership and guidance to agency managers and supervisors on their responsibilities in implementng the program.

2. Serves as resource and advisor on the unique concerns of the Spanish-speaking; participates in the development and implementation of the agency's national, regional, and local EEO plans which relate to the Sixteen-Point Program.

3. Assures effective relationships with Spanish-speaking organizations and groups in order to obtain their cooperation and advice on reaching all Spanish-speaking manpower sources; and maintains close liaison with other Federal agencies on Spanish related matters.

4. Assists in assessing the Spanish-Surnamed employment situation to better identify employment patterns and participate in solving problems through development of goals and timetables.

5. Participates in special studies of employment practices to ascertain whether there are systematic barriers that would limit opportunities for Spanish-speaking citizens.

6. Participates in development and implementation of upward mobility training and education programs to assure inclusion of the Sixteen-Point Program.

7. Maintains liaison with regional and agency officials, regional and agency Sixteen Point Program Coordinators and coordinates Office of the Secretary and agency plans of action to insure consistency of operations within the Department.

8. Assists the EEO staff in the direction and guidance of the EEO system, in the development and issuance of directives, instruction, and guidelines as it relates to the Spanish-surnamed.

9. Assists in the coordination and formulation of the Department's Annual Affirmative Action Plan; reviews and issues approval of agency and regional affirmative action plans for the Department to assure inclusion of the Sixteen Point Program.

10. Maintains surveillance and policy supervision and minority employment data; provides leadership and assistance in the design, development, and issuance of manpower information relevant to minority employment profiles through the Department and agency data systems.

C. *HEW Equal Employment Opportunity Staff* carries out programs as mandated by Executive Order 11478 and P.L. 92–261 which requires the establishment and maintenance of a positive program of non-discrimination in employment throughout the Department; its major functions are:

1. Provides direction and guidance on the EEO system to managers and employees through development and issuance of directives, instructions, and guidelines.

2. Coordinates and formulates the Department's Annual Affirmative Action Plan; receives, reviews, and issues approval of agency and regional affirmative action plans for the Department for submittal to the Civil Service Regional Offices; monitors and evaluates efficiency minority and female employment profiles and effectiveness of the plan.

3. Monitors EEO complaint system and issues decisions on all formal complaints; ensures adequacy of counselors and investigators, through training and assignment.

4. Maintains surveillance and policy supervision over minority employment data; provides leadership and assistance in the design, development, and issuance of manpower information relevant to minority and female employment profiles through the Department and agency automatic data systems.

Dated June 20, 1973.

ROBERT H. MARIK,
Assistant Secretary for Administration and Management.

[FR Doc.73-12870 Filed 6-26-73;8:45 am]

Social and Rehabilitation Service

CUBAN REFUGEE PROGRAM

Phaseout of Federal Reimbursement to States

Notice of intention to phase out Federal Cuban Refugee Program reimbursements to the States, under the Migration and Refugee Assistance Act of 1962 (Public Law 87-510), was published in the FEDERAL REGISTER of April 10, 1973 (38 FR 9103). State agencies administering public assistance programs had been previously informed of the phaseout plan in an information memorandum issued May 22, 1972 (APA-IM-72-13). The phaseout proposal implemented commitments made to the Congressional Appropriations Committees during budget hearings for fiscal year 1973 for the Cuban Refugee Program. These commitments were in response to an earlier Congressional recommendation that "the Executive Branch exert every effort in bringing about the termination of this program as soon as reasonably possible" (Conference Report on Foreign Assistance and Related Programs Appropriations, Fiscal Year 1972, H. Rept. No. 92-849), with which the Department subsequently concurred.

Comments were received from seven States, four local jurisdictions, two Cuban organizations in the United States, and several members of the Florida Congressional delegation.

Six States (including the five with the largest numbers of Cuban refugee assistance recipients) objected to the phaseout; one State approved. Three local jurisdictions (having a substantial number of refugee assistance recipients) objected, and one approved. Members of the Florida Congressional delegation supported the Governor of Florida (where approximately one-half of the Cuban refugees are located) in objecting to the phaseout. One Cuban organization objected to the phaseout; the other agreed in principle with the phaseout but urged the Department to take other actions to prevent hardship to refugees.

The objections on behalf of States and local jurisdictions were principally on the following grounds: (1) Cuban refugees were brought into the U.S. as a matter of national policy without regard to an individual's capacity for self-support; (2) therefore the Federal Government has a continuing responsibility to pay welfare costs; and (3) the phaseout would place too great a financial burden on State and/or local funds.

The Department carefully considered the objections in light of major factors which included the following: (1) The Congressional recommendation that the program be phased out; (2) the termination of the Cuban refugee airlift on April 6, 1973; (3) the fact that approximately 80 percent of the Cuban refugees in the United States are fully self-supporting and making significant economic and tax contributions in the areas in which they live; (4) the gradual nature of the phaseout, over a 4-year period, and the fact that States and local jurisdictions are required to begin to assume responsibility for only those refugees who have lived in the United States more than 5 years, the minimum time required to obtain citizenship; (5) the substantial Federal funds which will continue to be provided to States for refugees who are eligible for the federally aided categorical welfare programs; (6) the fact that eligible refugees will be included under the federally financed program of Supplemental Security Income for the Aged, Blind, and Disabled which begins January 1, 1974; and (7) the fact that although the amount of assistance will be reduced, in certain locations, for some refugee general assistance type cases, this appears to be unavoidable in any phaseout, and the effect of the phaseout will be to place such refugees on exactly the same basis as United States citizens in similar circumstances.

After full consideration of the comments received, the Department has determined that the phaseout plan shall be placed in effect, without change from the previous proposal, as follows:

1. Effective July 1, 1973, Federal reimbursements to the States for financial and medical assistance to needy Cuban refugees, from funds appropriated to carry out the provisions of the Migration and Refugee Assistance Act of 1962 (Public Law 87-510) relating to assistance to refugees in the United States (Cuban refugee program), shall be discontinued for cases in which the head of the case has lived in the United States for 5 years or longer, and thereafter at such time as the head of an assisted case has lived in the United States for 5 years, with the following exceptions: (a) Reimbursements to the States for nonmedical assistance shall be discontinued January 1, 1974, for all cases eligible under Title III ("Supplemental Security Income for the Aged, Blind, and Disabled") of the Social Security Amendments of 1972 (Public Law 92-603) without regard to the length of time the head of the case has lived in the United States; and (b) reimbursements shall be continued, subject to annual review and approval by the Department of Health, Education, and Welfare, but in no event beyond June 30, 1977, for financial and medical assistance to Cuban refugee cases not eligible under title I, IV, X, XIV, XVI, or XIX of the Social Security Act in any State in which the population born in Cuba comprised 3 percent or more of the total population of the State according to the 1970 census of population.

2. Effective July 1, 1977, all Federal reimbursements to the States for financial and medical assistance to needy Cuban refugees, from funds appropriated as specified above, shall be terminated.

Dated: May 31, 1973.

FRANCIS D. DEGEORGE,
Acting Administrator, Social and Rehabilitation Service.

Approved June 21, 1973.

CASPAR W. WEINBERGER,
Secretary.

[FR Doc.73-12861 Filed 6-26-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

AIRPORT TRAFFIC CONTROL TOWER, ATHENS, GEORGIA

Notice of Commissioning

Notice is hereby given that on or about June 21, 1973, the Airport Traffic Control Tower at the Athens, Georgia, Municipal Airport will be in operation as an FAA facility. This information will be reflected in the FAA Organization Statement the next time it is issued. Communications to the tower should be as follows:

Federal Aviation Administration
Airport Traffic Control Tower
Municipal Airport
Athens, Georgia 30601

Issued in East Point on June 18, 1973.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.73-12854 Filed 6-26-73;8:45 am]

AIRPORT TRAFFIC CONTROL TOWER, BRUNSWICK, GEORGIA

Notice of Commissioning

Notice is hereby given that on or about June 21, 1973, the Airport Traffic Control Tower at the Brunswick, Georgia, Malcolm-McKinnon Airport will be in operation as an FAA facility. This information will be reflected in the FAA Organization Statement the next time it is issued. Communications to the tower should be as follows:

Federal Aviation Administration
Airport Traffic Control Tower
P.O. Box 1199
St. Simons Island, Georgia 31522

Issued in East Point on June 18, 1973.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.73-12855 Filed 6-26-73;8:45 am]

ATOMIC ENERGY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON INDIAN POINT NUCLEAR STATION UNIT 3

Notice of Meeting

JUNE 22, 1973.

In accordance with the purposes of Sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the Advisory Committee on Reactor Safeguards' Subcommittee on Indian Point Nuclear Station Unit 3 will hold a meeting on July 11, 1973 in Room 1062 at 1717 H Street, NW., Washington, D.C. The purpose of this meeting will be to review the application of the Consolidated Edison Co. for an Operating License for Indian Point Unit 3. This facility is located at Buchanan, New York.

The following constitutes that portion of the Subcommittee's agenda for the above meeting which will be open to the public:

Wednesday, July 11, 9:30 a.m.–3:30 p.m.

The Subcommittee will hear presentations by Regulatory Staff and representatives of the Consolidated Edison Co. of New York and their representatives and hold discussions with these groups regarding the application for an Operating License for Indian Point Unit 3.

In connection with the above agenda item, the Subcommittee will hold an executive session beginning at 8:30 a.m. which will involve a discussion of its preliminary views, and an executive session at the end of the day, consisting of an exchange of opinions of the Subcommittee members present and internal deliberations for the purpose of formulation of recommendations to the ACRS. In addition, prior to the executive session at the end of the day, the Subcommittee may hold a closed session with the Regulatory Staff and applicant to discuss privileged information relating to plant security and fuel performance, if necessary. I have determined, in accordance with subsection 10(d) of Public Law 92–463, that the executive session at the beginning and end of the meeting will consist of an exchange of opinions and formulation of recommendations, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b) and that a closed session may be held, if necessary, to discuss certain documents which are privileged and fall within exemption (4) of 5 U.S.C. 552(b). It is essential to close such portions of the meeting to protect such privileged information and protect the free interchange of internal views and to avoid undue interference with agency or Committee operation.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by mailing 25 copies thereof, postmarked no later than July 3, 1973 to the Executive Secretary, Advisory Committee on Reactor Safeguards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Such comments shall be based upon the Preliminary Site Description Report and related documents on file and available for public inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20545 and the Hendrick Hudson Free Library, 31 Albany Post Road, Montrose, New York 10548.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement and shall set forth reasons justifying the need for such oral statements and its usefulness to the Subcommittee. To the extent that the time available for the meeting permits, the Subcommittee will receive oral statements during a period of not more than 30 minutes at an appropriate time, chosen by the Chairman of the Subcommittee, between the hours of 1:30 p.m. and 3:00 p.m. on the day of the meeting.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Chairman of the Subcommittee, who is empowered to apportion the time available among those selected by him to make oral statements.

(d) Information as to whether the meeting has been cancelled or rescheduled and in regard to the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted, can be obtained by a prepaid telephone call on July 10, 1973, to the Office of the Executive Secretary of the Committee (telephone: 301–973–5651) between 8:30 a.m. and 5:15 p.m. Eastern Daylight Time.

(e) Questions may be propounded only by members of the Subcommittee and its consultants.

(f) Seating for the public will be available on a first-come, first-served basis.

(g) A copy of the transcript of the open portions of the meeting will be available within approximately 24 hours at the Atomic Energy Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20545, and within approximately 5 days at the local public document room listed in (a) above. Copies of minutes of public sessions will be made available for inspection on or after September 11, 1973, at the Atomic Energy Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20545. Copies may be obtained upon payment of appropriate charges.

JOHN C. RYAN,
Acting Advisory Committee, Management Officer.

[FR Doc.73–13007 Filed 6–26–73;8:45 am]

GENERAL ADVISORY COMMITTEE

Notice of Meeting

JUNE 22, 1973.

In accordance with the purposes of section 26 of the Atomic Energy Act, the General Advisory Committee will hold a meeting on July 9–11, 1973 in the San Francisco Bay area in California.

The following constitutes that portion of the Committee's agenda for the above meeting which will be open to the public:

(1) Monday, July 9—Orange Room, Central Laboratory Building, Stanford Linear Accelerator Center, Stanford, California
- 1:30 p.m.—SLAC Facility
- 2:15 p.m.—SLAC Physics Research
- 3:00 p.m.—SLAC Technical Operations
- 3:40–4:00 p.m.—Proposed Recirculating Linear Accelerator

(2) Tuesday, July 10—room 4205, Building 50B, Lawrence Berkeley Laboratory, Berkeley, California
- 10:00 a.m.—Briefing on Chemical Biodynamics Program
- 10:30 a.m.—Biology & Medicine
- 11:00 a.m.—Inorganic Materials Research Division
- 11:30 a.m.—Nuclear Chemistry
- 12:00 noon—Energy & Environment
- 12:30 p.m.—Lunch
- 1:30 p.m.—High, medium and low energy physics
- 2:30–3:00 p.m.—Bevatron, Bevalac, Proton-Electron-Positron, & Controlled Thermonuclear Research

In addition to the above agenda items, the Committee will hold executive sessions not open to the public, under the authority of Section 10(d) of Public Law 92–463 (the Federal Advisory Committee Act), to formulate recommendations on the above topics and other matters.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business.

With respect to public participation in agenda items (1) and (2) listed above, the following requirements shall apply:

(a) Persons wishing to submit written statements on those agenda items may do so by mailing 12 copies thereof, postmarked no later than July 2, 1973, to the Secretary, General Advisory Committee, U. S. Atomic Energy Commission, Washington, D. C. 20545. Such comments shall be based upon the above agenda items.

(b) Questions may be propounded only by members of the Committee.

(c) Seating for the public will be available on a first-come, first-served basis.

(d) Copies of minutes of public sessions will be made available for copying, in accordance with the Federal Advisory Committee Act, on or after July 25, 1973, at the Atomic Energy Commission's Public Document Room, 1717 H Street, N.W., Washington, D. C. upon payment of all charges required by law.

JOHN C. RYAN,
Acting Advisory Committee Management Officer.

[FR Doc.73–13066 Filed 6–27–73;8:45 am]

[Docket No. 50–155]

CONSUMERS POWER CO.

Notice and Order for Special Prehearing Conference

Notice is hereby given that, pursuant to the Atomic Energy Commission's "No-

tice of Issuance of Facility License Amendment and Opportunity for Hearing", dated April 6, 1973, and published in the FEDERAL REGISTER on April 10, 1973 (38 FR 9104), and in accordance with § 2.751a of said Commission's rules of practice, 10 CFR Part 2, a special prehearing conference will be held in the above-captioned proceeding on Friday, July 6, 1973, at 10:00 a.m., local time, in the County Administration Building, Room 311, 300 Monroe Avenue NW., Grand Rapids, Michigan 49502.

This special prehearing conference will be held before the Atomic Safety and Licensing Board established by the Commission in the above-mentioned notice of April 6, 1973, and composed of Max D. Paglin, Chairman, Dr. Harry Foreman, and Mr. Frederick J. Shon.

This special prehearing conference will deal with the following matters:

1. Pending petitions for intervention and oppositions and responses thereto filed in this proceeding;
2. Identification of the key issues;
3. Consideration of a schedule for further action; and
4. Such other matters as may aid in the orderly and expeditious conduct of the hearing.

At the special prehearing conference, the Board will entertain oral argument on the pending petition to intervene by the West Michigan Environmental Action Council, Inc. In connection with said oral argument, petitioner and counsel for the parties shall address themselves to the matters regarding the basis for intervention, including the matters set forth in § 2.714 of the Commission's regulations.

In addition, the Board will expect to be advised by the petitioner for intervention regarding the identity of the members of its organization and other members of the public which it purports to represent, and to state how the aforementioned individuals' interests will be affected by the proposed operation of the Big Rock Point Nuclear Plant. Further, the Board will hear comment on the suggestion by the Applicant in its answer to the petition to intervene concerning the submission of briefs or stipulations with regard to the asserted legal questions involved in this proceeding.

Members of the public are invited to attend this special prehearing conference as well as the evidentiary hearing to be held at a latter date to be fixed by the Board. Members of the public wishing to make limited appearances may identify themselves at this special prehearing conference, but oral or written statements to be presented by limited appearance will not be received at this conference. The Board will receive such statements at the aforementioned evidentiary hearing.

It is so ordered.

Issued at Washington, D.C. this 21st day of June, 1973.

The Atomic Safety and Licensing Board.

MAX D. PAGLIN,
Chairman.

[FR Doc.73-12867 Filed 6-26-73;8:45 am]

[Docket No. 50-324; 50-325]

CAROLINA POWER & LIGHT CO.

Notice and Order for Prehearing Conference

In the matter of Carolina Power & Light Company (Brunswick Steam Electric Plant, Units 1 and 2) Docket Nos. 50-324 and 50-325.

On November 3, 1972, the Atomic Energy Commission published in the FEDERAL REGISTER (37 FR 23468) a Notice of Consideration of Issuance of Facility Operating Licenses and Opportunity for Hearing; Notice of Hearing, to consider the application filed under the Atomic Energy Act by the Carolina Power & Light Company for facility operating licenses which would authorize the operation of two boiling water nuclear reactors identified as the Brunswick Steam Electric Plant, Units 1 and 2, at steady state power levels not to exceed 2346 megawatts thermal each, at the applicant's site on the Cape Fear River, near Southport, in Brunswick County, North Carolina. The Notice of Hearing further provided that the facilities are subject to the provisions of Section B of Appendix D to 10 CFR Part 50, which set forth procedures applicable to reviews of environmental considerations for production and utilization facilities for which construction permits or operating licenses were issued in the period January 1, 1970, to September 9, 1971. Construction of the subject facilities was authorized by Construction Permits CPPR-67 and CPPR-68 issued by the Atomic Energy Commission on February 7, 1970. The provisions of Section B to Appendix D to 10 C.F.R. Part 50 require a hearing to be held to consider whether the construction permits should be continued, modified, terminated or appropriately conditioned to protect environmental values. In addition, the Notice of Hearing provided that the hearing would be held by an Atomic Safety and Licensing Board designated by the Atomic Energy Commission, and that the Board's membership would be published in the FEDERAL REGISTER. Finally, the Notice of Hearing provided that the date and place of a prehearing conference and of the hearing would be set by the Board.

On March 13, 1973, the Atomic Energy Commission's Atomic Safety and Licensing Board designated to review Petitions to Intervene determined that a hearing was warranted with respect to issuance of the facility operating licenses, and that this hearing should be consolidated with the hearing specified in the Notice of Hearing of November 3, 1972. This same Atomic Safety and Licensing Board published in the FEDERAL REGISTER (37 FR 6843) the establishment of the Atomic Safety and Licensing Board to conduct the hearing and its membership.

Pursuant to the Atomic Energy Commission's establishment of the Atomic Safety and Licensing Board and the authorization therein for the Board to set the date and place of a prehearing conference, notice is hereby given that a prehearing conference will be held at 9:00 a.m. on Thursday, July 19, 1973, in the United States District Court, 2nd Floor, United States Court House, Federal Building, Water and Princess Streets, Wilmington, North Carolina 28401.

All members of the public are entitled to attend this prehearing conference, any subsequent prehearing conferences, and the full evidentiary hearing to be held in this proceeding. The evidentiary hearing in this proceeding will be scheduled at a later date and public notice thereof will be given.

The prehearing conference on July 19, 1973, will be conducted in accordance with § 2.751a of the Commission's Rules of Practice, 10 CFR 2.751a, which provides for special prehearing conference in operating license proceedings.

This special prehearing conference will consider identification of key issues in the proceeding, steps necessary for further identification of issues and establishment of a schedule for further actions in the proceeding.

The prehearing conference on July 19, 1973, not receive any evidence, nor will there be an opportunity for presentation of statements by members of the public who desire to make a limited appearance in this proceeding for that purpose. All statements that members of the public desire to make in this proceeding by way of limited appearance pursuant to § 2.715 of the Commission's Rules of Practice, 10 CFR § 2.715, will be received on the initial day of commencement of the evidentiary hearing.

Wherefore, it is ordered, In accordance with the Atomic Energy Act, as amended, and the Rules of Practice of the Atomic Energy Commission, that a prehearing conference in this proceeding shall convene at 9:00 a.m. on Thursday, July 19, 1973, in the United States District Court, 2nd Floor, United States Court House, Federal Building, Water and Princess Streets, Wilmington, North Carolina 28401.

Issued: June 22, 1973, Washington, D.C.

ATOMIC SAFETY AND LICENSING BOARD,
MICHAEL L. GLASER,
Chairman.

[FR Doc. 73-12921 Filed 6-26-73;8:45 am]

[Docket No. 50-423]

MILLSTONE POINT CO., ET AL.

Notice and Order for Prehearing Conference

In the matter of The Millstone Point Company, et al. (The Millstone Point Power Station, Unit No. 3) Docket No. 50-423.

Take notice that, pursuant to the Atomic Energy Commission's "Notice of Hearing on Application for Construction Permit" dated March 20, 1973, the Atomic Safety and Licensing Board will hold a special prehearing conference in this proceeding on July 27, 1973, at 10:00 a.m., local time, at the Public Works Complex, Complex Meeting Room, 1000 Hartford Road, Waterford, Connecticut. The purposes of this special prehearing conference are to: (1) Permit identification of the key issues in the proceeding; (2) take any steps

necessary for further identification of the issues; (3) consider petitions for intervention in the proceeding; and (4) establish a schedule for further actions in the proceeding. In addition to the purposes specified above, the prehearing conference will also deal with such of the matters stated in § 2.752 of the Commission's Rules of Practice (10 CFR 2.752) as may be appropriate.

Members of the public may attend this prehearing conference as well as the evidentiary hearing which will be held at a later time to be fixed by the Board. However, members of the public who may wish to participate in the proceeding by way of limited appearances will not be permitted to do so at the prehearing conference. Oral or written statements offered by way of limited appearances will be received by the Board at the time of the aforementioned evidentiary hearing.

It is ordered, That counsel for the Applicant, the Regulatory Staff of the Commission, and any petitioners for intervention conduct such informal conferences, including telephone conferences to the extent they may be practicable, to expedite the proceeding and in particular to advance the purposes of the prehearing conference.

Issued at Washington, D.C., this 22d day of June 1973.

The Atomic Safety and Licensing Board.

EDWARD LUTON,
Chairman.

[FR Doc.73-12922 Filed 6-26-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Order 73-6-91; Docket No. 23354]

ALOHA AIRLINES, INC.

Application for Approval

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 22d day of June 1973.

Order Authorizing Discussions. Aloha Airlines, Inc. (Aloha) requests authorization of discussions looking toward extension of the intra-Hawaiian scheduling agreement between Aloha and Hawaiian Airlines, Inc. (Hawaiian).[1] Hawaiian has filed an answer indicating no objection to Aloha's petition, but requesting that any approval of discussions be sufficiently broad to permit discussion of extension, alteration or amendment of the current agreement, or the negotiation of a wholly new agreement.

No other comments have been received.

Based on the foregoing, we will authorize further discussions.[2] A preliminary review indicates that many of the same considerations set forth in our orders approving the initial capacity agreement warrant our authorization of capacity discussions looking toward an extension or revision of that agreement.[3]

Approval of the requested discussions will be conditioned upon acceptance of procedural safeguards usualy imposed in capacity discussion meetings.[4]

Accordingly, it is Ordered, That 1. The application of Aloha Airlines, Inc. for approval of discussions regarding capacity reductions in Docket 23354 be and it hereby is approved subject to the following conditions:

(a) discussions shall be held in Washington, D.C., the hour and date of such meetings to be determined by the carriers. A notice of such meetings shall be served upon the Civil Aeronautics Board and the persons stated in ordering paragraph 2 at least three business days prior to such meetings;

(b) representatives of the Civil Aeronautics Board and any other local, state or Federal Government Agency; civic, trade, or consumer association, group or representatives; or air carrier expressing an interest shall be permitted to attend and view the discussions as observers;

(c) A full transcript shall be maintained of all meetings, at the expense of the carriers, and two copies of the transcript shall be filed with the Docket Section of the Board within ten days after the conclusion of each meeting, and shall be available for purchase by any person;

(d) Any agreement reached as a result of the discussions authorized herein shall be filed with the Board for approval under section 412 of the Act within fifteen days of consummation thereof, accompanied by an explanatory statement and a statement of justification, and shall be served on the persons listed in ordering paragraph 2 within the same period; *Provided*, That no agreement shall be implemented without having been previously approved by the Board;

(e) Comments pertaining to any agreements filed pursuant to subparagraph (d) shall be filed within fifteen days from the date of the filing of such agreements with the Board;

(f) Comments in reply to any previously filed document authorized to be filed in subparagraph (e) shall be filed within ten days of the date of filing of such document;

(g) The relief granted herein shall expire within 60 days of the date of this order and may be revoked or amended at any time in the discretion of the Board; and

(h) This authorization does not extend to discussions of rates, fares, charges, or inflight or other services pertaining to air transportation;

2. Copies of this order shall be served on the Departments of Defense, Justice, Post Office and Transportation; and on the State of Hawaii; and

3. To the extent not granted herein all outstanding requests be and they hereby are dismissed.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73-12931 Filed 6-26-73;8:45 am]

[1] By Order 71-12-143, December 30, 1971, the Board approved a scheduling agreement between the two carriers on the basis that extraordinary measures were necessary to preserve competitive intra-Hawaiian service. The purpose was to allow Hawaiian to operate at a profit and to greatly decrease the magnitude of Aloha's losses. That agreement will expire July 15, 1973.

[2] Our approval extends only to discussions and not to any agreement which may be reached therein. Resulting agreements will be subject to Board approval pursuant to section 412 of the Federal Aviation Act of 1958, as amended.

[3] See Orders 71-12-143, December 30, 1971; 71-6-124, June 24, 1971; 70-12-146, December 8, 1970, and 70-7-120, July 24, 1970.

[4] Approval is of sufficient scope to allow discussion of extension, alteration or amendment of the agreement now in effect, or the negotiation of a wholly new agreement.

COMMISSION ON AMERICAN SHIPBUILDING

Notice of Meeting

Pursuant to the requirements of the Federal Advisory Committee Act, notice is hereby given that there will be a meeting of the Commission on American Shipbuilding on Thursday, July 5, 1973, at 9:30 a.m. This meeting will be held in the Commission's offices, room 1300, 1717 Pennsylvania Avenue NW., Washington, D.C. The meeting will be held for the purposes of reviewing reports prepared for the commissioners and of preparing the Commission's final report to the President and the Congress. Since matters pertaining to national security will be discussed during the review and in the preparation of the final report, the meeting will not be open to the public.

JOHN H. LANCASTER,
Executive Director.

[FR Doc.73-12894 Filed 6-26-73;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN COLOMBIA

Entry or Withdrawal From Warehouse for Consumption

JUNE 13, 1973.

On June 25, 1971, the United States Government, in furtherance of the objectives of, and under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, concluded a new comprehensive bilateral cotton textile agreement with the Government of Colombia concerning exports of cotton textiles and cotton textile products from Colombia to the United States over a four-year period beginning on July 1, 1971 and extending through June 30, 1975. Among the provisions of the agreement are those establishing an aggregate limit for the 64 categories; within the aggregate limit, group limits on categories 1-4, 5-27, and 28-64; and within both of the aforesaid limits, specific limits on categories 5, 6, 9/10, 16, 19, 22/23, 26 and 27 for the third agreement year beginning on July 1, 1973.

Accordingly, there is published below a letter of June 13, 1973 from the Chair-

man of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, directing that the amounts of cotton textiles and cotton textile products in categories 1 through 27, produced or manufactured in Colombia, which may be entered or withdrawn from warehouse for consumption in the United States for the twelve-month period beginning July 1, 1973 and extending through June 30, 1974, be limited to the designated levels. The letter published below and the actions pursuant thereto are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

JUNE 13, 1973.

Dear Mr. Commissioner:

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral cotton textile agreement of June 25, 1971, between the Governments of the United States and Colombia, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective July 1, 1973 and for the twelve-month period extending through June 30, 1974, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1 through 27 produced or manufactured in Colombia, in excess of the levels of restraint set forth below.

The combined level of restraint for Categories 1 through 4 shall be 4,242,228 pounds.

The combined level of restraint for Categories 5 through 27 shall be 23,483,250 square yards.

Within the overall level of restraint for Categories 5 through 27, the following specific levels of restraint shall apply:

Category	*Twelve-Month Levels of Restraint*
5	1,914,422
6	382,885
9/10	5,003,421
16	1,148,654
19	1,276,282
22/23	8,379,000
26 (other than duck)[1]	4,032,394
26 (duck only)[2]	638,140
27	728,973

[1] Excluding T.S.U.S.A. Nos.:
320.—01 through 04, 06, 08
321.—01 through 04, 06, 08
322.—01 through 04, 06, 08
326.—01 through 04, 06, 08
327.—01 through 04, 06, 08
328.—01 through 04, 06, 08

[2] Including only those T.S.U.S.A. Nos. excluded by footnote 1.

In carrying out this directive, entries of cotton textiles and cotton textile products in the above categories, produced or manufactured in Colombia, which have been exported to the United States prior to July 1, 1973, shall, to the extent of any unfilled balances be charged against the levels of restraint established for such goods for the twelve-month period beginning July 1, 1972 and extending through June 30, 1973. In the event that the levels of restraint established for that twelve-month period have been exhausted by previous entries, such goals shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of June 25, 1971, between the Governments of the United States and Colombia which provide in part that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appropriate adjustments pursuant to the provisions of the bilateral agreement referred to above will be made to you by letter.

The bilateral agreement of June 25, 1971 also provides an overall limit on Categories 28 through 64. Import controls on these categories at an overall level of 1,102,500 square yards equivalent may be established during the current agreement year. In such an event, you will be advised by further letter.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on April 29, 1972 (37 FR 8802), as amended on February 14, 1973 (38 FR 4436).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Colombia and with respect to imports of cotton textiles and cotton textile products from Colombia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States.

Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

[FR Doc.73-12864 Filed 6-26-73;8:45 am]

CERTAIN MAN-MADE FIBER TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN THE REPUBLIC OF KOREA

Entry or Withdrawal from Warehouse for Consumption

Correction

In FR Doc. 73-12685 appearing at page 16680 in the issue of Monday, June 25, 1973, in the table appearing in the appended letter, the second and third entries in the left-hand column, now reading "219" and "214-240", respectively, should be reversed; and the last figure in the right-hand column, now reading "3,634,923", should read "3,634,293".

COMMITTEE FOR PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY HANDICAPPED

1973 PROCUREMENT LIST

Addition

Notice of proposed addition to the Initial Procurement List, August 26, 1971 (36 FR 16982), was published in the FEDERAL REGISTER on January 19, 1972 (37 FR 824).

Pursuant to the above notice the following commodities are added to Procurement List 1973, March 12, 1973 (38 FR 6742).

COMMODITIES

CLASS 7520, Box, Index Card (GI):	PRICE EACH
7520-285-3147	$3.17
7520-285-3143	2.03

By the Committee.

CHARLES W. FLETCHER,
Executive Director.

[FR Doc.73-12988 Filed 6-26-73;8:45 am]

COST OF LIVING COUNCIL

[Order No. 15D]

COMMISSIONER OF INTERNAL REVENUE

Delegation of Compliance Functions

Pursuant to the authority delegated to the Director by the Cost of Living Council Order Number 14 (38 FR 1489, January 12, 1973) it is hereby ordered as follows:

1. There is hereby delegated to the Commissioner of the Internal Revenue, subject to the policy guidance and direction of the Director of the Cost of Living Council the authority to perform the following compliance functions with respect to pre-January 11, 1973, activities of those price Category II firms as defined in 6 CFR 101.13(a)(4), which derive less than $20 million in annual sales or revenues from or by the sale or brokerage of lumber, plywood, veneer, millwork, and structural wood members and associated wood products such as hardwood or particle board:

a. Review cases referred by the Cost of Living Council to determine whether there has been any violation of any regulation, decision or order issued under Chapter III of title 6 of the Code of Federal Regulations;

b. Determine the appropriate corrective action to be taken with respect to each such violation; and

c. Issue appropriate determinations, findings, and orders necessary to correct each such violation.

2. The Commissioner may redelegate to any official of the Internal Revenue

Service any authority under this Order.

3. The authority hereby delegated is in addition to the authority delegated to the Commissioner by previous Council Orders.

Issued in Washington, D.C. on June 22, 1973.

WILLIAM N. WALKER,
Acting Deputy Director
Cost of Living Council.

[FR Doc.73-12916 Filed 6-22-73;3:17 pm]

[Cost of Living Council Order No. 28 Amendment No. 1]

DEPUTY ADMINISTRATOR, OFFICE OF PRICE MONITORING ET AL.

Delegations of Authority; Correction

The purpose of this amendment is to correct an error in Cost of Living Council Order No. 28 (38 F.R. 14702) concerning the authority delegated to the Deputy Administrator, Office of Price Monitoring.

Paragraph 1(g) of Cost of Living Council Order No. 28 is amended to read as follows:

1. There is delegated to the Deputy Administrator, Office of Price Monitoring, authority to:

* * * * *

(g) Monitor price increases or adjustments put into effect after January 10, 1973, disclosed as the result of individual company filings; and issue challenges and remedial orders, monitor remedial activities, and approve compliance actions with respect thereto;

This amendment is effective April 23, 1973.

DON I. WORTMAN,
Administrator, Office of Price Monitoring, Cost of Living Council.

[FR Doc.73-13070 Filed 6-25-73;4:41 pm]

ENVIRONMENTAL PROTECTION AGENCY

EFFLUENT STANDARDS AND WATER QUALITY INFORMATION ADVISORY COMMITTEE

Notice of Meeting and Agenda

1. *Notice of meeting.*—Notice is hereby given that meetings of the Effluent Standards and Water Quality Information Advisory Committee (the Committee) established under section 515 of the Federal Water Pollution Control Act (the Act; 33 U.S.C. 1373; Public Law 92-500), will be held beginning at 9 a.m. on each day, July 2, 1973 through July 6, 1973, in Room 1112, Crystal Mall, Building No. 2 in Crystal City, Arlington, Va. These are regularly scheduled meetings of the Committee.

During the week of July 2, 1973 through July 6, 1973, the Committee intends to consider scientific and technical information pertinent to the determination required to be made by the Administrator of the Environmental Protection Agency when proposing regulations providing effluent limitations guidelines and standards of performance for new sources under the Act, including guidelines and standards for the following categories of sources: plastic and synthetic materials manufacturing, cement manufacturing, iron and steel manufacturing, organic chemical manufacturing, timber products processing, electroplating, beet sugar processing, insulation fiberglass and feedlots.

The meetings will be open to the public. The Committee does not intend to receive oral statements or hold informal workshops. However, written statements may be submitted to the Committee in accordance with the procedures outlined below. Any member of the public planning to attend or wishing to obtain additional information should contact Dr. Martha Sager, Chairman, ES&WQIAC at 703/557-7390. Any changes in the above planned schedule will be announced at the Committee meetings.

2. *Written statements.*—Section 515 (b)(3) of the Act provides that scientific and technical information in the Committee's possession, including that which is presented at public hearings, is to be transmitted by the Committee to the Administrator and "shall constitute a part of the administrative record and comments on any proposed regulations or standards as information to be considered with other comments and information in making any final determinations." When public hearings are held by the Committee, transcripts of these hearings will be prepared and included within the administrative record. Minutes of Committee meetings will also be prepared and included in the record; however, verbatim transcripts of the discussions at such meetings will not be prepared.

A public hearing will not be held during the July 2 through July 6, 1973 meetings. Parties desiring to submit scientific and technical information to the Committee should submit such information in writing to the Committee, rather than rely upon minutes of the Committee meetings for the transition of such information. (The Committee, of course, does not view this as the sole means of inclusion of public comments in the administrative record. See, e.g., Administrative Procedure Act, 5 U.S.C. 553 and 706.) Written statements or comments may be transmitted to the Committee at any meeting of the Committee or by mail to Dr. Martha Sager, Chairman, Effluent Standards and Water Quality Information Advisory Committee, Environmental Protection Agency, Room 821, Crystal Mall, Building No. 2, Washington, D.C. 20460.

ROBERT L. SANSOM,
Assistant Administrator for
Air and Water Programs.

JULY 19, 1973.

[FR Doc.73-12964 Filed 6-26-73;8:45 am]

GRAIN AND FEED INDUSTRY ADVISORY COMMITTEE

Notice of Meeting

Pursuant to P.L. 92-463, notice is hereby given that a meeting of the Grain and Feed Industry Advisory Committee will be held from 8:30 a.m. to 4:30 p.m., July 24, 1973, and continuing at 8:30 a.m., July 25, 1973. The meeting will be held at the National Environmental Research Center, Wing B, Classroom 2, Research Triangle Park, North Carolina.

The agenda will include a brief presentation of the findings of the "Engineering and Cost Study of Emission Control in the Grain and Feed Industry." The report on grain elevators, formula feed production, and wheat, rice, durum, rye, oat, and dry corn milling will be discussed on July 24th. Reports on soybean processing, corn refining and alfalfa dehydration will be discussed on July 25th.

The meeting will be open to the public. Any members of the public wishing to participate or present comments, should contact Kenneth R. Woodard, Executive Secretary, Grain and Feed Industry Advisory Committee (919) 688-8146.

ROBERT L. SANSOM,
Assistant Administrator for
Air and Water Programs.

JUNE 21, 1973.

[FR Doc.73-12965 Filed 6-26-73;8:45 am]

TECHNICAL ADVISORY GROUP TO THE MUNICIPAL WASTE WATER SYSTEMS DIVISION

Notice of Meeting

Pursuant to P.L. 92-463 notice is hereby given that a meeting of the Technical Advisory Group to the Municipal Waste Water Systems Division will be held on July 9, 10, and 11, 1973 beginning at 1:30 p.m. P.d.t. on July 9 at the Financial District Holiday Inn in San Francisco, California.

This a regularly scheduled meeting of the Advisory Group. The Advisory Group will review programs, technical topics, guidelines and regulations for the design, construction, operation and maintenance of Federally funded wastewater treatment works.

The meeting will be open to the public. Any members of the public who would like to participate may submit written comments to the Chairman of the Advisory Group within five days after the close of the meeting. Persons desiring more information should contact Mr. Harold P. Cahill, Jr., Executive Secretary, Technical Advisory Group to the Municipal Waste Water Systems Division at (202) 426-8986.

ROBERT L. SANSOM,
Assistant Administrator
for Air and Water Programs.

JUNE 21, 1973.

[FR Doc.73-12966 Filed 6-26-73;8:45 am]

FEDERAL HOME LOAN BANK BOARD

[H. C. No. 155]

GENERAL OHIO S&L CORP.

Receipt of Application To Acquire the Railroad Savings and Loan Co.

JUNE 22, 1973.

Notice is hereby given that the Federal Savings and Loan Insurance Corporation has received an application from

the General Ohio S&L Corporation, Findlay, Ohio, a multiple savings and loan holding company, for approval of acquisition of control of The Railroad Savings and Loan Company, Columbus, Ohio, an uninsured institution, under the provisions of section 408(e) of the National Housing Act, as amended (12 U.S.C. 1730 a(e)), and § 584.4 of the regulations for savings and loan holding companies, said acquisition to be effected by an exchange of stock of General Ohio S&L Corporation for the stock of The Railroad Savings and Loan Company. Comments on the proposed acquisition should be submitted to the Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, Washington, D.C. 20552, on or before July 27, 1973.

[SEAL] GRENVILLE L. MILLARD, Jr.,
Assistant Secretary,
Federal Home Loan Bank Board.

[FR Doc.73-12857 Filed 6-26-73;8:45 am]

[H. C. No. 156]

ISC INDUSTRIES INC.

Receipt of Application To Acquire Anchor Savings Association

JUNE 22, 1973.

Notice is hereby given that the Federal Savings and Loan Insurance Corporation has received an application from ISC Industries Inc., Kansas City, Missouri, for approval of acquisition of control of the Anchor Savings Association, Kansas City, Kansas, an insured institution, under the provisions of section 408(e) of the National Housing Act, as amended (12 U.S.C. 1730a(e)), and § 584.4 of the regulations for savings and loan holding companies, said acquisition to be effected by a purchase for cash of stock of Anchor Savings Association. Comments on the proposed acquisition should be submitted to the Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, Washington, D.C. 20552, on or before July 27, 1973.

[SEAL] GRENVILLE L. MILLARD, Jr.,
Assistant Secretary,
Federal Home Loan Bank Board.

[FR Doc.73-12858 Filed 6-26-73;8:45 am]

FEDERAL POWER COMMISSION

[Docket Nos. CI73-494 and CI73-588 and CI73-449 and CI73-542]

COLUMBIA GAS DEVELOPMENT CORP. AND TEXAS GULF, INC.

Order Consolidating Proceedings, Granting Interventions, and Fixing Date for Hearing

JUNE 14, 1973.

The above-named applicants have each filed applications pursuant to section 7(c) of the Natural Gas Act,[1] and pursuant to § 2.75[2] of the Commission's General Policy Statements, the new Optional Procedure for Certificating New Producer Sales of Natural Gas set forth in Order No. 455[3] (hereinafter § 2.75) for certificates of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce.

On January 22, 1973, Columbia Gas Development Corporation (Columbia Gas) filed in Docket No. CI73-494 an application for the sale of natural gas to Columbia Gas Transmission Corporation (Columbia) from the Block 292 Field, Eugene Island Area, Offshore Louisiana.

Columbia Gas, pursuant to the optional procedure, filed its contract with Columbia dated January 15, 1973, concurrently with its application as its FPC Gas Rate Schedule and submitted a Summary of Gas Purchase Contract with the application. The basic contract provides for an initial rate of 45.0 cents per Mcf at 15.025 psia, subject to upward and downward Btu adjustment, and price escalations of 1.0 cent per Mcf every year. The contract term is twenty (20) years and further provides for reimbursement to the seller (Columbia Gas) of 100 percent of all additional or increased taxes.

Initial deliveries were commenced on November 22, 1972, pursuant to § 157.29 (18 CFR 157.29) of the regulations under the Natural Gas Act. Deliveries were commenced pursuant to § 2.75n (18 CFR 2.75n) on January 21, 1973.

Columbia Gas is affiliated with Columbia and states that the 45.0 cents per Mcf price is the same as the contract prices that Columbia pays to certain nonaffiliated producers.

Columbia Gas' application in Docket No. CI73-494 was noticed on February 12, 1973, and the notice was published in the FEDERAL REGISTER on February 21, 1973 (38 FR 4727). Timely petitions to intervene or protests were due on or before March 5, 1973. A Notice of Intervention was filed by the Public Service Commission for the State of New York, and petitions to intervene were filed by the following parties:

Associated Gas Distributors
Columbia Gas Transmission Corporation
Washington Gas Light Company
UGI Corporation
American Public Gas Association
City of Charlottesville, Virginia

On March 15, 1973, Columbia Gas filed in Docket No. CI73-588 an application pursuant to § 2.75 for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce to Columbia from the Block 225 Field, Vermillion Area, Offshore Louisiana.

The contract terms for the proposed sale in Docket No. CI73-588 are the same as those for the contract submitted in Docket No. CI73-494, except that the contract is dated February 20, 1973.

Columbia Gas commenced initial deliveries of natural gas from the area involved in this application on January 5, 1973, pursuant to § 157.29 (18 CFR 157.29) of the regulations under the Natural Gas Act. Deliveries were commenced pursuant to § 2.75n (18 CFR 2.75n) on March 6, 1973.

Notice of Columbia Gas' application in Docket No. CI73-588 was issued on March 13, 1973, and was published in the FEDERAL REGISTER on March 19, 1973 (38 FR 7283). Timely protests or petitions to intervene were due on or before April 6, 1973. A Notice of Intervention was filed by the Public Service Commission for the State of New York, and petitions to intervene were filed by the following parties:

Associated Gas Distributors
Columbia Gas Transmission Corporation
The Cincinnati Gas & Electric Company, and The Union Light, Heat and Power Company (joint petition)
The Dayton Power and Light Company
UGI Corporation
American Public Gas Association
Washington Gas Light Company

On December 18, 1972, Texas Gulf, Inc. (TGI) filed in Docket No. CI73-449 an application pursuant to § 2.75 for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce to Columbia from Block 146, West Cameron Area, offshore Louisiana.

TGI, pursuant to the optional procedure, filed its contract dated September 12, 1972, concurrently with the application as its FPC Gas Rate Schedule and submitted a Summary of Gas Purchase Contract with the application. The basic contract provides for an initial rate of 35.0 cents per Mcf at 15.025 psia, subject to upward and downward Btu adjustment, price escalations of 2.0 cents per Mcf every two years, and 100 percent reimbursement of any increased taxes. The contract term is twenty years, the price is reduced 0.02 cents per Mcf per mile of transportation of plant shrinkage volumes. TGI is also seeking pre-granted abandonment with respect to this proposed sale.

Deliveries of the gas to Columbia were commenced on January 13, 1973 pursuant to § 2.75n (18 CFR 2.75n).

Notice of TGI's application was issued on January 22, 1973, and was published in the FEDERAL REGISTER on January 29, 1973 (38 FR 2715). Timely protests or petitions to intervene were due on or before February 9, 1973. A Notice of Intervention was filed by the Public Service Commission for the State of New York and petitions to intervene were filed by the following parties:

Associated Gas Distributors
Columbia Gas Transmission Corporation

On Feburary 16, 1973, TGI filed in Docket No. CI73-542 an application pursuant to § 2.75 for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas in interstate commerce to Columbia from

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[1] 15 U.S.C. section 717, et seq. (1970).
[2] 18 CFR 2.75.
[3] Statement Of Policy Relating To Optional Procedure For Certificating New Producer Sales of Natural Gas, Docket No. R-441, —— F.P.C. —— (issued August 3, 1972), appeal pending, John E. Moss, et al. v. F.P.C., No. 72-1837 (D.C. Cir.)

Block 273, East Cameron Area, Offshore Louisiana.

TGI, pursuant to the optional procedure, filed its contract dated November 14, 1972, concurrently with the application as its FPC Gas Rate Schedule and submitted a Summary of Gas Purchase Contract with the application. The basic contract provides for an initial rate of 45.0 cents per Mcf at 15.025 psia, subject to upward and downward Btu adjustment, price escalations of 1.0 cent every year, and 100 percent reimbursement of any increased taxes to TGI. The contract term is twenty (20) years, and the price is reduced 0.02 cents per Mcf per mile of transportation of plant shrinkage volumes. TGI is also seeking pre-granted abandonment.

Notice of TGI's application was issued February 26, 1973, and was published in the FEDERAL REGISTER on March 5, 1973 (38 FR 5947). An Errata notice was published in the FEDERAL REGISTER on April 10, 1973 (38 FR 9121). Timely protests or petitions to intervene were due on or before March 19, 1973. A Notice of Intervention was filed by the Public Service Commission for the State of New York and petitions to intervene were filed by the following parties:

Associated Gas Distributors
Columbia Gas Transmission Corporation
Washington Gas Light Company
American Public Gas Association

Having reviewed the petitions to intervene, we find that all of the above-mentioned petitioners have sufficient interest in these proceedings to warrant intervention.

A formal hearing has been requested, and we find a hearing is desirable to determine, on the record, whether the present and future public convenience and necessity will be served by certificating these sales, and whether the proposed rates are just and reasonable, taking into consideration all factors bearing on maintenance of an adequate and reliable supply of gas, delivered at the lowest reasonable cost.[4]

Since these applications involve similar questions of law and fact as to the reasonableness of the prices for which certification is sought, the Commission concludes that the ultimate disposition of the above-described proceedings would be best accomplished in a consolidated proceeding. The Commission shall, therefore, consolidate these dockets for hearing and disposition.[5]

This hearing is not the proper forum for the relitigation of the propriety of the § 2.75 procedures; that matter is now before the Court of Appeals. See n. 2, *supra*. This hearing will be addressed solely to the issues of public convenience and necessity, and the justness and reasonableness, of the particular sales and rates herein proposed.

Those parties and intervenors desiring to submit cost and non-cost data should structure their evidence to reflect the tests under § 2.75 for determining the justness and reasonableness of the rate sought,[6] bearing in mind that with respect to proceedings under § 2.75 of our regulations, we have heretofore stated.

> We will, absent a showing of special circumstances, accept as conclusive the cost findings embodied in our area rate decisions, as such may be supplemented from time to time by appropriate Commission order (Order 455, paragraph 63, page 21.)

We do not, therefore, open this hearing to the presentation of cost data, other than that incorporated from the Belco, et al. proceedings as hereinafter ordered, unless, in the judgment of the Presiding Administrative Law Judge, a showing of special circumstances is made.

We also direct the attention of the parties to our recent statement in Opinion No. 639, Area Rates for the Appalachian and Illinois Basin Areas, Docket No. R-371, opinion issued December 13, 1972, wherein we stated:

> We have been admonished not to rely on cost alone, but also to consider producer rate levels in the context of "non-cost" factors of supply and demand, capital formation, and probable industry response to any given level of rates. Austral Oil, et al. v. F.P.C., 428 F.2d 407 (CA5, 1970). Applications under § 2.75 will be so considered * * *.

No intervenor has questioned Columbia's need for the approximately 15 billion cubic feet per year of natural gas that will be available as a result of these purchases. We note from the filings that Columbia has received approval of its interim curtailment plan. Columbia is not making emergency purchases of natural gas, but has invoked the provisions of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) to assure maintenance of adequate supplies of natural gas. A Columbia affiliate has received permission to import liquefied natural gas (LNG)[7], and has filed applications concerning synthetic pipeline gas. Accordingly, the hearing provided for herein should not explore any issues related to Columbia's need for additional supplies of natural gas. However, we shall require Columbia to present evidence as to whether or not a comparable supply of natural gas is available to Columbia at any rate lower than the rates proposed in these applications.

The six month period during which a producer under § 2.75o (18 CFR 2.75o) may not collect a rate in excess of the prevailing area ceiling rate will expire for TGI in Docket No. CI73-449 on July 13, 1973, and for Columbia Gas in Docket No. CI73-494 on July 23, 1973.[8] Consequently, we shall provide special procedures which will enable us to determine promptly whether the public convenience and necessity requires that these sales be certificated and whether the rates sought are just and reasonable. We will provide that the hearing hereinafter ordered shall commence on July 16, 1973 and conclude not later than July 20, 1973. In addition, initial briefs will be due on or before July 30, 1973 and reply briefs on or before August 6, 1973. We shall also provide for waiver of the intermediate decision.

We have just rendered a decision in the first proceedings under § 2.75 in which a full evidentiary record was made.[9] We think it appropriate in these circumstances to incorporate by reference the record developed in that proceeding into these consolidated proceedings insofar as it may be relevant pursuant to the majority or minority views in Opinion No. 659.

The Commission finds: (1) It is necessary and in the public interest that the above-docketed proceedings be consolidated for hearing and decision.

(2) It is desirable and in the public interest to allow the above-named petitioners to intervene in these consolidated proceedings.

(3) Good cause exists for the waiver of the intermediate decision procedure in view of the imminent expiration of the six-month period in Docket Nos. CI73-449 and CI73-494 from the commencement of deliveries under § 2.75o.

The Commission orders: (A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 6, 7, 15, and 16 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Chapter I), Docket Nos. CI73-494, CI73-588, CI73-449, and CI73-542 are consolidated for purposes of hearing and disposition.

(B) A public hearing on the issues presented by the proposals of the applicants herein shall be held commencing July 16, 1973, at 10:00 a.m., (e.d.s.t.), in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and shall be completed on or before July 20, 1973.

(C) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5 (d)), shall preside at the hearing in this proceeding pursuant to the Commission's rules of practice and procedure.

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[4] Opinion And Order Issuing Certificate Of Public Convenience And Necessity And Determining Just And Reasonable Rates, Opinion No. 659, Belco Petroleum Corporation, Agent, et al., Docket Nos. CI73-293, et al., —— F.P.C. ——, —— (issued May 30, 1973, slip op. at para. 21, p. 5).

[5] Opinion No. 659, slip op. at para. 11, p. 5.

[6] Opinion 639 gave consideration to such factors as (1) cost, (2) return, (3) alternate supply costs, (4) contract rates for intra- and interstate sales, (5) commodity value, and (6) supply and demand. Opinion No. 659.

[7] Opinion And Order Adopting With Modifications Decision of Presiding Examiner Authorizing Importation of Liquefied Natural Gas And Issuing Certificates, Opinion No. 622, as amended by Opinion No. 622-A, Columbia LNG Corporation, et al., Docket Nos. CP71-68, et al., — FPC — (issued June 28, 1972), as amended — FPC — (issued October 5, 1972), appeal pending sub nom. El Paso Algeria Corp., et al. v. F.P.C. Nos. 72-3122, et al., (5th Cir.)

[8] The annual volume of gas involved in Docket No. CI73-449 is 900,000 Mcf and the annual volume in Docket No. CI73-494 amounts to 4,050,000 Mcf.

[9] Opinion No. 659, *supra*.

(D) Applicants and all intervenors supporting the applications shall file their direct testimony and evidence on or before June 29, 1973. All testimony and evidence shall be served upon the Presiding Administrative Law Judge, the Commission Staff, and all other parties to these proceedings.

(E) The Commission Staff and all intervenors opposing the application shall file their direct testimony and evidence on or before July 6, 1973. All testimony and evidence shall be served upon the Presiding Administrative Law Judge, and all other parties to these proceedings.

(F) All rebuttal testimony and evidence shall be served on or before July 11, 1973. All parties submitting rebuttal testimony and evidence shall serve such testimony and evidence upon the Presiding Administrative Law Judge, the Commission Staff, and all other parties to these proceedings.

(G) The record in the Belco case, Docket Nos. CI73-293, et al., is incorporated by reference into the subject consolidated proceedings insofar as it may be relevant pursuant to the majority or minority views in Opinion No. 659.

(H) In view of the need for prompt action herein, the initial decision by the Administrative Law Judge is waived.

(I) All parties shall submit initial briefs to the Commission on or before July 30, 1973, and reply briefs on or before August 6, 1973.

(J) The above-named petitioners are permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene; and provided, further, that the admission of such interests shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

By the Commission.[1]

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-12929 Filed 6-26-73;8:45 am]

[Project 2685]

POWER AUTHORITY OF THE STATE OF NEW YORK

Order Postponing Hearing, Retaining Hearing Site and Deferring Decision Upon Certified and Related Matters

JUNE 15, 1973.

On June 6, 1969, the Commission granted a license to the Power Authority of the State of New York (PASNY) to construct and operate the Blenheim-Gilboa Pumped Storage Project No. 2685 including, as part of the project works, three 345 Kv transmission lines (41 FPC 712). The principal project works are now about 90 percent complete and two of the lines are in operation. This proceeding involves PASNY's application for approval of the route prior to construction of the third line from the project switchyard in the Town of Gilboa, Schoharie County, New York, to the Leeds substation in the Town of Athens, Greene County, New York. The hearing is scheduled to resume on June 19, 1973.

Although prior notices of possible routes for the line had been given, the Commission staff, on May 18, 1973, gave new written notice and commenced publishing new notice of alternative routes, setting July 2, 1973, as the last date for filing protests and/or petitions to intervene. On May 25, 1973, Intervenor Joe Segelman (Segleman) moved to adjourn the hearing to an unspecified date after the Commission rules upon prospective interventions. And on May 29, 1973, Intervenors Town of Durham and the Association For The Preservation of Durham Valley, *et al.* (collectively, Durham), moved the Commission to postpone the hearing to an unspecified date after July 2, 1973, urging that new intervenors should have an opportunity to study the record to enable them to participate effectively in the proceeding. PASNY replied on June 8, 1973, opposing the motions and asserting that cross-examination upon the Commission staff's final environmental impact statement would begin when the hearing is resumed; that completion of the direct cases and presentation of the intervenors' cases would be scheduled later; and, consequently, if new petitions to intervene are filed and granted, there would be ample time for participation by such new intervenors.

We believe that while the hearing should proceed as rapidly as possible, it would be appropriate, nonetheless, to grant a short postponement. We note, in this connection, that the Administrative Law Judge has the authority under § 1.8 (f)(2) of our rules of practice and procedure to permit tentative participation in the hearing in advance of, and subject to, our granting a petition to intervene. And we assume that he would consider favorably a specific showing by a prospective intervenor that his or its asserted rights and interests as specifically set forth in his or its petition to intervene are not being adequately protected by any of the present participants, and that additional time is required to participate effectively in the proceeding. Under the circumstances, it would be appropriate to postpone the hearing until July 2, 1973, or such later date as may be established by the Administrative Law Judge.

On June 11, 1973, Durham moved the Commission purportedly on behalf of all active intervenors to "allow the reopened hearings in this matter to be held in New York City rather than in Washington, D.C.," urging that PASNY and the intervenors are all located in the State of New York and that such change of the hearing site would help reduce their expenses. In our order issued in this proceeding on October 29, 1971, we said in response to a similar motion that

> The matter of scheduling the hearing is peculiarly within the competence of the [presiding Administrative Law Judge], and we would not be justified in overruling him unless his determination as to the needs of the parties in the light of the status of the proceeding had been entirely unreasonable, which is clearly not the case here.

Nor is it the case here. His choice of Washington, D.C., where most Commission hearings are held, appears to be reasonable considering that the hearing will resume with cross-examination upon the Commission staff's final environmental impact statement. We wish to make it clear, however, that in reopening this proceeding on November 6, 1972, and directing the hearing to resume in Washington, D.C., we did not intend to preclude subsequent sessions from being held in such places as the Administrative Law Judge may determine.

On May 17, 1973, the Administrative Law Judge certified certain other matters to us, setting June 4, 1973, as the last date for filing comments on or objections to his ruling. We have these matters under consideration together with Segelman's partly cumulative subsequent motion and the cumulative subsequent motion of another intervenor. Although we intend to rule upon these matters on their merits as soon as practicable, we anticipate that we will not be in a position to do so within 30 days after May 17, 1973. In order to afford additional time for consideration of the issues raised in the numerous pleadings which have been filed, and in view of the importance of these issues to the administration of the Federal Power Act and the National Environmental Policy Act of 1969, we find that it is appropriate and proper in the administration of both statutes and in the public interest to defer our decision upon such certified and related matters so that, by such action, they shall not be deemed to have been denied under §§ 1.12 (e) and 1.28(c) of our rules of practice and procedure.

The Commission orders: (A) Segelman's and Durham's motions for postponement of the hearing in this proceeding are granted insofar as they request postponement until July 2, 1973, and are denied without prejudice insofar as they request postponement after that date.

(B) Durham's motion to "allow the reopened hearings in this matter to be held in New York City rather than in Washington, D.C.," is denied insofar as it pertains to the resumption of the hearing now scheduled for July 2, 1973, and is denied without prejudice insofar as it pertains to subsequent sessions.

(C) Decision upon the matters certified by the Administrative Law Judge on May 17, 1973, and certain related matters described in the body of this order, is hereby deferred for the purpose of further consideration.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-12927 Filed 6-26-73;8:45 am]

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[1] Chairman Nassikas concurring in part filed as part of original document.

[Docket No. RP72-64]

TEXAS GAS TRANSMISSION CORP.

Order Suspending Proposed Tariff Provisions

JUNE 15, 1973.

On May 17, 1973, Texas Gas Transmission Corporation (Texas Gas) submitted for filing, pursuant to section 4 of the Natural Gas Act, Original Sheet No. 92-C, First Revised Sheet Nos. 90, 91, 92-A, 92-B, 148, 149, 150, 151 and 152, Second Revised Sheet No. 79, and Third Revised Sheet No. 92 to its FPC Gas Tariff, Third Revised Volume No. 1.[1] The revised tariff sheets pertain to curtailment procedures, applicability of force majeure provisions to all failures of gas supply, recovery of demand charge adjustments resulting from curtailment, imposition of an overrun penalty, and extension of the presently effective Quantity Entitlements.

Texas Gas proposes that the aforesaid tariff sheets become effective on May 1, 1973, with the exception of First Revised Sheet Nos. 148 through 152, for which Texas Gas requests an effective date of May 1, 1974, after full statutory suspension, if any.

Texas Gas states that its revised tariff filing was made in major part pursuant to the Commission's direction in its order issued April 11, 1973, in the above-entitled docket, and that it reflects the same priorities-of-service specified in the Commission's Order No. 467-B issued March 2, 1973, in Docket No. R-469.

Texas Gas has requested waiver of the notice requirements of § 154.22 of the Commission's regulations under the Natural Gas Act.

On June 11, 1973, timely protests were filed by Consolidated Gas Supply Corporation and Mississippi Power & Light Company; a petition for intervention[2] and protest by Mississippi Valley Gas Company (Mississippi Valley); and a petition for leave to intervene or, in the alternative, comments by Louisville Gas and Electric Company.

The protestants object to Texas Gas' proposed tariff filing because, inter alia firm industrial sales up to 300 Mcf per day have not been added to Priority Category 2 for Texas Gas' curtailment plan; Order No. 467-B expressly envisions further hearings in specific proceedings; low priority of service is accorded electric generating plants by Order No. 467-B; and curtailment under Order No. 467-B priority of service categories allegedly should not be governed by interim quantity entitlements agreed to before the end-use type of curtailment was required.

We take cognizance of the fact that Texas Gas' tariff filing reflects priorities of service for curtailment consistent with our Statement of Policy contained in Order No. 467-B issued March 2, 1973 in Docket No. R-469; and we normally would accept it for filing without suspension since it conforms to the policies expressed in Docket No. R-469. However, the priority of service categories for curtailment purposes are interwoven with other proposed tariff provisions as they are set forth in Texas Gas' filing, principally those pertaining to penalty charges and demand charge adjustments. In view of the question raised as to the justness and reasonableness of these other tariff revisions, we are of the view that we must suspend for one day the effectiveness of Texas Gas' revised tariff sheets containing priority of service categories and other provisions, with the exception of those consisting of future Quantity Entitlements upon which we shall defer action.

The Commission finds: (1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the proposed tariff provisions except First Revised Sheet Nos. 148 through 152 to Texas Gas' FPC Gas Tariff, Third Revised Volume No. 1, be suspended and the use thereof deferred as herein provided.

(2) It is necessary and appropriate that decision be deferred regarding acceptance for filing of First Revised Sheet Nos. 148 through 152 to Texas Gas' FPC Gas Tariff, Third Revised Volume No. 1, and they should be held in abeyance pending disposition of the issues raised concerning Texas Gas' tariff filing of May 17, 1973.

The Commission orders: (A) Original Sheet No. 92-C, First Revised Sheet Nos. 90, 91, 92-A, and 92-B, Second Revised Sheet No. 79 and Third Revised Sheet No. 92 to Texas Gas' FPC Gas Tariff, Third Revised Volume No. 1, are hereby suspended and the use thereof deferred until June 18, 1973, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(B) Decision is deferred regarding acceptance for filing of the tariff sheets referred to in finding paragraph (2) above, and they are to be held in abeyance pending disposition of the issues raised concerning Texas Gas' tariff filing of May 17, 1973.

(C) Texas Gas must submit end-use data to the Commission and serve it on all interveners on or before July 18, 1973.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-12928 Filed 6-26-73;8:45 am]

[1] Notice of Texas Gas' proposed tariff revisions to its FPC Gas Tariff was published in the FEDERAL REGISTER (38 FR 15394).

[2] Parties previously granted intervention in Docket No. RP72-64 need not file additional petitions for leave to intervene.

OFFICE OF EMERGENCY PREPAREDNESS

ARKANSAS

Amendment to Notice of Major Disaster

Notice of major disaster for the State of Arkansas, dated April 27, 1973, and published May 3, 1973 (38 FR 11013); amended May 8, 1973, and published May 14, 1973 (38 FR 12636); amended May 15, 1973, and published May 21, 1973 (38 FR 13401); and amended May 30, 1973, and published June 5, 1973 (38 FR 14799 and 14800), is hereby further amended to include the following counties among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 27, 1973:

The Counties of:

Benton	Howard
Bradley	Madison
Chicot	Montgomery
Columbia	Union
Fulton	Washington

(Catalog of Federal Domestic Assistance Program 50.002, Disaster Assistance.)

Dated June 21, 1973.

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

[FR Doc.73-12882 Filed 6-26-73;8:45 am]

MISSISSIPPI

Amendment to Notice of Major Disaster

Notice of major disaster for the State of Mississippi, dated March 27, 1973, and published April 2, 1973 (38 FR 8489); amended April 5, 1973, and published April 9, 1973 (38 FR 9049); amended April 12, 1973, and published April 18, 1973 (38 FR 9624); and amended May 11, 1973, and published May 17, 1973 (38 FR 12958), is hereby further amended to include the following county among those counties determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 27, 1973:

The County of:

Montgomery

(Catalog of Federal Domestic Assistance Program No. 50.002, Disaster Assistance.)

Dated June 21, 1973.

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

[FR Doc.73-12883 Filed 6-26-73;8:45 am]

VETERANS ADMINISTRATION

GRANTS AND ASSISTANCE FOR DEVELOPMENT, EXPANSION AND IMPROVEMENT OF MEDICAL AND ALLIED HEALTH EDUCATION

Program Guidelines

The following program guidelines relate to the implementation of the Veterans Administration Medical School Assistance and Health Manpower Training Act of 1972 (Public Law 92-541), which provides for a pilot program for assistance in the establishment of new State medical schools; grants to affiliated medical schools; and grants to assist in the education and training of professional and technical allied health manpower.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed guidelines to the Administrator of Veterans Affairs (232H), Veterans Administration, 810 Vermont Avenue, NW, Washington,

DC 20420 in connection with the proposed §§ 17.400 through 17.416, Title 38, Code of Federal Regulations which appear at page 16917 of this issue.

Changes in §§ 17.400 through 17.416 which are made as a result of the written comments, suggestions, or objections submitted under the provisions explained in the preamble to those sections, will be reflected, as required, in these documents before they are published and released, in brochure form, by the Veterans Administration.

Issued June 22, 1973.

[SEAL] DONALD E. JOHNSON, *Administrator.*

PILOT PROGRAM FOR ASSISTANCE IN THE ESTABLISHMENT OF NEW STATE MEDICAL SCHOOLS

GUIDELINES FOR APPLICANTS

I. *Introduction.* The Veterans Administration Medical School Assistance and Health Manpower Training Act of 1972 (PL 92-541) authorizes assistance to State colleges and universities to establish new State medical and osteopathic schools in affiliation with Veterans Administration medical facilities. (38 U.S.C. 5071-5074).

This document describes the terms and conditions applicable to the assistance which can be awarded by the Veterans Administration, including the lease of land and of buildings and the costs of adapting them to use as school facilities, and grants for faculty salaries. The provision of such assistance is also subject to §§ 17.400 through 17.416, Title 38, Code of Federal Regulations.

This pilot program is limited, under the provisions of the Act, to assistance in the establishment of not more than eight new State medical schools. While every effort will be made to assure an equitable division of available funds among the recipients, it is recognized that their needs will be different in any one year, and will vary from year to year. Therefore, no recipient should anticipate Veterans Administration assistance in any one year totalling more than one-eighth of the funds available for this purpose for that year.

II. *Administration.* VA assistance for establishment of new State medical and osteopathic schools is administered by the Office of the Administrator of Veterans Affairs. Questions concerning this program should be referred to:

Chief Medical Director (152)
Department of Medicine and Surgery
Veterans Administration
810 Vermont Avenue N.W.
Washington, D.C. 20420

III. *Eligible applicants.* To be eligible for assistance in this pilot program, the applicant must be a public or other nonprofit college or university which is primarily supported by the State in which it is located, be authorized to offer a formal four-year program of college level studies in residence, and be accredited by a body approved for such purpose by the Commissioner of Education.

The applicant school must be located within a reasonable distance of a Veterans Administration medical facility.

For purposes of accreditation, the bodies recognized by the Commissioner of Education for accrediting institutions of higher education are the following:

New England Association of Colleges and Secondary Schools
Middle State Association of Colleges and Secondary Schools, Commission on Institutions of Higher Education
North Central Association of Colleges and Secondary Schools, Commission on Higher Schools
Northwest Association of Secondary and Higher Schools, Commission on Higher Schools
Southern Association of Colleges and Schools
Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities, and Accrediting Commission for Junior Colleges

IV. *Assurances.* In order to receive assistance from the Veterans Administration, a college or university must present a plan for the establishment of a new school of medicine or osteopathy, and provide the following evidence of steps taken toward its accomplishment:

(1) A communication, dated not earlier than [October 24, 1972], reporting a finding of reasonable assurance of accreditation of the new school of medicine or osteopathy, from the Commissioner of Education after consultation with the appropriate accrediting body.[1]

(2) A statement of commitment on the part of the State in which the new school of medicine or osteopathy is to be located, providing reasonable assurance of adequate financial support. The statement must include specific plans for funding from State and other sources to supplement the assistance requested from the Veterans Administration during the period for which the request is made; and a long range plan for financing the school of medicine or osteopathy beyond the period of the grant. The statement must be executed by an appropriate official(s) of the State, in behalf of the applicant college or university.

(3) An appropriately executed Memorandum of Understanding between the applicant college or university and the Veterans Administration Hospital with which it will join, and a plan for assuring the mutual benefit of both the new medical or osteopathic school and the affiliated Veterans Administration hospital.

Special consideration will be given to applications which include a plan for assuring that priority for admission to the new school of medicine or osteopathy will be given to otherwise qualified veterans who during their military service acquired medical military occupation specialties; and that among such qualified veterans those who served during the Vietnam era, and those who are entitled to disability compensation under laws administered by the Veterans Administration, or whose discharge or release was for a disability incurred or aggravated in line of duty, will be given the highest priority.

V. *Application procedures.* Schools or colleges which wish to apply for assistance in the establishment of new State schools of medicine or osteopathy must submit an application in accordance with instructions provided in a separate document (Ref.). All such institutions known to have initiated plans for providing the required assurances (see section IV) will be directly supplied with application materials and the deadline for submission of the completed application will be stated in the instructions.

The application will consist of four sections.

A. A narrative portion, including:

(1) A general statement regarding the conceptual plan of the State for providing health professions education and the role of the proposed school of medicine or osteopathy in that plan, including the views of the health planning entity designated under section 314(a) of the Public Health Service Act;

(2) A description of the resources of the applicant college or university, both present and projected, which make it an adequate and appropriate academic base for the new medical or osteopathic school;

(3) A proposed plan by which the new school will serve to expand and improve the quality of services available to the veteran patients served by the medical facility(s) which are included in the affiliation arrangements; and

(4) A listing and brief description of other resources available to the new school and the direct or indirect contributions they will be called upon to make; both in the establishment of the new school and in its continued operation. This should include individuals, educational and health-related institutions and agencies, professional and civic organizations, private foundations, etc., as appropriate.

B. A brief description of the resources of the specific Veterans Administration medical facility(s) with which the new school will affiliate. This should be prepared in collaboration with the Director of the facility and presented in two parts, the first dealing briefly with the entire facility as it is currently operating (including the acute care, specialized and long term care units; clinics; nursing home; domiciliary, etc., as appropriate) and relating each to its potential contribution to clinical teaching.

The second part should deal with the land, buildings, and structures to be leased by the college or university and adapted to use and maintained as offices, classrooms, laboratories and other basically non-clinical teaching facilities for the new school. It should include a preliminary prospectus for extension, al-

[1] For this purpose the accrediting bodies recognized by the Commissioner of Education are:

Schools of Medicine—Liaison Committee on Medical Education (AMA-AAMC)
Schools of Osteopathy—The American Osteopathic Association

teration, remodeling, improvement, repair, and equipping of the leased buildings and structures to make them suitable for the uses proposed; phased over the entire program period for which the assistance is being requested.

Proposals for modernization, expansion, or extension of the operating component units of the affiliated Veterans Administration medical facility itself should not be included in this application.

C. A budget projection for the entire program period for which assistance is being requested, including specific information regarding the costs of the adaptation of buildings and structures to be leased and a detailed list of the faculty positions to which the grant funds will be applied.

NOTE: In this program the "faculty" to whose salaries the grant funds may be applied is only those individuals whose principal duty is the instruction of undergraduate students in the new school of medicine or osteopathy or the administration of the academic program of that school.

D. An appendix of supporting documents including the required assurances (section IV), a draft of a proposed lease agreement (section VIII), and such letters and statements as the applicant deems appropriate to support the involvement and commitment of other institutions and agencies which will participate in the establishment and continued operation of the new medical or osteopathic school.

VI. *Review process.* After review by both an ad hoc operational review committee and by the Special Medical Advisory Group, all applications will be referred, with appropriate recommendation of the Chief Medical Director, for final decision by the Administrator.

Applications will be reviewed, taking into account the following criteria:

(1) The ability of the college or university to establish and maintain a school of medicine or osteopathy; and the likelihood that it will, in a reasonable length of time, enroll a class of students, and proceed to full accreditation.

(2) The reasonable proximity of the Veterans Administration medical facility with which the school is to affiliate, and the adequacy of the land, buildings and structures which are to be leased for the purposes proposed by the applicant.

(3) The merit of the plan for utilization of the Veterans Administration assistance, including the faculty support grant, the use of land, buildings and structures to be leased, and the continuing affiliation with the Veterans Administration medical facility.

(4) The other resources available to the new school, especially clinical resources to adequately complement those which are and will be unavailable in the Veterans Administration facility because of its specific service mission.

(5) The extent to which the plan for the new school takes into account its potential for improving and expanding the availability of both health manpower and health care services to the community in which it is to be located.

VII. *Grants and other assistance.* All applicants will be notified in writing of the actions taken on their applications. If an application is approved and funded a Notice of Award will be issued. This notice will indicate the total period for which support for the new medical or osteopathic school has been recommended (the program period), an approved budget for the grant to assist in the payment of faculty salaries, and the amount available for expenditure for that purpose during the portion of the program period covered by the budget (the award period—usually twelve months) and the level of grant assistance recommended for the remainder of the program period, subject to annual renegotiation.

The notice of award will also include an agreement regarding the terms of the lease to the college or university of land, buildings, and structures (including arrangements for maintenance, protection and restoration of the property). This agreement will state the amount of funds recommended for the extension, alteration, remodeling, improvement and repair of buildings and structures to be leased and for the equipment, which is recommended for the entire program period, and the amount to be made available for the award period.

When an award includes a lease, to the college or university, of land only, the buildings or structures for the medical or osteopathic school to be constructed with funds *other* than those provided by the Veterans Administration, the terms of this lease will be separately negotiated: It will not be a part of the Notice of Award document.

Continuation Awards. Although applications may be approved for program periods of up to seven years, a continuation application must be submitted for each twelve-month period after the initial award. Materials for this purpose will be routinely mailed to the recipient college or university in sufficient time to meet annual deadlines. Continued grant support for faculty salaries, and other support for the completion of or further adaptation and equipping of leased buildings or structures at the level indicated in the notice of award, depends upon acceptable progress and the availability of funds.

Grant funds which remain unobligated at the end of each award period will remain in the grant accounts but may be used only within the limits of the budget approved for the succeeding award period. Support for completion of, or additional extension, alteration, remodeling improvement or repair of leased buildings and structures (taking into account the additional costs of restoration, maintenance, and protection provided by the leasee) may, also, be adjusted in consideration of unobligated balances remaining from previous awards.

Supplemental Awards. If the college or university wishes to request additional support in behalf of the new school of medicine or osteopathy over those budgeted and approved for the remaining program period, a supplemental application for additional support may be submitted. Supplemental applications are subject to the same deadlines and are processed in the same manner as new applications. In addition they must compete with new applications for available funds.

VIII. *Expenditure of funds awarded—Grants for Faculty Salaries.* Funds granted for assisting in the payment of faculty must be used solely for that purpose and may be applied only to the salaries of the incumbents of the positions described in the application and detailed in the notice of award. The proportion of such salaries to be paid for this purpose will not exceed 90 percent for the first, second and third years of the approved program period; 80 percent for the fourth year; 70 percent for the fifth year; 60 percent for the sixth year; and 50 percent for the seventh year.

Other assistance. Specific terms of the lease of land, buildings and structures will be negotiated between the college or university and the Veterans Administration within the scope of the arrangements proposed in the application and approved by the Administrator.

Extension, alteration, remodeling, improvement or repair of buildings and structures, and provision of equipment, within the limits set forth in the Notice of Award, will be undertaken by the Veterans Administration and completed according to the specifications agreed upon by the college or university and the Director of the affiliated Veterans Administration medical facility.

IX. *Indirect costs.* Indirect costs, in an amount not greater than 15 percent of the total amount awarded for faculty salaries in each award period will be made as part of each award. These funds may be used by the college or university for costs which bear a reasonable relationship to the purposes of the new school of medicine or osteopathy.

X. *Method of grant payment.* Grant funds for faculty salaries and appropriate indirect costs will be made available to the college or university either by way of reimbursement or by advance payments for the amount approved for the award period. (See section VII.) If a relationship with a grantee is not expected to continue for a year regardless of the amount of advances or is not expected to give rise to requirements for cash advances aggregating $250,000 annually, advance financing will be accomplished by Treasury check. If a relationship with a grantee is expected to continue for at least a year and a requirement exists for advance financing aggregating at least $250,000 the letter-of-credit method shall be used.

XI. *Reports.* An annual progress report must accompany each application for continuation of support. The purpose of this report is to identify the progress being made in the establishment of the new medical or osteopathic school. Instructions for preparing the report will be sent to the awardees along with the

material for submitting continuation applications.

Grant agreements entered into will contain a provision to require the grantee to report no later than the first workday of the succeeding month the amount of the actual expenditures for the month made by them. Forms and instructions for this purpose will be provided. Continued support will be withheld if the expenditure reports are not received.

XII. *Records and audit.* Colleges and universities receiving assistance under this Act must maintain accounting records, which will be subject to audit by or in behalf of the Veterans Administration. (See § 17.411, title 38, Code of Federal Regulations.)

GRANTS TO AFFILIATED MEDICAL SCHOOLS

GUIDELINES FOR APPLICANTS

I. *Introduction.* The Veterans Administration Medical School Assistance and Health Manpower Training Act of 1972 (PL 92-541) authorizes a program of grants to medical schools which have maintained affiliations with the Veterans Administration, in order to assist such schools to expand and improve their training capacity; and to enable them to enter into cooperative arrangements with other health manpower training programs and institutions to improve and expand other health manpower utilization.

This document describes the terms and conditions applicable to these grants. These grants are also subject to pertinent §§ 17.400 through 17.416, title 38, Code of Federal Regulations.

II. *Purposes.* The purposes for which a medical school assistance grant may be awarded are the following:

(1) Increase the total enrollment of undergraduate medical students in medical schools which are affiliated with Veterans Administration medical facilities.

(2) Expand or improve the faculty in medical schools or otherwise enhance the quality of the curriculum offered to the undergraduate medical students.

(3) Improve and broaden the availability of the medical schools' programs of continuing education for physicians.

(4) Complement, through direct support of medical schools, their programs of clinical education for undergraduate medical students currently conducted in affiliation with the Veterans Administration medical facility(s).

(5) Establish cooperative arrangements with other nonprofit educational or health related institutions and agencies which conduct health manpower training and education programs, to improve and expand all health manpower utilization by

(a) Assisting in developing and evaluating new health careers,

(b) Investigating and implementing interdisciplinary approaches to delivering improved and expanded health services, and

(c) Establishing programs of career development for all health personnel.

III. *Administration.* Veterans Administration grants to medical schools under this authority are administered by the Office of the Administrator of Veterans Affairs. Questions concerning this program should be referred to:

Chief Medical Director (152)
Department of Medicine and Surgery
Veterans Administration
810 Vermont Avenue, N.W.
Washington, D.C. 20420

IV. *Eligible applicants.* To be eligible for a grant in this program, the applicant must be a school of medicine which provides a course of study of not less than two years, which forms a part or whole of the necessary requirements leading to a degree of doctor of medicine, and is accredited by the Commissioner of Education of the Department of Health, Education and Welfare,[1] and have entered into an agreement of affiliation with a Veterans Administration medical facility(s), by signing a Memorandum of Agreement (affiliation) and/or the official appointment of a Deans Committee, at least twelve months prior to the date of the application for a medical school assistance grant.

V. *Assurances.* A medical school applying for an assistance grant must present, in addition to an appropriately executed application (See section VI), the following assurances:

(1) A statement of commitment on the part of the applicant school of medicine providing reasonable assurance that support granted for activities under this assistance grant program will be supplemented by funds or other resources available from other public or private sources. The statement must be executed by the governing body of the institution on behalf of the administrative officials of the school.

(2) A communication from the Liaison Committee on Medical Education (AMA-AAMC) providing a statement of reasonable assurance that the school's accreditation will not be threatened or the quality of its educational program jeopardized by enrollment increases or curriculum changes proposed in the application.

Special consideration will be given to applications which include a plan for assuring that priority for admission to the medical school and to other health manpower training programs which may be included in the proposed projects or activities, will be given to otherwise qualified veterans who, during their military service acquired military medical occupation specialties; and that among such qualified veterans those who served during the Vietnam era, and those who are entitled to disability compensation under laws administered by the Veterans Administration, or whose discharge was for a disability incurred or aggravated in line of duty, will be given the highest priority.

VI. *Application procedures.* Medical schools which wish to apply for an assistance grant must submit an application in accordance with instructions provided in a separate document. All medical schools evincing interest in receiving support under this program will be directly supplied with application materials. The deadline for submission will be stated in the instructions.

The application will consist of four sections:

A. A Narrative concerning:

(1) The Program by means of which the applicant proposes to utilize grant funds to expand its educational capacity and improve its undergraduate curriculum and continuing education program, and to increase the school's total enrollment of full-time undergraduate students, *and*

(2) The special Projects that the applicant may wish to propose to accomplish other purposes of the medical school assistance grant program.

B. A brief description of the resources of the specific Veterans Administration medical facility(s) with which the applicant medical school is affiliated. This should be prepared in collaboration with the Director of the facility and include a statement dealing with the present affiliation arrangement—its history and progress, and the extent to which it presently contributes to the undergraduate teaching program of the applicant medical school—and the role of that facility, and/or others in the Veterans Administration Medical District, in the program or projects proposed in the application.

If the proposed program or projects(s) require the extension, expansion, alteration, improvement, remodeling, repair, or replacement of obsolete or worn-out equipment in presently operating VA medical facilities, in order to make them suitable for clinical teaching, the general proposal should be described. If approved, funding for such costs will be provided directly to the Veterans Administration medical facility and will NOT be included in the grant award.

C. A budget projection for the entire period for which the grant is being requested.

D. An appendix of supporting documents, including the required assurances (section V), and a record of the school's total enrollment of full-time undergraduate medical students for the past five academic years, as recorded each year on October 15.

VII. *Review process.* After review by both an ad hoc operational review committee and by the Special Medical Advisory Group, all applications will be referred, with appropriate recommendation of the Chief Medical Director, for final decision by the Administrator.

Applications will be reviewed to ascertain the following:

A. That the applicant's program and project(s) propose to expend the funds for purposes within the intent of the authorizing legislation (38 USC Chapter 82, Subchapters II and III) listed in section II of this document.

B. The relative merit of the proposed program and project(s).

C. The plans and commitment on the part of the applicant to assign other resources to the proposed activities during

[1] The Commissioner recognizes the Liaison Committee on Medical Education (AMA-AAMC) for this purpose.

the program period, and to the continuation of the activities after the program period.

D. The extent to which the proposed program takes into account the improvement, and expanded availability of health manpower, and therefore, of health care services to the community.

VIII. *Grant awards.* All applicants will be notified in writing of the actions taken on their applications. If an application is approved and funded, a Notice of Award will be issued. This Notice will indicate the total period for which support for the proposed program and project(s) has been recommended (the program period) and an approved budget for the grant to carry out those activities, stating the amount available for expenditure for that purpose during the portion of the program period covered by the budget (the award period—usually twelve months) and the level of grant assistance recommended for the remainder of the program period, subject to annual renegotiation.

The notice of award will be accompanied by a statement of agreement, on the part of the Veterans Administration, to proceed with the necessary extension, expansion, alteration, improvement, remodeling, repair and equipping of currently operating Veterans Administration facilities which are essential to the accomplishment of the approved program and project(s) for which grant funds are to be provided.

Continuation Awards. Although applications may be approved for program periods of up to seven years, a continuation application must be submitted for each twelve-month period after the initial award. Materials for this purpose will be routinely mailed to the grantee in sufficient time to meet annual deadlines. Continued funding of the grant at the level indicated in the notice of award, and any further adaptation or equipping of Veterans Administration medical facilities, depends upon acceptable progress and the availability of funds.

Grant funds which remain unobligated at the end of each award period will remain in the grant accounts but may be used only within the limits of the budget approved for the succeeding award period.

Direct funding for completion of, or additional extension, alteration, remodeling improvement or repair of the affiliated Veterans Administration medical facility may also be adjusted in consideration of work not completed in previous award periods.

Supplemental Awards. If the grantee medical school wishes to request additional funding of its approved program or projects over those budgeted and approved for the remaining program period, a supplemental application for additional support may be submitted. Supplemental applications are subject to the same deadlines and are processed in the same manner as new applications. In addition they must compete with new applications for available funds.

IX. *Expenditure of grant funds.*—A. *Purposes for Which Grant Funds May be Expended.* Medical school assistance grant funds must be used solely for the purposes described in the approved application or for such related purposes as may subsequently be approved as necessary to the project.

Typical allowable items of expenditure include salaries of professional and supportive staff, associated fringe benefits, purchase of supplies and certain equipment, alterations and renovations of existing medical school buildings (within the limits described below) and other costs necessary to carry out the purposes of the grant (with the exception of the prohibited purposes described below).

Salaries and wages of professional staff may be charged to the grant in proportion to the distribution of their total effort between activities within the scope of the approved program and projects, and other activities in which they engage.

Because the assistance grant may relate to major portions of the medical schools' total programs for undergraduate and continuing education, funds may be expended for supportive services related to the approved purposes of the grant. Costs of central resources and library support may be charged in direct proportion to their use in activities supported by the grant.

All expenditures of grant funds must be based upon identifiable and measurable contributions to the approved purposes of the program or special project(s) as described in the school's approved application.

Alterations and Renovations. Alterations and renovations of buildings and structures *Not* owned or controlled by the Veterans Administration are defined as work required to change the interior arrangement or other physical characteristics of an existing facility or installed equipment so that it may be more effectively utilized for its currently designated purpose or adapted to a requirement of the approved program or projects.

Similar adaptation of buildings and structures which ARE owned or controlled by the Veterans Administration and currently unused for patient services may also be provided as part of the award for an approved activity but will be done directly by the VA, *Not* by expenditure of grant funds.

B. *Purposes for Which Grant Funds May NOT Be Expended* (1) The costs of operation of teaching hospitals, clinics or other patient care facilities. This does not preclude the use of grant funds to pay salaries of clinical teaching staff engaged in the approved program or projects.

(2) Financial assistance to medical students, interns, and residents—including stipends, fees, tuition, travel allowances, etc.

(3) Construction of buildings—including additions or extensions.

(4) The costs of the conduct of research including basic research, clinical investigations, therapeutic trials, etc.

(5) Preparation or publication of educational materials, audio-visual aids, textbooks, monographs, etc. for use other than in the direct operation of the approved program or projects.

(6) All travel of faculty and staff, except domestic travel directly related to the conduct of the approved program or project(s).

NOTE: "Domestic" travel is defined as that within the 50 United States and Canada and excludes such travel enroute to or returning from foreign travel. Travel costs are limited to the extent provided by formal institutional policy except that less than first class air travel must be used when available. If the grantee has no formal travel policies, VA travel regulations will be applied.

X. *INDIRECT COSTS.* Indirect costs, in an amount not greater than 15 per cent of the total amount of direct grant costs in each award period will be made as a part of each award. These funds may be used by the grantee medical school for costs which bear a reasonable relationship to the purposes of the approved program and projects.

XI. *Method of grant payment.* Grant funds for direct and indirect costs will be made available to the grantee either by way of reimbursement or by advance payments for the amount approved for the award period. (See section VIII). If a relationship with a grantee is not expected to continue for a year regardless of the amount of advances or is not expected to give rise to requirements for cash advances aggregating $250,000 annually, advanced financing will be accomplished by Treasury check. If a relationship with a grantee is expected to continue for at least a year and a requirement exists for advance financing aggregating at least $250,000 the letter-of-credit method shall be used.

XII. *Reports.* An annual progress report must accompany each application for continuation of support. The purpose of this report is to identify the progress being made in achieving the purposes of the approved program and projects. Instructions for preparing the report will be sent to the awardees along with the materials for submitting continuation applications.

Grant agreements entered into will contain a provision to require the grantee to report no later than the first workday of the succeeding month the amount of the actual expenditures for the month made by them. Forms and instructions for this purpose will be provided. Continued support will be withheld if the expenditure reports are not received.

XIII. *Records and audit.* Medical schools receiving assistance under this Act must maintain accounting records, which will be subject to audit by or in behalf of the Veterans Administration. (See § 17.411, Title 38, Code of Federal Regulations).

GRANTS TO ASSIST IN THE EDUCATION AND TRAINING OF PROFESSIONAL AND TECHNICAL ALLIED HEALTH MANPOWER

GUIDELINES FOR APPLICANTS

I. *Introduction.* The Veterans Administration Medical School Assistance and

Health Manpower Training Act of 1972 (PL 92-541) authorizes a program of grants to provide assistance in the establishment of cooperative arrangements among institutions and agencies which, in affiliation with the Veterans Administration, provide or participate in the education and training in the health professions and occupations, so that they may coordinate, expand and improve their programs, and enter into special projects to improve the utilization of all health manpower.

This document describes the terms and conditions applicable to these grants. These grants are also subject to §§ 17.400 through 17.416, Title 38, Code of Federal Regulations.

II. *Purposes*. The purposes for which a health manpower assistance grant may be awarded are the following:

(1) Establish and/or support cooperative arrangements among appropriate educational and health care institutions and agencies (including Veterans Administration medical facilities) to coordinate, improve and expand the training of professional and technical allied health personnel.

(2) Improve and broaden the availability of programs for continuing education in the allied health professions and occupations.

(3) Relate the specific clinical characteristics and requirements of hospitals and other medical facilities (including those of the Veterans Administration) to the educational potential of the educational institutions.

(4) Establish and/or support cooperative arrangements among institutions and agencies which conduct health professions and occupations programs, including medical schools, to improve and expand all health manpower utilization by

(a) Assisting in developing and evaluating new health careers,

(b) Investigating and implementing interdisciplinary approaches to delivering improved and expanded health services,

(c) Establishing programs of career development for all professional and technical allied health personnel.

III. *Administration*. VA grants to assist in the training of professional and technical allied health manpower are administered by the Office of the Administrator of Veterans Affairs. Questions concerning this program should be referred to:

Chief Medical Director (152)
Department of Medicine and Surgery
Veterans Administration
810 Vermont Avenue, N.W.
Washington, D.C. 20420

IV. *Eligible applicants*. To be eligible for a grant in this program, the applicant must be

(1) A nonprofit educational facility or other public or nonprofit institution which conducts or participates in the conduct of formally organized education or training of health professionals and other allied health personnel who engage in the provision of direct health services or

(2) An organization or consortium of such institutions and agencies, incorporated not-for-profit, for the purpose of coordinating or expanding such education and training on a community-wide basis; and

(3) Affiliated with, or have as one of the constituent members of the consortium, a Veterans Administration medical facility.

V. *Assurances*. An applicant for a health manpower assistance grant must present, in addition to an appropriately executed application (See section VI), the following assurances:

(1) A statement of commitment on the part of the applicant providing reasonable assurance that support granted for activities under this assistance grant program will be supplemented by funds or other resources available from other public or private sources. The statement must be executed by the governing body of the institution or agency on behalf of its administrative officials.

(2) A communication from the appropriate body or bodies responsible for the accreditation of education and training program(s) in the health professions and/or occupations involved in the activities for grant support,[1] providing reasonable assurance that the accreditation of the program will not be threatened or its quality jeopardized by enrollment increases or curriculum changes proposed in the applications. A similar communication must accompany all proposals for establishment of new educational or training programs, reporting a finding of reasonable assurance of accreditation of the programs.

(3) An appropriately executed Memorandum of Understanding (affiliation) between the applicant institution or agency (or an appropriate institutional member of the applicant consortium) and the Veterans Administration Hospital with which it will join, and a plan for assuring the mutual benefit of both the applicant agency(s) and the affiliated Veterans Administration medical facility.

Special consideration will be given to applications which include a plan for assuring that priority for admission to the health manpower training and education programs conducted by the participating institutions will be given to otherwise qualified veterans who during their military service acquired medical military occupation specialties; and that among such qualified veterans those who served during the Vietnam era, and those who are entitled to disability compensation under laws administered by the Veterans Administration, or whose discharge or release was for a disability incurred or aggravated in line of duty, will be given the highest priority.

VI. *Application procedures*. Institutions or agencies which wish to apply for an assistance grant must submit an application in accordance with instructions provided in a separate document (Ref.). All individuals and organizations evincing interest in receiving support under this program will be directly supplied with application materials. The deadline for submission will be stated in the instructions.

The application will consist of four sections:

A. A narrative portion concerning:

(1) The *Program* by means of which the applicant proposes to utilize grant funds to coordinate, improve and expand programs for the education and training (and/or continuing education) of allied professionals and technical personnel; and to increase the numbers of full-time students enrolled in the program(s).

(2) Other *Special Projects* that the applicant wishes to propose to accomplish other purposes of the health manpower assistance grant program.

B. A brief description of the resources of the specific Veterans Administration medical facility(s) which will be affiliated in the programs and projects. This should be prepared in collaboration with the Director of the facility and include a statement dealing with the present affiliation arrangement—its history and progress, and the extent to which it presently contributes to the training of allied health professional and technical personnel with the other agencies or institutions involved in the proposed program or project—and the role of that facility, and/or others in the Veterans Administration Medical District, in the program and projects proposed in the application.

If the proposed program or project(s) requires the extension, expansion, alteration, improvement, remodeling, repair, or replacement of obsolete or worn-out equipment in presently operating VA medical facilities, in order to make them suitable for clinical teaching, the general proposal should be described. If approved, funding for such costs will be provided directly to the Veterans Administration medical facility and will *not* be included in the grant award.

C. A budget projection for the entire period for which the grant is being requested.

D. An appendix of supporting documents, including the required assurances (section V), and a record of the present total enrollment of full-time students in the health professions and occupations training programs which are involved in the application.

VII. *Review process*. After review by both an ad hoc operational review committee and by the Special Medical Advisory Group, all applications will be referred, with appropriate recommendation of the Chief Medical Director, for final decision by the Administrator.

Applications will be reviewed to ascertain the following:

A. That the applicant's program and project(s) propose to expend the funds for purposes within the intent of the authorizing legislation (38 USC Chapter 82, Subchapter III) listed in section II of this document.

B. The relative merit of the proposed program and project(s).

[1] The appropriate accrediting agencies are those recognized for such purpose by the Commissioner of Education of the Office of Health, Education, and Welfare, DHEW Publication No. (OE) 72-198.

C. The plans and commitment on the part of the applicant to assign other resources to the proposed activities during the program period, and to the continuation of the activities after the program period.

D. The extent to which the proposed program takes into account the improvement, and expanded availability of health manpower, and therefore, of health care services to the community.

VIII. *Grant awards.* All applicants will be notified in writing of the actions taken on their applications. If an application is approved and funded a Notice of Award will be issued. This notice will indicate the total period for which support for the proposed program and project(s) has been recommended (the program period) and an approved budget for the grant to carry out those activities, stating the amount available for expenditure for that purpose during the portion of the program period covered by the budget (the award period—usually twelve months) and the level of grant assistance recommended for the remainder of the program period, subject to annual renegotiation.

The notice of award will be accompanied by a statement of agreement, on the part of the Veterans Administration, to proceed with the necessary extension, expansion, alteration, improvement, remodeling, repair and equipping of currently operating Veterans Administration facilities which are essential to the accomplishment of the approved program and project(s) for which grant funds are to be provided.

Continuation Awards. Although applications may be approved for program periods of up to seven years, a continuation application must be submitted for each twelve-month period after the initial award. Materials for this purpose will be routinely mailed to the grantee in sufficient time to meet annual deadlines. Continued funding of the grant at the level indicated in the notice of award, and any further adaptation or equipping of Veterans Administration medical facilities, depends upon acceptable program progress and the availability of funds.

Grant funds which remain unobligated at the end of each award period will remain in the grant accounts but may be used only within the limits of the budget approved for the succeeding award period.

Direct funding for completion of, or additional extension, alteration, remodeling improvement or repair of the affiliated Veterans Administration medical facility may also be adjusted in consideration of work not completed in previous award periods.

Supplemental Awards. If the grantee wishes to request additional funding of its approved program or projects over those budgeted and approved for the remaining program period, a supplemental application for additional support may be submitted. Supplemental applications are subject to the same deadlines and are processed in the same manner as new applications. In addition they must compete with new applications for available funds

IX. *Expenditure of grant funds.* A. *Purposes for Which Grant Funds May Be Expended.* Grant funds must be used solely for the purposes described in the approved application or for such related purposes as may subsequently be approved as necessary to the project.

Typical allowable items of expenditure include salaries of professional and supportive staff, associated fringe benefits, purchase of supplies and certain equipment, alterations and renovations of existing buildings (within the limits described below) and other costs necessary to carry out the purposes of the grant (with the exception of the prohibited purposes described below).

Salaries and wages of professional staff may be charged to the grant in proportion to the distribution of their total effort between activities within the scope of the approved program and projects, and other activities in which they engage.

Because the assistance grant may relate to major portions of the participating schools' total programs for undergraduate and continuing education, funds may be expended for supportive services related to the approved purposes of the grant. Costs of central resources and library support may be charged in direct proportion to their use in activities supported by the grant.

All expenditures of grant funds must be based upon identifiable and measurable contributions to the approved purposes of the special project as described in the approved application.

Alterations and Renovations. Alterations and renovations of buildings and structures *not* owned or controlled by the Veterans Administration are defined as work required to change the interior arrangement or other physical characteristics of an existing facility or installed equipment so that it may be more effectively utilized for its currently designated purpose or adapted to a requirement of the approved program or projects.

Similar adaptation of buildings and structures which *are* owned or controlled by the Veterans Administration and currently unused for patient services may also be provided as part of the award for an approved activity but will be done directly by the VA, *not* by expenditure of grant funds.

B. *Purposes for Which Grant Funds May NOT be Expended.* (1) The costs of operation of teaching hospitals, clinics or other patient care facilities. This does not preclude the use of grant funds to pay salaries of clinical teaching staff engaged in the approved program or projects.

(2) Financial assistant to students at any level, interns, and residents—including stipends,[1] fees, tuition, travel allowances, etc.

(3) Construction of buildings—including additions or extensions.

(4) The costs of the conduct of research including basic research, clinical investigations, therapeutic trials, etc.

(5) Preparation or publication of educational materials, audio-visual aids, textbooks, monographs, etc. for use other than in the direct operation of the approved programs or projects.

All travel of faculty and staff except domestic travel directly related to the conduct of the approved program or projects.

NOTE: "Domestic" travel is defined as that within the 50 United States and Canada and excludes such travel enroute to or returning from foreign travel. Travel costs are limited to the extent provided by formal institutional policy except that less than first class air travel must be used when available. If the grantee has no formal travel policies, VA travel regulations will be applied.

X. *Indirect costs.* Indirect costs, in an amount not greater than 15 percent of the total amount awarded direct costs in each award period will be made as a part of each award. These funds may be used by the grantee medical school for costs which bear a reasonable relationship to the purposes of the approved programs and projects.

XI. *Method of grant payment.* Grant funds for direct and indirect costs will be made available to the grantee either by way of reimbursement or by advance payments for the amount approved for the award period. (See section VIII.) If a relationship with a grantee is not expected to continue for a year regardless of the amount of advances or is not expected to give rise to requirements for cash advances aggregating $250,000 annually, advance financing will be accomplished by Treasury check. If a relationship with a grantee is expected to continue for at least a year and a requirement exists for advance financing aggregating at least $250,000 the letter-of-credit method shall be used.

XII. *Reports.* An annual progress report must accompany each application for continuation of support. The purpose of this report is to identify the progress being made in achieving the purposes of the approved program and projects. Instructions for preparing the report will be sent to the awardees along with the materials for submitting continuation applications.

Grant agreements entered into will contain a provision to require the grantee to report no later than the first workday of the succeeding month the amount of the actual expenditures for

[1] Direct payment of stipends and other methods of remuneration to students receiving supervised clinical experience in Veterans Administration medical facilities can be arranged, as appropriate to the approved program or project, under the VA's prevailing personnel practices.

the month made by them. Forms and instructions for this purpose will be provided. Continued support will be withheld if the expenditure reports are not received.

XIII. *Records and audit.* Schools receiving assistance under this Act must maintain accounting records, which will be subject to audit by or in behalf of the Veterans Administration. (See §§ 17.411, Title 38, Code of Federal Regulations)

[FR Doc.73-12926 Filed 6-26-73;8:45 am]

CHIEF MEDICAL DIRECTOR'S AD HOC ADVISORY COMMITTEE ON SPINAL CORD INJURY

Notice of Meeting

The Veterans Administration gives notice pursuant to Public Law 92-463 that a meeting of the Chief Medical Director's Ad Hoc Advisory Committee on Spinal Cord Injury will be held at the Veterans Administration Central Office, Washington, DC on July 2 and 3, 1973 at 9 a.m. The meeting will be for the purpose of receiving consumer advice on program plans, specialized facilities and equipment for the treatment of the spinal cord injured in Veterans Administration hospitals.

The meeting will be opened to the public up to the seating capacity of the room. Because of the limited seating capacity of the room, those who plan to attend should contact Dr. Peter C. Hofstra, Director of Spinal Cord Injury Service, VA Central Office, Washington, DC (202-389-3032) prior to June 28, 1973.

Minutes of the meeting and a roster of committee members may be obtained from Howard L. Bennett, Staff Assistant to Director, Spinal Cord Injury Service, Veterans Administration, Washington, DC 20420, (phone 202-389-2076).

Dated: June 22, 1973.

By direction of the Administrator.

[SEAL] RUFUS H. WILSON,
Associate Deputy Administrator.

[FR Doc.73-12924 Filed 6-26-73;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V-73-3]

AMERICAN AIRLINES, INC.

Grant of Variance

I. *Background.* American Airlines, Inc., Maintenance and Engineering Center, Tulsa, Oklahoma 74151, made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 655) and 29 CFR 1905.11, for a variance, and for an interim order pending a decision on the application for a variance, from the safety standards prescribed in 29 CFR 1910.107(g)(7) and 1910.108(f)(4) concerning the posting of no-smoking signs within spraying, paint storage, and dip tank areas. Notice of the application for a variance made by American Airlines, Inc., and of the granting of an interim order, was published in the FEDERAL REGISTER on December 7, 1972 (37 FR 26069). The notice invited interested persons, including affected employers and employees, to submit written data, views, and arguments regarding the grant or denial of the variance requested. In addition, affected employers and employees were permitted to request a hearing on the application for a variance. No comments and no request for a hearing have been received.

II. *Facts.* The request for a variance is limited to the American Airlines' Maintenance and Engineering Center in Tulsa, Oklahoma, which the applicant states is the facility affected by the application.

The applicant presently uses a system for designating no-smoking areas by the use of 4-inch parallel red and white lines painted on the floors, indicating, that smoking is permitted on the white side and prohibited on the red side. This system is used throughout the spraying, paint storage, and dip tank areas.

In support of its application, American Airlines argues that the red and white lines more clearly define the boundaries of the smoking and no-smoking areas than no-smoking signs would. The applicant further argues that employees, who are instructed as to the meaning of the red and white lines, would be confused by the addition of no-smoking signs.

III. *Decision.* The primary purpose of the standards from which the variance is sought, is to avoid certain fire hazards by indicating no-smoking areas. American Airlines has demonstrated with information that is credible and uncontroverted that its system of indicating the no-smoking areas will satisfy this purpose at least as effectively as a no-smoking sign system which complies with the standards.

The American Airlines system marks the exact boundaries of the smoking and no-smoking areas, while signs posted according to the Federal standards would not designate specific areas. Moreover, the colored lines are more visible than posted signs.

It is concluded, accordingly, that the American Airlines method of warning and its use of the red and white lines to indicate the no-smoking areas will provide employment and places of employment as safe as those which would prevail if American Airlines were to comply with the requirements of §§ 1910.107(g)(7) and 1910.108(f)(4) of Title 29, Code of Federal Regulations. Therefore,

IV. *Order. It is ordered,* pursuant to authority in § 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 and in Secretary of Labor's Order No. 12-71 (36 FR 8754), that American Airlines, Inc., be, and it is hereby, authorized to use the system for designating smoking and no-smoking areas described in its application for a variance, at its Maintenance and Engineering Center, Tulsa, Oklahoma, in accordance with the following conditions, in lieu of complying with the requirements of §§ 1910.107(g)(7) and 1910.108(f)(4) of Title 29, Code of Federal Regulations:

1. Any employee who is required to use any of the no-smoking areas must be instructed in the warning procedure before he is permitted in the area;

2. The same warning system must be used in all spraying, paint storage, and dip tank areas; and

3. American Airlines, Inc., shall give notice to affected employees of the terms of this variance by the same means required to be used to inform them of the application for the variance.

Effective date. This order shall become effective on June 27, 1973, and shall remain in effect until modified or revoked in accordance with section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970.

Signed at Washington, D.C. June 20, 1973.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.73-12948 Filed 6-26-73;8:45 am]

[V-73-4]

BETHLEHEM STEEL CORP.

Grant of Variance

I. *Background*—Bethlehem Steel Corporation made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 655) and 29 CFR 1905.11 for a variance, and for an interim order pending a decision on the application for a variance, from the safety standard prescribed in 29 CFR 1910.23(c)(1) and (2), concerning the protection of open-sided floors, platforms, and runways.

Notice of the application for a variance made by Bethlehem Steel Corporation, and of the granting of an interim order pending a decision on the application, was published in the FEDERAL REGISTER on September 19, 1972 (37 FR 19165). The notice invited interested persons, including affected employers and employees, to submit written data, views, and arguments regarding the grant or denial of the variance requested. In addition, affected employers and employees were permitted to request a hearing on the application for a variance. No comments have been received, nor has there been any request for a hearing.

II. *Facts.* The request for a variance is limited to the facilities at the following addresses: Bethlehem Steel Corp., Seattle Plant, 23'd Avenue, S.W., and Southwest Charlestown Street, Seattle, Washington 98124.

Bethlehem Steel states that the type of work performed in the mould preparation area requires employees to inspect, clean, and spray the ingot moulds. In order to carry out these duties, the employees must work from the edge if the mould preparation platforms in order to see the bottom of the moulds. If standard railings were in place, as specified by § 1910.23(c)(1) and (2), they would interfere with the employes' functions. The applicant adds that it would not be possible for the employees to perform

all their functions without working outside such guardrails, which position would negate the purpose of the railing.

Bethlehem Steel has developed an alternative method for preventing employees from falling off the platforms. This method is a tie-off system whereby any employee working on the mould preparation platform is required to wear a safety belt connected to overhead tracks which allow the necessary mobility. The tie-off system consists of:

(1) Three tracks attached to the overhead truss chord angles of the building structure;

(2) A series of pendant chains that run freely in the overhead tracks;

(3) Rings on the bottom end of the pendant chains to which the safety lines from the safety belts are secured; and

(4) Safety belts to be worn by each employee when he is required to work on the mould preparation platforms. In addition, all unauthorized personnel are prohibited from the mould preparation platforms.

III. *Decision*. The primary purpose of the standard from which the variance is sought is to prevent employees from falling off a platform or an open-sided floor. It appears from the very nature of the Bethlehem Steel tie-off system that the system accomplishes this purpose as well as the standard does, and no statements to the contrary have been received.

It is concluded, accordingly, that the design, construction, and use of the Bethlehem Steel tie-off system, provide employment and places of employment as safe as those which would prevail if Bethlehem Steel were to comply with the requirements of 29 CFR 1910.23(c)(1) and (2). Therefore:

IV. *Order. It is ordered*, pursuant to authority in section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 655) and in Secretary of Labor's Order No. 12-71 (36 FR 8754), that Bethlehem Steel Corporation be, and it is hereby, authorized to allow its employees to inspect, clean, and spray the ingot moulds on the mould preparation platforms of its two Seattle plants at 23'd Avenue, S.W., and Southwest Charlestown Street, Seattle, Washington, in accordance with the tie-off system described above and the following conditions in lieu of complying with the requirements of 29 CFR 1910.23(c) (1) and (2):

(1) A properly secured safety belt is to be worn by every employee working on a mould preparation platform;

(2) The safety belt, lifeline, and pendant chain, together, shall not be of such length as to extend below the level of the platform;

(3) Access to the mould preparation platforms small be authorized only for employees who must use the platforms for purposes of work; and

(4) Bethlehem Steel Corporation shall give notice to affected employees of the terms of this variance by the same means required to be used to inform them of the application for the variance.

Effective date. This order shall become effective on June 27, 1973, and shall remain in effect until modified or revoked in accordance with section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970.

Signed at Washington, D.C. June 20, 1973.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.73-12949 Filed 6-26-73;8:45 am]

Office of the Secretary

CONSOLIDATED NATIONAL SHOE CORP.

Certification of Eligibility of Workers to Apply for Adjustment Assistance

Under date of March 27, 1973, the U.S. Tariff Commission made a report of the results of its investigation (TEA-W-183) under section 301(c)(2) of the Trade Expansion Act of 1962 (76 Stat. 884) in response to a petition for determination of eligibility to apply for adjustment assistance on behalf of the workers of Consolidated National Shoe Corporation (American Girl Fashions, Incorporated as of May 17, 1973) Braintree, Massachusetts. In this report, the Commission, being equally divided, made no finding with respect to whether articles like or directly competitive with the footwear for women and children produced by Consolidated National Shoe Corporation are, as a result in major part of concessions granted under trade agreements, being imported into the United States in such increased quantities as to cause, or threaten to cause unemployment or underemployment of a significant number or proportion of the workers of such firm, or an appropriate subdivision thereof. The President subsequently decided, under the authority of section 330 (d)(1) of the Tariff Act of 1930, as amended, to consider the findings of those Commissioners who found in the affirmative as the finding of the Commission.

Upon receipt of the President's authorization, the Department through the Director of the Office of Foreign Economic Policy Bureau of International Labor Affairs instituted an investigation.

Following this, the Director made a recommendation to me relating to the matter of certification (Notice of Delegation of Authority and Notice of Investigation, 34 FR 18342; 37 FR 2472; 38 FR 13605; 29 CFR Part 90). In the recommendation she noted that concession generated imports like or directly competitive with the footwear produced by Consolidated National Shoe Corporation had increased while the company's production and employment declined. Each year from 1969 to the present, annual footwear sales of the company have fallen. Import competition necessitated the closing of four manufacturing plants and consolidation of remaining footwear production in relatively more efficient company plants. The company closed four plants as follows: the Webster Division in 1969; Allied Novelty Division in 1970; the Majestic Division in 1972; and the manufacturing facilities of the Ware Division in 1973. In March 1973, the company began to phase out the warehouse facilities and corporate offices in Norwood, Massachusetts, moving each respectively to the former Ware facility and new offices in Braintree, Massachusetts. All production ceased at the Ware Division by the end of March 1973, and from then on this facility was used only as a warehouse.

Notwithstanding the consolidation of production and the realignment of the company's warehousing and headquarters operations to further reduce costs, footwear output continued to decline at the Raymond, Sunapee, and Universal Divisions, and remained stable at the Continental Division. Reductions in employment due in major part to increased footwear imports occurred in 1969 at the Webster and Allied Novelty Divisions; in 1971 at the Majestic Division; and in 1972 at the Raymond, Sunapee, Ware and Universal Divisions. After due consideration I make the following certifications:

All hourly, piecework, and salaried employees of Consolidated National Shoe Corporation, Webster Division, Webster, Massachusetts, who became unemployed or underemployed after February 21, 1969 are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

All hourly, piecework, and salaried employees of Consolidated National Shoe Corporation, Allied Novelty Division, Springvale, Maine, who became unemployed or underemployed after February 7, 1969 are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

All hourly, piecework, and salaried employees of Consolidated National Shoe Corporation, Majestic Division, Lawrence, Massachusetts, who became unemployed or underemployed after November 12, 1971 are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

All hourly, piecework, and salaried employees of Consolidated National Shoe Corporation, Ware Division, Ware, Massachusetts, who became unemployed or underemployed after March 3, 1972 and before April 1, 1973 are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

All hourly, piecework, and salaried employees of Consolidated National Shoe Corporation, Raymond Division, Raymond, New Hampshire, who became or will become unemployed or underemployed after June 23, 1972 are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

All hourly, piecework, and salaried employees of Consolidated National Shoe Corporation, Sunapee Division, Newport, New Hampshire, who became or will become unemployed or underemployed after July 21, 1972 are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

All hourly, piecework, and salaried employees of Consolidated National Shoe Corporation, Universal Division, Sanford, Maine, who became or will become unemployed or underemployed after February 25, 1972 are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

Signed at Washington, D.C. this 20th day of June, 1973.

JOEL SEGALL,
Deputy Under Secretary International Affairs.

[FR Doc.73-12898 Filed 6-26-73;8:45 am]

H. H. SCOTT, INC.

Certification of Eligibility of Workers To Apply for Adjustment Assistance

Under date of May 11, 1973, the U.S. Tariff Commission made a report of the results of its investigation (TEA-W-189) under section 301(c)(2) of the Trade Expansion Act of 1962 (76 Stat. 884) in response to a petition for determination of eligibility to apply for adjustment assistance submitted on behalf of the workers formerly employed by H. H. Scott, Inc., Maynard, Massachusetts. In this report the Commission found that articles like or directly competitive with loudspeakers, amplifiers, solid-state radio receivers, and radio-phonograph combinations produced by H. H. Scott, Inc., are, as a result in major part of concessions granted under trade agreements, being imported into the United States in such increased quantities as to cause unemployment or underemployment of a significant number or proportion of the workers of such firm.

Upon receipt of the Tariff Commission's affirmative finding, the Department, through the Director of the Office of Foreign Economic Policy, Bureau of International Labor Affairs, instituted an investigation.

Following this, the Director made a recommendation to me relating to the matter of certification (Notice of Delegation of Authority and Notice of Investigation, 34 FR 18342; 37 FR 2472; 38 FR 13406, 29 CFR Part 90). In the recommendation she noted that concession generated U.S. imports of articles like or directly competitive with speakers, amplifiers, radio receivers, and radio-phonograph combinations produced by H. H. Scott, Inc. increased substantially. As a result the company reduced production of the articles and employment levels declined. Unemployment and underemployment caused in major part by import competition began in the first half of 1970 as the company decided to import a significant proportion of its radio receiver requirements and imports of like and directly competitive products continued to increase. All production was terminated in October 1972. The company reopened in January 1973 under new ownership and is currently hiring new workers as well as some former workers of H. H. Scott, Inc. Employment levels are expected to continue to increase. After due consideration I make the following certification:

That all salaried and hourly workers of H. H. Scott, Inc. Maynard, Massachusetts at its central facility in Maynard who became unemployed or underemployed after April 25, 1970 and before January 6, 1973, are eligible to apply for adjustment assistance under Title III, Chapter 3, of the Trade Expansion Act of 1962.

Signed at Washington, D.C. this 20th day of June 1973.

JOEL SEGALL,
Deputy Under Secretary
International Affairs.

[FR Doc.73-12897 Filed 6-26-73;8:45 am]

ROYAL CHINA COMPANY, SEBRING, OHIO

Determinations on Petition of Workers Certification of Eligibility to Apply for Adjustment Assistance

Under date of April 23, 1973, a petition requesting certification of eligibility to apply for adjustment assistance was filed with the Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs by the International Brotherhood of Pottery and Allied Workers, AFL-CIO, on behalf of workers of the East Palestine, Ohio plants of Royal China Company, Sebring, Ohio. The East Palestine plants were identified as Plants No. 1 and No. 4 of the Royal China Company. The request for certification was made under the President's decision of April 22, 1972. That decision provides pursuant to section 302(a)(3), with respect to the industry producing earthen tableware, that its workers may request the Secretary of Labor for certifications of eligibility to apply for adjustment assistance under Chapter 3, Title III, of the Trade Expansion Act of 1962. (Proclamation 4125; Adjustment of Duties on certain Ceramic Tableware, April 22, 1972, 37 FR 8369).

The Act, section 302(b)(2), provides that the Secretary of Labor shall certify as eligible to apply for adjustment assistance under chapter 3 any group of workers in an industry with respect to which the President has acted under section 302(a)(3), upon a showing by such group of workers to the satisfaction of the Secretary of Labor that the increased imports (which the Tariff Commission has determined to result from concessions granted under trade agreements) have caused or threaten to cause unemployment or underemployment of a significant number or proportion of workers of such workers' firm or subdivision thereof. The same degree of causal connection is applicable here as under the tariff adjustment and other adjustment assistance provisions; that is, the increased imports have been the major factor.

The Director, Office of Foreign Economic Policy, upon receipt of the petition, instituted an investigation following which she made a recommendation to me relating to the matter of certification (Notice of Delegation of Authority and Notice of Investigation, 34 FR 18342, 37 FR 2472, 38 FR 11021; 29 CFR 90.11). The Director reported that a significant number of proportion of the workers at the East Palestine plants became unemployed or underemployed when the company ended production at Plant No. 4 in January 1970 and at Plant No. 1 in April 1970. She further reported that although imports of prdoucts like or directly competitive with earthen dinnerware sets of the type produced at Plants No. 1 and No. 4 had increased substantially, such increased imports were not the major factor in causing the unemployment or underemployment of workers from the plants. Plant No. 1 closed as a consequence of the early termination of a manufacturing agreement between the company and a major customer. The termination was unrelated to increased imports. The company closed Plant No. 4 after several years of unprofitable operations caused mainly by internal factors related to production efficiencies and quality control.

After due consideration, I have concluded that increased imports were not the major factor in causing the unemployment or underemployment of the workers of the East Palestine, Ohio plants of Royal China Company, Sebring, Ohio, and, accordingly I make no certification of eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this 20th day of June, 1973.

JOEL SEGALL,
Deputy Under Secretary
International Affairs.

[FR Doc.73-12896 Filed 6-26-73;8:45 am]

POSTAL RATE COMMISSION

WASHINGTON, D.C., POST OFFICE AND AREA POSTAL FACILITIES

Notice of Commission Visit

JUNE 26, 1973.

In furtherance of the Postal Rate Commission's training program noticed in the FEDERAL REGISTER on September 29, 1972 (37 FR 19404), employees of the Commission will be visiting the Washington, D.C. post office and associated facilities in the Washington area on July 10 and 17, 1973.

No particular matter at issue in contested proceedings before the Commission nor the substantive merits of a matter that is likely to become a particular matter at issue in contested proceedings before the Commission will be discussed. A report on the visits will be on file in the Commission's docket room.

Place of Visit	*Date of Visit*
Washington, D.C. Post Office	Tuesday, July 10, 1973
Prince Georges Sectional Center Facility	Tuesday, July 17, 1973

By Director of the Commission.

JOSEPH A. FISHER,
Secretary.

[FR Doc.73-13092 Filed 6-26-73;10:53 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Notice of Meeting

JUNE 25, 1973.

In accordance with the provisions of Sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the Advisory Committee on Reactor Safeguards will hold a meeting on July 12-14, 1973, in Room 1046-H, at 1717 H Street, N.W., Washington, D.C.

The following constitutes that portion of the Committee's agenda for the above meeting which will be open to the public:

(1) *Thursday, July 12, 1973.* Newbold Island Nuclear Generating Station (located near Trenton, New Jersey)—8:45 a.m.-12:00 N and 12:30 p.m.-1:00 p.m.—Presentations by the Applicant (Public Service Electric and Gas Company) and the AEC Regulatory Staff—Construction Permit.

Nine Mile Point Nuclear Station Unit 2 (located near Oswego, New York)—2:45 p.m.-6:45 p.m. and 6:45 p.m.-7:15 p.m.—Presentations by the Applicant (Niagara Mohawk Power Corp.) and the AEC Regulatory Staff—Construction Permit.

(2) *Friday, July 13, 1973.* Rancho Seco Nuclear Generating Station Unit 1 (located in Sacramento County, California)—11:45 a.m.-4:15 p.m. and 4:45 p.m.-5:15 p.m.—Presentations by the Applicant (Sacramento Municipal Utility District) and the AEC Regulatory Staff—Operating License.

In addition to the agenda items noted above, the Committee will hold sessions not open to the public under the authority of Section 10(d) of Public Law 92-463 (the Federal Advisory Committee Act), to consider the above applications and other matters.

Practical considerations may dictate alterations in the above agenda or schedule.

With respect to public participation in agenda items listed above, the following requirements shall apply:

(a) Persons wishing to submit written statements on those agenda items may do so by mailing 25 copies thereof, postmarked no later than July 5, 1973, to the Executive Secretary, Advisory Committee on Reactor Safeguards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Such written comments shall be based on materials related to the above agenda items, which materials are contained in the application for a construction permit or operating license and related documents, on file, and available for public inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20545 and as follows:

Newbold Island—Trenton Free Public Library, 120 Academy Street, Trenton, New Jersey 08608.

Nine Mile Point—Oswego City Library, 120 East Second Street, Oswego, New York 13126.

Rancho Seco—Sacramento City County Library, 1930 T Street, Sacramento, California 95814.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement, and shall set forth reasons justifying the need for such oral statement, and its usefulness to the Committee. To the extent that the time available for the meeting permits, the Committee will receive oral statements during a period of not more than 30 minutes at an appropriate time, chosen by the Chairman.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Chairman of the Committee, who is empowered to apportion the time available among those selected by him to make oral statements.

(d) Information as to the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted, can be obtained by a prepaid telephone call on July 11, 1973, to the Office of the Executive Secretary of the Committee (telephone: 301-973-5651) between 8:30 a.m. and 5:15 p.m. Eastern Daylight Time.

(e) Questions may be propounded only by members of the Committee and its consultants.

(f) Seating for the public will be available on a first-come first-served basis.

(g) Copies of minutes will be made available for copying, in accordance with the Federal Advisory Committee Act, on or after September 12, 1973, at the Atomic Energy Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., upon payment of all charges required by law. A copy of the transcript of open portions of the meeting will be available within 24 hours in the AEC Public Document Room.

JOHN V. VINCIGUERRA,
Advisory Committee Management Officer.

[FR Doc.73-13067 Filed 6-27-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 274 (Sub-No. 1)]

ABANDONMENT OF RAILROAD LINES

JUNE 20, 1973.

Notice. On June 4, 1973, in a court action, entitled as shown below, the United States District Court for the Middle District of Pennsylvania entered an order dismissing a complaint seeking to set aside the Commission order in the above entitled proceeding. Therefore, the Commission will accept applications or notices for abandonment of railroad lines, filed pursuant to Subpart B or Subpart C of the abandonment rules promulgated in the above-entitled proceeding. Parties are reminded to comply with the provisions of Ex Parte No. 55 (Sub-No. 4), *Implementation—Nat. Environmental Policy Act, 1969*, 340 I.C.C. 431 (1972).

Civil Action No. 72-63

Commonwealth of Pennsylvania, Pennsylvania Public Utility Commission, and Congress of Railway Unions

v.

United States of America and Interstate Commerce Commission

before the United States District Court for the Middle District of Pennsylvania.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-12953 Filed 6-26-73;8:45 am]

[Notice 285]

ASSIGNMENT OF HEARINGS

JUNE 22, 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 112304 Sub 63, Ace Doran Hauling & Rigging Co., now being assigned hearing August 23, 1973 (1 day), at Detroit, Mich., in a hearing room to be later designated.

AB-49, Ann Arbor Railroad Company Abandonment Entire Line of Railroad, Including All of its car ferry routes North and West of Thompsonville, Michigan in Benzie County, Michigan, and Kewaunee and Manitowoc Counties, Wisconsin, is continued to August 20, 1973, at Traverse City, Mich., in a hearing room to be later designated.

MC-F-11768, Lee Way Motor Freight, Inc.—Control and Merger—Loving Truck Lines, Inc., Dba Loving Truck Line, and FD 27294, Lee Way Motor Freight, Inc., Notes, now being assigned hearing September 10, 1973 (2 weeks), at Little Rock, Ark., in a hearing room to be later designated.

I&S 8813, General Increase in Rates and Charges, Sea-Land Service, Inc., I&S 8814, and Sub 1, General Increase, The Alaska Railroad, I&S 8814 Sub 2, Increased Rates & Charges, from and to Alaska, now assigned July 23, 1973, will be held in Room 1151, Federal Office Bldg., 909 First Ave., Seattle, Washington, July 30, 1973, will be held in U.S. District Courtroom 3rd Floor, Federal Bldg., 2nd Ave., & Cushman Street, Fairbanks, Alaska, and August 1, 1973, will be held in Court Room No. 1, Federal Bldg., 605 West 4th Ave., Anchorage, Alaska.

MC-116519 Sub 17, Frederick Transport, LTD., now being assigned hearing September 24, 1973 (2 days), at Chicago, Ill., in a hearing room to be later designated.

MC-107012 Sub 162, North American Van Lines, Inc., now being assigned hearing September 26, 1973 (3 days), at Chicago, Ill., in a hearing room to be later designated.

MC-113495 Sub 56, Gregory Heavy Haulers, Inc., now being assigned hearing October 4, 1973 (2 days), at Chicago, Ill., in a hearing room to be later designated.

MC 117883 Sub 177, Subler Transfer, Inc., now being assigned hearing October 23, 1973 (2 weeks), in Room 4, State Office Bldg., 65 South Front Street, Columbus, Ohio.

MC 136839, Josephine Koffman and Nancy J. Nimmo, Dba Bergen Limousine Rental Service, now assigned June 27, 1973, at New York, N.Y., is postponed indefinitely.

MC 138237, Metro Heavy Hauling, Inc., now being assigned hearing October 1, 1973, at Olympia, Wash., in a hearing room to be later designated.

MC 60066 Sub 8, Bee Line Motor Freight, Inc., now assigned June 26, 1973, at Lincoln, Nebr., is cancelled and the application is dismissed.

AB-72, Sacramento Northern Railway Abandonment between Sutter and Tarke, in Sutter County, California, now being assigned hearings September 27, 1973 (2 days), at Yuba City, Calif., in a hearing room to be later designated.

MC-138168, Load & Go Truck Line, now being assigned hearing September 10, 1973 (1 week), at Phoenix, Ariz., in a hearing room to be later designated.

MC-F-11673, Reliance Truck Company—Purchase—Daigh & Stewart Truck Co., & MC-54567 Sub 12, Reliance Truck Co., now being assigned hearing September 17, 1973 (1 week), at Phoenix, Ariz., in a hearing room to be later designated.

MC-136564 Sub 1, Shippers Leasing, Inc., now being assigned hearing September 24, 1973 (1 day), at San Francisco, Calif. in a hearing room to be later designated.

MC 71459 Sub 33 O.N.C. Freight Systems, continued to September 4, 1973 (4 days), at Colorado Springs, Colo., in a hearing room to be later designated.

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

[FR Doc.73-12952 Filed 6-26-73;8:45 am]

[Notice 16]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

JUNE 22, 1973.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Passengers, 1969 (49 CFR 1042.2 (c)(9)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2 (c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2 (c)(9)) at any time, but will not operate to stay commencement of the proposed operations unless filed on or before July 27, 1973.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules-Motor Carriers of property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PASSENGERS

No. MC 13028 (Deviation No. 18), Bonanza Bus Lines, Inc., 27 Sabin St., P.O. Box 1116, Annex Station, Providence, R.I. 02901, filed June 13, 1973. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers, over a deviation route as follows: From New Bedford, Mass., over Interstate Highway 195 to junction Massachusetts Highway 28 at Wareham, Mass., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: From Providence, R.I., over U.S. Highway 6 to junction unnumbered highway (formerly U.S. Highway 6), thence over unnumbered highway to Seekonk, Mass., thence over alternate Massachusetts Highway 114 to junction U.S. Highway 6, thence over U.S. Highway 6 via Fall River and New Bedford to Wareham, Mass., and return over the same route.

By the Commission.

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

[FR Doc.73-12956 Filed 6-26-73;8:45 am]

[Notice No. 23]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

JUNE 22, 1973.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969 (49 CFR 1042.4 (d)(11) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4 (d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4 (d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed on or before July 27, 1973.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC-29910 (Deviation No. 23), Arkansas-Best Freight System, Inc., 301 South 11th St., Fort Smith, Ark. 72901, filed June 11, 1973. Carrier proposes to operate as a *common carrier* by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Little Rock, Ark., over Interstate Highway 40 to junction U.S. Highway 65, at or near Conway, Ark., thence over U. S. Highway 65 to junction Missouri Highway 13, at or near Springfield, Mo., thence over Missouri Highway 13 to junction Missouri Highway 7, at or near Clinton, Mo., thence over Missouri Highway 7 to junction U. S. Highway 71, at or near Harrisonville, Mo., thence over U. S. Highway 71 to junction Missouri Highway 291, at or near Harrisonville, Mo., thence over Missouri Highway 291 to junction U. S. Highway 50, thence over U. S. Highway 50 to Kansas City, Mo., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) from Fort Smith, Ark., over Arkansas Highway 22 to Dardanelle, Ark., thence over Arkansas Highway 7 to Russellville, Ark., thence over U.S. Highway 64 to Conway, Ark., thence over U.S. Highway 65 to Pine Bluff, Ark., and (2) from Fort Smith, Ark., over U.S. Highway 71 via Bentonville, Ark., to Lanagan, Mo. (also from Bentonville over Arkansas Highway 100 to the Arkansas-Missouri State line, thence over Missouri Highway 88 to Lanagan), thence over U. S. Highway 71 to Kansas City, Mo., thence over city streets to Kansas City, Kans., and return over the same routes.

No. MC-43487 (Deviation No. 100), Consolidated Freightways Corporation of Delaware, 175 Linfield Drive, Menlo Park, Calif. 94015, filed June 13, 1973. Carrier's representative: V. R. Oldenburg, P. O. Box 5138, Chicago, Ill. 60680. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Kankakee, Ill., over U.S. Highway 45 to junction Interstate Highway 57, thence over Interstate Highway 57 to junction U. S. Highway 24 near Gilman, Ill., thence over U. S. Highway 24 to junction U. S. Highway 66 at or near Chenoa, Ill., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: from Kankakee, Ill., over Illinois Highway 113 to Braidwood, Ill., thence over unnumbered highway (formerly U. S. Highway 66) to junction U. S. Highway 66, thence over U. S. Highway 66 to junction U. S. Highway 24 at or near Chenoa, Ill., and return over the same route.

By the Commission.

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

[FR Doc.73-12957 Filed 6-26-73;8:45 am]

[Notice 49]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

JUNE 22, 1973.

The following publications (except as otherwise specifically noted, each applicant (on applications filed after March 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application), are governed by the new Special Rule 1100.247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the

applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable by the Commission.

MOTOR CARRIERS OF PROPERTY

APPLICATIONS ASSIGNED FOR ORAL HEARING

No. MC 136857 (REPUBLICATION) filed June 16, 1972, published in the FR issue of July 27, 1972, and republished this issue. Applicant: ROSELAND TRUCKING CORP., P.O. Box K, Roseland, N.J. 07068. Applicant's representative: Bert Collins, 140 Cedar Street, New York, N.Y. 10006. An Order of the Commission, Review Board Number 1, dated June 8, 1973, and served June 19, 1973, finds that operation by applicant, in interstate or foreign commerce, as a *contract carrier* by motor vehicle, over irregular routes, (1) of *foodstuffs* (except meat and meat products, and commodities in bulk) from Roseland, N.J., to points in Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, Delaware, Maryland, Ohio, Michigan, Illinois, Indiana, and the District of Columbia, and (2) of *materials and supplies* used in the manufacture and packaging of foodstuffs, from points in Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, Delaware, Maryland, Ohio, Michigan, Illinois, Indiana, and the District of Columbia, to Roseland, N.J., under a continuing contract or contracts with M. Polaner and Son, Inc., of Roseland, N.J., will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; and that an appropriate permit should be issued. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of authority described above, issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 136884 (REPUBLICATION) filed July 13, 1972, published in the FR issue of August 10, 1972, and republished this issue. Applicant: JAMES J. HAMILTON doing business as: HAMILTON'S TOWING SERVICE, 380 Northeast 54th Street, Des Moines, Iowa 50313. Applicant's representative: Kenneth F. Dudley 611 Church Street P.O. Box 279 Ottumwa, Iowa 52501. A Stay Decision and Order of the Commission, Review Board Number 3, dated May 25, 1973, and served June 19, 1973, (1) modifies the Report and Order of the Administrative Law Judge to exclude service to Alaska and Hawaii; and (2) finds that operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, (1) of *wrecked and disabled motor vehicles* and *replacement motor vehicles* between points in Iowa, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), and (2) of *wrecked and disabled motor vehicles* from points in Iowa to points in Minnesota, Wisconsin, Illinois, Missouri, Kansas, Nebraska, and South Dakota, will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

NOTICE OF FILING PETITIONS

No. MC 110420 (Sub-No. 584) (NOTICE OF FILING OF PETITION FOR MODIFICATION OF CERTIFICATE RESTRICTION) filed June 5, 1973. Petitioner: QUALITY CARRIERS, INC., P.O. Box 186, Pleasant Prairie, Wis. 53158. Petitioner's representative: Fred H. Figge (same address as applicant). Petitioner presently holds a motor *common carrier* certificate in No. MC 110420 (Sub-No. 584), issued July 22, 1970, authorizing transportation, by motor vehicle, over irregular routes, of *inedible tallow, inedible grease, vegetable oils, and products and blends* of the aforementioned commodities, in bulk, in tank vehicles, from Hammond, Ind., to points in Alabama, Florida, Georgia, Kentucky, Louisiana Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, with no compensation on return, except as otherwise authorized, restricted to the transportation of shipments originating at the plant of Swift Chemical Co. at Hammond, Ind. By the instant petition, petitioner seeks to modify its restriction to read: "Restricted to the transportation of shipments originating at the plant or warehouse facilities of Swift Chemical Co. at Hammond, Ind.", in lieu of the presently authorized restriction. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 114115 (Sub-Nos. 16 and 20) (Notice of Filing of Petition to Add a Shipper) filed May 23, 1973. Petitioner: TRUCKWAY SERVICE, INC., 1099 Oakwood Boulevard, Detroit, Mich. 48217. Petitioner's representative: James R. Stiverson, 50 West Broad Street, Columbus, Ohio 43215. Petitioner presently holds motor *contract carrier* permits in No. MC-114115 (Sub-Nos. 16 and 20) issued December 4, 1969, and January 25, 1970, respectively, authorizing transportation in interstate or foreign commerce, over irregular routes, of (in Sub-16) *salt*, in packages, from points in Hamilton County, Ohio, to points in Illinois, Indiana, Kentucky, Pennsylvania, West Virginia, and the Lower Peninsula of Michigan, with no transportation for compensation on return except as otherwise authorized, under continuing contracts with International Salt Company and Morton International, Inc.; and (in Sub-20) *salt*, from Chicago, Ill., to points in Indiana, Ohio, and Michigan, with no transportation for compensation on return except as otherwise authorized, restricted against the transportation of salt in packages to points in the Upper Peninsula of Michigan, under continuing contracts with Cargill, Incorporated, International Salt Company, and Morton Salt Company, Division of Morton International, Inc. By the instant petition, petitioner seeks to add the additional contracting shipper of Diamond Crystal Salt Company to the authority described above. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATION FOR CERTIFICATE OR PERMIT WHICH IS TO BE PROCESSED CONCURRENTLY WITH APPLICATION UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 124211 (Sub-No. 227) filed May 17, 1973. Applicant: HILT TRUCK LINES, INC., P.O. Drawer 988 D.T.S., Omaha, Nebr. 68101. Applicant's representative: James C. Hardman, 127 North Dearborn Street, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy, steel, machinery, food, automotive equipment, dirt, coal, stone, and sand*, (1) between points in Cook, De Kalb, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties, Ill., and (2) between points named in (1) above, on the one hand, and, on the other, points in Illinois. Note: The instant application is a matter directly related to MC-F 11887 published in the FR issue of June 6, 1973. Applicant states that joinder would normally be at Chicago or a point in its commercial zone, and operations could be effected to and from various points in the western and middle United States. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 60580 (sub-No. 29) (Correction), filed April 17, 1973, published in the FEDERAL REGISTER issue of May 31, 1973, and republished, as corrected, this issue. Applicant: MAISLIN TRANSPORT CORP., 1314 Irving Street, Allentown, Pa. 18103. Applicant's representative: Charles Ephraim, 1250 Connecticut Avenue NW., suite 600, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over regular and irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment). Regular routes: (A)(1) Between New York, N.Y., and Watertown, N.Y., serving the intermediate points of Binghamton and Syracuse, N.Y.; from New York via the Holland Tunnel to Jersey City, N.J., thence over U.S. Highway 1 to junction New Jersey Highway 3, thence over New Jersey Highway 3 to junction New Jersey Highway 17, thence over New Jersey Highway 17 to the New Jersey-New York State line, thence over New York Highway 17 to Binghamton, N.Y., thence over U.S. Highway 11 via Syracuse, N.Y., to Watertown, N.Y., and return over the same route; (2) between the junction of New Jersey Highway 17 and U.S. Highway 46, and Binghamton, N.Y., over an alternate route for operating convenience only, in connection with carrier's regular-route operation authorized above, serving no intermediate points and with service at the junction of New Jersey Highway 17 and U.S. Highway 46 for purpose of joinder only; from the junction of New Jersey Highway 17 and U.S. Highway 46 over U.S. Highway 46 via Dover and Hackettstown, N.J., to the New Jersey-Pennsylvania State line, thence over U.S. Highway 611 via Stroudsburg and Tobyhanna, Pa., to Scranton, Pa., thence over U.S. Highway 11 via New Milford, Pa., to Binghamton, and return over the same route; (3) Between Syracuse, N.Y. and Rochester, N.Y., as an alternate route for operating convenience only, in connection with carrier's regular-route operation, serving no intermediate points and with service at Syracuse and Rochester, N.Y. for the purpose of joinder only: From Syracuse over New York Highway 5 to junction New York Highway 31B, thence over New York Highway 31B to junction New York Highway 31, thence over New York Highway 31 to Rochester, N.Y., and return over the same route; (4) Between Buffalo, N.Y. and Rochester, N.Y., over an alternate route, for operating convenience only, in connection with carrier's regular-route operation, serving no intermediate points and with service at Buffalo and Rochester, N.Y. for the purpose of joinder only; From Buffalo over New York Highway 5 to Batavia, N.Y., thence over New York Highway 33 to Rochester, N.Y., and return over the same route. (B)(1) *General commodities* (except those of unusual value, high explosives, household goods as defined by the Commission, commodities requiring special equipment, and commodities in bulk); IRREGULAR ROUTE: (a) between points in New Jersey and New York within 25 miles of the City Hall, New York, N.Y.; (b) between points in New Jersey and New York within 25 miles of the City Hall, New York, N.Y., on the one hand, and, on the other, Oyster Bay, Ossining, and Peekskill, N.Y.; and (2) *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), Between Buffalo, N.Y., on the one hand, and, on the other, those ports of entry on the United States-Canada Boundary line located at Buffalo and Lewiston, N.Y.

Restriction: The service authorized in (2) above is restricted to the transportation of traffic originating at, or destined to, points in Canada. Note: The purposes of this republication are: (1) to properly indicate route (A)(3) above; and (2) to clarify applicant's intention to tack. The requested authority is presently held by Maislin Transport Ltd., the parent Corportation of Maislin Transport Corp. Upon grant of the authority requested herein Maislin Transport Ltd. will offer for cancellation all duplicating authority. This application is filed in furtherance of the Commission's Order in No. MC-F-11855, published in the FR issue directly related to those involved in No. MC-F-11855, published in the FR issue of May 9, 1973. Applicant states that the requested authority will be tacked with its existing authority at all common points. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

APPLICATIONS UNDER SECTIONS 5 AND 210a (b)

The following applications are governed by the Interstate Commerce Commission's Special Rules governing notice of filing of applications by motor carriers of property or passengers under Sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 C.F.R. 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11702. (Amendment) (ILLINOIS-CALIFORNIA EXPRESS, INC.—PURCHASE (PORTION)—HENNIS FREIGHT LINES, INC., OF NEBRASKA), published in the November 8, 1972, issue of the FEDERAL REGISTER on page 23767. By amendment filed June 8, 1973, CERRO MOTOR EXPRESS CORPORATION, 300 Park Ave., New York, NY 10022, ICX INDUSTRIES, INC., AND FRONTIER, INC., both of 501 E. 51 Ave., Denver, CO 80216, join in as party applicants in control of the applicant.

No. MC-F-11866. (Correction) (MIDSTATES TRUCKING CO.—CONTROL AND MERGER—GOVAN EXPRESS, INC., AND DENTON PRODUCE, INC.), published in the May 16, 1973, issue of the FEDERAL REGISTER on page 12858. Prior notice under (A) GOVAN EXPRESS, INC., should be modified to include: (1) *Foodstuffs*, and (2) *laundry products* when moving in mixed shipments with foodstuffs, from Dallas and Fort Worth, Tex., to points in Texas, Oklahoma, and that part of Louisiana west of the Mississippi River.

No. MC-F-11908. Authority sought for control by ALLTRANS HOLDINGS (ONTARIO) LTD., a non-carrier, Suite 1600, 11 King St., W. Toronto, Ontario, Canada, of (A) OVERLAND WESTERN LIMITED, P.O. Box 460, Woodstock, Ontario, Canada, (B) OVERLAND EXPRESS INC., 150 Milens Rd., Tonawonda, NY 14150, and (C) OVERLAND WESTERN INTERNATIONAL, INC., 2828 Howard St., Detroit, MI 48216, and for acquisition by ALLTRANS HOLDINGS (CANADA) LTD., 16th Floor, 1030 West Georgia St., Vancouver 5, British Columbia. Applicants' attorney: Jack Goodman, 39 So. LaSalle St., Chicago, IL 60603, and Walter N. Bieneman, One Woodward Ave., Detroit, MI 48226. Operating rights sought to be controlled: (A) *General commodities*, with exceptions, as a *common carrier* over irregular routes, between the boundary of the United States and Canada at Windsor, Canada-Detroit, Mich., on the one hand, and, on the other, Detroit, Mich., and points in the United States within five miles thereof, between the international boundary between the United States and Canada at Port Huron, Mich., on the one hand, and, on the other, Port Huron, Mich., between ports of entry on the United States-Canada boundary line at Buffalo and Niagara Falls, N.Y., on the one hand, and, on the other, Buffalo and Niagara Falls, N.Y., solely for the purpose of interchanging traffic with connecting carriers, between Detroit, Mich., and the port of entry at Port Huron, Mich., serving no intermediate points, between Detroit, Mich., and Willow Run Airport, near Ypsilanti, Mich., with restrictions; (B) *General commodities*, with exceptions, as a *common carrier* over regular routes, between Buffalo, and Alden, N.Y., serving all intermediate points; *general commodities*, with exceptions over irregular routes, between points in Erie County, N.Y., on the one hand, and, on the other, points in Erie and Niagara Counties, N.Y.; (C) General commodities, with exceptions as a common carrier over regular routes, between Detroit, Mich., and Bay City, Mich., serving all intermediate points, and the off-route points of Clarkston, Mount Morris, Clio, Zilwaukee, Carrollton, and Essexville, Mich., between Flint, Mich., and Lansing, Mich., serving no intermediate points, between Flint, Mich., and the port of entry at Port Huron, Mich., on the United States-Canada boundary line, serving no intermediate points, with restriction. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11909. Authority sought for control by EDWARD J. STARCK AND JAMES J. STARCK, RD #1, Burgettstown, PA 15021, of STARCK VAN LINES OF COLUMBUS, INC., 3747 Grove Port Rd., Columbus, OH. Applicants' attorney: Robert J. Gallagher, 1776 Broadway, New York, NY 10019. Operating rights sought to be controlled: *Used household goods*, as a *common carrier* over irregular routes, between points in Athens, Belmont, Carroll, Coshocton, Crawford, Delaware, Fairfield, Franklin, Gallia, Guernsey, Harrison, Hocking, Holmes, Jackson, Jefferson, Knox, Licking, Madison, Marion, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Richland, Ross, Seneca, Tuscarawas, Union, Vinton, Washington, and Wyandot Counties, Ohio with restriction. EDWARD J. STARCK AND JAMES J. STARCK, holds no authority from this Commission. However they are affiliated with STARCK VAN LINES, INC., which is authorized to operate as a *common carrier* in Pennsylvania, West Virginia, Connecticut, Delaware, Illinois, Kentucky, Maryland, Missouri, Massachusetts, Michigan, North Carolina, New Jersey, New York, Ohio, Oklahoma, Indiana, Florida, Georgia, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11911. Authority sought for purchase by ILLINOIS-CALIFORNIA EXPRESS, INC., 510 E. 51 Avenue, Denver, CO 80216, of a portion of the operating rights of CARDINAL FREIGHTWAYS (Limited Partnership), 3308 Bandini Blvd., Los Angeles, CA 90023, and for acquisition by CERRO CORPORATION, AND CERRO MOTOR EXPRESS CORPORATION, both of 300 Park Ave., New York, NY 10022, ICX INDUSTRIES, INC., AND FRONTIER, INC., both of Denver, CO 80216, of control of such rights through the purchase. Applicants' attorneys: R. Y. Schureman, 1545 Wilshire Blvd., Los Angeles, CA 90017, and Warren N. Grossman, 606 S. Olive St., Los Angeles, CA 90014. Operating rights sought to be transferred: *General commodities*, excepting among others, classes A and B explosives, household goods and commodities in bulk, as a *common carrier* over irregular routes, between points in Maricopa, Pinal, and Pima Counties, Ariz. (except Tucson, Ariz., and points in its commercial zone as defined by the Commission). Vendee is authorized to operate as a *common carrier* in Arizona, California, Colorado, Kansas, Illinois, Iowa, Missouri, Nebraska, New Mexico, Texas, Utah, and Wyoming. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11913. Authority sought for purchase by J. J. WILLIS TRUCKING COMPANY, 2608 Electronic Lane, Dallas, TX 75220, of the operating rights of CHESLEY TRANSPORTATION CO., INC., P.O. Box 1228, Long Beach, CA 90801, and for acquisition by TEMTEX INDUSTRIES, INC., 1516 LTV Tower, Dallas, TX 75201, of control of such rights through the purchase. Applicants' attorneys: J. G. Dail, Jr., 1111 E St., N.W., Washington, DC 20004, and Michael Stecher, 140 Montgomery St., San Francisco, CA 94104. Operating rights sought to be transferred: *Machinery, material, supplies*, and *equipment*, incidental to, or used in the construction, development, operation, and maintenance of facilities for discovery, development, and production of natural gas and petroleum, as a *common carrier* over irregular routes, between Los Angeles Harbor and Long Beach, Calif., on the one hand, and on the other, points and places within 30 miles of Long Beach, Calif., between points and places within 30 miles of Long Beach, Calif., including Long Beach, Calif., and under a certificate of registration in Docket No. MC-72252 (Sub-No. 8), covering the transportation of property, as a common carrier, in interstate commerce, within the State of California. Vendee is authorized to operate as a *common carrier* in all of the States in the United States (except Alaska and Hawaii). Application has been filed for temporary authority under section 210a(b).

No. MC-F-11914. Authority sought for purchase by NORTH EAST EXPRESS, INC., P.O. Box 61, Mountaintop, PA 18707, of a portion of the operating rights of FERGUSON TRANSPORTATION CO., 445 E. 7th St., Bloomsburg, PA 17815, and for acquisition by THOMAS NAVIN, EDWARD DEETS AND ELIZABETH DEETS, all of Mountaintop, PA 18707, of control of such rights through the purchase. Applicants' attorney: Kenneth R. Davis, 999 Union St., Taylor, PA 18517. Operating rights sought to be transferred: *Potato chips* and *advertising materials and machinery* used in the manufacture, sale and packing of potato chips, as a *common carrier* over irregular routes, from Berwick, Pa., to all points in Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, Virginia and West Virginia; *packing materials, machinery and equipment* used in the manufacture and packing of potato chips, from all points in Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, Virginia and West Virginia to Berwick, Pa.; *foodstuffs* (except frozen foodstuffs, and commodities in bulk), and *advertising materials and displays, dispensing equipment and premiums*, when moving in connection with foodstuffs (except frozen foodstuffs and commodities in bulk), from the plant site of Wise Potato Chip Co., at Berwick, Pa., to points in Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, Virginia, West Virginia, and the District of Columbia, with restriction; *packing materials, machinery and equipment*, used in the manufacture and packing of foodstuffs (except frozen foodstuffs, and commodities in bulk), except commodities which because of size or weight require the use of special equipment and/or special handling, from points in Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, Virginia, West Virginia, and the District of Columbia, to the plant site of Wise Potato Chip Co., at Berwick, Pa.; *foodstuffs* (except frozen foodstuffs and commodities in bulk), *advertising materials and displays, dispensing equipment and premiums* when moving in connection with foodstuffs (except frozen foodstuffs and commodities in bulk), from the plant site of Wise Potato Chip Co., at Berwick, Pa., to points in Illinois, Indiana, Kentucky, Maine, Michigan, South Carolinia, Tennessee, and Vermont, with restriction. Vendee is authorized to operate as a *common carrier* in Pennsylvania, Connecticut, Rhode Island, Massachusetts, Maine, New Hampshire, Vermont, New York, New Jersey, Maryland, Delaware, Ohio, Michigan and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

NOTICE

The WESTERN MARYLAND RAILWAY COMPANY (WM) and THE BALTIMORE AND OHIO RAILROAD COMPANY and THE BALTIMORE AND OHIO RAILROAD COMPANY IN PENNSYLVANIA (collectively referred to as B&O) hereby give notice that on the 11th day of June, 1973, they filed with the Interstate Commerce Commission at Washington, D.C., an application under Section 5(2) of the Interstate Commerce Act for an order approving and authorizing the acquisition of trackage rights by WM over the line of railroad of B&O, which application was assigned Finance Docket No. 27406. In accordance with the Commission's regulations (49 CFR 1111.2 (13)) as amended May 16, 1972, the Applicants state the following:

(1) The name and address of the Applicants and their attorneys are:

Western Maryland Railway Company
The Baltimore and Ohio Railroad Company
The Baltimore and Ohio Railroad Company in Pennsylvania
2 North Charles Street
Baltimore, Maryland 21201
Richard B. Allen
Norman C. Melvin
Attorneys for Applicants
2 North Charles Street
Baltimore, Maryland 21201

(2) The nature of the proposed transaction is the acquisition of trackage rights by WM over the line of railroad of B&O.

(3) (a) The B&O line of railroad over which WM requests approval and authorization of trackage rights extends from Cherry Run, West Virginia (Valuation Section 1-WV-36.6, Station

36+73.4) to Viaduct Junction, Maryland (Valuation Section 1-MD-40.1, Station 8874+85.4); from Mount Savage Junction, Maryland (Valuation Section 31-MD-68.1, Station 157+77) to Connellsville, Pennsylvania (Valuation Section 31-PA-89.1, Station 4970+00); from Viaduct Junction, Maryland (Valuation Section 1-MD-40.2, Station 0+00) to West Virginia Central Junction, West Virginia (Valuation Section 1-WV-42.1, Station 1519+42); from Greene Junction, Pennsylvania (Valuation Section 31-PA-69.11, Station 0+56.30) to Bowest Junction, Pennsylvania (Valuation Section 31-PA-69.11, Station 85+78.5), and from Rockwood, Pennsylvania (Valuation Section 31-PA-71.1, Station 0+13.4) to Wilson Creek, Pennsylvania (Valuation Section 31-PA-71.1, Station 59+84.4), a total distance of approximately 184.40 miles, all in Morgan, Hampshire and Mineral Counties, West Virginia, Allegany County, Maryland, and Bedford, Somerset and Fayette Counties, Pennsylvania.

(b) At the present time WM has a parallel line of railroad which it seeks to abandon in Docket No. AB-69 (Sub 1).

(4) The description of the involved line of railroad over which trackage rights are sought, including city, county and state location, termini and approximate distance in miles is set forth above in (3)(a).

Applicants have alleged in their application that the quality of the human environment will not be affected by the proposed Commission action requested in the application. In accordance with the Commission's regulations (49 CFR 1100.250) in Ex Parte No. 55 (Sub No. 4), Implementation-Nat'l Environmental Policy Act, 1969, 340 I.C.C. 431 (1972), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall include information relating to the relevant factors set forth in Ex Parte No. 55 (Sub No. 4), *supra*, Part (b)(1)-(5), 340 I.C.C. 431, 461.

The proceeding will be handled without public hearings unless protests are received which contain information indicating a need for such hearings. Any protests submitted shall be filed with the Commission no later than 30 days from the date of first publication in the FEDERAL REGISTER.

WESTERN MARYLAND RAILWAY COMPANY

THE BALTIMORE AND OHIO RAILROAD COMPANY

THE BALTIMORE AND OHIO RAILROAD COMPANY IN PENNSYLVANIA

NOTICE

The Chesapeake and Ohio Railway Company hereby gives notice that on the 13th day of June, 1973, it filed with the Interstate Commerce Commission at Washington, D.C., an application under Section 5(2) of the Interstate Commerce Act for an order approving and authorizing the acquisition of trackage rights by The Chesapeake and Ohio Railway Company over a line of railroad of The Ann Arbor Railroad Company in Isabella County, Michigan, which application was assigned Finance Docket No. 27412. In accordance with the Commission's regulations (49 CFR 1111.2 (13)) as amended May 16, 1972 the applicant states the following:

(i) The name and address of the applicant and its attorney are:

The Chesapeake and Ohio Railway Company, Attention A. F. Schmalzriedt, P. O. Box 6419, Cleveland, Ohio 44101.

John J. Holden, General Attorney, The Chesapeake and Ohio Railway Company, 407 One Northland Plaza, 20755 Greenfield Road, Southfield, Michigan 48075, Attorney for The Chesapeake and Ohio Railway Company.

(ii) The nature of the proposed transaction is the acquisition by The Chesapeake and Ohio Railway Company of trackage rights over certain tracks of The Ann Arbor Railroad Company in Isabella County, Michigan. In a related application in Docket No. *AB-18 (Sub-No. 6)*. The Chesapeake and Ohio Railway Company has requested a certificate that the present and future public convenience and necessity permit the abandonment of its own line of railroad from its valuation station 41 plus 06 (railroad milepost 0.78) southwest of Coleman to its valuation station 655 plus 45 (railroad milepost 12.42) in the Township of Union northeast of Mount Pleasant, a distance of approximately 11.64 miles, all in Isabella County, Michigan.

(iii) (a) The line of railroad over which The Chesapeake and Ohio Railway Company requests approval and authorization of trackage rights extends from The Ann Arbor Railroad Company's valuation station 8653 plus 83 at Mount Pleasant to The Ann Arbor Railroad Company's valuation station 9470 plus 32 at Clare, approximately 15.40 miles of main line track and .91 mile of connecting tracks forming connections between the main track of The Ann Arbor Railroad Company and tracks of The Chesapeake and Ohio Railway Company, all in Isabella County, Michigan.

(b) At the present time, The Chesapeake and Ohio Railway Company serves Mount Pleasant by means of its own line of railroad between Coleman and Mount Pleasant, which line of railroad the applicant seeks to abandon.

(iv) The description of the involved line of railroad including city, county and state location, termini, and approximate distance in miles is set forth above in (iii)(a).

The Chesapeake and Ohio Railway Company has alleged in its application that the quality of the human environment will not be affected by the proposed Commission action requested in the application. In accordance with the Commission's regulations (49 CFR 1100.250) in Ex Parte No. 55 (Sub No. 4), Implementation-Nat'l Environmental Policy Act, 1969, 340 I.C.C. 431 (1972), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall include information relating to the relevant factors set forth in Ex Parte No. 55 (Sub No. 4), *supra*, Part (b)(1)-(5), 340 I.C.C. 431, 461.

The proceeding will be handled without public hearings unless protests are received which contain information indicating a need for such hearings. Any protests submitted shall be filed with the Commission no later than 30 days from the date of first publication in the FEDERAL REGISTER.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

By the Commission.

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

[FR Doc.73-12958 Filed 6-26-73;8:45 am]

[Notice 306]

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 July 18, 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-74223. By order of June 20, 1973, the Motor Carrier Board approved the transfer to A. L. A. Delivery Corp., New York, N.Y., of the operating rights in Certificate No. MC-58959 issued May 15, 1941, to Manhattan Express & Trucking Corp., New York, N.Y., authorizing the transportation of infants clothing, umbrellas and umbrella fabric, rugs, tapestries, leather goods, underwear, linens, novelties, fountain pens, pencils, yarns, knitted goods, shirts, pajamas, and cushions, between points in New York, N.Y. Commercial Zone, as defined by the Commission in 1. M.C.C. 665, on the one hand, and, on the other, points in Bergen, Essex, Passaic, Hudson, and Union Counties, N.J. Dual operations were authorized. Morris Honig, 150 Broadway, New York, N.Y. 10038. Attorney for applicants.

No. MC-FC-74513. By order of June 20, 1973, the Motor Carrier Board approved

the transfer to Herb Davies, doing business as Davies Truck Line, Topeka, Kansas, of the operating rights in Certificate No. MC-98261 (Sub-No. 1) and Certificate of Registration No. MC-98261 (Sub-No. 3) issued September 15, 1960 and November 20, 1963 respectively to Donald H. Rush and Arthur L. Rush, a partnership, doing business as Rush Truck Line, Eskridge, Kansas, authorizing the transportation of general commodities, with exceptions, between Eskridge and Topeka, Kansas, serving specified intermediate points and evidencing a right to engage in transportation in interstate commerce as described in Certificate of Convenience and Necessity covering Route 172 in Docket 8214-M, dated May 3, 1960, issued by the State Corporation Commission of the State of Kansas. Charles E. McNish, 1415 Topeka Ave., Topeka, Kansas, 66612. Attorney for applicants.

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

[FR Doc.73-12955 Filed 6-26-73;8:45 am]

MOTOR CARRIER INTRASTATE APPLICATIONS

JUNE 22, 1973.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are goverened by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

Texas Docket No. 2674 filed June 5, 1973. Applicant: TEXAS TEX-PACK EXPRESS, INC. 150 E. Zavalla Street, San Antonio, Tex. 78204. Applicant's representatives: Austin L. Hatchell, 1102 Perry Brooks Bldg., Austin, Tex. 78701 and Johnnie B. Rogers, 313 Perry Brooks Bldg., Austin, Tex. 78701. (1) Application of Texas Tex-Pack Express to amend Limited Common Carrier Certificate No. 2674 so as to authorize the transportation of: *General commodities,* subject to the restriction that no service shall be provided in the transportation of packages or articles weighing in the aggregate more than 100 pounds from one consignor at one location to one consignee at one location on any one day, between Nixon and Victoria over U.S. Highway 87 serving only the intermediate points of Smiley and Westhoff, and coordinating such service with that presently being rendered and interlining with other carriers at appropriate interline points.

(2) Applicant also seeks authority to use the following alternate routes in the transportation of *General commodities, motion picture films and theater supplies, flowers and potted plants, magazines and newspapers* over the following additional alternate routes, without service to any intermediate point except as otherwise authorized: (1) State Hwy 71 between Austin and Brady; (2) U.S. Hwy 287 between Midlothian and Waxahachie; (3) F.M. Road 243 between Bertram and its intersection with U.S. Hwy 183. (3) Applicant also seeks authority to use the following alternate routes in the transportation of *Motion picture film and theater supplies, flowers and potted plants, magazines and newspapers* without service to any intermediate point except as otherwise authorized: (1) U.S. Hwy 90 between San Antonio and Del Rio; (2) U.S. Hwy 277 and State Hwy 85 between Del Rio and Dilley; (3) I.S. 10 between Houston and Kerrville; (4) U.S. Hwy 90 between Sequin and Luling; (5) Alternate U.S. Hwy 90 between Sequin and Gonzales; (6) State Hwy 29 between Llano and Mason; (7) U.S. Hwy 183 between Lampasas and its intersection with State Hwy 29 and between Austin and Lockhart; (8) U.S. Hwy 84 and F.M. Road 73 between Waco and Collidge; (9) U.S. Hwy 80 between San Marcos and Gonzales; (10) State Hwy 123 between San Marcos and Sequin.

(4) Applicant also proposes to use the following alternate routes in the transportation of *Motion picture film, theater supplies and magazines* over the following routes without service to any intermediate point thereon except as otherwise authorized: (1) F. M. Road 65 between Crystal City and Brundage; (2) F. M. Road 88 between Elsa and Weslaco; (3) State Hwy 44 between Robstown and Alice; (4) State Hwy 361 between Gregory and Aransas Pass; (5) State Hwy 97 between Nixon and Gonzales; (6) State Hwy 136 between Woodsboro and Rockport. (5) Applicant also proposes that the Commission hear and consider the Motion to Reform Certificate which is attached to this application, in which Applicant herein requests rewording of Certificate No. 2674 so as to clarify and simplify the language therein. SO THAT SUCH CERTIFICATE WILL READ AS FOLLOWS: (I) *General commodities* to, from and between all points along the routes in Texas shown below subject to the following restriction:

(1) No service shall be provided in the transportation of packages or articles weighing in the aggregate more than 100 pounds from one consignor at one location to one consignee at one location on any one day: (1) U.S. Hwy 77, U.S. Hwy 81, and I.S. 35 between Dallas and San Antonio; (2) U.S. Hwy 67 between Dallas and Alvarado; (3) U.S. Hwy 81 between Alvarado and Hillsboro; (4) State Hwy 171 between Hillsboro and Coolidge; (5) U.S. Hwy 84 and F.M. 73 between McGregor and Coolidge; (6) State Hwy 317 and F.M. 107 between McGregor and Moody; (7) State Hwy 95 between Temple and Taylor; (8) U.S. Hwy 79 between Taylor and Round Rock; (9) U.S. Hwy 183 between Austin and Gonzales; (10) U.S. Hwy 90 and I.S. 10 between Houston and San Antonio; (11) F.M. Road 78 and State Hwy 46 between San Antonio and Sequin; (12) State Hwy 123 between Sequin and Stockdale; (13) U.S. Hwy 87 between San Antonio and Nixon; (14) State Hwy 80 and State Hwy 97 and Alternate Route U.S. Hwy 90 between Nixon and Gonzales; (15) U.S. Hwy 181 between San Antonio and Corpus Christi; (16) State Hwy 35 between Gregory and Fulton; (17) F.M. Road 881 between Sinton and Rockport; (18) F.M. Road 136 between Woodsboro and its intersection with F.M. Road 881; (19) State Hwy 44 between Corpus Christi and Alice; (20) U.S. Hwy 77 between Victoria and Brownsville; (21) State Hwy 141 between Kingsville and its intersection with U.S. Hwy 281; (22) U.S. Hwy 281 between Alice and Edinburg;

(23) U.S. Hwy 59 between Victoria and Houston; (24) U.S. Hwy 83 between Harlingen and Mission; (25) State Hwy 107 between Combes and Edinburg; (26) U.S. Hwy 281 between San Antonio and Johnson City; (27) U.S. Hwy 290 between Johnson City and Fredericksburg; (28) State Hwy 16 between Fredericksburg and Kerrville; (29) State Hwy 27 between Kerrville and Comfort; (30) U.S. Hwy 87 and I.S. 10 between Fredericksburg and San Antonio; (31) U.S. Hwy 183 U.S. Hwy 190 between Belton and Brady; (33) State Hwy 195 between its junction with U.S. Hwy 183 via Florence to its intersection with U.S. Hwy 81; (34) State Hwy 29 between its intersection with U.S. Hwy 183 and Mason, via Bumet and Llano; (35) U.S. Hwy 281 between Lampasas and its intersection with State Hwy 71 near Marble Falls; (36) State Hwy 71 between its intersection with U.S. Hwy 281 and Llano; (37) State Hwy 16 between Llano and Goldthwaite, via San Saba; (38) U.S. Hwy 377 between Mason and Junction; (39) U.S. Hwy 83 between Junction and Eden; (40) U.S. Hwy 87 between Eden and Brady; (41) U.S. Hwy 377 and U.S. Hwy 87 between Mason and Brady; (42) State Hwy 71 between Austin and Bastrop; (43) State Hwy 95 between Bastrop and Elgin; (44) U.S. Hwy 290 between Elgin and Austin; (45) F.M. Road 440 between Killeen and Florence; (46) F.M. Road 1431 between its intersection with U.S. Hwy 281 and its intersection with State Hwy 29, via Kingsland; (47) U.S. Hwy 90 between San Antonio and Del Rio; (48) U.S. Hwy 277 between Del Rio and Carrizo Springs;

(49) U.S. Hwy 83 between Uvalde and Carrizo Springs; (50) U.S. Hwy 57 between Eagle Pass and Moore; (51) State Hwy 85 between Carrizo Springs and Dilley; (52) F.M. Road 65 between Crystal City and Brundage; (53) U.S. Hwy 81 between San Antonio and Laredo; (54) State Hwy 359 between Laredo and Mathis; (55) State Hwy 44 between Freer and Alice; (56) State Hwy 339 between Freer and Benavides; (57) U.S. Hwy 83 between Laredo and Rio Grande

City; (58) U.S. Hwy 281 between San Antonio and George West; (59) U.S. Hwy 59 and State Hwy 9 between George West and Mathis; (60) State Hwy 6 between Waco and Hearne, via Marlin and Calvert; (61) State Hwy 164 between Waco and Groesbeck, via Mart; (62) State Hwy 14 between Groesbeck and its intersection with State Hwy 6 south of Bremond; (63) F.M. Road 107 between Moody and Eddy; (64) State Hwy 361 between Gregory and Aransas Pass; (65) State Hwy 97 between Jourdanton and Pleasanton; (66) State Hwy 16 between Jourdanton and Poteet; (67) U.S. Hwy 77 between Waco and Victoria, serving all intermediate points along said routes, coordinating the service authorized herein with that being rendered under existing certificates, and interlining with other carriers at appropriate interline points.

RESTRICTIONS: (1) No service shall be rendered on any shipments originating in Houston and destined to Victoria, or any intermediate point located on U.S. Hwy 59 between Victoria and Houston; nor on shipments originating at Victoria destined to Houston, or any intermediate point located on U.S. Hwy 59 between Victoria and Houston, nor on shipments originating at any intermediate point located on U.S. Hwy 59 between Victoria and Houston destined to Houston, Victoria, or any other intermediate point along said route. No service shall be rendered on shipments moving to, from, or between the following named towns: Brownsville, Olmito, San Benito, Sebastian, Lyford, Raymondville, Combes, Santa Rosa, La Villa, Edcouch, San Carlos, Mission, McAllen, Pharr, Alamo, Donna, Weslaco, Mercedes, La Feria and San Juan. (2) No service shall be rendered on shipments moving between Harlingen and Edinburg, and further prohibited from handling any shipments between Houston and Victoria over the routes shown in (60), (61), (63) or (67) shown above. (3) The holder of this authority is prohibited from serving La-Grange, Hallettsville, or any intermediate point on U.S. Hwy 77 between Schulenburg and Victoria. (4) The holder of this authority is prohibited from serving Hearne in the transportation of general commodities as described herein except for the purpose of interline with other carriers. This certificate was issued to the holder hereof after notice to interested parties through publication in the FEDERAL REGISTER of the filing of the application and the desire of the applicant to also engage in interstate or foreign commerce within the limits of the intrastate authority authorized herein.

Reasonable opportunity was afforded to all interested parties to be heard and such parties were heard. Consideration has been given to the proposed interstate or foreign operations, and the Commission has found that public convenience and necessity require operations in interstate and foreign commerce over the above named routes, in accordance with the provisions of 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. *Motion picture film and theater supplies, flowers and potted plants, magazines and newspapers* over the following Texas highways as heretofore listed by number in I above: (2), (3), (4), (7), (8), (11), (26), (32), (33), (35), (37), (38), (39), (40), (41), (42), (43), (44), (45), (46), (49), (50), (54), (55), (56), (58), (59) and (65) and over the following routes: U.S. Hwy 77 and 81 between Dallas and Laredo; U.S. Hwy 83 and F.M. Road 133 between Carrizo Springs and Artesia Wells; U.S. Hwy 90 between San Antonio and Sequin, and between Luling and Waelder; State Hwy 80, State Hwy 142 and U.S. Hwy 183 between San Marcos and Luling, via Lockhart; U.S. Hwy 183 and State Hwy 29 between Austin and Llano; U.S. Hwy 84 and State Hwy 31 between McGregor and Dawson; State Hwy 317 and State Hwy 36 between McGregor and Temple; U.S. Hwy 183 between Goldthwaite and Lometa; U.S. Hwy 287 between Midlothian and Wazahachie. The holder of this authority is also authorized to operate over the following alternate routes without service to any intermediate points except as otherwise authorized: U.S. Hwy 90 between San Antonio and Del Rio; U.S. Hwy 277 and State Hwy 85 between Del Rio and Dilley; I.S. Hwy 10 between Houston and Kerrville; U.S. Hwy 90 between Sequin and Luling; Alternate U.S. Hwy 90 between Sequin and Gonzales; State Hwy 29 between Llano and Mason; U.S. Hwy 183 between Lampasas and its intersection with State Hwy 29, and between Austin and Lockhart; U.S. Hwy 84 and F.M. Road 73 between Waco and Coolidge; State Hwy 71 between Austin and Brady; U.S. Hwy 80 between San Marcos and Gonzales; State Hwy 123 between San Marcos and Sequin.

Motion picture film and theater supplies over the following Texas highways as heretofore listed by number in I above: (12), (13), (15), (16), (20), (21), (22), (23), (24), (25), (27), (28), (29), (33), (47), (48), (51), (52), (57), (60), (61), (62), (63), (66) and (67) and over the following routes: U.S. Hwy 90 between Waelder and Houston; U.S. Hwy 87 between San Antonio and Comfort; State Hwy 107 between Edinburg and Mission; State Hwy 44 between Corpus Christi and Robstown; State Hwy 133 between Carrizo Springs and Artesia Wells. *Magazines* over the following Texas highways as heretofore listed in I above: (15), (16), (20), (21), (22), (23), (24), (25), (27), (28), (29), (33), (47), (48), (51), (52), (57), (60), (61), (62), (63), (66), and (67), and over the following routes: U.S. Hwy 90 between Waelder and Houston; U.S. Hwy 87 between San Antonio and Comfort; State Hwy 133 between Carrizo Springs and Artesia Wells; State Hwy 107 between Edinburg and Mission; State Hwy 44 between Corpus Christi and Robstown. The holder of this authority is authorized to operate over the following alternate routes in the transportation of *Motion picture films, theater supplies and magazines* without service to any intermediate point except as otherwise authorized: State Hwy 136 between Refugio and Rockport; F. M. Road 65 between Crystal City and Brundage; F. M. Road 88 between Elsa and Weslaco; State Hwy 44 between Robstown and Alice; State Hwy 361 between Gregory and Aransas Pass; State Hwy 97 between Nixon and Gonzales. Subject to the restrictions contained in I above. *Flowers and potted plants* over the following Texas highways as heretofore listed in I above: (27), (28), (29), (32), (33), (47), (48), (51), (52), (57), (60), (61), (62), (63), (66) and (67), and over the following routes: U.S. Hwy 87 between San Antonio and Comfort; State Hwy 133 between Carrizo Springs and Artesia Wells.

RESTRICTIONS: (1) The holder of this authority shall operate with closed doors between Refugio and Houston and is prohibited from transporting films originating in Dallas, Texas over the route between Houston and Refugio, and vice versa. (2) The carrier is prohibited from transporting magazines to or from Houston, Corpus Christi, Robstown, Sinton, Odem, Woodsboro and Refugio. (3) The holder of this certificate is restricted against the transportation of the above named commodity to or from McGregor. (4) In the transportation of motion picture films and theater supplies, the holder of this authority shall operate with closed doors between Waelder and Houston, serving Houston and Waelder in both directions, and all points now served by the holder hereof except points north of Temple, Texas on U.S. Highway 81. (5) The holder of this certificate is prohibited from transporting magazines, newspapers, popcorn and candy to Goldthwaite, Camp Hood, Killen, Florence, and Elgin, Texas. (6) The holder of this authority is prohibited from transporting flowers, potted plants and magazines originating in San Antonio, destined to Laredo, Uvalde and Alice. (7) The holder of this authority is prohibited from transporting motion picture films, theater supplies, magazines, flowers and potted plants to or from La Grange, Texas, Schulenburg, Texas, Victoria, Texas, or any intermediate point between Schulenburg and Victoria.

(8) The holder of this authority is prohibited from transporting motion picture films originating in Dallas, Texas moving through Houston to any point served by the holder hereof and vice versa, and prohibited from transporting motion picture films originating at Houston, Texas destined to Victoria or vice versa. (9) The holder of this authority is prohibited from transporting magazines originating at Dallas, Texas destined to Houston, Corpus Christi, Robstown, Sinton, Odem, Woodsboro, and Refugio or moving through San Antonio or any other point destined to Refugio, Woodsboro, Sinton, Odem, Robstown, Corpus Christi and Houston over State Highway 6 between Waco and Hearne; State Highway 164 between Waco and Groesbeck; State Highway 14 between Groesbeck and Bremond; U.S. Highway 77 between Waco and Victoria.

In addition to other alternate routes authorized, the holder hereby is authorized to operate over the following alternate routes, without service to any intermediate point except as otherwise authorized: (1) U.S. Hwy 290, I.S. 10 and State Hwy 27 between Kerrville and Junction; (2) U.S. Hwy 87 between Fredericksburg and Mason; (3) U.S. Hwy 281 between Johnson City and its intersection with State Hwy 71 south of Marble Falls; (4) State Hwy 16 between Fredericksburg and Llano; (5) U.S. Hwy 90a between Sequin and Belmont; (6) State Hwy 71 between Austin and Brady; (7) State Hwy 46 between New Braunfels and Sequin; (8) U.S. Hwy 79 between Hearne and Taylor; (9) State Hwy 95 between Elgin and Taylor; (10) State Hwy 21 between Bastrop and Lincoln; (11) State Hwy 16 between San Antonio and its intersection with U.S. Hwy. 83, near Zapata; (12) I.S., 37 between Corpus Christi and San Antonio; (13) U.S. Hwy 83 between Mission and Rio Grande City; (14) I.S. 10 between Comfort and its intersection with State Hwy 16, near Legion; (15) State Hwy 285 between Falfurrias and Riviera; (16) State Hwy 9 between its intersection with U.S. Hwy 281 north of Three Rivers to Corpus Christi; (17) State Hwy 123 between Stockdale and Karnes City; (18) State Hwy 186 between San Manuel and Raymondville; (19) U.S. Hwy 281 between Edinburg and Pharr; (20) State Hwy 202 between Beeville and Refugio; (21) State Hwy 97 between Waelder and Gonzales; (22) State Hwy 142 between San Marcos and its intersection with U.S. Hwy 183 north of Lockhart; (23) F.M. Road 218 between its intersection with U.S. Hwy 81 and State Hwy 78, near Schertz; (24) State Hwy 131 between Brackettville and its intersection with U.S. Hwy 277, north of Eagle Pass; (25) State Hwy 117 between Uvalde and Batesville; (26) F.M. Roads 1025 and 1867 between Batesville and Big Wells; (27) U.S. Hwy 83 between Carrizo Springs, Texas and its intersection with U.S. Hwy 81, north of Laredo; (28) U.S. Hwy 59 between Laredo and Freer; (29) State Hwy 346 and 173 between San Antonio and Freer; (30) U.S. Hwy 281 between George West and Alice; (31) State Hwy 97 between Pleasanton and Jourdanton; (32) F.M. Road 467 between Pleasanton and Poteet; (33) U.S. Hwy 287 between Midlothian and Waxahachie; (34) F.M. 243 between Bertram and its intersection with U.S. Hwy 183. Intrastate, interstate and foreign commerce authority sought. HEARING: Date, time and place not shown. Requests for procedural information should be addressed to the Texas Railroad Commission, Drawer 12967, Capitol Station, Austin, Tex. 78711, and should *not* be directed to the Interstate Commerce Commission.

California Docket No. 54031 filed May 14, 1973. Applicant: ACME DRAYAGE, 306 B Shaw Road, South San Francisco, Calif. 94080. Applicant's representative: E. H. Griffiths 1182 Market Street, Suite 207, San Francisco, Calif. 94102. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities*, except as hereinafter provided: Between all points and places in the San Francisco Territory, which is described as follows: San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U.S. Highway 101 to its intersection with Southern Pacific Company right of way at Arastradero Road; southeasterly along the Southern Pacific Company right of way to Pollard Road; including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way; southerly along the Southern Pacific Company right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U.S. Highway 40 (San Pablo Avenue); northerly along U.S. Highway 40 to and including the City of Richmond; southwesterly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning. Except that applicant shall not transport any shipments of: (1) Used household goods and personal effects not packed in accordance with the crated property requirements set forth in Paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A. (2) Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps) ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis. (3) Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine. (4) Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers, or a combination of such highway vehicles. (5) Commodities when transported in bulk in dump trucks or in hopper-type trucks. (6) Commodities when transported in motor vehicles equipped for mechanical mixing in transit. (7) Cement. (8) Logs. (9) Commodities of unusual or extraordinary value. (10) Fresh fruits and vegetables. Intrastate, interstate and foreign commerce authority sought.

HEARING: Date, time and place not shown. Requests for procedural information should be addressed to the California Public Utilities Commission, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, Calif., 94102, and should *not* be directed to the Interstate Commerce Commission.

By the Commission.

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

[FR Doc.73-12959 Filed 6-26-73;8:45 am]

[Notice No. 305]

MOTOR CARRIER TRANSFER PROCEEDINGS

JUNE 22, 1973.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer rules, 49 CFR Part 1132:

No. MC-FC-74571. By application filed June 18, 1973, J-V INC., 9832 Tonya Dr., Sandy UT 84070, seeks temporary authority to lease the operating rights of Robert S. Withers, doing business as Robert Withers Trucking, 723 E. 8425 So., Sandy, UT 84070, under section 210a(b). The transfer to J-V INC., of the operating rights of Robert S. Withers, doing business as Robert Withers Trucking, is presently pending.

By the Commission.

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

[FR Doc.73-12954 Filed 6-26-73;8:45 am]

[No. MC-C-8106]

NORTH AMERICAN VAN LINES INC. AND SMYTHE OVERSEAS VAN LINES INC.

Filing of Petition

JUNE 22, 1973.

Petition for Declaratory Order. Joint Petitioners: North American Van Lines, Inc. (Fort Wayne, Ind.) and Smythe Overseas Van Lines, Inc. (Seattle, Wash.). Petitioners' representative: Alan F. Wohlstetter, 1700 K Street, N.W., Washington, D.C. 20006.

By joint petition filed May 17, 1973, as amended, petitioners seek a ruling as to whether two carriers, each of which is authorized by the Interstate Commerce Commission, to operate in interstate or foreign commerce, one between points in the 48 coterminous States, and the other between points in Alaska, may lawfully effect an interchange at points in Canada to provide a through service between points in Alaska, on the one hand, and, on the other, points in the 48 coterminous States; or alternatively, whether the "common point of service" required to effect a lawful interchange under § 1057.2(c) of the Interstate Commerce Commission's Lease and Interchange Regulations (49 CFR 1057.2(c)), may be a point of service authorized by a foreign sovereign.

Petitioners state that North American holds authority in Certificate No. MC-107012 to transport household goods as defined by the Commission, between points in Alaska, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii); that Smyth Overseas holds authority in No. MC-118482 (Sub-No. 6) to transport household goods, as defined by the Commission, between Seattle, Wash., on the one hand, and, on the other, points in Alaska, and has pending an application in its Sub-No. 9 proceeding, seeking authority to transport household goods, as defined by the Commission, between Minneapolis, Minn., on the one hand, and, on the other, points in Alaska; that a number of carriers holding authority from this Commission to operate exclusively in Alaska have been interlining at points in Canada with other carriers holding authority from this Commission to operate exclusively within the coterminous 48 States; and that these interlining carriers have been providing a service materially adverse to their own. Petitioners further argue that such interline operations are not allowed under the Commission's rules, inasmuch as the point at which the alleged interline occurs is located in Canada, and as such, the common service points are not authorized by the Commission. Petitioners therefore request a determination that such interline operations at service points in Canada for the purpose of providing a through movement between points in Alaska, on the one hand, and, on the other, points in the 48 coterminous States are not authorized by the Commission.

Any person (including petitioners) desiring to participate in this proceeding shall file an original and fifteen (15) copies of written representations, views, and arguments in the matter on or before August 15, 1973. A copy of each representation shall be filed on petitioners' representative.

Written material or suggestions submitted will be available for public inspection at the Offices of the Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, D.C., during the regular business hours.

Notice to the general public of the matter herein under consideration will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission.

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

[FR Doc.73-12960 Filed 6-26-73;8:45 am]

[Ex Parte MC 55 (Sub-No. 8)]

DEVIATION OF AUTHORIZED REGULAR ROUTE OPERATIONS, ETC.

Petition for Initiation of a Rulemaking Procedure

JUNE 22, 1973.

Notice To All Parties:

At the request of Mr. Robert J. Gallagher, Attorney for the petitioning carriers, the time for filing representations in the above-entitled proceeding has been extended from July 6, 1973 to August 6, 1973.[1]

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

[FR Doc.73-12961 Filed 6-26-73;8:45 am]

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[1] See 38 FR 10851 for previous publication in this matter.

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PART II

DEPARTMENT OF LABOR

Employment Standards Administration

■

BLACK LUNG BENEFITS PROGRAM

Title 20—Employees' Benefits

CHAPTER VI—EMPLOYMENT STANDARDS ADMINISTRATION, DEPARTMENT OF LABOR

SUBCHAPTER B—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, AS AMENDED

BLACK LUNG BENEFITS PROGRAM

On September 30, 1972, 20 CFR chapter VI was amended subsequent to comments, objections, and recommendations to a notice of proposed rulemaking (37 FR 18152–18167), by adding thereto new parts 715, 718, and 720 (37 FR 20612–20631. Due to the short period allowed for public comments on the proposed parts 715, 718, and 720, the time for comments was extended beyond the date of promulgation until November 20, 1972. Some comments, recommendations, and objections were received after the September 30, 1972, promulgation date concerning parts 715 and 720. Each of such comments, recommendations, and objections has been carefully and fully considered and changes in parts 715 and 720 were made where appropriate.

In addition, certain amendments made by Public Law 92–576 to the Longshoremen's and Harbor Workers' Compensation Act (LHWCA) (33 U.S.C. 901 et seq.) which became effective on November 26, 1972, are required by section 415 of part B of title IV of the Federal Coal Mine Health and Safety Act (83 Stat. 742), as amended by Public Law 92–303 (86 Stat. 156) to be incorporated by the procedures described in parts 715 and 720. Accordingly, a number of changes have been made in parts 715 and 720 to reflect these amendments to the LHWCA.

Considering the broad extent of the amendments to parts 715 and 720, I find it appropriate and in the best interest of those persons who may claim for benefits under section 415 of part B of title IV of the Federal Coal Mine Health and Safety Act, as amended, to republish in their entireties parts 715, 718, and 720 incorporating the amendments made to these sections.

These amended parts 715, 718, and 720 shall become effective on July 1, 1973. Any comments, recommendations, or objections received before that date shall be considered and acted upon where appropriate.

PART 715—BLACK LUNG BENEFITS PROGRAM UNDER TITLE IV OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT; GENERAL PROVISIONS

1. Part 715 is revised as follows:

INTRODUCTION

Sec.
715.1 Purpose and scope of this part.

MEANING AND USE OF TERMS IN THE ACT AND THIS SUBCHAPTER

715.101 General definitions and use of terms.

BENEFITS PROVIDED BY THE ACT AND ELIGIBILITY THEREFOR

715.201 Types of benefits; general.
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715.301 Disclosure of program information and records.

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AUTHORITY.—Title IV, Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 742, 30 U.S.C. 901 et seq., as amended by Public Law 92–303, 86 Stat. 156, and pursuant to such Act under 44 Stat. 1424, 33 U.S.C. 901 et seq., as amended by Public Law 92–576, 86 Stat. 1251; 5 U.S.C. 301; Secretary of Labor's Order 13–71, 36 FR 8755.

INTRODUCTION

§ 715.1 Purpose and scope of this part.

(a) *General.*—It is the purpose of this part to set forth certain rules having general application to the parts in this subchapter dealing with the claims of coal miners and their survivors for pneumoconiosis benefits pursuant to those provisions of title IV of the Federal Coal Mine Health and Safety Act of 1969 (as amended by the Black Lung Benefits Act of 1972), for which the Act places responsibilities in the Secretary of Labor.

(b) *Statutory provisions.*—Title IV of such act makes provision for the payment of disability benefits to coal miners in cases of total disability from pneumoconiosis and death benefits to their survivors as therein provided in cases of a miner's death due to or while totally disabled by pneumoconiosis (coal workers' black lung disease). In section 415 of part B and in part C of the title, the Act assigns the Secretary of Labor specified functions in the administration of the benefits program with respect to claims for disability and death benefits filed on and after July 1, 1973. The Act also makes applicable, for the determination and payment of those claims for which the Act imposes liability on coal mine operators or on the Federal Government in lieu thereof, many of the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended. The federally administered program applicable on and after January 1, 1974, under part C of the title applies to new claims of miners or their survivors only during periods when no State workmen's compensation law providing adequate coverage for pneumoconiosis is available for determination and payment of such claims. The Act makes the Secretary of Labor responsible for determining which workmen's compensation laws of the States provide adequate coverage for pneumoconiosis and the periods in which such coverage is provided, and charges the Secretary with the responsibility for publishing and keeping current a list of such laws which, in accordance with specified criteria, he has determined to provide adequate coverage for periods on and after January 1, 1974.

(c) *Matters included in this part.*—For application in connection with the rules and procedures set forth in the parts of this subchapter with respect to the filing of benefit claims under title IV of the Act and the processing and adjudication of such claims, there are included in this part (1) definitions and general rules with respect to use of terms in this subchapter, (2) a description of the types of benefits provided by the Act and rules governing eligibility therefor, and (3) rules with respect to access to information in program records.

MEANING AND USE OF TERMS IN THE ACT AND THIS SUBCHAPTER

§ 715.101 General definitions and use of terms.

(a) *Definitions.*—For purposes of this subchapter, except where the content clearly indicates otherwise, the following definitions apply:

(1) "The Act" means the Federal Coal Mine Health and Safety Act of 1969 (Public Law 92–303) as amended May 19, 1972, and as it may hereafter be amended.

(2) "Benefits" means benefits paid or payable under or pursuant to section 415 or part C of title IV of the Act on account of the total disability or death of a miner due to pneumoconiosis, including the death of such a miner while totally disabled by such disease.

(3) "Pneumoconiosis" means a chronic dust disease of the lung arising out of employment in a coal mine, and includes the diseases listed in § 410.110(o) of this title.

(4) The term "total disability" has the meaning given it by regulations of the Secretary of Health, Education and Welfare as set forth in subpart D of part 410 of this title (see part 718 of this subchapter).

(5) "Miner" or "coal miner" means any individual who is or was employed in a coal mine, performing functions in extracting the coal or preparing the coal so extracted.

(6) "Operator" means any owner, lessee, or other person who operates, controls, or supervises, a coal mine.

(7) "Prior operator" means an operator who has transferred a coal mine or substantially all the assets of a coal mine to another person after December 30, 1969.

(8) "Coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface, of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite, from its natural deposits in the earth by any means or method, and

the work of preparing the coal so extracted, and includes custom coal preparation facilities.

(9) "Underground coal mine" means a coal mine in which the earth and other materials which lie above the natural deposit of coal (overburden) is not removed in mining. In addition to the natural deposit of coal in the earth, the underground coal mine includes all land, buildings, and equipment, appurtenant thereto.

(10) "The Nation's coal mines" comprises all coal mines as defined in paragraph (a)(8) of this section, located in a State as defined in paragraph (a)(11) of this section.

(11) "State" includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and prior to January 3, 1959, and August 21, 1959, respectively, the territories of Alaska and Hawaii.

(12) The "Social Security Act" means the Social Security Act (49 Stat. 620, 42 U.S.C. 301 et seq.) as amended from time to time.

(13) The "Longshoremen's Act" or "LHWCA" means the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. 901 et seq.) as amended from time to time.

(14) "Secretary" means the Secretary of Labor or a person authorized by him to perform his functions under title IV of the Act.

(15) "Department" means the Department of Labor.

(16) "Office" or "OWCP" means the Office of Workmen's Compensation Programs, Employment Standards Administration, Department of Labor, Washington, D.C. 20210.

(17) "Deputy commissioner" means a person appointed as provided in sections 39 and 40 of the Longshoremen's Act, or his designee, and authorized by the Director of the Office of Workmen's Compensation Programs as having authority to make determinations in respect to claims for total disability or death due to pneumoconiosis as provided in this subchapter.

(18) A "workmen's compensation law" means a law providing for payment of compensation by employers to employees (and their dependents) for injury (including occupational disease), or death suffered in connection with their employment.

(19) "State agency" means, with respect to any State, the agency, department, or officer designated by the workmen's compensation law of the State to administer such law. In any case in which more than one agency participates in the administration of a State workmen's compensation law, the Governor may designate which of such agencies shall be the State agency for purposes of this subchapter.

(20) "Insurer" or "carrier" means any private company, corporation, mutual association, reciprocal, or interinsurance exchange, or any other person or fund, including any State fund, authorized under the laws of a State to insure an employer's liability under workmen's compensation laws.

(21) "Claimant" means an individual whose claim to entitlement for benefits under title IV of the Act has been filed in accordance with the provisions of the Act and the applicable regulations issued thereunder. As used in part 720 of this subchapter, the term means such an individual whose claim is subject to the provisions of section 415 of part B of such title and has been filed as provided in part 717 of this subchapter. As used in part 725 of this subchapter, the term means such an individual whose claim is subject to the provisions of part C of such title and has been filed as provided in such part 725.

(22) "Claim" means an assertion in writing of an individual's entitlement to benefits under or pursuant to title IV of the Act, submitted in a form and manner authorized by the regulations in this subchapter. The term includes claims of living miners for total disability benefits and claims of those miners' widows, children, parents, brothers, and sisters whose entitlement to benefits on the death of a miner is provided for by the Act. As used in parts 717 and 720 of this subchapter, the term refers to those claims for benefits payable under part B of title IV of the Act which are filed before the cutoff date specified in sections 413(a) and 414 for entitlement under part B and which are subject to the provisions of section 414(b) and section 415 of the Act because they were not filed prior to July 1, 1973. Such claims include new claims of living miners for disability benefits filed after June 30, 1973, but before January 1, 1974. As used in part 725 of this subchapter, the term refers to those claims for benefits payable under part C of title IV of the Act. Such claims include new claims of living miners for disability benefits filed after December 31, 1973, and death benefit claims or surviving dependents of miners who were not entitled to part B benefits at the time of death, or of miners (or their widows) who were entitled to part B benefits at the time of death but whose survivors failed to file for survivors benefits within 6 months of the date of death or by December 31, 1973, whichever is later.

(23) "Beneficiary" means a miner or a surviving widow, child, parent, brother, or sister who is entitled to a benefit as defined in paragraph (a)(2) of this section.

(24) "Entitlement" means entitlement to benefits as determined pursuant to the provisions of the Act and the procedures set forth in this subchapter. A beneficiary is "entitled" to benefits as so determined when the determination is final.

(25) "Office of Administrative Law Judges" means the Office of the Administrative Law Judges of the Department of Labor Washington, D.C. 20210.

(26) "Chief Administrative Law Judge" means the Chief Administrative Law Judge of the Department of Labor, Washington, D.C. 20210.

(27) "Administrative law judge" means an administrative law judge appointed pursuant to the provisions of sections 554 et seq. of title 5 of the United States Code and employed by the Department of Labor, Washington, D.C. 20210.

(28) "Benefits Review Board" or "Board" means the Benefits Review Board appointed by the Secretary of Labor pursuant to the provisions of section 21 of the Longshoremen's Act.

(29) "Employment Standards Administration" means the Employment Standards Administration of the Department of Labor, Washington, D.C. 20210.

(b) *Statutory terms.*—The definitions contained in these regulations shall not be considered to derogate from the terms of the Federal Coal Mine Health and Safety Act of 1969, as amended.

(c) *Dependents and survivors.*—Part A of title IV of the Act in section 402 (a), (e), and (g), defines the terms "dependent," "widow," and "child." In section 412(a)(5) of part B and in part C and of title IV, the Act provides for determination of the relationship of parent, brother, or sister to a miner by standards consistent with those applicable to relationship determination under title II of the Social Security Act. For purposes of this subchapter, the determination of the individuals who possess the required relationship to, or who have the status of dependents of, a miner under the provisions of title IV of the Act shall be made in accordance with the rules set forth in the Social Security Administration's Regulations in part 410, subpart C of this title.

(d) *Inclusive terms.*—Masculine gender includes the feminine, and the singular includes the plural.

BENEFITS PROVIDED BY THE ACT AND ELIGIBILITY THEREFOR

§ 715.201 Types of benefits; general.

(a) Title IV of the Act provides for the payment of periodic benefits:

(1) To a miner who is determined to be totally disabled due to pneumoconiosis; or

(2) To the widow or child of a miner (i) who was receiving benefits at the time of his death; or (ii) who is determined to have been totally disabled due to pneumoconiosis at the time of his death; or (iii) whose death was due to pneumoconiosis; or

(3) To the child of a widow of a miner who was receiving benefits at the time of her death; or

(4) To the surviving dependent parents, where no widow or child survives, or the surviving dependent brothers or sisters, where there is no surviving widow, child, or parent, of a miner who was receiving benefits at the time of his death; or who was totally disabled due to pneumoconiosis at the time of his death; or whose death was due to pneumoconiosis.

(b) The following sections set out the conditions of entitlement to benefits for a miner or for a widow, child, parent,

brother, or sister, and describe the events which terminate or preclude entitlement to benefits. Also see subpart C of part 410 of chapter III of this title for regulations relating to the relationship and dependency requirements applicable to claimants for benefits as widow, a child, parent, brother, or sister and to beneficiaries with dependents.

§ 715.205 Conditions of entitlement; miner.

(a) An individual is eligible for benefits under this subchapter if such individual:

(1) Is a miner as defined in § 715.101 (a)(5);

(2) Is totally disabled due to pneumoconiosis (see pt. 718 of this subchapter); and

(3) Has filed a claim for benefits in accordance with the provisions of part 717 (or, after Dec. 31, 1973, pt. 725) of this subchapter.

(b) An individual is entitled to have his eligibility for benefits determined under this subchapter if such individual:

(1) Is a miner as defined in § 715.101 (a)(5); and

(2) Has filed a claim for benefits (i) in accordance with the provisions of part 717 of this subchapter after June 30, 1973, but before January 1, 1974, or (ii) after December 31, 1973, in accordance with the provisions of part 725 of this subchapter.

§ 715.206 Duration of entitlement; miner.

(a) An individual is entitled to benefits as a miner for each month beginning with the first month in which all of the conditions for entitlement prescribed in § 715.205 are satisfied.

(b) The last month for which such individual is entitled to benefits is the month during which either of the following events first occurs:

(1) The miner dies; or

(2) The miner's total disability ceases.

(c) A miner's entitlement to Federal payment of benefits under section 415 of part B of title IV of the Act on a claim filed after June 30, 1973, and before January 1, 1974, shall terminate on December 31, 1973, unless terminated sooner under paragraph (b) of this section. If not so terminated under paragraph (b) of this section the payment of benefits after December 31, 1973, shall be as provided in part C of title IV and section 415 of part B of such title and part 725 of this subchapter.

§ 715.207 Conditions of entitlement; widow or surviving divorced wife.

(a) An individual is eligible for benefits if such individual:

(1) Is the widow or surviving divorced wife of a miner;

(2) Is not married;

(3) Was dependent on the miner at the pertinent time (see § 715.101(c)); and

(4) The deceased miner either:

(i) Was receiving benefits at the time of his death; or

(ii) Died before January 1, 1974, and it is determined that he was totally disabled due to pneumoconiosis at the time of his death, or that his death was due to pneumoconiosis. (See pt. 718 of this subchapter.)

(b) An individual meeting the foregoing requirements is entitled to have her eligibility for benefits determined under this subchapter upon filing a claim for such benefits in accordance with the applicable provisions of this subchapter.

§ 715.208 Duration of entitlement; widow or surviving divorced wife.

(a) An individual is entitled to benefits as a widow, or as a surviving divorced wife, for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 715.207 are satisfied.

(b) The last month for which such individual is entitled to such benefit is the month in which either of the following events first occurs:

(1) The widow or surviving divorced wife marries; or

(2) The widow or surviving divorced wife dies; or

(3) Where the individual qualifies as the widow of a miner under § 410.320(d) of this title, she ceases to qualify as provided therein.

§ 715.211 Conditions of entitlement; child.

(a) An individual is eligible for benefits if such individual:

(1) Is the child of:

(i) A deceased miner, or

(ii) The widow of a miner who was receiving benefits at the time of her death;

(2) Meets the dependency requirements in § 410.370 of this title;

(3) Is a child of a miner, and the deceased miner:

(i) Was receiving benefits at the time of his death, or

(ii) His death was due to pneumoconiosis (see pt. 718 of this subchapter), or

(iii) At the time of his death was totally disabled by pneumoconiosis.

(4) A child is not entitled to benefits for any month for which a widow of a miner establishes entitlement to benefits.

(5) A child is eligible for survivor benefits on death of a miner only under part C of title IV of the act if the miner died after December 31, 1973.

(b) An individual meeting the foregoing requirements is entitled to have his eligibility for benefits determined under this subchapter upon filing a claim for such benefits in accordance with the applicable provisions of this subchapter.

§ 715.212 Duration of entitlement; child.

(a) An individual is entitled to benefits as a child for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 715.211 are satisfied.

(b) The last month for which such individual is entitled to such benefit is the month in which any one of the following events first occurs:

(1) The child dies;

(2) The child marries;

(3) The child attains age 18, and

(i) Is not under a disability at that time, and

(ii) Is not a student (as defined in § 410.370 of this title) during any part of the month in which he attains age 18;

(4) If the child's entitlement is based on his status as a student, the earlier of:

(i) The first month during no part of which he is a student, or

(ii) The month in which the attains age 23 and is not under a disability at that time;

(5) If the child's entitlement is based on disability, the first month in no part of which such individual is under a disability;

(c) A child whose entitlement to benefits terminated with the month before the month in which he attained age 18, or later, may thereafter (provided he is not married) again become entitled to such benefits upon filing application for such reentitlement, beginning with the first month after such termination in which he is a student and has not attained the age of 23.

§ 715.215 Conditions of entitlement; parent, brother, or sister.

(a) An individual is eligible for benefits if:

(1) Such individual is the parent, brother, or sister of a deceased miner;

(2) Such individual was dependent on the miner at the pertinent time; and

(3) Proof of support must be filed within 2 years after the miner's death, unless it is demonstrated to the satisfaction of the Secretary that there is good cause for the failure to timely file such proof (see § 715.217).

(4) In the case of a brother, he also:

(i) Is under 18 years of age; or

(ii) Is 18 years of age or older and is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d), which began before he attained age 18, or in the case of a student, before he ceased to be a student (see § 410.370(c) of this title); or

(iii) Is a student (see § 410.370(c) of this title); or

(iv) Is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d), at the time of the miner's death;

(5) The deceased miner:

(i) Was entitled to benefits at the time of his death; or

(ii) His death is determined to have been due to pneumoconiosis; or

(iii) At the time of his death he was totally disabled by pneumoconiosis.

(b)(1) A parent is not entitled to benefits if the deceased miner was survived by a widow or child at the time of his death.

(2) A brother or sister is not entitled to benefits if the deceased miner was survived by a widow, child, or parent, at the time of his death.

(3) A parent, brother, or sister is eligible for survivor benefits on death of a miner only under part C of title IV of the Act if the miner died after December 31, 1973.

(c) An individual meeting the foregoing requirements is entitled to have his eligibility for benefits determined under this subchapter upon filing a claim for such benefits in accordance with the applicable provisions of this subchapter.

§ 715.216 Duration of entitlement; parent, brother, or sister.

(a) A parent, brother, or sister is entitled to benefits beginning with the month all the conditions of entitlement described in § 715.215 are met.

(b) The last month for which such parent is entitled to benefits is the month before the month in which the parent dies.

(c) The last month for which such sister is entitled to benefits is the month in which any of the following events occurs:

(1) She dies;

(2) (i) She marries or remarries; or

(ii) If already married, she receives support in any amount from her spouse.

(d) The last month for which such brother is entitled to benefits is the month before the month in which any of the following events first occurs:

(1) He dies;

(2) (i) He marries or remarries; or

(ii) If already married, he received support in any amount from his spouse;

(3) He attains age 18, and

(i) Is not under a disability at that time, and

(ii) Is not a student (see § 410.370(c) of this title) during any part of the month in which he attains age 18;

(4) If his entitlement is based on his status as a student, the earlier of:

(i) The first month during no part of which he is a student; or

(ii) The month in which he attains age 23 and is not under a disability at that time;

(5) If his entitlement is based on disability the first month in no part of which such individual is under a disability.

§ 715.217 "Good cause" for delayed filing of proof of support.

(a) *What constitutes "good cause".*—"Good cause" may be found for failure to file timely proof of support where the parent, brother, or sister establishes to the satisfaction of the Office that such failure to file was due to:

(1) Circumstances beyond the individual's control, such as extended illness, mental, or physical incapacity, or communication difficulties; or

(2) Incorrect or incomplete information furnished the individual by the Office; or

(3) Efforts by the individual to secure supporting evidence without a realization that such evidence could be submitted after filing proof of support.

(b) *What does not constitute "good cause".*—"Good cause" for failure to file timely proof of support (see § 715.215(a)(3)) does not exist when there is evidence of record in the Office that the individual was informed that he should file within the prescribed period and he failed to do so deliberately or through his own negligence.

§ 715.220 Effect of conviction of felonious and intentional homicide on entitlement to benefits.

An individual who has been finally convicted by a court of competent jurisdiction of the felonious and intentional homicide of a miner or other beneficiary shall not be entitled to receive any benefits payable because of the death of such miner or other beneficiary, and such felon shall be considered nonexistent in determining the entitlement to benefits of other individuals with respect to such miner or other beneficiary.

INFORMATION IN PROGRAM RECORDS

§ 715.301 Disclosure of program information and records.

(a) Disclosure of any file, record, report, or other document or information in the custody of the Department, of Labor or any of its officers or employees or in the custody of any person, agency, or organization with whom the Office of Workmen's Compensation Programs has entered into an agreement to perform certain functions with respect to the administration of provisions of title IV of the act which in any way relates to or is in connection with the administration of such title, shall be made in accordance with the regulations of the Department contained in 29 CFR, part 70, and § 1.22 of this title.

(b) All records, data, or information of any kind relating to the disability or death of a miner or other person entitled to benefits under the act and all amendments or extensions thereof, are the official records of the Office of Workmen's Compensation Programs and are not records of any other agency, establishment, or department, or of any other component unit of the Department of Labor, making or having the case or use of such records or information. Such records and information are confidential and shall not be disclosed except as provided in 29 CFR, part 70 and 20 CFR 1.22

SERVICE OF PAPERS, NOTICES

§ 715.401 Service and form of papers, notices and briefs.

(a) Unless otherwise indicated any paper, document, brief, or other statement required to be submitted in respect of formal proceedings to adjudicate a claim under parts 720 and 725 of this subchapter to the parties in interest shall be served on each such party or mailed to each such party by the party submitting such paper, document, brief, or other statement.

(b) Unless otherwise indicated any notice order, brief, pleading, or other document required to be served upon or by a deputy commissioner, administrative law judge, or the Secretary or upon or by any party shall be served by mail or personal service. Proof of service shall be submitted to the appropriate adjudication officer and filed as a part of the record.

(c) Whenever any notice, paper, or document is served by mail, 3 days shall be added to the specified period within which the reply or response to such notice, paper, or document is required to be made.

§ 715.402 Periods of limitation ending on nonwork days.

Where any applicable provision of title IV of the Act, or any provision of another law of the United States relating to or changing the effect of title IV, or any regulation of the Secretary issued under title IV, provides for a period within which an act is required to be done which affects eligibility for or the amount of any benefit or payment under this title and such period ends on a Saturday, Sunday, or Federal legal holiday or on any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order, then such act shall be considered as done within such period if it is done on the first day thereafter which is not a Saturday, Sunday, or legal holiday or any other day all or part of which is declared to be a nonwork day for Federal employees either by statute or Executive order. For purposes of this section, the day on which a period ends shall include the final day of any extended period where such extension is authorized by law or by the Secretary pursuant to law. Such extension of any period of limitation does not apply to any periods during which benefits may be paid for months prior to the month a claim for such benefits is filed.

PART 718—STANDARDS FOR DETERMINING COAL MINER'S TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS

2. Part 718 is revised as follows:

Sec.
718.1 Statutory provisions.
718.2 The applicable standards.

AUTHORITY.—Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, 83 Stat. 792; 86 Stat. 150, and Secretary of Labor's Order No. 13-71, 36 FR 8755.

§ 718.1 Statutory provisions.

Under sections 415 and 422 of title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, the Secretary of Labor is charged with the duty of adjudicating disability and death claims of coal miners and their surviving dependents for the pneumoconiosis benefits which the Act provides for such individuals. Under section 421 of the Act, the Secretary of Labor is charged with the duty of establishing criteria for determining whether workmen's compensation laws of the States provide adequate coverage for pneumoconiosis and for determining which such laws meet these criteria. The Act requires the Secretary of Labor, in his performance of these functions, to apply or provide for application of standards for determining

whether a coal miner is totally disabled due to pneumoconiosis, was totally disabled due to pneumoconiosis at the time of his death, or died from pneumoconiosis which accord with those promulgated by the Secretary of Health, Education, and Welfare pursuant to and in conformity with the provisions of sections 402(f) and 411 of title IV of such Act.

§ 718.2 The applicable standards.

The standards applicable for determining, under the provisions of this subchapter and sections 415 and 422 of the Federal Coal Mine Health and Safety Act, as amended, whether a coal miner is totally disabled due to pneumoconiosis, was totally disabled due to peneumoconiosis at the time of his death, or died from pneumoconiosis, are those promulgated by the Secretary of Health, Education and Welfare as set forth in subpart D of part 410 of this title. Except that the interim adjudicatory rules promulgated by the Secretary of Health, Education and Welfare which are published in § 410.490 of this title shall not apply to any claim adjudicated by the Secretary of Labor under section 415 or section 422 of the Act. Pursuant to section 421 of such Act and part 722 of this subchapter, a workmen's compensation law of a State will not be considered to provide adequate coverage for pneumoconiosis unless its standards for making the foregoing determinations are substantially equivalent to those set forth in part 410 of this title.

PART 720—DETERMINATION OF BLACK LUNG BENEFITS CLAIMS UNDER SECTION 415 OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT AND PAYMENT OF BENEFITS TO CLAIMANTS

3. Part 720 is revised as follows:

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720.100 Statutory provisions.
720.101 Scope of this part.
720.102 Applicability of other parts in this subchapter.

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720.108 Type of claims processed pursuant to this part.
720.109 Treatment of claims previously filed with the Social Security Administration.
720.110 Action to be taken by the Office—general.
720.111 Action to be taken by the Office—miner's claim.
720.112 Filing of claim with deputy commissioner.
720.113 Notification of operators.
720.114 Operator's response to notification.
720.120 Final adjudication; no responsible operator.
720.121 Filing claim under State workmen's compensation law.

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720.200 Scope and applicability of this subpart.
720.201 Adjudication officers.
720.202 Powers of adjudication officers.
720.203 Disqualification of adjudication officer.
720.204 Changes in procedures.

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720.211 Determination of disability.
720.212 General procedures for determination of contested issues.
720.213 Presumptions.
720.214 Abandonment of a claim.

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720.221 Party amicus curiae.
720.222 Representation of parties.
720.223 Qualifications of representative.
720.224 Authority of representative.
720.225 Legal assistance.
720.226 Legal services.
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720.233 Time and place of conference.
720.234 Preparation for conferences.
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720.237 Participation by the deputy commissioner.
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720.285 Termination of formal hearings.
720.286 Preparation of final decision and order.
720.287 Form of final decision and order.
720.288 Contents of decision and order.
720.289 Formal hearings; filing and mailing of orders; disposition of transcripts.
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720.291 Finality of decisions and orders.
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720.299 Costs in proceedings brought without reasonable grounds.

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720.435 Payment on behalf of an individual.
720.436 Submission of evidence by representative payee.
720.437 Responsibility of representative payee.
720.438 Use of benefits for current maintenance.
720.439 Conservation and investment of payments.
720.440 Use of benefits for beneficiary in institution.
720.441 Support of legally dependent spouse, child, or parent.
720.442 Claims of creditors.
720.443 Accountability.
720.444 Transfer of accumulated benefit payments.

AUTHORITY.—Title IV, Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 742, 30 U.S.C. 901 et seq., as amended by Public Law 92-303, 86 Stat. 156, and pursuant to such Act under 44 Stat. 1424, 33 U.S.C. 901 et seq., as amended by Public Law 92-576, 86 Stat. 1251, 5 U.S.C. 301; Secretary of Labor's Order 13-71; 36 FR 8755.

Subpart A—General

INTRODUCTION

§ 720.100 Statutory provisions.

(a) Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, provides for the payment of prescribed benefits to coal miners who are totally disabled due to pneumoconiosis and to surviving widows, children, parents, brothers, and sisters as provided in the Act in case of death of a coal miner who is receiving disability benefits under the Act or is totally disabled by pneumoconiosis at the time of his death or whose death is due to pneumoconiosis.

(b) Part B of title IV of the Act provides for the determination and the payment by the Federal Government of such benefits on disability claims filed before January 1, 1974, and on death claims filed before such date or within 6 months of the death of a miner who dies before such date, whichever is the later date. In the case of claims filed before such terminal date, Federal payment of benefits to which entitlement is established under part B of title IV of the Act continues beyond such terminal filing date so long as the claimant remains eligible therefor, except in those cases which are subject to special provisions terminating liability for Federal payment of benefits under part B at the end of the part B filing period with respect to claims therefor which were not filed before July 1, 1974.

(c) In the case of claims for benefits under part B of title IV of the Act filed after June 30, 1973, and subject to the special provisions mentioned in paragraph (b) of this section, section 415 of part B provides for the filing of such claims at the places and in the manner provided by joint regulations of the Secretary of Labor and the Secretary of Health, Education, and Welfare and for the transfer of such claims to the Secretary of Labor who is to determine such claims in accordance with the procedures provided in section 415 and regulations promulgated thereunder by the Secretary after consultation with the Secretary of Health, Education, and Welfare. Under section 415, benefits to which the claimant is determined to be entitled under part B of title IV are to be paid by the Secretary of Labor for the period from the filing date to the date of termination of Federal part B payments as provided in the special provisions mentioned in paragraph (b) of this section. For periods thereafter, liability for continued payment of benefits is placed in the responsible coal mine operators as determined in accordance with part C of title IV of the Act and section 422 thereof or, if a workmen's compensation law of a State is found by the Secretary to provide adequate coverage for pneumoconiosis, under such workmen's compensation law as provided in section 421 of part C. For any periods after December 31, 1973, when the payment by a responsible operator of benefits to which the claimant is found entitled pursuant to section 415 of the Act is not assured, or the payment of equivalent or greater benefits under an applicable State workmen's compensation law is not assured, the Secretary of Labor is to make benefit payments from Federal funds pursuant to the provisions of section 415 of part B and section 424 of part C as appropriate. These provisions are intended to assure the uninterrupted receipt of benefits by claimants filing therefor on or after July 1, 1973, during the period of transition from full Federal liability for benefits under part B of title IV to mine operators' liablity under part C or under adequate State workmen's compensation laws identified as provided in part C.

(d) Part C of title IV of the Act makes provision for payment of pneumoconiosis disability and death claims filed on or after January 1, 1974. Under the provisions of part C, in States having a workmen's compensation law meeting the criteria set forth in part 722 of this subchapter, such claims are to be filed pursuant to such State law. In periods when no such law is applicable, the Secretary of Labor is charged with administering a program following the provisions of the Longshoremen's and Harbor Workers' Compensation Act under which responsibility for payment of pneumoconiosis benefits is placed upon operators of coal mines in which the miners who contracted pneumoconiosis were employed. Benefit payments by the Secretary of Labor are made in cases where payments to which a claimant is entitled are not available from the sources specified.

§ 720.101 Scope of this part.

This part sets forth in subparts A and B the rules which will be applied by the Secretary of Labor in the adjudication, under section 415 of part B of title IV of the Act, of claims for pneumoconiosis benefits under such part B which are filed within the period permitted for filing of such claims but after June 30, 1973. Subpart C of this part sets forth the rules under which the Secretary of Labor will provide for payment of benefits to claimants determined to be entitled thereto pursuant to the rules in subparts A and B of this part.

§ 720.102 Applicability of other parts in this subchapter.

(a) Part 715 of this subchapter contains general provisions, including definitions of terms, which are applicable to the rules set forth in this part.

(b) Part 717 of this subchapter contains the joint regulations of the Secretary of Labor and the Secretary of Health, Education, and Welfare with respect to the place and manner of filing claims under part B of title IV of the Federal Coal Mine Health and Safety Act, as amended, on and after July 1, 1973, for determination by the Secretary of Labor under the adjudicatory process set forth in subpart B of this part and for payment of benefits as provided in subpart C of this part and section 415 of the Act.

(c) Part 718 of this subchapter identifies the standards which will be applied by the Secretary of Labor in the adjudicatory process under title IV of the Act as set forth in subpart B of this part, in making determinations as to whether a coal miner is totally disabled due to pneumoconiosis was totally disabled due to pneumoconiosis at the time of his death, or died from pneumoconiosis.

(d) Part 725 of this subchapter contains the rules and regulations by which the Department of Labor shall accept, process, and adjudicate all claims for black lung benefits filed pursuant to part C of title IV of the Act after December 31, 1973. All new claims filed after December 31, 1973, shall be filed pursuant to the provisions of part 725.

PREPARATION AND FILING CLAIMS FOR ADJUDICATION

§ 720.108 Type of claims processed pursuant to this part.

Claims filed after June 30, 1973, but before January 1, 1974, pursuant to the provisions of section 415 of part B of title IV of the Act by living miners only, shall be processed and paid pursuant to this part. All claims filed during such period which are predicated upon the death of a miner shall be filed, processed, and paid pursuant to the provisions contained in part 410 of this title.

§ 720.109 Treatment of claims previously filed with the Social Security Administration.

(a) *Approved claims.*—Claims of living miners filed prior to July 1, 1973, with the Social Security Administration pursuant to the applicable provisions of part B of title IV of the Act shall be processed, adjudicated, and paid by the Administration if such miner's total disability is determined to have begun prior to July 1, 1973. Such miner may file a new claim with the Department pursuant to section 415 of part B of the Act and the regulations contained in parts 717 and 718 of this subchapter and in this part in order to obtain such additional benefits, including medical benefits, as may become available to such miner beginning January 1, 1974, as provided by part C of title IV of the Act and the regulations promulgated thereunder. In no event shall such subsequent filing or the adjudication by the Department of such subsequent claim result in an alteration, modification, or reduction of the benefits to which such claimant has been determined entitled by the Social Security Administration pursuant to part B of title IV of the Act and part 410 of this title.

(b) *Denied claims.*—Any miner who has filed a claim for benefits under part B of title IV of the Act prior to July 1, 1973, and whose claim has been finally denied by the Social Security Administration for any reason, may file a new claim for benefits with the Department and may be awarded benefits, where appropriate, under section 415 of part B of title IV of the Act and the applicable regulations contained in this subchapter.

(c) *Claims in process.*—Any miner who has filed a claim for benefits under part B of title IV of the Act prior to July 1, 1973, and whose claim has not

been finally adjudicated by the Social Security Administration, may not be awarded benefits pursuant to this part until such time as the Administration has completed its adjudication of such claim. A claim filed prior to July 1, 1973, shall be considered finally adjudicated at any time after a decision has been rendered in respect of the claimant's entitlement to benefits by a Social Security Administration adjudication officer and no review, reconsideration, reopening, or appeal is being pursued by such claimant. If such review, reconsideration, reopening, or appeal is later pursued by such claimant the Department shall suspend the evidentiary development of the case and hold the final adjudication of the case in abeyance pending the outcome of such review, reconsideration, reopening, or appeal.

(d) *Protective filing.*—Any miner who has filed a "protective writing" with the Social Security Administration prior to July 1, 1973, and who timely perfects such protective writing (see § 410.229 of this title) with the Social Security Administration on some date subsequent to June 30, 1973, shall, as of the date of such perfection of the protective writing, be considered to have filed a protective writing with the Department of Labor (see § 717.117 of this subchapter) for purposes of determining the amount of benefits which may be payable to such claimant under section 415 of part B of title IV of the Act.

§ 720.110 Action to be taken by the Office—general.

When a claim filed pursuant to the provisions of part 717 of this subchapter has been received by the Office from the filing office it shall be examined together with the supporting evidence transmitted with respect thereto. The Office shall promptly take such further action as may be necessary to assure that sufficient information, medical evidence, and a properly executed claims form have been submitted and that the claim is complete and ready for adjudication. The claim and supporting documents shall then be filed with a deputy commissioner of the Office. In the following sections the action to be taken in circumstances described therein is set forth in more detail.

§ 720.111 Action to be taken by the Office—miner's claim.

(a) Upon receipt by the Office of Workmen's Compensation Programs of a completed medical report the Office shall tentatively determine whether the medical evidence of record indicates an impairment for which benefits may be paid as determined with reference to standards promulgated by the Secretary of Health, Education, and Welfare as subpart D of part 410 of this title (see pt. 718 of this subchapter, which incorporates these standards).

(b) If it appears that the claimant may be considered disabled in accordance with the standards published in subpart D of part 410 of this title, then the claim shall be prepared for filing and filed with a deputy commissioner as provided in § 720.112 pending the receipt of any additional evidence developed and obtained pursuant to § 717.123 of this subchapter and the notification and reply of any possibly responsible operator as provided in §§ 720.113 and 720.114.

(c) In cases where the medical evidence received by the Office in respect to any claim does not indicate an impairment sufficient under the Department of Health, Education, and Welfare medical criteria (see pt. 718 of this subchapter) to support a claim for benefits, the claimant will be advised of the deficiency in his claim and directed by the Office to obtain such additional medical evidence as is appropriate and ordered by the Office. Medical evidence obtained at the direction of the Office shall be paid for by the Office (see § 717.125 of this subchapter).

(d) In the event that the medical evidence received by the Office pursuant to paragraph (c) of this section does not provide credible support for the miner's claim for benefits, any further evidentiary investigations shall be discontinued until further notice. Any additional medical evidence submitted by the claimant shall be obtained at the claimant's expense, and shall not be reimburseable pursuant to § 717.125 of this subchapter.

(e) If a miner whose claim is not considered to be supported by the medical evidence desires a formal hearing on the issue of his disability under the standards set forth in subpart D of part 410 of this title, the claim will be made ready for filing with a deputy commissioner and filed with him as provided in § 720.112. Thereafter a hearing or informal conference may be arranged pursuant to subpart B of this part.

§ 720.112 Filing of claim with deputy commissioner.

After the Office of Workmen's Compensation Programs has received a completed claim form and completed medical evaluation reports pursuant to § 720.111, the Office will make a tentative determination on the basis of information contained in the claim and any other available information, as to the identity or probable identity of any coal mine operator who may be liable for the payment of black lung benefits to the claimant for any month after December 31, 1973 (see § 725.311 of this title). The claim will then be filed with a deputy commissioner who shall, to the extent appropriate, follow the procedures provided in section 19 of the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. 919). The date upon which a claim is filed with the deputy commissioner pursuant to this section shall be noted on a form provided for this purpose and such form shall be kept in the office of the deputy commissioner with whom the claim is filed. A copy of the form shall be included in the case file.

§ 720.113 Notification of operators.

(a) Upon the filing of the claim with a deputy commissioner, each coal mine operator who has been tentatively identified as an operator who may have such liability will be notified of the pending claim, of his possible liability, and of the provisions of section 415(a)(5) of the act. This notification will be made by certified mail, with proof of delivery requested.

(b) Such notification will include a copy of claimant's completed claim form, the medical evaluation report from an authorized physician, and a cover letter informing the operator of the tentative determination of his possible liability for the claim and notice that he may present evidence relevant to determination of the claim pursuant to the procedures provided for such determination if he so requests within 20 calendar days from the date of mailing of this notice.

§ 720.114 Operator's response to notification.

(a) Within the 20-day period described in § 720.113 a notified coal mine operator shall respond to the notice.

(b) If the operator does not desire to present any evidence relevant to determination of the claim or desires the opportunity to do so, he shall so state either:

(1) By letter mailed to the Office of Workmen's Compensation Programs, U.S. Department of Labor, Washington, D.C. 20211; or

(2) By completing and mailing the form provided for this purpose.

(c) If a notified operator questions his liability for payment of benefits to the claimant for any period after December 31, 1973, he shall so state by transmitting to the Office a completed form setting forth generally his reasons for questioning such liability along with a detailed description of any evidence relied upon to negate his liability.

(d) A notified operator shall be considered a party in interest for purposes of adjudicatory proceedings with respect to the claim (see § 720.220).

(e) If a notified operator raises substantial new and/or unresolved medical issues with respect to the case, the deputy commissioner may, in his discretion, order the claimant to submit to additional medical examination at the expense of the operator or his insurance carrier.

§ 720.120 Final adjudication; no responsible operator.

(a) If after the Office has received all the evidence developed with respect to a claim and there is no identifiable responsible operator, the deputy commissioner shall proceed to a final adjudication of a claim pursuant to subpart B of this part.

(b) If at this point there is no dispute over the claimant's eligibility and entitlement to benefits, the claim shall be filed with a deputy commissioner pursuant to § 720.112 and the deputy commissioner shall summarily issue his findings of fact, conclusions of law and order approving the claim, and commencing

the payment of benefits pursuant to §§ 720.401–720.444.

(e) If agreement cannot be reached in cases for which no responsible operator can be found, the case will be filed with a deputy commissioner pursuant to § 720.112. Simultaneously with such filing a recommended decision and order shall be sent to the claimant. Within 20 days from the receipt of such recommended decision and order the claimant shall either agree with the recommended decision and order and so notify the deputy commissioner or notify the deputy commissioner that he is unwilling to agree to one or more of the items contained in such decision and order. Failure to respond within the 20-day period described in this paragraph shall be construed as a refusal to accept the ruling of the deputy commissioner.

(d) If the recommended decision and order is agreed to the deputy commissioner shall proceed to a final adjudication of the case pursuant to § 720.241.

(e) If the claimant is unwilling to agree with the allegations and proposed disposition contained in the recommended decision and order, or if the claimant does not respond within the specified time period the deputy commissioner shall schedule and conduct an informal conference pursuant to §§ 720.-230–720.241 or take any other action consistent with the provisions of this part which he deems necessary to achieve a resolution of the case.

(f) Within 60 days from the date upon which a claim for which no potentially responsible operator has been determined has been filed with a deputy commissioner pursuant to § 720.112 in cases for which there has been no prior request for a formal hearing the deputy commissioner assigned the case shall either:

(1) Issue a decision and order in respect of the case pursuant to § 720.241; or

(2) Declare the case abandoned pursuant to § 720.214; or

(3) Transfer the case to the Chief Administrative Law Judge for the purpose of making the formal hearing procedures described in this part available to the parties in interest.

§ 720.121 Filing claim under State workmen's compensation law.

(a) A claimant for benefits under this part must file a claim under the applicable State Workmen's compensation law prior to the receipt of benefits under this part except where the filing of a claim under the applicable State workmen's compensation law would clearly be futile.

(b) The Office of Workmen's Compensation Programs shall determine that the filing of such a claim would clearly be futile when:

(1) The period within which such a claim may be filed under such law has expired; or

(2) Pneumoconiosis as defined in § 715.101(a)(3) of this subchapter is not compensable under such law; or

(3) The maximum amount of compensation or the maximum number of compensation payments allowable under such law has already been paid; or

(4) The claimant does not meet one or more conditions of eligibility for workmen's compensation payments under applicable State law; or

(5) In any other situation the claimant establishes to the satisfaction of the Office that the filing of a claim on account of pneumoconiosis would result as a matter of law in a denial of his claim for compensation under such law.

(c) To be considered to have complied with the requirement for filing a claim under the applicable State workmen's compensation law, a claimant for benefits under this part must diligently prosecute such State claim.

(d) Where, but for the failure to file a claim under the applicable State workmen's compensation law, an individual's claim for benefits under this part would be allowed, the Office shall notify the individual in writing of the need to file such State claim as a prerequisite to such allowance. Such claim, when filed within 30 days of the date such notice is mailed to the individual, will be considered to have been filed timely.

(e) Where, on the other hand, a claim has not been filed under the applicable State workmen's compensation law, and the Office determines that a claim for benefits under this part would be disallowed even if a State claim were filed, the Office shall make such determination as may be necessary for the adjudication of the individual's claim for benefits under this part.

Subpart B—Adjudicatory Process

General

§ 720.200 Scope and applicability of this subpart.

Every dispute arising in respect to any claim for benefits or any action taken by an adjudication officer pursuant to this part, and any other issue of fact or law arising out of the Department of Labor's administration of any of the provisions of section 415 of part B of title IV of the Act as amended shall be determined or adjudicated pursuant to the procedures enumerated in this subpart, except as otherwise specifically provided in this part or as elsewhere provided by statute or treaty. Disputes arising out of or in respect to claims for benefits under part C of title IV of the Act filed after December 31, 1973, shall be determined or adjudicated pursuant to procedures contained in part 725 of this subchapter.

§ 720.201 Adjudication officers.

(a) *Who are adjudication officers.*—The deputy commissioner, the administrative law judge, or the Benefits Review Board before whom a benefit claim proceeding under the Act is pending are the Department's adjudication officers with respect to such claim.

(b) *Deputy commissioner.*—The deputy commissioner is that official of the Office of Workmen's Compensation Programs or his designee authorized to make initial determinations with respect to any case and to insure that any case is developed and processed according to these regulations. He may also under appropriate circumstances conduct conferences, prepare or issue motions and orders as provided in this part, prepare documents for the signatures of the parties in interest in any case, and sign benefits orders in cases for which no formal hearing procedure is required. The deputy commissioner shall not hold formal hearings.

(c) *Administrative law judge.*—The administrative law judge is that official of the Department of Labor empowered by the Secretary to conduct formal hearings whenever necessary, in respect of any claim for black lung benefits. Each such administrative law judge shall be qualified under 5 U.S.C. 3105 to conduct hearings in accordance with the provisions of 5 U.S.C. 554 et seq.

(d) *Benefits Review Board.*—The Benefits Review Board is that body appointed by the Secretary pursuant to section 21 (b) of the Longshoremen's and Harbor Workers' Compensation Act as amended in 1972, which is empowered to hear and determine finally for the Department of Labor appeals raising a substantial question of law or fact taken by any party in interest from decisions and orders of any duly authorized Department of Labor official with respect to any claim for black lung benefits (see sec. 415(a) of pt. B of title IV of the Act).

§ 720.202 Powers of adjudication officers.

(a) *Conduct of proceedings.*—The adjudication officer in any case shall have power to preserve and enforce order during any proceedings for determination or adjudication of entitlement to benefits or liability for benefits payments; to issue subpenas for, to administer oaths to and to compel the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable him to discharge effectively the duties of his office (Act, secs. 415 and 422 and Longshoremen's Act, secs. 19(d) and 27(a)).

(b) *Contumacy.*—Pursuant to section 19(d) of the Longshoremen's Act as incorporated by sections 415 and 422 of the Act, if any person in proceedings before an adjudication officer disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the adjudication officer shall certify the facts to the Federal district court having jurisdiction in the place in which he is sitting (or to the U.S. District Court for the District of Columbia if he is sitting in the District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and,

if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same condition as if the doing of the forbidden act had occurred with reference to the process or in the presence of the court.

§ 720.203 Disqualification of adjudication officer.

(a) No adjudication officer shall conduct any proceeding in a case in which he is prejudiced or partial with respect to any party, or where he has any interest in the manner pending for decision before him. Notice of any objection which a party may have to any adjudication officer who will conduct the proceeding, shall be made by such party at his earliest opportunity. The adjudication officer shall consider such objection and shall, in his discretion, either proceed with the case or withdraw. In the absence of an objection by a party any adjudication officer who is aware that he is or may be considered prejudiced or partial with respect to the case before him shall, in his discretion, either proceed with the case or withdraw. If the adjudication officer withdraws, another such officer shall be designated by the Director of the Officer of Workmen's Compensation Programs or the Chief Administrative Law Judge as the case may be. If the interested officer is a member of the Benefits Review Board, the procedure in case of disqualification of any Board member who has an irreconcilable interest shall be in accordance with the applicable regulations and rules to be promulgated by the Secretary and the Board.

(b) Neither a deputy commissioner, nor administrative law judge, nor any business associate of a deputy commissioner, or administrative law judge, shall appear as attorney in any proceeding under the Act, and no deputy commissioner, or administrative law judge, shall act in any such case in which he is interested, or when he is or was employed by any party in interest or is related to any part in interest by consanguinity or affinity within the third degree as determined by the common law (Act, sec. 415 and 422 and Longshoremen's Act, sec. 19(d), 49(f)).

§ 720.204 Changes in procedures.

In the event that certain changes are required by virtue of administrative interpretation or court decision to be made concerning the procedures described in this subpart, such changes shall be put into effect by the Secretary as expeditiously as possible. Amendments to this subpart shall be issued where appropriate. No such change shall have any substantive impact on any other unaffected provision contained in this subchapter.

PROCEDURES, GENERALLY

§ 720.210 Procedures by and before deputy commissioner.

(a) Each claim for benefits under this part received by the Office of Workmen's Compensation Programs will be filed with a deputy commissioner after preliminary processing as provided in §§ 720.111 and 720.112. The deputy commissioner will be responsible thereafter for compiling the case record, notifying any operator who may be liable to pay benefits to the claimant after December 31, 1973, of the pendency of the claim, notifying a claimant of any deficiency in the medical and/or nonmedical record, scheduling, and conducting conferances pursuant to this subpart B, effecting the settlement or compromise of disputes whenever possible, drafting documents for the signature of the parties in interest, drafting conclusions of law and orders for cases in which no further proceedings are necessary beyond the conference, and making recommendations in respect to any case for which a formal hearing is to be conducted.

(b) At any time after a claim has been the Office of Workmen's Compensation Programs, the deputy commissioner having jurisdiction over the claim may, with the approval of the Office, transfer such case to any other office or agency for the purpose of making investigation, taking testimony, making physical examinations, or the taking of such other necessary action therein as may be directed. Such transfer is to be made in accordance with procedures established by the Office.

§ 720.211 Determination of disability.

(a) Determination as to whether a miner is under a total disability due to pneumoconiosis, as to the date the total disability began, and to the date total disability ceases, shall be finally made by the appropriate Department of Labor adjudication officer or court pursuant to title IV of the Act and the regulations issued thereunder.

(b) In the absence of new evidence or changed conditions, final determinations made by the Social Security Administration denying a miner's claim which was filed under part B of title IV of the Act prior to July 1, 1973 shall constitute rebuttable evidence of nonentitlement for purposes of section 415 of part B of title IV of the Act.

(c) Any final determination made by the Social Security Administration in respect of a miner's claim filed prior to July 1, 1973, in which it is established that such miner is totally disabled due to pneumoconiosis shall, subsequent to review by the appropriate Department of Labor adjudication officer and in the absence of rebutting evidence, constitute prima facie evidence of such miner's total disability due to pneumoconiosis for purposes of section 415 of part B of title IV of the Act.

§ 720.212 General procedures for determination of contested issues.

(a) In the event that there are contested issues of fact in any case, those issues generally will be resolved by the following procedure:

(1) If in the opinion of the deputy commissioner the evidence does not support the claim for benefits, the claimant will be given an opportunity to submit additional medical and/or nonmedical evidence.

(2) The deputy commissioner will make every effort to resolve any dispute at a conference conducted pursuant to this subpart. If no resolution can be achieved at such conference, the case will be forwarded with the deputy commissioner's recommendation to the Chief Administrative Law Judge for assignment to an administrative law judge who will schedule and conduct a formal hearing pursuant to this subpart and issue a formal order granting or denying the claim and, where appropriate, establishing the identity of any operator who will either be liable or not liable for payment of benefits to the claimant for any periods after December 31, 1973.

(b) In the event that there are no contested issues of fact or law the deputy commissioner will prepare documents identifying any operator who will be liable for payment of such benefits for any periods after December 31, 1973. These stipulations will be signed by the parties in interest and the deputy commissioner who will either approve and sign a benefits order or take any other action he deems appropriate. If the proposed order is signed by a deputy commissioner, it will become a final order pursuant to this subpart.

(c) Except as provided in § 720.120(f), if there has been no final resolution of a case after 90 days from the date upon which any claim has been filed with the deputy commissioner pursuant to § 720.112 and there has been no prior request for a formal hearing or additional conferences, the deputy commissioner assigned the case shall either:

(1) Issue a decision and order in respect of the case pursuant to § 720.241; or

(2) Declare the case abandoned pursuant to § 720.214; or

(3) Transfer the case to the Chief Administrative Law Judge pursuant to paragraph (a) of this section for the purpose of making the formal hearing procedures described in this subpart available to any or all of the parties in interest.

§ 720.213 Presumptions.

In any proceeding for the enforcement of liability on a claim for benefits under the Act it shall be presumed, in the absence of substantial evidence to the contrary, that the claim comes within the provisions of the Act, and that sufficient notice of such claim has been given.

§ 720.214 Abandonment of a claim.

(a) If a claimant at any time during the proceedings to adjudicate his claim, chooses to terminate those proceedings he may do so in his discretion by notifying the appropriate adjudication officer or the Office of his intention in this regard.

(b) In addition, a claim may be deemed abandoned by the adjudication officer who is processing such claim under the following circumstances:

(1) In cases where the claimant fails to comply with a lawful order of any adjudication officer in respect to his claim: *Provided*, That such failure to comply is not later excused for good cause; or

(2) In cases where the claimant fails in a significant way to pursue his claim with reasonable diligence. A finding that a claimant has failed to pursue his claim with reasonable diligence may be made by the adjudication officer who is processing the claim at any time during formal or informal proceedings, where, for instance, the claimant fails to undergo a required medical examination or submit medical evidence, fails or refuses to submit evidence of relationship or dependency, or fails or refuses to participate in the adjudicatory process. Any claim in which proceedings are suspended or terminated pursuant to paragraphs (a) and (b) of this section, or paragraph (b) (1) and (2) of this section, shall be deemed an "abandoned claim."

(c) Notwithstanding any other provision of this part, before any claim may be considered an "abandoned claim" the appropriate adjudication officer shall notify the claimant of the pending termination of proceedings and afford such claimant 10 days within which to take affirmative action to cure the deficiency in his claim. If no response is received within the 10-day period, all proceedings and evidentiary development in respect to the claim shall cease. If the claimant expresses his intent to continue his pursuit of the claim, the adjudication officer shall suspend or continue whatever proceedings are in progress in such a manner as he deems appropriate.

(d) In the event that a claim is abandoned the claimant's original filing date (see § 717.113 of this subchapter) shall remain the date on which the claim was filed should such claimant later decide to once again pursue his claim. However, upon the expiration of 1 year from the date on which a claim is deemed abandoned pursuant to this section, such claim may not once again be pursued.

PARTIES TO PROCEEDINGS

§ 720.220 Parties in interest.

(a) Except as provided in § 720.221, persons other than the Secretary of Labor and authorized personnel of the Department of Labor may not participate at any stage of the adjudicatory process unless they are determined by the adjudication officer to qualify under the provisions of this section as parties in interest. The following persons may qualify as parties in interest:

(1) The claimant;

(2) A person other than a claimant authorized to execute a claim on such claimant's behalf pursuant to § 717.101 of this subchapter;

(3) A dependent who may be entitled to receive augmented benefits or for whom augmented benefits are payable pursuant to subpart C of this part 720;

(4) Any coal mine operator who has been notified pursuant to § 720.113 of his possible liability to the claimant for benefits payable for any month after December 31, 1973; and

(5) Any insurance carrier of such operator.

(b) The Secretary of Labor is a party in interest in any proceeding in which his obligation to pay benefits under section 415 of the Act or to take other action under provisions of the Act may depend on the resolution of an issue or issues to be determined or adjudicated in that proceeding.

(c) A widow, surviving child, parent, brother, or sister or representative of a decedent's estate, who makes a showing in writing that an individual's rights with respect to benefits may be prejudiced by a decision that may be made, may be made a party in interest.

(d) Any coal mine operator or prior operator or insurance carrier who has not been notified pursuant to § 720.113 and who makes a showing in writing that its rights may be prejudiced by any final decision of an adjudication officer may in the discretion of the deputy commissioner or administrative law judge be made a party in interest.

(e) Any other individual may be made a party in interest if that individual's rights with respect to benefits may be prejudiced by the decision, upon notice given to him by the deputy commissioner or administrative law judge to appear at the hearing or otherwise present evidence as to fact or law as he may desire in support of his interest.

§ 720.221 Party amicus curiae.

At the discretion of the Chief Administrative Law Judge or the administrative law judge assigned to the case, a party not named in § 720.220 may be allowed to participate, fully or partially, in a formal hearing only, as to an issue of law. If a party wishes to participate amicus curiae in a formal hearing he shall request such status in writing with supporting arguments at least 10 days prior to the hearing. If the request is granted, the Chief Administrative Law Judge or the administrative law judge hearing the case will inform the party of the extent to which he may participate. The request may, however, be denied summarily and without explanation.

§ 720.222 Representation of parties.

Except for the Secretary of Labor, whose interests shall be represented by the Solicitor of Labor or an authorized attorney on his staff, each of the parties in interest may appoint an individual to represent his interest in any proceeding for determination of a claim under this part. Such appointment shall be made in writing or on the record at the hearing. A written notice appointing a representative shall be signed by the party in interest or his legal guardian and shall be sent to the Office or, for representation at a formal hearing, to the Chief Administrative Law Judge. In any case such representative must be qualified under § 720.223.

§ 720.223 Qualifications of representative.

(a) *Attorney.*—Any attorney in good standing who is admitted to practice before a court or a State, territory, district, or insular possession or before the Supreme Court of the United States or other Federal court and is not, pursuant to any provision of law, prohibited from acting as a representative may be appointed as a representative.

(b) *Other person.*—Any other person with the approval of the adjudication officer may be appointed as a representative so long as that person is not, pursuant to any provision of law, prohibited from acting as a representative.

§ 720.224 Authority of representative.

A representative, appointed and qualified as provided in §§ 720.222 and 720.223 may make or give, on behalf of the party he represents, any request or notice relative to any proceeding before an adjudication officer under section 415 of part B of title IV of the Act, including formal hearing and review, except that such representative may not execute a claim for benefits, unless he is a person designated in § 717.101 as authorized to execute a claim. A representative shall be entitled to present or elicit evidence and make allegations as to facts and law in any proceeding affecting the party he represents and to obtain information with respect to the claim of such party to the same extent as such party. Notice to any party of any administrative action, determination, or decision, or request to any party for the production of evidence may be sent to the representative of such party, and such notice or request shall have the same force and effect as if it has been sent to the party represented.

§ 720.225 Legal assistance.

The Secretary may, upon request, provide a claimant with legal assistance in processing a claim for benefits payable under section 415 of part B of title IV of the Act. Such assistance may be made available to a claimant at any time prior to or during which the claim is being processed and shall be furnished without charge to the claimant. Legal assistance shall be available to all claimants in the processing of the claim. However, legal representation of the claimant in adjudicatory proceedings in which the Secretary may be an adverse party in respect of the claimant is not authorized under this section.

§ 720.226 Legal services.

(a) *Approval of fees; lien against benefits.*—If a claimant is represented by an attorney at law, the Act requires approval of such attorney's fees as provided in section 28 of the Longshoremen's Act. In cases where the obligation to pay the attorney's fee is upon the claimant, it may be made a lien upon the benefits due under an award as provided in section 28(d) of the Longshoremen's Act and, as therein provided, the adjudication officer shall fix in the award approving the fee, such lien and manner

of payment. Such lien shall remain in effect for not more than 30 days subsequent to the date upon which the order granting the award became final. Any representative who is not an attorney may be awarded a fee for services pursuant to this section except that no lien may be imposed in respect of such representative's fee.

(b) *Contingent and stipulated fees.*—No contract for a stipulated fee or for a fee on a contingent basis will be recognized, and no fee shall be approved, except upon an application to the appropriate adjudication officer.

(c) *Procedure for approval of fees.*—No fee charged for representation services in respect of any claim under this part shall be valid unless approved pursuant to this section. In each case for which approval of a fee is sought, application for such approval shall be made to the Department of Labor adjudication officer who finally determined the case. Such application shall be made on a form provided for this purpose by the Office and shall be supported by a complete itemized statement describing the services rendered. Such itemization shall contain the following information:

(1) The dates the services began and ended;

(2) A description of services rendered in any proceeding under the Act, with the amount of time spent on each type of service;

(3) The amount of fee the representative desires to charge for services performed;

(4) The amount of fee requested, charged, or received for services rendered to the claimant before any State or Federal court or agency in a similar matter;

(5) The amount and nature of expenses incurred for which reimbursement has been made or is expected; and

(6) A statement showing that a copy of the itemized fee application has been sent to the person represented. Upon receipt of a request for approval of a fee such request shall be reviewed and evaluated (see § 720.226) by the appropriate adjudication officer and a fee award issued. Any party in interest including a claimant or an attorney or representative aggrieved or adversely affected by such award may request reconsideration thereof by the adjudication officer making such award. A revised or modified award may then be issued, if appropriate. Thereafter, if a revised or modified fee award is considered unsatisfactbry by such party or representative, the hearings and appeals procedures described in this subpart available in respect of claims for benefits, may be utilized by such party or attorney or representative. Each request for reconsideration or review of a fee award shall be in writing and shall contain supporting statements or information pertinent to any increase or decrease requested.

§ 720.227 Fixing of amount of legal fees.

(a) *Evaluation of fee application.*—In evaluating a request for approval of a fee the following factors will be considered:

(1) The services performed (including types of services);

(2) The complexity of the case;

(3) The level of skill and competence required in rendition of the services;

(4) The amount of time spent on the case to the nearest quarter hour;

(5) The level of administrative proceedings to which the claim was carried and the level at which the attorney entered the proceedings;

(6) The amounts of any fees or reimbursement for expenses previously authorized, paid, or requested; and

(7) Any other information or data which may be relevant to the amount of fee requested.

(b) *Reimbursement for expenses.*—In awarding a fee, the appropriate adjudication officer shall consider and shall add thereto the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. The amount of reimbursement for travel expenses incurred by an attorney shall be determined in accordance with the provisions of § 720.264(a). No amount of reimbursement shall be permitted for expenses incurred in obtaining medical or documentary evidence in support of the claim which has previously been obtained by the Department, and no reimbursement shall be allowed for expenses incurred by him in establishing or pursuing his application for approval of his fee.

CONFERENCES

§ 720.230 Nature of conferences.

(a) In cases which cannot be disposed of summarily and on the record, conferences are to be scheduled to expedite the handling of contested issues and to avoid, whenever possible, the need for formal hearings. However, if it appears that a conference would serve none of the purposes enumerated in § 720.231, the deputy commissioner may forward the case to the Chief Administrative Law Judge without conducting a conference, for further action as provided in this subpart.

(b) The proceedings are to be informal and are presided over by a deputy commissioner. Testimony is not stenographically reported. The parties in interest are not required to be represented by counsel, but may be so represented if they desire. The conference is not a formal hearing and witnesses may not be produced.

§ 720.231 Purpose of conferences.

Among the purposes of a conference are:

(a) To amicably dispose of controversies whenever possible;

(b) To narrow issues; and

(c) To simplify the subsequent methods of proof.

§ 720.232 Notification of parties.

When, after reviewing the record, the deputy commissioner assigned the case determines that a conference may fulfill one or more of the purposes listed in § 720.231 he shall notify all parties in interest that a conference has been called. Conferences may be called upon at least 10 days notice to the parties in interest or a shorter period if agreed upon by the parties. In any event, every effort shall be made to give all parties sufficient notice to insure that the conference will be productive.

§ 720.233 Time and place of conference.

The deputy commissioner shall assign a definite time and place for the conference and shall include this information in his notice to the parties.

§ 720.234 Preparation for conferences.

Prior to scheduling a conference, the deputy commissioner shall review his file to be certain that it contains all the necessary material to insure that the conference will be productive. The file should contain copies of all medical reports from all parties in interest and there should be evidence in the file that the parties have exchanged all medical reports and any other material pertinent to the case. If this information does not appear in the file the deputy commissioner may advise the parties of these requirements and postpone the setting of the conference.

§ 720.235 Cancellation of conferences.

Any party may request cancellation and rescheduling of a conference upon 5 days' written notice prior to the conference date sent to the Office or the deputy commissioner assigned the case. Such request shall state the reasons warranting cancellation. The deputy commissioner may, if reasonable cause is shown, grant the request.

§ 720.236 Attendance at conferences.

(a) The claimant and/or his representative and any operator whose liability for payment of benefits after December 31, 1973, may be determined by a final order in the case and/or the operator's insurance carrier and/or their representatives shall attend all conferences. Any party may, in writing stating the reasons therefor, request that such attendance requirement be waived. The deputy commissioner may, in his discretion, grant or deny such waiver. The failure of any party to appear at a conference or obtain a waiver of the attendance requirement pursuant to this paragraph or the failure of any party to observe the requirement contained in paragraph (b) of this section shall not constitute grounds for cancellation of the conference. Information adduced at such conference may be utilized at any point during the adjudication of the case.

(b) Any representative of an operator or of an operator's insurance carrier must have sufficient authority to expedite settlement.

§ 720.237 Participation by the deputy commissioner.

A characteristic of an informal conference under the Act is the active participation in the proceedings by the

deputy commissioner. It is his responsibility to see that the conference is productive. He shall assist the parties whenever possible by answering questions pertaining to the law and offer compromises for the parties to consider. He shall direct the discussion of the parties. He has the authority to conduct direct examinations of the claimants, operators whose liabilities may be determined, and their insurance carriers' representatives and he may conduct such examination whenever necessary.

§ 720.238 File record.

(a) During the course of the conference the deputy commissioner shall take notes upon which to base his written memorandum of conference. Among the information which must appear in the memorandum of conference is:

(1) Date, time, and place of conference;

(2) Names, addresses, telephone numbers, and status (i.e., claimant, attorney, operator, carrier's representatives, etc.), of all persons attending the conference;

(3) Reasons why conference was held;

(4) Issues discussed at conference;

(5) Additional material presented (i.e., medical reports, employment reports, marriage certificates, birth certificates, etc.);

(6) Issues resolve at conference; and

(7) Deputy commissioner's recommendation.

§ 720.239 Memorandum of conference.

At the conclusion of the conference the deputy commissioner shall issue a comprehensive but brief memorandum summarizing the conference for the record. Copies of the memorandum shall be sent to each party in interest by certified mail no more than 20 days after the date on which the conference is terminated.

§ 720.240 Reply to memorandum of conference.

Each party shall, in writing either accept or reject in part or in whole the deputy commissioner's recommendations, stating in appropriate cases the reasons for rejecting any recommendation. If no reply is received within 10 days from the date on which the recommendations were sent to the parties, the recommendations shall be deemed accepted. If the recommendations are not wholly agreed upon, the deputy commissioner or any party in interest may request a formal hearing. If it appears that final settlement might be reached without a formal hearing, the deputy commissioner may schedule one or more additional conferences.

§ 720.241 Adjudication without a hearing.

(a) If the parties in interest indicate that they are willing to dispose of the issues in the case based on the recommendations made, the deputy commissioner shall obtain statements to this effect signed by the parties. The statements shall contain all the information required for inclusion in a formal order and shall show that the parties agree that a final order may be issued by the deputy commissioner without a formal hearing. The deputy commissioner shall then proceed to prepare and sign a decision and order based on the statements.

(b) If the parties are unable or unwilling to reach an agreement at the conference and if no request for a formal hearing is received by the deputy commissioner within 30 days from the close of the conference, the deputy commissioner in appropriate cases shall proceed to a final adjudication of the case based upon the record and the statements made by the parties, if any, and issue formal findings of fact, conclusions of law, and a decision and order.

§ 720.242 Accelerated hearing.

Notwithstanding any other provision of this part, after 30 days from the date upon which a claim is filed with a deputy commissioner pursuant to § 720.112, a claimant, a notified operator, or the Secretary may request and shall have a right to a formal hearing to be conducted by an administrative law judge pursuant to this subpart. In the event that a formal hearing is requested pursuant to this paragraph, all responsibility and authority pertaining to the evidentiary development and settlement of the case vested in the deputy commissioner shall be vested in the Chief Administrative Law Judge or the administrative law judge assigned the case.

HEARINGS

§ 720.250 Right to a hearing.

(a) A person affected by proceedings under this part has a right to a formal hearing concerning any issue of fact or law unresolved in a conference if:

(1) He is a party in interest as defined in § 720.220; and

(2) No final disposition of the case has been achieved in prior proceedings within the period specified in § 720.742.

§ 720.251 Request for hearing.

Any party in interest may in writing or on the record at a conference request a formal hearing as to any contested issue of fact or law. In addition, a deputy commissioner may on his own initiative refer a case for hearing, when he determines a hearing necessary to protect the rights of any party in interest. If the deputy commissioner determines that a hearing is required or is necessary to the resolution of any issue, he shall refer the case to the Chief Administrative Law Judge who will assign it for a hearing. The deputy commissioner may not deny a request for a hearing if the requirements of § 720.250 are met.

§ 720.252 Type of hearing; parties.

In contested cases for which a formal hearing is deemed necessary, the hearing shall be conducted by an administrative law judge designated by the Chief Administrative Law Judge. The necessary parties to this hearing are the administrative law judge and all parties in interest or their designated representatives, except that any party may waive his right to be heard as to any or all issues. All hearings shall be conducted in accordance with the provisions of 5 U.S.C. 554 et seq. If any party in interest chooses to plead his own case at a formal hearing he may do so only upon the approval of the administrative law judge. No party shall be permitted to represent himself in a formal hearing if it appears to the administrative law judge that such party may not be sufficiently able to protect the rights granted him by the Act.

§ 720.253 Notice of hearing.

In each case in which a hearing is ordered the deputy commissioner shall prepare a notice of hearing for the signature of the Chief Administrative Law Judge and by service thereof shall give all parties in interest at least 10 days notice of the time and place at which the hearing, or any prehearing conference is to be conducted and the issues to be resolved. The notice of hearing shall be sent to each party in interest by certified mail. No issue may be raised or discussed at a hearing if the party who must contest the issue has not had at least 10 days notice that the issue was to be raised at the hearing, unless he waives such notice in writing or on the record in the proceeding.

§ 720.254 Hearing on new issues.

(a) At any time after a hearing has been ordered and before a final decision has been mailed, the administrative law judge may in his discretion, either on the application of a party or on his own motion, give notice that he will consider any specified new issue. In such a case the administrative law judge shall give the parties at least 10 days notice of the hearing on the new issue, unless they stipulate that the issue may be heard at an earlier time, and shall proceed to hearing on the new issue in the same manner as he would on an issue initially considered.

(b) A hearing on any new issue shall be limited to a discussion of that new issue.

(c) In the event that a new issue is raised at the time any formal hearing is conducted, the party confronted with that new issue may, upon request to the administrative law judge, be granted a continuance of not less than 10 days with respect to that new issue.

§ 720.255 Time and place of hearing.

(a) The Chief Administrative Law Judge shall assign a definite time and place for the formal hearing and shall include this information in his notice to the parties.

(b) If the claimant's residence is not in any State, the Chief Administrative Law Judge may, in his discretion, determine an appropriate location for the hearing.

§ 720.256 Change of time and place for hearing; transfer of cases.

(a) The Chief Administrative Law Judge or the administrative law judge may change the time and place for the hearing, either on his own motion or for good cause shown by a party. The Chief

Administrative Law Judge or administrative law judge may adjourn or postpone the hearing, or he may reopen the hearing for the receipt of additional evidence at any time prior to the mailing to the parties of the decision in the case. Unless otherwise agreed, at least 10 days notice shall be given to the parties of any change in the time or place of hearing.

(b) At any time after a notice of hearing has been issued the Chief Administrative Law Judge may for good cause transfer such case from one administrative law judge to another.

CONDUCT OF HEARINGS

§ 720.260 Hearings procedure, generally.

All hearings shall be attended by the parties or their representatives and such other persons as the administrative law judge deems necessary and proper. The administrative law judge shall inquire fully into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters. If the administrative law judge believes that there is relevant and material evidence available which has not been presented at the hearing, he may adjourn the hearing or, at any time, prior to the mailing of notice of the decision, reopen the hearing for the receipt of such evidence. The order in which evidence and allegations shall be presented and the procedures at the hearing generally, except as these regulations otherwise expressly provide, shall be in the discretion of the administrative law judge and of such nature as to afford the parties a reasonable opportunity for a fair hearing. The unexcused failure of any party or such party's duly authorized representative to attend a formal hearing shall constitute a waiver of such party's rights to present evidence in respect of the issues to be determined at the hearing.

§ 720.261 Evidence.

In making an investigation or inquiry or conducting a hearing the administrative law judge shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by 5 U.S.C. 554 and this subpart. He may conduct such investigation or inquiry as to best ascertain the rights of the parties. Declarations of a deceased miner concerning his disability or cause of death in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the disability or cause of death.

§ 720.262 Witnesses.

(a) Witnesses at the hearing shall testify under oath or affirmation. The administrative law judge may examine the witnesses and shall allow the parties or their representatives to question the witness with respect to any matters relevant and material to any issue pending before him.

(b) No person shall be required to attend as a witness in any proceeding before an administrative law judge at a place more than 100 miles from his place of residence, unless his lawful mileage and fee for 1 day's attendance shall be paid to him in advance of the hearing date.

§ 720.263 Depositions; interrogatories.

The testimony of any witness may be taken by deposition or interrogatory according to the rules of practice of the Federal district court for the judicial district in which the case is pending (or of the U.S. District Court for the District of Columbia if the case is pending in the District).

§ 720.264 Witness fees.

(a) Witnesses summoned in a formal hearing before an administrative law judge or whose depositions are taken shall receive the same fees and mileage as witnesses in courts of the United States. (Act, secs. 415 and 422 and Longshoremen's Act, sec. 25.) Such fees shall be paid by the party summoning the witness.

(b) Expert witness fees in excess of the amounts to which an individual would be entitled under paragraph (a) of this section shall be paid by the party summoning such expert witness unless the Chief Administrative Law Judge or the administrative law judge determines that such expert witness is necessary and that a claimant is financially unable to secure such witness. If in the opinion of the Chief Administrative Law Judge or administrative law judge, the requirements of this paragraph are met appropriate action will be taken to pay such expert witness fee on behalf of the claimant (see § 717.123 of this subchapter). Requests for reimbursement or direct payment of an expert witness fee shall be directed to the Chief Administrative Law Judge or the administrative law judge assigned the case no less than 5 days prior to the hearing date.

(c) No claimant shall be required to bear the financial responsibility for producing an expert -witness for cross-examination if such expert witness, regardless of his availability to attend the hearing, has previously submitted depositions, interrogatories, or attested medical reports. Such expert witness, if he is required to attend the hearing shall be summoned and shall have his expert witness fee paid by the party in interest other than the claimant, who desires to cross-examine such expert witness.

§ 720.265 Oral argument and written allegations.

The parties, upon their request, shall be allowed a reasonable time for the presentation of oral argument and for the filing of briefs or other written statements of allegations as to facts or law. Copies of any brief or other written statement shall be filed with the administrative law judge and served on all parties in interest by the party submitting the statement.

§ 720.266 Waiver of right to appear and present evidence.

If all parties waive their right to appear before the administrative law judge or to present evidence or argument personally or by representative, it shall not be necessary for the administrative law judge to give notice of or conduct an oral hearing. A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the Chief Administrative Law Judge or the administrative law judge. Such waiver may be withdrawn by a party at any time prior to the mailing of notice of the decision in the case. Even though all of the parties have filed a waiver of the right to appear and present evidence and contentions at a formal hearing, the administrative law judge may, nevertheless, give notice of a time and place and conduct a hearing, if he believes that the personal appearance and testimony of the party or parties would assist him to ascertain the facts in issue in the case. Where such a waiver has been filed by all parties, and they do not appear before the administrative law judge personally or by representative, the administrative law judge shall make a record of the relevant written evidence, including applications, written statements, certificates, affidavits, reports, and other documents which were considered in connection with the recommendations of the deputy commissioner, and whatever relevant and material evidence the party or parties may present in writing for consideration by the administrative law judge. Such documents shall be considered as all of the evidence in the case and the decision shall be based on them.

§ 720.267 Consolidated issues.

When one or more additional issues are raised before the administrative law judge pursuant to § 720.254, such issues may, in the discretion of the Chief Administrative Law Judge, be consolidated for hearing and decision with other issues pending before the administrative law judge upon the same request for a hearing, whether or not the same or substantially similar evidence is relevant and material to the matters in issue. A single decision may be made upon all such issues.

§ 720.268 Joint hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters in issue at each such hearing the Chief Administrative Law Judge may upon motion by any party in interest or on his own motion, or on the motion of an adjudication officer, order the administrative law judge assigned the case to fix the same time and place for each such hearing and conduct all such hearings jointly. Where joint hearings are held, a single record of the proceedings shall be made and the evidence

introduced in one case may be considered as introduced in the others and a separate or joint decision shall be made, as appropriate.

§ 720.269 Record of hearing.

All formal hearings shall be open to the public and shall be stenographically reported. All evidence upon which the administrative law judge relies for his final decision shall be contained in the transcript of testimony either directly or by appropriate reference. All medical reports, exhibits, and any other pertinent document or record either in whole or in material part shall be incorporated into the record either by reference or as an appendix.

DISMISSALS

§ 720.275 Dismissal of the case or claim by application of party.

With the approval of the Chief Administrative Law Judge or administrative law judge at any time prior to the mailing of notice of the decision, a case or claim may be dismissed upon the application of the party or parties filing the request for such hearing. A party may request a dismissal by filing a written notice of such request with the Chief Administrative Law Judge or administrative law judge or orally stating such request at the hearing.

§ 720.276 Dismissal by abandonment of party.

Notwithstanding the provisions of § 720.214, with the approval of the Chief Administrative Law Judge or administrative law judge, a case or claim may also be dismissed upon its abandonment by the claimant. A party shall be deemed to have abandoned his case or claim if neither the party nor his representative appears at the time and place fixed for the hearing and either: (a) Prior to the time for hearing such party does not show good cause as to why neither he nor his representative can appear or (b) within 10 days after the mailing of a notice of hearing to him to show cause, such party does not show good cause for such failure to appear and failure to notify the Chief Administrative Law Judge or administrative law judge prior to the time fixed for hearing that he cannot appear.

§ 720.277 Dismissal for cause.

The Chief Administrative Law Judge or administrative law judge may, on his own motion dismiss a case or claim, either entirely or as to any stated issue, under any of the following circumstances:

(a) *Res judicata.*—A case or claim shall be dismissed for cause where there has been a previous final determination or decision by the Secretary with respect to the rights or obligations of the same party on the same facts pertinent to the same issue or issues.

(b) *No right to a hearing.*—A case or claim shall be dismissed for cause where the party requesting a hearing is not a proper party under § 720.220 or does not have a right to a hearing under the provisions of this part. A case or claim may be dismissed as to any party who is not a proper party to the case or claim pursuant to § 720.220.

§ 720.278 Notice of dismissal and right to request review thereon.

Notice of the Chief Administrative Law Judge's or administrative law judge's dismissal action shall be given to the parties or mailed to them at their last known addresses within 20 days from the date on which the hearing was scheduled. Such notice shall advise the parties of their right to request review by the Benefits Review Board pursuant to § 720.295.

§ 720.279 Effect of dismissal.

The dismissal of a case or claim shall be final and binding unless suspended or set aside (see § 720.291).

COMPLETION OF FORMAL HEARING

§ 720.285 Termination of formal hearings.

Formal hearings are officially terminated when all the evidence has been received, witnesses heard, pleadings and briefs submitted to the administrative law judge, and the transcript of the proceedings has been printed and delivered to the administrative law judge.

§ 720.286 Preparation of final decision and order.

Within 20 days after the official termination of the hearing as defined by § 720.285, the administrative law judge shall have prepared a final decision and order with respect to the claim making an award to the claimant or rejecting the claim.

§ 720.287 Form of final decision and order.

(a) Orders adjudicating claims for benefits or suspending payments of benefits shal be designated by the term "decision and order" followed by a descriptive phrase designating the particular type of such order, such as "award of benefits," "rejection of claim," "suspension of benefits," "modification of award." All decisions and orders shall contain the name of the Office and agency, the names of the parties in interest, a statement of the basis therefor, findings of fact, an award, rejection, or other appropriate paragraph containing the action of the administrative law judge. Final decisions and orders shall be signed by the administrative law judge at two places following the action paragraph.

(b) Copies of decisions and orders shall be served personally or by certified mail upon the parties in interest.

§ 720.288 Contents of decision and order.

(a) *Findings of fact.*—(1) All original decisions and orders shall contain, in the paragraph headed, "Findings of Fact," findings with respect to the names and addresses of the parties in interest, and dates and places of employment pertinent to the claim, the circumstances surrounding the coal miner's exposure to respirable coal dust, the nature and extent of the disability, notice of total disability or death, and such other facts as may be necessary to determine all of the issues raised before the administrative law judge upon the hearing of the case or otherwise, but in case of rejection of the claim the administrative law judge may in his discretion omit any findings unnecessary to support such action. In cases in which the claim is rejected, the grounds for such rejection shall be stated in a paragraph following the findings of fact.

(2) In orders other than the original order, the statement of the basis for the order shall contain reference to all prior orders with the dates thereof. In such orders the findings of fact shall relate only to the immediate issues before the administrative law judge without restatement of facts found in any prior order relating to the same disability or death, unless necessary for the completeness of the order.

(b) *Conclusions of law.*—All decisions and orders shall contain after the findings of fact a paragraph entitled "Conclusions of Law." This paragraph shall, when appropriate, contain statements of all ultimate facts necessary to support the action of the administrative law judge. This paragraph shall contain among other things a statement as to the claimant's eligibility for benefits and, when appropriate, a statement asserting or denying the liability of an operator or his insurance carrier for the payment of benefits to the claimant for any periods after December 31, 1973.

(c) *Order.*—All decisions and orders shall contain after the conclusions of law the orders of the administrative law judge directing the parties to take any action consistent with the findings of fact and conclusions of law as required by the Act.

§ 720.289 Formal hearings; filing and mailing of orders; disposition of transcripts.

The administrative law judge shall, within 20 days after the official termination of the hearing, deliver by mail, or otherwise, to the office of the deputy commissioner having original jurisdiction, the transcript of the hearing, and other documents or pleadings filed with him with respect to the claim, together with his signed order. Upon receipt thereof, the deputy commissioner, being the official custodian of all records with respect to such claims within his jurisdiction, shall formally date and file the transcript, pleadings, and benefits order (original) in his office. Such filing shall be accomplished as expeditiously as possible, and the deputy commissioner shall, on the same day as the filing was accomplished, send by certified mail a copy of the order to the parties and to representatives of the parties, if any. Appended to each such copy shall be a paragraph entitled "proof of service," containing the certification of the deputy

commissioner that the copies were mailed on the date stated, to each of the parties and their representatives, as shown in said paragraph.

§ 720.290 Interlocutory matters to be disposed of without formal orders.

Decisions and orders or other formal orders shall not be made or filed with respect to interlocutory matters of a procedural nature arising during the pendency of a case where benefits have been claimed.

§ 720.291 Finality of decisions and orders.

Decisions and orders issued pursuant to § 720.241 or § 720.286 shall become effective when filed in the office of the deputy commissioner, and unless proceedings for suspension or setting aside of such orders are instituted within 30 days of such filing, shall become final at the expiration of the 30th day after such filing, as provided in section 21 of the Longshoremen's Act.

§ 720.292 Withdrawal of controversion of issues set for formal hearing; effect.

Whenever a party withdraws his controversion of the issues set for a formal hearing, the administrative law judge shall halt the proceedings upon receipt from said party of a signed statement to that effect and forthwith notify the deputy commissioner who shall then proceed to dispose of the case as provided for in § 720.241.

§ 720.293 Modification of awards.

Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the administrative law judge, the administrative law judge may, at any time prior to 1 year after the date of the last payment of benefits, whether or not an order has been issued, or at any time prior to 1 year after the rejection of a claim, review a case in accordance with the procedure prescribed in respect of claims in this subpart and in accordance therewith issue a new final decision and order which may terminate, continue, or reinstate, increase, or decrease such benefits, or award benefits. Such new order shall not affect any benefits previously paid, except that an award increasing the benefits rate may be made effective from the date of the entitlement and if any part of the benefit due or to become due is unpaid, an award decreasing the benefit rate may be made effective from the date of entitlement, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid benefit pursuant to subpart C of this part.

APPEALS FROM DECISIONS AND ORDERS

§ 720.295 Right to appeal; Benefits Review Board.

Any party in interest, adversely affected or aggrieved by a decision or order of an adjudication officer issued pursuant to §§ 720.289–720.293 may appeal such decision or order to the Benefits Review Board.

§ 720.296 Procedure before the Board.

All appeals filed with the Board shall be processed and determined pursuant to rules and regulations duly promulgated by the Board as authorized by the Secretary in part 802 of this title.

§ 720.297 Judicial review.

Pursuant to section 21(c) of the Longshoremen's and Harbor Workers' Compensation Act as incorporated by sections 415 and 422 of the Act, any person adversely affected or aggrieved by a final order of the Board may obtain a review of that order in the U.S. Court of Appeals for the circuit in which the disability occurred by filing in such court within 60 days following the issuance of such Board order a written petition praying that the order be modified or set aside. The LHWCA provides that payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless the court finds that irreparable injury would otherwise ensue to an operator or carrier.

§ 720.298 Certification of record for judicial review.

Whenever the record of a hearing shall be required for review or otherwise by any court of competent jurisdiction, the Secretary or his designated representative shall transmit the record with a certification thereof over an appropriate signature as the official record of the case in his custody. The certification shall list each transcipt of testimony and other paper included in the record.

§ 720.299 Costs in proceedings brought without reasonable grounds.

If the court having jurisdiction of proceedings in respect of any claim or final decision and order determines that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings (Act, secs. 415 and 422 and Longshoremen's Act, sec. 26).

Subpart C—Payment of Benefits

GENERAL

§ 720.401 Duration of applicability of this payment scheme.

For purposes of the Department of Labor's administration of part B of title IV of the Act only, benefits shall be determined and paid pursuant to the provisions of this subpart. Beginning January 1, 1974, claimants determined eligible for the receipt of benefits pursuant to this part shall be paid according to the provisions of sections 422 and 424 of part C of title IV of the Act and subpart F of part 725 of this chapter, or in appropriate cases, pursuant to the provisions of an approved State workmen's compensation law. No benefits shall be payable nor shall benefit amounts be computed pursuant to this subpart in respect of any period of entitlement subsequent to December 31, 1973. The full amount of benefits paid or payable under this subpart shall be paid by the Department of Labor. No payment shall be required to be made by a coal mine operator prior to January 1, 1974.

§ 720.402 Manner of payment; payment periods.

(a) Benefits under this Act shall be paid periodically, promptly, and directly to the person entitled thereto or his authorized representative payee (see § 720.435).

(b) Benefits are payable for monthly periods beginning with the month during which the claim is filed. If the claimant meets all the requirements for entitlement to benefits in the same month in which his claim is filed, the filing will be effective for the whole month. If a claimant dies in the first month for which he meets all the requirements for entitlement to benefits, he will be considered to be entitled to benefits for that month.

(c) As expeditiously as possible after the date upon which there has been a determination by a deputy commissioner or decision by an administrative law judge to the effect that the claimant is entitled to receive benefits, the first installment of benefits shall become due and all benefits then due shall be paid. Thereafter benefits shall be paid in monthly installments.

§ 720.403 Payees.

Benefits may be paid, as appropriate, to a beneficiary, to a qualified dependent, or to a representative authorized under this subpart to receive payments on behalf of such beneficiary or dependent. Also, where an amount is payable under part B of title IV of the Act for any month to two or more individuals who are members of the same household, the OWCP may, in its discretion, certify to any two or more of such individuals joint payment of the total benefits payable to them for such period.

§ 720.404 Payment on behalf of another; "legal guardian" defined.

Except as provided in § 270.435 benefits are paid only to the beneficiary or his legal guardian. As used in this section, "legal guardian" means an individual who has been appointed by a court of competent jurisdiction or otherwise appointed pursuant to law, to assume control of and responsibility for the care of the beneficiary, the management of his estate, or both.

§ 720.405 Guardian for minor or incompetent.

The appropriate adjudication officer may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive benefits payable to such person under part B of title IV of the Act and to exercise the powers granted to or

to perform the duties required of such person under the Act.

§ 720.406 Assignment and exemption from claims of creditors.

Except as provided in § 720.414 no assignment, release, or commutation of benefits due or payable under this part, except as provided by the Act as implemented by this part, shall be valid, and such benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived (Act, secs. 415 and 422, and Longshoremen's Act, sec. 16).

BENEFIT RATES

§ 720.410 Computation of benefits.

(a) *Basic rate.*—The benefit amount of each beneficiary entitled to a benefit for a month is determined, in the first instance, by computing the "basic rate." The basic rate is equal to 50 percent of the minimum monthly payment to which a totally disabled Federal employee in grade GS-2 would be entitled for such month under the Federal Employees' Compensation Act, chapter 81, title 5, United States Code. That rate for a month is determined by:

(1) Ascertaining the lowest annual rate of pay (step 1) for grade GS-2 of the "General Schedule" applicable to such month (see 5 U.S.C. 5332);

(2) Ascertaining the monthly rate thereof by dividing the amount determined in paragraph (a)(1) of this section by 12;

(3) Ascertaining the minimum monthly payment under the Federal Employees' Compensation Act by multiplying the amount determined in paragraph (a)(2) of this section by 0.75 (that is, by 75 percent) (see 5 U.S.C. 8112); and

(4) Ascertaining the basic rate under the Act multiplying the amount determined in paragraph (a)(3) of this section by 0.50 (that is, by 50 percent).

(b) *Basic benefit.*—When a miner or widow is entitled to benefits for a month for which he or she has no dependents who qualify under part 715 of this chapter and when a surviving child of a miner or widow, or a parent, brother, or sister of a miner, is entitled to benefits for a month for which he or she is the only beneficiary entitled to benefits, the amount of benefits to which such beneficiary is entitled is equal to the basic rate as computed in accordance with this section (raised, if not a multiple of 10 cents, to the next higher multiple of 10 cents). This amount is referred to as the "basic benefit."

(c) *Augmented benefit.*—(1) When a miner or widow is entitled to benefits for a month for which he or she has one or more dependents who qualify under part 715 of this chapter, the amount of benefits to which such miner or widow is entitles is increased. This increase is referred to as an "augmentation."

(2) Any request to the Office that the benefits of a miner or widow be augmented in accordance with this paragraph shall be in writing on such form and in accordance with such instructions as are prescribed by the Office. Such request shall be filed with the Office in accordance with those provisions of part 717 of this chapter dealing with the filing of claims as if such request were a claim for benefits, and as if such dependent were the "beneficiary" referred to therein. Ordinarily, such request is made as part of the claim of the miner or widow for benefits.

(3) The benefits of a miner or widow are augmented to take account of a particular dependent beginning with the first month in which such dependent satisfies the conditions set forth in part 715 of this chapter and continues to be augmented through the month before the month in which such dependent ceases to satisfy the conditions set forth in part 715 of this chapter, except in the case of a child who qualifies as a dependent because he is a student. In the latter case such benefits continue to be augmented through the month before the first month during no part of which he qualifies as a student.

(4) The basic rate is augmented by 50 percent for one such dependent, 75 percent for two such dependents, and 100 percent for three or more such dependents.

(d) *Survivor benefit.*—(1) As used in this section, "survivor" means a surviving child of a miner or widow, or, for months beginning May 1972, a surviving parent, brother, or sister of a miner, who establishes entitlement to benefits under the provisions of part 715 of this chapter.

(e) *Computation and rounding.*—(1) Any computation prescribed by this section is made to the third decimal place.

(2) Monthly benefits are payable in multiples of 10 cents. Therefore, a monthly payment of amounts derived under paragraph (c)(4) of this section which is not a multiple of 10 cents is increased to the next higher multiple of 10 cents.

(3) Since a fraction of a cent is not a multiple of 10 cents, such an amount which contains a fraction in the third decimal place is raised to the next higher multiple of 10 cents.

§ 720.411 Certification to dependent of augmentation portion of benefit.

(a) If the benefit of a miner or of a widow is augmented because of one or more dependents (§ 720.410(b)), and it appears to the Office that the best interest of such dependent would be served thereby, the Office may certify payment of the amount of such augmentation (to the extent attributable to such dependent) to such dependent directly or to a representative payee for the use and benefit of such dependent.

(b) Any request to the Office to certify separate payment of the amount of an augmentation in accordance with paragraph (a) of this section, shall be in writing on such form and in accordance with such instructions as are prescribed by the Office, and shall be filed with the Office in accordance with those provisions of subpart B of this part dealing with the filing of claims as if such request were a claim for benefits. (See subpt. A of this part.)

(c) In determining whether it is in the best interest of such dependent to certify separate payment of the amount of the augmentation in benefits attributable to him, the Office shall apply the standards pertaining to representative payment in §§ 720.435–720.444, and the instructions issued pursuant thereto.

(d) When the Office determines that the amount of a miner's benefit attributable to the miner's wife or child should be certified for separate payment to a person other than such miner, or that the amount of a widow's benefit attributable to such widow's child should be certified for separate payment to a person other than the widow, and the miner or widow disagrees with such determination and alleges that separate certification is not in the best interest of such dependent, the Office shall reconsider that determination.

(e) Any payment made under this section, if otherwise valid under the Act, is a complete settlement and satisfaction of all claims, rights, and interests in and to such payment.

§ 720.412 Commutation of payments, lump sum awards.

(a) Whenever the deputy commissioner determines that it is in the interest of justice, the liability for benefits or any part thereof as determined by a final adjudication, may, with the approval of the Director of the OWCP, be discharged by the payment of a lump sum equal to the present value of future benefits payments commuted, computed at 4 percent true discount compounded annually.

(b) Applications for commutation of future payments of benefits shall be made to the Office in the manner prescribed by the Office. If the deputy commissioner determines that an award of a lump-sum payment of such benefits would be in the interest of justice, he shall refer such application, together with the reasons in support of such determination, to the Director of the Office for consideration.

(c) The Director of the OWCP shall, in his discretion, grant or deny the application for commutation of payments. In the case of a denial an appeal may be taken pursuant to the adjudicatory procedures prescribed in subpart B of this part as though such appeal were an appeal from a denial of benefits.

(d) The computation of all commutations of such benefits will be made by the Office of Workmen's Compensation programs and for such purpose the deputy commissioner shall refer the file to the appropriate officer. For this purpose the file shall contain the date of birth of the person on whose behalf commutation is sought, as well as the date upon which such commutation shall be effective.

(e) For purposes of determining the amount of any lump-sum award, the probability of the death of the disabled miner and/or other persons entitled to

benefits before the expiration of the period during which he is entitled to benefits, shall be determined in accordance with the American experience table of mortality, and the probability of the remarriage of the surviving wife shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

(f) In the event that an operator or carrier is adjudicated liable for the payment of benefits subsequent to December 31, 1973, such operator or carrier shall not be liable for any portion of a commuted or lump-sum award predicated upon benefits due any claimant prior to January 1, 1974.

(g) In the event a lump-sum award or settlement is approved pursuant to this part, such award or settlement shall not operate to bar an eligible miner's future entitlement to medical benefits pursuant to sections 422 and 424 of part C of title IV of the Act, subsequent to December 31, 1973.

INCREASES AND REDUCTIONS OF BENEFITS

§ 720.415 Modification of benefit amounts; general.

Under certain conditions, the amount of monthly benefits as computed in § 720.410 must be modified to determine the amount actually to be paid to a beneficiary. A modification of the amount of a monthly benefit is required in the following instances:

(a) *Reduction.*—A reduction from a beneficiary's monthly benefit may be required:

(1) In the case of benefits to a miner, parent, brother, or sister, the excessive earnings from wages and from net earnings from self-employment of such miner, parents, brother, or sister, respectively; or

(2) Failure to report earnings from work in employment and self-employment within the prescribed period of time (see § 720.417); or

(3) The receipt by a beneficiary of payments made on account of any disability of the miner under State laws relating to workmen's compensation (including compensation for occupational disease), unemployment compensation, or disability insurance (see § 720.416).

(4) The fact that a claim for benefits from an additional beneficiary is filed, or that such a claim is effective for a month prior to the month of filing, or a dependent qualifies under part 715 of this chapter for an augmentation portion of a benefit of a miner or widow for a month for which another dependent has previously qualifies for an augmentation.

(b) *Adjustment.*—An adjustment in a beneficiary's monthly benefit may be required because an overpayment or underpayment has been made to such beneficiary (see §§ 720.420, 720.429, 720.430).

(c) *Nonpayment.*—No benefits under this part are payable to the residents of a State which reduces its payments made to beneficiaries pursuant to certain State laws (see § 720.420).

(d) *Suspension.*—A suspension of a beneficiary's monthly benefits may be required when the Office has information indicating that reductions on account of the miner's excess earnings (based on criteria in sec. 203(b) of the Social Security Act, 42 U.S.C. 403(b)) may reasonably be expected.

(e) *"Rounding" of benefit amounts.*—Monthly benefit rates are payable in multiples of 10 cents. Any monthly benefit rate which, after the applicable computations, augmentations, and/or reductions is not a multiple of 10 cents, is increased to the next higher multiple of 10 cents. Since a fraction of a cent is not a multiple of 10 cents a benefit rate which contains such a fraction in the third decimal is raised to the next higher multiple of 10 cents.

(f) *Failure to disclose pertinent evidence.*—Any individual entitled to a benefit who is aware of any circumstance which, under the provisions of this part could affect his entitlement to benefits, his eligibility for payment, or the amount of his benefit, or result in the termination, suspension, or reduction of his benefit, shall promptly report such circumstance to the Office of Workmen's Compensation Programs. The Office may at any time require an individual receiving, or claiming that he is entitled to receive a benefit, either on behalf of himself or on behalf of another, to submit a written statement giving pertinent information bearing upon the issue of whether or not an event has occurred which would cause such benefit to be terminated, or which would subject such benefit to reductions or suspension under the provisions of the Act. The failure on the part of such individual to submit any such report or statement properly executed, to the Office shall subject such benefit to reductions, suspension, or termination as the case may be.

§ 720.416 Reductions; receipt of State benefit.

(a) As used in this section, the term "State benefit" means a payment to a beneficiary made on account of any disability of the miner under State laws relating to workmen's compensation (including compensation for occupational disease), unemployment compensation, or disability insurance.

(b) Benefit payments to a beneficiary for a month are reduced (but not below zero) by an amount equal to any payments of State benefits received by such beneficiary for such month.

(c) Where a State benefit is paid periodically but not monthly, or in a lump sum as a commutation of or a substitute for periodic benefits, the reduction under this section is made at such time or times and in such amounts as the Office determines will approximate as nearly as practicable the reduction required under paragraph (b) of this section. In making such a determination, a weekly State benefit is multiplied by 4⅓ and a biweekly benefit is multiplied by 2⅙, to ascertain the monthly equivalent for reduction purposes.

(d) Amounts paid or incurred, or to be incurred, by the individual for medical, legal, or related expenses in connection with his claim for State benefits (defined in par. (a) of this section) or the injury or occupational disease, if any, on which such award of State benefits (or settlement agreement) is based, are excluded in computing the reduction under paragraph (b) of this section, to the extent that they are consonant with State law. Such medical, legal, or related expenses may be evidenced by the State benefit award, compromise agreement, or court order in the State benefit proceedings, or by such other evidence as the Administration may require. Such other evidence may consist of:

(1) A detailed statement by the individual's attorney, physician, or the employer's insurance carrier; or

(2) Bills, receipts, or canceled checks; or

(3) Other clear and convincing evidence indicating the amount of such expenses; or

(4) Any combination of the foregoing evidence from which the amount of such expenses may be determinable.

Any expenses not established by evidence required by the Administration will not be excluded.

§ 720.417 Reductions; excessive earnings.

Benefit payments to a miner, parent, brother, or sister are reduced by an amount equal to the deductions which would be made with respect to excess earnings under the provisions of sections 203 (b), (f), (g), (h), (j), and (l) of the Social Security Act (42 U.S.C. 403 (b), (f), (g), (h), (j), and (l)) as if such benefit payments were benefits payable under section 202 of the Social Security Act (42 U.S.C. 402).

§ 720.418 Reductions; retroactive effect of an additional claim for benefits.

Beginning with the month in which a person (other than a miner) files a claim and becomes entitled to benefits, the benefits of other persons entitled to benefits with respect to the same miner, are adjusted downward, if necessary, so that no more than the permissible amount of benefits (the maximum amount for the number of beneficiaries involved) will be paid.

§ 720.419 More than one reduction event.

If a reduction for receipt of State benefits and a reduction on account of excess earnings are chargeable to the same month, the benefit for such month is first reduced (but not below zero) by the amount of the State benefits, and the remainder of the benefit for such month, if any, is then reduced (but not below zero) by the amount of excess earnings chargeable to such month.

§ 720.420 Nonpayment of benefits to residents of certain States.

No benefit shall be paid under this part to the residents of any State which, after December 30, 1969, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's

compensation (including compensation for occupational disease), unemployment compensation, or disability insurance benefits which are funded in whole or in part out of employer contributions.

OVERPAYMENTS, UNDERPAYMENTS

§ 720.425 Overpayments.

(a) *General.*—As used in this subpart, the term "overpayment" includes a payment where no amount is payable under part B of title IV of the Act; a payment in excess of the amount due under part B of title IV of the Act; a payment resulting from the failure to reduce benefits under section 412(b) of the Act; a payment to a resident of a State whose residents are not eligible for payment; and a payment resulting from the failure to terminate benefits of an individual no longer entitled thereto.

(b) *Overpaid beneficiary is living.*—If the beneficiary to whom an overpayment was made is at the time a determination of such overpayment, entitled to benefits, or at any time thereafter becomes so entitled, no benefit for any month is payable to such individual, except as provided in paragraph (c) of this section, until an amount equal to the amount of the overpayment has been withheld or refunded.

(c) *Adjustment by withholding part of a monthly benefit.*—Adjustment under paragraph (b) of this section may be effected by withholding a part of the monthly benefit payable to a beneficiary where it is determined that:

(1) Withholding the full amount each month would deprive the beneficiary of income required for ordinary and necessary living expenses;

(2) The overpayment was not caused by the beneficiary's intentionally false statement or representation, or willful concealment of, or deliberate failure to furnish material information; and

(3) Recoupment can be effected in an amount of not less than $10 a month and at a rate which would not extend the period of adjustment beyond 3 years after the initiation of the adjustment action.

(d) *Overpaid beneficiary dies before adjustment.*—If an overpaid beneficiary dies before adjustment is completed under the provisions of paragraph (b) of this section, recovery of the overpayment shall be effected through repayment by the estate of the deceased overpaid beneficiary, or by withholding of amounts due the estate of such deceased beneficiary, or both.

§ 720.426 Notice of right to waive consideration.

Whenever an initial determination is made that more than the correct amount of payment has been made, notice of the provisions of section 204(b) of the Social Security Act regarding waiver of adjustment or recovery shall be sent to the overpaid individual and to any other individual against whom adjustment or recovery of the overpayment is to be effected.

§ 720.427 When waiver of adjustment or recovery may be applied.

There shall be no adjustment or recovery in any case where an incorrect payment under part B of title IV of the Act has been made with respect to an individual—

(a) Who is without fault, and

(b) Adjustment or recovery would either:

(1) Defeat the purpose of title IV of the Act, or

(2) Be against equity and good conscience.

§ 720.428 Standards for waiver of adjustment or recovery.

The standards for determining the applicability of the criteria listed in § 720.427 shall be the same as those applied by the Social Security Administration pursuant to §§ 410.561–410.561(h) of this title.

§ 720.429 Collection and compromise of claims for overpayment.

(a) *General effect of the Federal Claims Collection Act of 1966.*—Claims by the Office of Workmen's Compensation Programs against an individual for recovery of overpayments under part B of title IV of the Act, not exceeding the sum of $2,000, exclusive of interest, may be compromised or collection suspended or terminated where such individual or his estate does not have the present or prospective ability to pay the full amount of the claim within a reasonable time (see par. (c) of this section), or the cost of collection is likely to exceed the amount of recovery (see par. (d) of this section), except as provided under paragraph (b) of this section.

(b) *When there will be no compromise, suspension, or termination of collection of a claim for overpayment.*—(1) *Overpaid individual alive.*—In any case where the overpaid individual is alive, a claim for overpayment will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such individual or on the part of any other party having an interest in the claim.

(2) *Overpaid individual deceased.*—In any case where the overpaid individual is deceased: (i) A claim for overpayment in excess of $2,000 will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such deceased individual, and (ii) a claim for overpayment regardless of the amount will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication that any person other than the deceased overpaid individual had a part in the fraudulent action which resulted in the overpayment.

(c) *Inability to pay claim for recovery of overpayment.*—In determining whether the overpaid individual is unable to pay a claim for recovery of an overpayment under part B of title IV of the Act, the Office will consider such individual's age, health, present and potential income (including inheritance prospects), assets (e.g., real property, savings account), possible concealment or improper transfer of assets, and assets or income of such individual which may be available in enforced collection proceedings. The Office will also consider exemptions available to such individual under the pertinent State or Federal law in such proceedings. In the event the overpaid individual is deceased, the Office will consider the available assets of the estate, taking into account any liens or superior claims against the estate.

(d) *Cost of collection or litigative probabilities.*—Where the probable costs of recovering an overpayment under part B of title IV of the Act would not justify enforced collection proceedings for the full amount of the claim or there is doubt concerning the Office's ability to establish its claim as well as the time which it will take to effect such collection, a compromise or settlement for less than the full amount will be considered.

(e) *Amount of compromise.*—The amount to be accepted in compromise of a claim for overpayment under part B of title IV of the Act shall bear a reasonable relationship to the amount which can be recovered by enforced collection proceedings giving due consideration to the exemptions available to the overpaid individual under State or Federal law and the time which collection will take.

(f) *Payment.*—Payment of the amount which the Office has agreed to accept as a compromise in full settlement of a claim for recovery of an overpayment under part B of title IV of the Act must be made within the time and in the manner set by the Office. A claim for such recovery of the overpayment shall not be considered compromised or settled until the full payment of the compromised amount has been made within the time and manner set by the Office. Failure of the overpaid individual or his estate to make such payment as provided shall result in reinstatement of the full amount of the overpayment less any amounts paid prior to such default.

§ 720.430 Underpayments.

(a) *General.*—As used in this subpart, the term "underpayment" includes a payment in an amount less than the amount of the benefit due for such month, and nonpayment where some amount of such benefits is payable.

(b) *Underpaid individual is living.*—If an individual to whom an underpayment is due is living, the amount of such underpayment will be paid to such individual either in a single payment (if he is not entitled to a monthly benefit) or by increasing one or more monthly benefit payments to which such individual is or becomes entitled.

(c) *Underpaid individual dies before adjustment of underpayment.*—If an in-

dividual to whom an underpayment is due dies before receiving payment or negotiating the check or checks representing such payment, such underpayment will be distributed to the living person (or persons) in the highest order of priority as follows:

(1) The deceased individual's surviving spouse who was either:

(i) Living in the same household with the deceased individual at the time of such individual's death, or

(ii) In the case of a deceased miner, entitled for the month of death to widow's black lung benefits.

(2) In the case of a deceased miner or widow, his or her child entitled to benefits as the surviving child of such miner or widow for the month in which such miner or widow died (if more than one such child, in equal shares to each such child).

(3) In the case of a deceased miner, his parent entitled to benefits as the surviving parent of such miner for the month in which such miner died (if more than one such parent, in equal shares to each such parent).

(4) The surviving spouse of the deceased individual who does not qualify under paragraph (c)(1) of this section.

(5) The child or children of the deceased individual who do not qualify under paragraph (c)(2) of this section (if more than one such child, in equal shares to each such child).

(6) The parent or parents of the deceased individual who do not qualify under paragraph (c)(3) of this section (if more than one such parent, in equal shares to each such parent).

(7) The legal representative of the estate of the deceased individual as defined in paragraph (e) of this section.

(d) In the event that a person who is otherwise qualified to receive an underpayment under the provisions of paragraph (c) of this section, dies before receiving payment or before negotiating the check or checks representing such payment, his share of the underpayment will be divided among the remaining living person(s) in the same order of priority. In the event that there is (are) no other such person(s), the underpayment will be paid to the living person(s) in the next lower order of priority under paragraph (c) of this section.

(e) *Definition of legal representative.*—The term "legal representative," for the purpose of qualifying to receive an underpayment, generally means the executor or the administrator of the estate of the deceased beneficiary. However, it may also include an individual, institution, or organization acting on behalf of an unadministered estate, provided the person can give the Office good acquittance (as defined in par. (f) of this section). The following persons may qualify as legal representative for purposes of this section, provided they can give the Office good acquittance:

(1) A person who qualifies under a State's small estate statute; or

(2) A person resident in a foreign country who under the laws and customs of that country, has the right to receive assets of the estate; or

(3) A public administrator; or

(4) A person who has the authority, under applicable law, to collect the assets of the estate of the deceased beneficiary.

(f) *Definition of "good acquittance".*—A person is considered to give the Office "good acquittance" when payment to that person will release the Office from further liability for such payment.

§ 720.431 Relation to provisions for reductions or increases.

The amount of an overpayment or underpayment is the difference between the amount actually paid to the beneficiary and the amount of the payment to which the beneficiary was actually entitled. Such overpayment or underpayment, for example, would be equal to the difference between the amount of a benefit in fact paid to the beneficiary and the amount of such benefit as reduced under section 412(b) of the Act, as increased pursuant to section 412(a)(1) of the Act, or as augmented under section 412(a)(3) of the Act. In effecting an adjustment with respect to an overpayment, no amount can be considered as having been withheld from a particular benefit which is in excess of the amount of such benefit as so reduced. Overpayment and underpayment simultaneously outstanding on account of the same beneficiary are first adjusted against one another before adjustment pursuant to the other provisions of this subpart.

§ 720.435 Payment on behalf of an individual.

(a) When it appears to the Office that the interest of a beneficiary entitled to a payment under part B of title IV of the Act would be served thereby, certification of payments may be made by the Office regardless of the legal competency or incompetency of the beneficiary entitled thereto, either for direct payment to such beneficiary, or for his use and benefit to a relative or some other person as the "representative payee" of the beneficiary. When it appears that an indivdual who is receiving benefit payments my be incapable of managing such payments in his own interest, the Office shall, if such individual is age 18 or over and has not been adjudged legally incompetent, continue payments to such individual pending a determination as to his capacity to manage benefit payments and the selection of a representative payee.

(b) As used in §§ 720.435–720.444, the term "beneficiary" includes the dependent of a miner or widow who could qualify for certification of separate payment of an augmentation portion of such miner's or widow's benefits.

§ 720.436 Submission of evidence by representative payee.

Before any amount shall be certified for payment to any relative or other person as representative payee for and on behalf of a beneficiary, such relative or other person shall submit to the Office such evidence as it may require of his relationship to, or his responsibility for the care of, the beneficiary on whose behalf payment is to be made, or of his authority to receive such payment. The Office may, at any time thereafter, require evidence of the continued existence of such relationship, responsibility or authority. If any such relative or other person fails to submit the required evidence within a reasonable period of time after it is requested, no further payments shall be certified to him on behalf of the beneficiary unless for good cause shown, the default of such relative or other person is excused by the Office and the required evidence is thereafter submitted.

§ 720.437 Responsibility of representative payee.

A relative or other person to whom certification of payment is made on behalf of a beneficiary as representative payee shall, subject to review by the Office and to such requirements as it may from time to time prescribe, apply the payments certified to him on behalf of a beneficiary in the manner and for the purposes determined by him to be in the beneficiary's best interest.

§ 720.438 Use of benefits for current maintenance.

Payments certified to a relative or other person on behalf of a beneficiary shall be considered as having been appiled for the use and benefit of the beneficiary when they are used for the beneficiary's current maintenance—i.e., to replace current income lost because of the disability, retirement, or death of the insured individual. Where a beneficiary is received care in an institution, current maintenance shall include the customary charges made by the institution to individuals it provides with care and services like those it provides the beneficiary and charges made for current and foreseeable needs of the beneficiary which are not met by the institution.

§ 720.439 Conservation and investment of payments.

Payments certified to a relative or other person on behalf of a beneficiary which are not needed for the current maintenance of the beneficiary except as they may be used pursuant to § 720.440, shall be conserved or invested on the beneficiary's behalf. Preferred investments are U.S. savings bonds, but such funds may also be invested in accordance with the rules applicable to investment of trust estates by trustees. For example, surplus funds may be deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association if the account is either Federally insured or is otherwise insured in accordance with State law requirements. Surplus funds deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association must be in a form of account which clearly shows that the representative payee has

only a fiduciary, and not a personal, interest in the funds. The preferred forms of such accounts are as follows:

(Name of beneficiary)
by ----------,
(Name of representative payee)
representative payee; or

(Name of beneficiary)
by ----------,
(Name of representative payee)
trustee.

U.S. savings bonds purchased with surplus funds by a representative payee for an incapacitated adult beneficiary should be registered as follows:

(Name of beneficiary)
------, for whom ----------
(Social Security No.) (Name of payee)
is representative payee for black lung benefits.

A representative payee who is the legally appointed guardian or fiduciary of the beneficiary may also register U.S. savings bonds purchased with funds from the payment of benefits under part B of title IV in accordance with applicable regulations of the U.S. Treasury Department (31 CFR 315.5 through 315.8). Any other approved investment of the beneficiary's funds made by the representative payee must clearly show that the payee holds the property in trust for the beneficiary.

§ 720.440 Use of benefits for beneficiary in institution.

Where a beneficiary is confined in a Federal, State, or private institution because of mental or physical incapacity, the relative or other person to whom payments are certified on behalf of the beneficiary shall give highest priority to expenditure of the payments for the current maintenance needs of the beneficiary, including the customary charges made by the institution in providing care and maintenance. It is considered in the best interest of the beneficiary for the relative or other person to whom payments are certified on the beneficiary's behalf to allocate expenditure of the payments so certified in a manner which will facilitate the beneficiary's earliest possible rehabilitation or release from the institution or which otherwise will help him live as normal a life as practicable in the institutional environment.

§ 720.441 Support of legally dependent spouse, child, or parent.

If current maintenance needs of a beneficiary are being reasonably met, a relative or other person to whom payments are certified as representative payee on behalf of the beneficiary may use part of the payments so certified for the support of the legally dependent spouse, a legally dependent child, or a legally dependent parent of the beneficiary.

§ 720.442 Claims of creditors.

A relative or other person to whom payments under part B of title IV of the Act are certified as representative payee on behalf of a beneficiary may not be required to use such payments to discharge an indebtedness of the beneficiary which was incurred before the first month for which payments are certified to a relative or other person on the beneficiary's behalf. In no case, however, may such payee use such payments to discharge such indebtedness of the beneficiary unless the current and reasonably foreseeable future needs of the beneficiary are otherwise provided for.

§ 720.443 Accountability.

A relative or other person to whom payments are certified as representative payee on behalf of a beneficiary shall submit a written report in such form and at such times as the Office may require, accounting for the payments certified to him on behalf of the beneficiary unless such payee is a court-appointed fiduciary and, as such, is required to make an annual accounting to the court, in which case a true copy of each such account filed with the court may be submitted in lieu of the accounting form prescribed by the Office. If any such relative or other person fails to submit the required accounting within a reasonable period of time after it is requested, no further payments shall be certified to him on behalf of the beneficiary unless for good cause shown, the default of such relative or other person is excused by the Office, and the required accounting is thereafter submitted.

§ 720.444 Transfer of accumulated benefit payments.

A representative payee who has conserved or invested funds from payments under part B of title IV of the Act certified to him on behalf of a beneficiary shall, upon direction of the Office, transfer any such funds (including interest earned from investment of such funds) to a successor payee appointed by the Office, or, at the option of the Office, shall transfer such funds, including interest, to the Office for recertification to a successor payee or to the beneficiary.

Signed at Washington, D.C. this 20th day of June 1973.

BERNARD E. DELURY,
Assistant Secretary for Employment Standards.

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