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SUBCHAPTER A—INCOME TAX

[T.D. 7281]

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

Stock Dividends

By a notice of proposed rule making appearing in the FEDERAL REGISTER for March 18, 1971 (36 FR 5221) and by a second notice of proposed rule making appearing in the FEDERAL REGISTER for March 8, 1972 (37 FR 4964) revising certain provisions of the first notice, amendments to the Income Tax Regulations (26 CFR Part 1) were proposed in order to conform such regulations to the provisions of section 305 of the Internal Revenue Code of 1954 as amended by section 421(a) of the Tax Reform Act of 1969 (83 Stat. 614) concerning the treatment of distributions of stock and stock rights. After consideration of all such relevant matters as were presented by interested persons regarding the rules proposed, the proposed amendments of the regulations except for certain changes of which the following are the most significant are adopted by this Treasury decision. In addition, the regulations under sections 306 and 368 of the Internal Revenue Code are amended by this Treasury decision in order to conform to section 305 as amended.

The final regulations expand the definition of reasonable redemption premium set forth in the first notice of proposed rule making. The proposed regulations provide that if preferred stock may be redeemed after a specified time at a price higher than its issue price, the difference between the redemption price and the issue price will be treated as being distributed over the period during which the stock cannot be called for redemption. However the rule in the proposed regulations does not apply to the extent the redemption premium (i.e., the amount the redemption price exceeds the issue price) is reasonable.

Under the expanded definition of the final regulations a redemption price will be considered reasonable if it is in the nature of a penalty for a premature redemption of the preferred stock, and if such premium does not exceed the amount the corporation would be required to pay for the right to make such premature redemptions under market conditions existing at the time of issuance. The final regulations do not change the "safe harbor rule" provided in the proposed regulations, i.e., that a redemption premium not in excess of 10 percent of the issue price of stock which is not redeemable for 5 years from the date of issue is considered reasonable.

It was considered necessary to define in this document the issue price of preferred stock in the case where such stock is distributed as a stock dividend on common stock. The issue price is defined (for purposes of determining whether the redemption premium of such stock is reasonable under § 1.305–5 (b)) as the fair market value of the preferred stock immediately following its distribution as a stock dividend. The reason for making this revision is to make it clear that preferred stock distributed as a dividend on common stock has an issue price and is subject to the redemption premium provisions under §§ 1.305–5 (b) and 1.305–7 (a).

The final regulations add a new paragraph to the proposed regulations to explain in more detail the application of section 305 (c) to recapitalizations.

Under this new paragraph, a recapitalization will result in a deemed distribution under section 305 (c), if it is pursuant to a plan to periodically increase a shareholder's proportionate interest in the assets or earnings and profits of the corporation or if a shareholder owning stock with dividends in arrears exchanges his stock for other stock and, as a result, increases his proportionate interest. A rule is set forth in the final regulations which provides that where the fair market value or the liquidation preference, whichever is greater, of the stock received in exchange exceeds the issue price (or with respect to stock issued before July 12, 1973, the liquidation preference (not including dividends in arrears) if greater than the issue price) of the preferred stock surrendered, the amount of the excess shall be deemed under section 305 (c) to be a distribution of stock on the preferred stock surrendered to which sections 305 (b)(4) and 301 apply. However, the amount of the distribution shall not exceed the amount of the dividends in arrears on the preferred stock surrendered.

On March 18, 1971, a notice of proposed rule making to conform the Income Tax Regulations (26 CFR Part 1) to the provisions of section 305 of the Internal Revenue Code of 1954, as amended by section 421(a) of the Tax Reform Act of 1969 (83 Stat. 614), was published in the FEDERAL REGISTER (36 FR 5221). On March 8, 1972, a second notice of proposed rule making, which revised certain provisions of the first notice, was published in the FEDERAL REGISTER (37 FR 4964). After consideration of all such relevant matters as were presented by interested persons regarding the rules proposed, the following regulations are hereby adopted.

Section 1.30(c) of the regulations as hereby adopted supersedes § 13.10 of the temporary Income Tax Regulations under the Tax Reform Act of 1969 (T.D. 70–39) as published in the FEDERAL REGISTER for May 2, 1970 (35 FR 7012).

PARAGRAPH 1. Sections 1.305 through 1.305–3 are deleted and the following substituted therefor:

§ 1.305 Statutory provisions; distributions of stock and stock rights.

SEC. 305. *Distributions of stock and stock rights*—(a) *General rule.* Except as otherwise provided in this section, gross income does not include the amount of any distribution of the stock of a corporation made by such corporation to its shareholders with respect to its stock.

(b) *Exceptions.* Subsection (a) shall not apply to a distribution by a corporation of its stock, and the distribution shall be treated as a distribution of property to which section 301 applies—

(1) *Distributions in lieu of money.* If the distribution is at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either—

(A) In its stock, or

(B) In property.

(2) *Disproportionate distributions.* If the distribution (or a series of distributions of which such distribution is one) has the result of—

(A) The receipt of property by some shareholders, and

(B) An increase in the proportionate interests of other shareholders in the assets or earnings and profits of the corporation.

(3) *Distributions of common and preferred stock.* If the distribution (or a series of distributions of which such distribution is one) has the result of—

(A) The receipt of preferred stock by some common shareholders, and

(B) The receipt of common stock by other common shareholders.

(4) *Distributions on preferred stock.* If the distribution is with respect to perferred stock, other than an increase in the conversion ratio of convertible preferred stock made solely to take account of a stock dividend or stock split with respect to the stock into which such convertible stock is convertible.

(5) *Distributions of convertible preferred stock.* If the distribution is of convertible preferred stock, unless it is established to the satisfaction of the Secretary or his delegate that such distribution will not have the result described in paragraph (2).

(c) *Certain transactions treated as distributions.* For purposes of this section and section 301, the Secretary or his delegate shall prescribe regulations under which a change in conversion ratio, a change in redemption price, a difference between redemption price and issue price, a redemption which is treated as a distribution to which section 301 applies, or any transaction (including a recapitalization) having a similar effect on the interest of any shareholder

shall be treated as a distribution with respect to any shareholder whose proportionate interest in the earnings and profits or assets of the corporation is increased by such change, difference, redemption or similar transaction.

(d) *Definitions*—(1) *Rights to acquire stock.* For purposes of this section, the term "stock" includes rights to acquire such stock.

(2) *Shareholders.* For purposes of subsections (b) and (c), the term "shareholder" includes a holder of rights or of convertible securities.

(e) *Cross references.* For special rules—

(1) Relating to the receipt of stock and stock rights in corporate organizations and reorganizations, see part III (section 51 and following).

(2) In the case of a distribution which results in a gift, see section 2501 and following.

(3) In the case of a distribution which has the effect of the payment of compensation, see section 61(a)(1).

[Sec. 305 as amended by sec. 421(a), Tax Reform Act 1969 (83 Stat. 614)]

§ 1.305–1 Stock dividends.

(a) *In general.* Under section 305, a distribution made by a corporation to its shareholders in its stock or in rights to acquire its stock is not included in gross income except as provided in section 305(b) and the regulations promulgated under the authority of section 305(c). A distribution made by a corporation to its shareholders in its stock or rights to acquire its stock which would not otherwise be included in gross income by reason of section 305 shall not be so treated merely because such distribution was made out of Treasury stock or consisted of rights to acquire Treasury stock. See section 307 for rules as to basis of stock and stock rights acquired in a distribution.

(b) *Amount of distribution.* (1) In general, where a distribution of stock or rights to acquire stock of a corporation is treated as a distribution of property to which section 301 applies by reason of section 305(b), the amount of the distribution, in accordance with section 301(b) and § 1.301–1, is the fair market value of such stock or rights on the date of distribution. See example (1) of § 1.305–2(b).

(2) Where a corporation which regularly distributes its earnings and profits, such as a regulated investment company, declares a dividend pursuant to which the shareholders may elect to receive either money or stock of the distributing corporation of equivalent value, the amount of the distribution of the stock received by any shareholder electing to receive stock will be considered to equal the amount of the money which could have been received instead. See example (2) of § 1.305–2(b).

(3) For rules for determining the amount of the distribution where certain transactions, such as changes in conversion ratios or periodic redemptions, are treated as distributions under section 305 (c), see examples (6), (8), (9), and (15) of § 1.305–3 (e).

(c) *Adjustment in purchase price.* A transfer of stock (or rights to acquire stock) or an increase or decrease in the conversion ratio or redemption price of stock which represents an adjustment of the price to be paid by the distributing corporation in acquiring property (within the meaning of section 317(a)) is not within the purview of section 305 because it is not a distribution with respect to its stock. For example, assume that on January 1, 1970, pursuant to a reorganization, corporation X acquires all the stock of corporation Y solely in exchange for its convertible preferred class B stock. Under the terms of the class B stock, its conversion ratio is to be adjusted in 1976 under a formula based upon the earnings of corporation Y over the 6-year period ending on December 31, 1975. Such an adjustment in 1976 is not covered by section 305.

(d) *Definitions.* (1) For purposes of this section and §§ 1.305–2 through 1.305–7, the term "stock" includes rights or warrants to acquire such stock.

(2) For purposes of §§ 1.305–2 through 1.305–7, the term "shareholder" includes a holder of rights or warrants or a holder of convertible securities.

§ 1.305–2 Distributions in lieu of money.

(a) *In general.* Under section 305(b)(1), if any shareholder has the right to an election or option with respect to whether a distribution shall be made either in money or any other property, or in stock or rights to acquire stock of the distributing corporation, then, with respect to all shareholders, the distribution of stock or rights to acquire stock is treated as a distribution of property to which section 301 applies regardless of—

(1) Whether the distribution is actually made in whole or in part in stock or in stock rights;

(2) Whether the election or option is exercised or exercisable before or after the declaration of the distribution;

(3) Whether the declaration of the distribution provides that the distribution will be made in one medium unless the shareholder specifically requests payment in the other;

(4) Whether the election governing the nature of the distribution is provided in the declaration of the distribution or in the corporate charter or arises from the circumstances of the distribution; or

(5) Whether all or part of the shareholders have the election.

(b) *Examples.* The application of section 305(b)(1) may be illustrated by the following examples:

Example (1). (i) Corporation X declared a dividend payable in additional shares of its common stock to the holders of its outstanding common stock on the basis of two additional shares for each share held on the record date but with the provision that, at the election of any shareholder made within a specified period prior to the distribution date, he may receive one additional share for each share held on the record date plus $12 principal amount of securities of corporation Y owned by corporation X. The fair market value of the stock of corporation X on the distribution date was $10 per share. The fair market value of $12 principal amount of securities of corporation Y on the distribution date was $11 but such securities had a cost basis to corporation X of $9.

(ii) The distribution to all shareholders of one additional share of stock of corporation X (with respect to which no election applies) for each share outstanding is not a distribution to which section 301 applies.

(iii) The distribution of the second share of stock of corporation X to those shareholders who do not elect to receive securities of corporation Y is a distribution of property to which section 301 applies, whether such shareholders are individuals or corporations. The amount of the distribution to which section 301 applies is $10 per share of stock of corporation X held on the record date (the fair market value of the stock of corporation X on the distribution date).

(iv) The distribution of securities of corporation Y in lieu of the second share of stock of corporation X to the shareholders of corporation X whether individuals or corporations, who elect to receive such securities, is also a distribution of property to which section 301 applies.

(v) In the case of the individual shareholders of corporation X who elect to receive such securities, the amount of the distribution to which section 301 applies is $11 per share of stock of corporation X held on the record date (the fair market value of the $12 principal amount of securities of corporation Y on the distribution date).

(vi) In the case of the corporate shareholders of corporation X electing to receive such securities, the amount of the distribution to which section 301 applies is $9 per share of stock of corporation X held on the record date (the basis of the securities of corporation Y in the hands of corporation X).

Example (2). On January 10, 1970, corporation X, a regulated investment company, declared a dividend of $1 per share on its common stock payable on February 11, 1970, in cash or in stock of corporation X of equivalent value determined as of January 22, 1970, at the election of the shareholder made on or before January 22, 1970. The amount of the distribution to which section 301 applies is $1 per share whether the shareholder elects to take cash or stock and whether the shareholder is an individual or a corporation. Such amount will also be used in determining the dividend paid deduction of corporation X and the reduction in earnings and profits of corporation X.

§ 1.305–3 Disproportionate distributions.

(a) *In general.* Under section 305(b)(2), a distribution by a corporation of its stock or rights to acquire its stock is treated as a distribution of property to which section 301 applies if the distribution (or a series of distributions of which such distribution is one) has the result of (1) the receipt of money or other property by some shareholders, and (2) an increase in the proportionate interests of other shareholders in the assets or earnings and profits of the corporation. Thus, if a corporation has two classes of common stock outstanding and cash dividends are paid on one class and stock dividends are paid on the other class, the stock dividends are treated as distributions to which section 301 applies.

(b) *Special rules.* (1) As used in section 305(b)(2), the term "a series of distributions" encompasses all distributions of stock made or deemed made by a corporation which have the result of the

receipt of cash or property by some shareholders and an increase in the proportionate interests of other shareholders.

(2) In order for a distribution of stock to be considered as one of a series of distributions it is not necessary that such distribution be pursuant to a plan to distribute cash or property to some shareholders and to increase the proportionate interests of other shareholders. It is sufficient if there is an actual or deemed distribution of stock (of which such distribution is one) and as a result of such distribution or distributions some shareholders receive cash or property and other shareholders increase their proportionate interests. For example, if a corporation pays quarterly stock dividends to one class of common shareholders and annual cash dividends to another class of common shareholders the quarterly stock dividends constitute a series of distributions of stock having the result of the receipt of cash or property by some shareholders and an increase in the proportionate interests of other shareholders. This is so whether or not the stock distributions and the cash distributions are steps in an overall plan or are independent and unrelated. Accordingly, all the quarterly stock dividends are distributions to which section 301 applies.

(3) There is no requirement that both elements of section 305(b)(2) (i.e., receipt of cash or property by some shareholders and an increase in proportionate interests of other shareholders) occur in the form of a distribution or series of distributions as long as the result of a distribution or distributions of stock is that some shareholders' proportionate interests increase and other shareholders in fact receive cash or property. Thus, there is no requirement that the shareholders receiving cash or property acquire the cash or property by way of a corporate distribution with respect to their shares, so long as they receive such cash or property in their capacity as shareholders, if there is a stock distribution which results in a change in the proportionate interests of some shareholders and other shareholders receive cash or property. However, in order for a distribution of property to meet the requirement of section 305(b)(2), such distribution must be made to a shareholder in his capacity as a shareholder, and must be a distribution to which section 301, 356(a)(2), 871(a)(1)(A, 881(a)(1), 852(b), or 857(b) applies. For example if a corporation makes a stock distribution to its shareholders and, pursuant to a prearranged plan with such corporation, a related corporation purchases such stock from those shareholders who want cash, in a transaction to which section 301 applies by virtue of section 304, the requirements of section 305(b)(2) are satisfied. In addition, a distribution of property incident to an isolated redemption of stock (for example, pursuant to a tender offer) will not cause section 305(b)(2) to apply even though the redemption distribution is treated as a distribution of property to which section 301, 871(a)(1)(A), 881(a)(1), or 356(a)(2) applies.

(4) Where the receipt of cash or property occurs more than 36 months following a distribution or series of distributions of stock, or where a distribution or series of distributions of stock is made more than 36 months following the receipt of cash or property, such distribution or distributions will be presumed not to result in the receipt of cash or property by some shareholders and an increase in the proportionate interest of other shareholders, unless the receipt of cash or property and the distribution or series of distributions of stock are made pursuant to a plan. For example, if, pursuant to a plan, a corporation pays cash dividends to some shareholders on January 1, 1971 and increases the proportionate interests of other shareholders on March 1, 1974, such increases in proportionate interests are distributions to which section 301 applies.

(5) In determining whether a distribution or a series of distributions has the result of a disproportionate distribution, there shall be treated as outstanding stock of the distributing corporation (i) any right to acquire such stock (whether or not exercisable during the taxable year), and (ii) any security convertible into stock of the distributing corporation (whether or not convertible during the taxable year).

(6) In cases where there is more than one class of stock outstanding, each class of stock is to be considered separately in determining whether a shareholder has increased his proportionate interest in the assets or earnings and profits of a corporation. The individual shareholders of a class of stock will be deemed to have an increased interest if the class of stock as a whole has an increased interest in the corporation.

(c) *Distributions of cash in lieu of fractional shares.* (1) Section 305(b)(2) will not apply if—

(i) A corporation declares a dividend payable in stock of the corporation and distributes cash in lieu of fractional shares to which shareholders would otherwise be entitled, or

(ii) Upon a conversion of convertible stock or securities a corporation distributes cash in lieu of fractional shares to which shareholders would otherwise be entitled, provided the purpose of the distribution of cash is to save the corporation the trouble, expense, and inconvenience of issuing and transferring fractional shares (or scrip representing fractional shares), or issuing full shares representing the sum of fractional shares, and not to give any particular group of shareholders an increased interest in the assets or earnings and profits of the corporation. For purposes of paragraph (c)(1)(i) of this section, if the total amount of cash distributed in lieu of fractional shares is 5 percent or less of the total fair market value of the stock distributed (determined as of the date of declaration), the distribution shall be considered to be for such valid purpose.

(2) In a case to which subparagraph (1) of this paragraph applies, the transaction will be treated as though the fractional shares were distributed as part of the stock distribution and then were redeemed by the corporation. The treatment of the cash received by a shareholder will be determined under section 302.

(d) *Adjustment in conversion ratio.* (1)(i) Except as provided in subparagraph (2) of this paragraph, if a corporation has convertible stock or convertible securities outstanding (upon which it pays or is deemed to pay dividends or interest in money or other property) and distributes a stock dividend (or rights to acquire such stock) with respect to the stock into which the convertible stock or securities are convertible, an increase in proportionate interest in the assets or earnings and profits of the corporation by reason of such stock dividend shall be considered to have occurred unless a full adjustment in the conversion ratio or conversion price to reflect such stock dividend is made. Under certain circumstances, however, the application of an adjustment formula which in effect provides for a "credit" where stock is issued for consideration in excess of the conversion price may not satisfy the requirement for a "full adjustment." Thus, if under a "conversion price" antidilution formula the formula provides for a "credit" where stock is issued for consideration in excess of the conversion price (in effect as an offset against any decrease in the conversion price which would otherwise be required when stock is subsequently issued for consideration below the conversion price) there may still be an increase in proportionate interest by reason of a stock dividend after application of the formula, since any downward adjustment of the conversion price that would otherwise be required to reflect the stock dividend may be offset, in whole or in part, by the effect of prior sales made at prices above the conversion price. On the other hand, if there were no prior sales of stock above the conversion price then a full adjustment would occur upon the application of such an adjustment formula and there would be no change in proportionate interest. Similarly, if consideration is to be received in connection with the issuance of stock, such as in the case of a rights offering or a distribution of warrants, the fact that such consideration is taken into account in making the antidilution adjustment will not preclude a full adjustment. See paragraph (b) of the example in this subparagraph for a case where the application of an adjustment formula with a cumulative feature does not result in a full adjustment and where a change in proportionate interest therefore occurs. See paragraph (c) for a case where the application of an adjustment formula with a cumulative feature does result in a full adjustment and where no change

in proportionate interest therefore occurs. See paragraph (*d*) for an application of an antidilution formula in the case of a rights offering. See paragraph (*e*) for a case where the application of a noncumulative type adjustment formula will in all cases prevent a change in proportionate interest from occurring in the case of a stock dividend, because of the omission of the cumulative feature.

(ii) The principles of this subparagraph may be illustrated by the following example.

Example. (*a*) Corporation S has two classes of securities outstanding, convertible debentures and common stock. At the time of issuance of the debentures the corporation had 100 shares of common stock outstanding. Each debenture is interest-paying and is convertible into common stock at a conversion price of $2. The debenture's conversion price is subject to reduction pursuant to the following formula:

(Number of common shares outstanding at date of issue of debentures times initial conversion price)
plus
(Consideration received upon issuance of additional common shares)
divided by
(Number of common shares outstanding at date of issue of debentures)
plus
(Number of additional common shares issued)

Under the formula, common stock dividends are treated as an issue of common stock for zero consideration. If the computation results in a figure which is less than the existing conversion price the conversion price is reduced. However, under the formula, the existing conversion price is never increased. The formula works upon a cumulative basis since the numerator includes the consideration received upon the issuance of all common shares subsequent to the issuance of the debentures, and the reduction effected by the formula because of a sale or issuance of common stock below the existing conversion price is thus limited by any prior sales made above the existing conversion price.

(*b*) In 1972 corporation S sells 100 common shares at $3 per share. In 1973 the corporation declares a stock dividend of 20 shares to all holders of common stock. Under the antidilution formula no adjustment will be made to the conversion price of the debentures to reflect the stock dividend to common stockholders since the prior sale of common stock in excess of the conversion price in 1972 offsets the reduction in the conversion price which would otherwise result, as follows:

$$100\times\$2+\$300\div100+120=\frac{\$500}{220}=\$2.27$$

Since $2.27 is greater than the existing conversion price of $2 no adjustment is required. As a result, there is an increase in proportionate interest of the common stockholders by reason of the stock dividend and the additional shares of common stock will be treated, pursuant to section 305(b)(2), as a distribution of property to which section 301 applies.

(*c*) Assume the same facts as above, but instead of selling 100 common shares at $3 per share in 1972, assume corporation S sold no shares. Application of the antidilution formula would give rise to an adjustment in the conversion price as follows:

$$100\times\$2+\$0\div100+20=\frac{\$200}{120}=\$1.67$$

The conversion price, being reduced from $2 to $1.67, fully reflects the stock dividend distributed to the common stockholders. Hence, the distribution of common stock is not treated under section 305(b)(2) as one to which section 301 applies because the distribution does not increase the proportionate interests of the common shareholders as a class.

(*d*) Corporation S distributes to its shareholders rights entitling the shareholders to purchase a total of 20 shares at $1 per share. Application of the antidilution formula would produce an adjustment in the conversion price as follows:

$$100\times\$2+20\times\$1\div100+20=\frac{\$220}{120}=\$1.83$$

The conversion price, being reduced from $2 to $1.83, fully reflects the distribution of rights to purchase stock at a price lower than the conversion price. Hence, the distribution of the rights is not treated under section 305(b)(2) as one to which section 301 applies because the distribution does not increase the proportionate interests of the common shareholders as a class.

(*e*) Assume the same facts as in (*b*) above, but instead of using a "conversion price" antidilution formula which operates on a cumulative basis, assume corporation S has employed a formula which operates as follows with respect to all stock dividends: The conversion price in effect at the opening of business on the day following the dividend record date is reduced by multiplying such conversion price by a fraction the numerator of which is the number of shares of common stock outstanding at the close of business on the record date and the denominator of which is the sum of such shares so outstanding and the number of shares constituting the stock dividend. Under such a formula the following adjustment would be made to the conversion price upon the declaration of a stock dividend of 20 shares in 1973:

$$200\div200+20=\frac{200}{220}\times\$2=\$1.82$$

The conversion price, being reduced from $2 to $1.82, fully reflects the stock dividend distributed to the common stockholders. Hence, the distribution of common stock is not treated under section 305(b)(2) as one to which section 301 applies because the distribution does not increase the proportionate interests of the common shareholders as a class.

(2) (i) A distributing corporation either must make the adjustment required by subparagraph (1) of this paragraph as of the date of the distribution of the stock dividend, or must elect (in the manner provided in subdivision (iii) of this subparagraph) to make such adjustment within the time provided in subdivision (ii) of this subparagraph.

(ii) If the distributing corporation elects to make such adjustment, such adjustment must be made no later than the earlier of (*a*) 3 years after the date of the stock dividend, or (*b*) that date as of which the aggregate stock dividens for which adjustment of the conversion ratio has not previously been made total at least 3 percent of the issued and outstanding stock with respect to which such stock dividends were distributed.

(iii) The election provided by subdivision (ii) of this subparagraph shall be made by filing with the income tax return for the taxable year during which the stock dividend is distributed—

(*a*) A statement that an adjustment will be made as provided by that subdivision, and

(*b*) A description of the antidilution provisions under which the adjustment will be made.

(3) Notwithstanding the preceding subparagraph, if a distribution has been made before July 12, 1973, and the adjustment required by subparagraph (1) or the election to make such adjustment was not made before such date, the adjustment or the election to make such adjustment, as the case may be, shall be considered valid if made no later than 15 days following the date of the first annual meeting of the shareholders after July 12, 1973, or July 12, 1974, whichever is earlier. If the election is made within such period, and, if the income tax return has been filed before the time of such election, the statement of adjustment and the description of the antidilution provisions required by subparagraph (2)(iii) shall be filed with the Internal Revenue Service Center with which the income tax return was filed.

(4) See § 1.305–7(b) for a discussion of antidilution adjustments in connection with the application of section 305(c) in conjunction with section 305(b).

(e) *Examples.* The application of section 305(b)(2) to distributions of stock and section 305(c) to deemed distributions of stock may be illustrated by the following examples:

Example (1). Corporation X is organized with two classes of common stock, class A and class B. Each share of stock is entitled to share equally in the assets and earnings and profits of the corporation. Dividends may be paid in stock or in cash on either class of stock without regard to the medium of payment of dividends on the other class. A dividend is declared on the class A stock payable in additional shares of class A stock and a dividend is declared on class B stock payable in cash. Since the class A shareholders as a class will have increased their proportionate interests in the assets and earnings and profits of the corporation and the class B shareholders will have received cash, the additional shares of class A stock are distributions of property to which section 301 applies. This is true even with respect to those shareholders who may own class A stock and class B stock in the same proportion.

Example (2). Corporation Y is organized with two classes of stock, class A common, and class B, which is nonconvertible and limited and preferred as to dividends. A dividend is declared upon the class A stock payable in additional shares of class A stock and a dividend is declared on the class B stock payable in cash. The distribution of class A stock is not one to which section 301 applies because the distribution does not increase the proportionate interests of the class A shareholders as a class.

Example (3). Corporation K is organized with two classes of stock, class A common, and class B, which is nonconvertible preferred stock. A dividend is declared upon the class A stock payable in shares of class B stock and a dividend is declared on the class B stock payable in cash. Since the class A shareholders as a class have an increased interest in the assets and earnings and profits of the corporation, the stock distribution is treated as a distribution to which section 301 applies. If, however, a dividend

were declared upon the class A stock payable in a new class of preferred stock that is subordinated in all respects to the class B stock, the distribution would not increase the proportionate interests of the class A shareholders in the assets or earnings and profits of the corporation and would not be treated as a distribution to which section 301 applies.

Example (4). (i) Corporation W has one class of stock outstanding, class A common. The corporation also has outstanding interest paying securities convertible into class A common stock which have a fixed conversion ratio that is not subject to full adjustment in the event stock dividends or rights are distributed to the class A shareholders. Corporation W distributes to the class A shareholders rights to acquire additional shares of class A stock. During the year, interest is paid on the convertible securities.

(ii) The stock rights and convertible securities are considered to be outstanding stock of the corporation and the distribution increases the proportionate interests of the class A shareholders in the assets and earnings and profits of the corporation. Therefore, the distribution is treated as a distribution to which section 301 applies. The same result would follow if, instead of convertible securities, the corporation had outstanding convertible stock. If, however, the conversion ratio of the securities or stock were fully adjusted to reflect the distribution of rights to the class A shareholders, the rights to acquire class A stock would not increase the proportionate interests of the class A shareholders in the assets and earnings and profits of the corporation and would not be treated as a distribution to which section 301 applies.

Example (5). (i) Corporation S is organized with two classes of stock, class A common and class B convertible preferred. The class B is fully protected against dilution in the event of a stock dividend or stock split with respect to the class A stock; however, no adjustment in the conversion ratio is required to be made until the stock dividends equal 3 percent of the common stock issued and outstanding on the date of the first such stock dividend except that such adjustment must be made no later than 3 years after the date of the stock dividend. Cash dividends are paid annually on the class B stock.

(ii) Corporation S pays a 1 percent stock dividend on the class A stock in 1970. In 1971, another 1 percent stock dividend is paid and in 1972 another 1 percent stock dividend is paid. The conversion ratio of the class B stock is increased in 1972 to reflect the three stock dividends paid on the class A stock. The distributions of class A stock are not distributions to which section 301 applies because they do not increase the proportionate interests of the class A shareholders in the assets and earnings and profits of the corporation.

Example (6). (i) Corporation M is organized with two classes of stock outstanding, class A and class B. Each class B share may be converted, at the option of the holder, into class A shares. During the first year, the conversion ratio is one share of class A stock for each share of class B stock. At the beginning of each subsequent year, the conversion ratio is increased by 0.05 share of class A stock for each share of class B stock. Thus, during the second year, the conversion ratio would be 1.05 shares of class A stock for each share of class B stock, during the third year, the ratio would be 1.10 shares, etc.

(ii) M pays an annual cash dividend on the class A stock. At the beginning of the second year, when the conversion ratio is increased to 1.05 shares of class A stock for each share of class B stock, a distribution of 0.05 shares of class A stock is deemed made under section 305(c) with respect to each share of class B stock, since the proportionate interests of the class B shareholders in the assets or earnings and profits of M are increased and the transaction has the effect described in section 305(b)(2). Accordingly, sections 305(b)(2) and 301 apply to the transaction.

Example (7). (i) Corporation N has two classes of stock outstanding, class A and class B. Each class B share is convertible into class A stock. However, in accordance with a specified formula, the conversion ratio is decreased each time a cash dividend is paid on the class B stock to reflect the amount of the cash dividend. The conversion ratio is also adjusted in the event that cash dividends are paid on the class A stock to increase the number of class A shares into which the class B shares are convertible to compensate the class B shareholders for the cash dividend paid on the class A stock.

(ii) In 1972, a $1 cash dividend per share is declared and paid on the class B stock. On the date of payment, the conversion ratio of the class B stock is decreased. A distribution of stock is deemed made under section 305(c) to the class A shareholders, since the proportionate interest of the class A shareholders in the assets or earnings and profits of the corporation is increased and the transaction has the effect described in section 305(b)(2). Accordingly, sections 305(b)(2) and 301 apply to the transaction.

(iii) In the following year a cash dividend is paid on the class A stock and none is paid on the class B stock. The increase in conversion rights of the class B shares is deemed to be a distribution under section 305(c) to the class B shareholders since their proportionate interest in the assets or earnings and profits of the corporation is increased and since the transaction has the effect described in section 305(b)(2). Accordingly, sections 305(b)(2) and 301 apply to the transaction.

Example (8). Corporation T has 1,000 shares of stock outstanding. C owns 100 shares. Nine other shareholders each owns 100 shares. Pursuant to a plan for periodic redemptions, T redeems up to 5 percent of each shareholder's stock each year. During the year, each of the nine other shareholders has 5 shares of his stock redeemed for cash. Thus, C's proportionate interest in the assets and earnings and profits of T is increased. Assuming that the cash received by the nine other shareholders is taxable under section 301, C is deemed under section 305(c) to have received a distribution under section 305(b)(2) of 5.25 shares of T stock to which section 301 applies. The amount of C's distribution is measured by the fair market value of the number of shares which would have been distributed to C had the corporation sought to increase his interest by 0.47 percentage points (C owned 10 percent of the T stock immediately before the redemption and 10.47 percent immediately thereafter) and the other shareholders continued to hold 900 shares (i.e.,

(a) $\frac{100}{955}=10.47\%$ (percent of C's ownership after redemption);

(b) $\frac{100+x}{1000+x}=10.47\%$; $x=5.25$ (additional shares considered to be distributed to C)).

Since in computing the amount of additional shares deemed to be distributed to C the redemption of shares is disregarded, the redemption of shares will be similarly disregarded in determining the value of the stock of the corporation which is deemed to be distributed. Thus, in the example, 1,005.25 shares of stock are considered as outstanding after the redemption. The value of each share deemed to be distributed to C is then determined by dividing the 1,005.25 shares into the aggregate fair market value of the actual shares outstanding (955) after the redemption.

Example (9). (i) Corporation O has a stock redemption program under which, instead of paying out earnings and profits to its shareholders in the form of dividends, it redeems the stock of its shareholders up to a stated amount which is determined by the earnings and profits of the corporation. If the stock tendered for redemption exceeds the stated amount, the corporation redeems the stock on a pro rata basis up to the stated amount.

(ii) During the year corporation O offers to distribute $10,000 in redemption of its stock. At the time of the offering, corporation O has 1,000 shares outstanding of which E and F each owns 150 shares and G and H each owns 350 shares. The corporation redeems 15 shares from E and 35 shares from G, F and H continue to hold all of their stock.

(iii) F and H have increased their proportionate interests in the assets and earnings and profits of the corporation. Assuming that the cash E and G receive is taxable under section 301, F will be deemed under section 305(c) to have received a distribution under section 305(b)(2) of 16.66 shares of stock to which section 301 applies and H will be deemed under section 305(c) to have received a distribution under section 305(b)(2) of 38.86 shares of stock to which section 301 applies. The amount of the distribution to F and H is measured by the number of shares which would have been distributed to F and H had the corporation sought to increase the interest of F by 0.79 percentage points (F owned 15 percent of the stock immediately before the redemption and 15.79 percent immediately thereafter) and the interest of H by 1.84 percentage points (H owned 35 percent of the stock immediately before the redemption and 36.84 percent immediately thereafter) and E and G had continued to hold 150 shares and 350 shares, respectively (i.e.,

(a) $\frac{150}{950}+\frac{350}{950}=52.63\%$ (percent of F and H's ownership after redemption);

(b) $\frac{500+y}{1000+y}=52.63\%$; $y=55.52$ (additional shares considered to be distributed to F and H);

(c) (1) $\frac{150}{500}\times 55.52=16.66$ (shares considered to be distributed to F);

(2) $\frac{350}{500}\times 55.52=38.86$ (shares considered to be distributed to H)).

Since in computing the amount of additional shares deemed to be distributed to F and H the redemption of shares is disregarded, the redemption of shares will be similarly disregarded in determining the value of the stock of the corporation which is deemed to be distributed. Thus, in the example, 1,055.52 shares of stock are considered as outstanding after the redemption. The value of each share deemed to be distributed to F and H is then determined by dividing the 1,055.52 shares into the aggregate fair market value of the actual shares outstanding (950) after the redemption.

Example (10). Corporation P has 1,000 shares of stock outstanding. T owns 700 shares of the P stock and G owns 300 shares of the P stock. In a single and isolated redemption to which section 301 applies, the corporation redeems 150 shares of T's stock. Since this is an isolated redemption and is not a part of a periodic redemption plan, G is not treated as having received a deemed distribution under section 305(c) to which sections 305(b)(2) and 301 apply even though he has an increased proportionate interest in the assets and earnings and profits of the corporation.

Example (11). Corporation Q is a large corporation whose sole class of stock is widely held. However, the four largest shareholders are officers of the corporation and each owns 8 percent of the outstanding stock. In 1974, in a distribution to which section 301 applies, the corporation redeems 1.5 percent of the stock from each of the four largest shareholders in preparation for their retirement. From 1970 through 1974, the corporation distributes annual stock dividends to its shareholders. No other distributions were made to these shareholders. Since the 1974 redemptions are isolated and are not part of a plan for periodically redeeming the stock of the corporation, the shareholders receiving stock dividends will not be treated as having received a distribution under section 305(b)(2) even though they have an increased proportionate interest in the assets and earnings and profits of the corporation and whether or not the redemptions are treated as distributions to which section 301 applies.

Example (12). Corporation R has 2,000 shares of class A stock outstanding. Five shareholders own 300 shares each and five shareholders own 100 shares each. In preparation for the retirement of the five major shareholders, corporation R, in a single and isolated transaction, has a recapitalization in which each share of class A stock may be exchanged either for five shares of new class B nonconvertible preferred stock plus 0.4 share of new class C common stock, or for two shares of new class C common stock. As a result of the exchanges, each of the five major shareholders receives 1,500 shares of class B nonconvertible preferred stock and 120 shares of class C common stock. The remaining shareholders each receives 200 shares of class C common stock. None of the exchanges are within the purview of section 305.

Example (13). Corporation P is a widely-held company whose shares are listed for trading on a stock exchange. P distributes annual cash dividends to its shareholders. P purchases shares of its common stock directly from small stockholders (holders of record of 100 shares or less) or through brokers where the holders may not be known at the time of purchase. Where such purchases are made through brokers, they are pursuant to the rules and regulations of the Securities and Exchange Commission. The shares are purchased for the purpose of issuance to employee stock investment plans, to holders of convertible stock or debt, to holders of stock options, or for future acquisitions. Provided the purchases are not pursuant to a plan to increase the proportionate interest of some shareholders and distribute property to other shareholders, the remaining shareholders of P are not treated as having received a deemed distribution under section 305 to which section 305(b)(2) and 301 apply, even though they have an increased proportionate interest in the assets and earnings and profits of the corporation.

Example (14). Corporation U is a large manufacturing company whose products are sold through independent dealers. In order to assist individuals who lack capital to become dealers, the corporation has an established investment plan under which it provides 75 percent of the capital necessary to form a dealership corporation and the individual dealer provides the remaining 25 percent. Corporation U receives class A stock and a note representing its 75 percent interest. The individual dealer receives class B stock representing his 25 percent interest. The class B stock is nonvoting until all the class A shares are redeemed. At least 70 percent of the earnings and profits of the dealership corporation must be used each year to retire the note and to redeem the class A stock. The class A stock is redeemed at a fixed price. The individual dealer has no control over the redemption of stock and has no right to have his stock redeemed during the period the plan is in existence. U's investment is thus systematically eliminated and the individual becomes the sole owner of the dealership corporation. Since this type of plan is akin to a security arrangement, the redemptions of the class A stock will not be deemed under section 305 (c) as distributions taxable under sections 305 (b) (2) and 301 during the years in which the class A stock is redeemed.

Example (15). (i) Corporation V is organized with two classes of stock, class A common and class B convertible preferred. The class B stock is issued for $100 per share and is convertible into class A at a fixed ratio that is not subject to full adjustment in the event stock dividends or rights are distributed to the class A shareholders. The class B stock pays no dividends but it is redeemable in 10 years for $200. There are no facts to indicate that a call premium in excess of 10 percent of the issue price is reasonable. Under sections 305(c) and 305(b)(4), $90 of the redemption price (i.e., the excess of the redemption price over the sum of the issue price and a reasonable call premium) is deemed to be a distribution of preferred stock on preferred stock which is taxable as a distribution of property under section 301. This amount is considered to be distributed ratably over the 10-year period. During the year, the corporation declares a dividend on the class A stock payable in additional shares of class A stock.

(ii) The distribution on the class A stock is a distribution to which sections 305(b)(2) and 301 apply since it increases the proportionate interests of the class A shareholders in the assets and earnings and profits of the corporation and the class B stockholders have received property (i.e., a ratable share of the $90 excessive call premium deemed distributed pursuant to sections 305(c) and 305(b)(4) and taxable as a distribution of property under section 301). If, however, the conversion ratio of the class B stock were subject to full adjustment to reflect the distribution of stock to class A shareholders, the distribution of stock dividends on the class A stock would not increase the proportionate interests of the class A shareholders in the assets and earnings and profits of the corporation and such distribution would not be a distribution to which section 301 applies.

§ 1.305–4 Distributions of common and preferred stock.

(a) *In general.* Under section 305(b)(3), a distribution (or a series of distributions) by a corporation which results in the receipt of preferred stock whether or not convertible into common stock) by some common shareholders and the receipt of common stock by other common shareholders is treated as a distribution of property to which section 301 applies. For the meaning of the term "a series of distribution," see subparagraphs (1) through (6) of § 1.305–3(b).

(b) *Examples.* The application of section 305(b)(3) may be illustrated by the following examples:

Example (1). Corporation X is organized with two classes of common stock, class A and class B. Dividends may be paid in stock or in cash on either class of stock without regard to the medium of payment of dividends on the other class. A dividend is declared on the class A stock payable in additional shares of class A stock and a dividend is declared on class B stock payable in newly authorized class C stock which is nonconvertible and limited and preferred as to dividends. Both the distribution of class A shares and the distribution of new class C shares are distributions to which section 301 applies.

Example (2). Corporation Y is organized with one class of stock, class A common. During the year the corporation declares a dividend on the class A stock payable in newly authorized class B preferred stock which is convertible into class A stock no later than 6 months from the date of distribution at a price that is only slightly higher than the market price of class A stock on the date of distribution. Taking into account the dividend rate, redemption provisions, the marketability of the convertible stock, and the conversion price, it is reasonable to anticipate that within a relatively short period of time some shareholders will exercise their conversion rights and some will not. Since the distribution can reasonably be expected to result in the receipt of preferred stock by some common shareholders and the receipt of common stock by other common shareholders, the distribution is a distribution of property to which section 301 applies.

§ 1.305–5 Distributions on preferred stock.

(a) *In general.* Under section 305(b)(4), a distribution by a corporation of its stock (or rights to acquire its stock) made (or deemed made under section 305(c)) with respect to its preferred stock is treated as a distribution of property to which section 301 applies unless the distribution is made with respect to convertible preferred stock to take into account a stock dividend, stock split, or any similar event (such as the sale of stock at less than the fair market value pursuant to a rights offering) which would otherwise result in the dilution of the conversion right. For purposes of the preceding sentence, an adjustment in the conversion ratio of convertible preferred stock made solely to take into account the distribution by a closed end regulated investment company of a capital gain dividend with respect to the stock into which such stock is convertible shall not be considered a "similar event." The term "preferred stock" generally refers to stock which, in relation

to other classes of stock outstanding, enjoys certain limited rights and privileges (generally associated with specified dividend and liquidation priorities) but does not participate in corporate growth to any significant extent. The distinguishing feature of "preferred stock" for the purposes of section 305(b)(4) is not its privileged position as such, but that such privileged position is limited, and that such stock does not participate in corporate growth to any significant extent. However, a right to participate which lacks substance will not prevent a class of stock from being treated as preferred stock. Thus, stock which enjoys a priority as to dividends and on liquidation but which is entitled to participate, over and above such priority, with another less privileged class of stock in earnings and profits and upon liquidation, may nevertheless be treated as preferred stock for purposes of section 305 if, taking into account all the facts and circumstances, it is reasonable to anticipate at the time a distribution is made (or is deemed to have been made) with respect to such stock that there is little or no likelihood of such stock actually participating in current and anticipated earnings and upon liquidation beyond its preferred interest. Among the facts and circumstances to be considered are the prior and anticipated earnings per share, the cash dividends per share, the book value per share, the extent of preference and of participation of each class, both absolutely and relative to each other, and any other facts which indicate whether or not the stock has a real and meaningful probability of actually participating in the earnings and growth of the corporation. The determination of whether stock is preferred for purposes of section 305 shall be made without regard to any right to convert such stock into another class of stock of the corporation. The term "preferred stock", however, does not include convertible debentures.

(b) *Redemption premium.* (1) If a corporation issues preferred stock which may be redeemed after a specified period of time at a price higher than the issue price, the difference will be considered under the authority of section 305(c) to be a distribution of additional stock on preferred stock which is constructively received by the shareholder over the period of time during which the preferred stock cannot be called for redemption.

(2) Subparagraph (1) of this paragraph shall not apply to the extent that the difference between issue price and redemption price is a reasonable redemption premium. A redemption premium will be considered reasonable if it is in the nature of a penalty for a premature redemption of the preferred stock and if such premium does not exceed the amount the corporation would be required to pay for the right to make such premature redemption under market conditions existing at the time of issuance. Such an amount can be established by comparing call premium rates on comparable stock paying comparable dividends. However, for purposes of this subparagraph, a redemption premium not in excess of 10 percent of the issue price on stock which is not redeemable for 5 years from the date of issue shall be considered reasonable.

(c) *Cross reference.* For rules for applying sections 305(b)(4) and 305(c) to recapitalizations, see § 1.305–7(c).

(d) *Examples.* The application of sections 305(b)(4) and 305(c) may be illustrated by the following examples:

Example (1). (i) Corporation T has outstanding 1,000 shares of $100 par 5-percent cumulative preferred stock and 10,000 shares of no-par common stock. The corporation is 4 years in arrears on dividends to the preferred shareholders. The issue price of the preferred stock is $100 per share. Pursuant to a recapitalization under section 368(a)(1)(E), the preferred shareholders exchange their preferred stock, including the right to dividend arrearages, on the basis of one old preferred share for 1.20 newly authorized class A preferred shares. Immediately following the recapitalization, the new class A shares are traded at $100 per share. The class A shares are entitled to a liquidation preference of $100. The preferred shareholders have increased their proportionate interest in the assets or earnings and profits of corporation T since the fair market value of 1.20 shares of class A preferred stock ($120) exceeds the issue price of the old preferred stock ($100). Accordingly, the preferred shareholders are deemed under section 305(c) to receive a distribution in the amount of $20 on each share of old preferred stock and the distribution is one to which sections 305(b)(4) and 301 apply.

(ii) The same result would occur if the fair market value of the common stock immediately following the recapitalization were $20 per share and each share of preferred stock were exchanged for one share of the new class A preferred stock and one share of common stock.

Example (2). Corporation A, a publicly held company whose stock is traded on a securities exchange (or in the over-the-counter market) has two classes of stock outstanding, common and cumulative preferred. Each share of preferred stock is convertible into .75 shares of common stock. There are no dividend arrearages. At the time of issue of the preferred stock, there was no plan or prearrangement by which it was to be exchanged for common stock. The issue price of the preferred stock is $100 per share. In order to retire the preferred stock, corporation A recapitalizes in a transaction to which section 368(a)(1)(E) applies and each share of preferred stock is exchanged for one share of common stock. Immediately after the recapitalization the common stock has a fair market value of $110 per share. Notwithstanding the fact that the fair market value of the common stock received in the exchange (determined immediately following the recapitalization) exceeds the issue price of the preferred stock surrendered, the recapitalization is not deemed under section 305(c) to result in a distribution to which sections 305(b)(4) and 301 apply since the recapitalization is not pursuant to a plan to periodically increase a shareholder's proportionate interest in the assets or earnings and profits and does not involve dividend arrearages.

Example (3). Corporation V is organized with two classes of stock, 1,000 shares of class A common and 1,000 shares of class B convertible preferred. Each share of class B stock may be converted into two shares of class A stock. Pursuant to a recapitalization under section 368(a)(1)(E), the 1,000 shares of class A stock are surrendered in exchange for 500 shares of new class A common and 500 shares of newly authorized class C common. The conversion right of class B stock is changed to one share of class A stock and one share of class C stock for each share of class B stock. The change in the conversion right is not deemed under section 305(c) to be a distribution on preferred stock to which sections 305(b)(4) and 301 apply.

Example (4). Corporation X issues preferred stock for $100 per share. The stock is redeemable in 5 years or any time thereafter for $110. The redemption price at no time exceeds 10 percent of the issue price. The difference between redemption price and issue price is not deemed under section 305(c) to be a distribution on preferred stock to which sections 305(b)(4) and 301 supply.

Example (5). Corporation W issues preferred stock for $100 per share. The stock pays no dividends but is redeemable at the end of 5 years for $185 with yearly increases thereafter of $15. There are no facts to indicate that a call premium in excess of $10 is reasonable. Since the difference between redemption price and issue price exceeds the reasonable call premium to the extent of $75 that amount is considered to be a distribution of additional stock on preferred stock which is constructively received over the 5-year period. Therefore, the shareholder is deemed under section 305 (c) to receive on the last day of each year during the 5-year period a distribution on his preferred stock in an amount equal to 15 percent of the issue price. Each $15 increase in the redemption price thereafter is considered to be a distribution on the preferred stock at the time each such increase becomes effective.

Example (6). Corporation A, a publicly held company whose stock is traded on a securities exchange (or in the over-the-counter market) has two classes of stock outstanding, common and preferred. The preferred stock is nonvoting and nonconvertible, limited and preferred as to dividends, and has a fixed liquidation preference. There are no dividend arrearages. At the time of issue of the preferred stock, there was no plan or prearrangement by which it was to be exchanged for common stock. In order to retire the preferred stock, corporation A recapitalizes in a transaction to which section 368(a)(1)(E) applies and the preferred stock is exchanged for common stock. The transaction is not deemed to be a distribution under section 305(c) and sections 305(b) and 301 do not apply to the transaction. The same result would follow if the preferred stock was exchanged in any reorganization described in section 3 (a)(1) for a new preferred stock having substantially the same market value and having no greater call premium or liquidation preference than the old preferred stock, whether the new preferred stock has voting rights or is convertible into common stock of corporation A at a fixed ratio subject to change solely to take account of stock dividends, stock splits, or similar transactions with respect to the stock into which the preferred stock is convertible.

Example (7). Corporation R has only common stock outstanding. Corporation R distributes to the common shareholders on a pro rata basis, newly authorized 2-percent preferred stock. Such stock has a par value of $100 per share and is redeemable at the end of 5 years for $105 per share. At the time of the distribution, the fair market value of the preferred stock is $50 per share. There are no facts to indicate that a call premium in excess of $5 is reasonable. Since the difference between redemption price and issue price (*i.e.*, the fair market value of the

preferred stock immediately following its distribution as a stock dividend) exceeds the reasonable call premium to the extent of $50, that amount is considered to be a distribution of additional stock on preferred stock which is constructively received over the 5-year period. Therefore, each shareholder is deemed under section 305(c) to receive each year during the 5-year period a distribution in the amount of $10 on his preferred stock to which sections 305(b)(4) and 301 apply.

Example (8). Corporation Q is organized with 10,000 shares of class A stock and 1,000 shares of class B stock. The terms of the class B stock require that the class B have a preference of $5 per share with respect to dividends and $100 per share with respect to liquidation. In addition, upon a distribution of $10 per share to the class A stock, class B participates equally in any additional dividends. The terms also provide that upon liquidation the class B stock participates equally after the class A stock receives $100 per share. Corporation Q has no accumulated earnings and profits. In 1971 it earned $10,000, the highest earnings in its history. The corporation is in an industry in which it is reasonable to anticipate a growth in earnings of 5 percent per year. In 1971 the book value of corporation Q's assets totalled $100,000. In that year the corporation paid a dividend of $5 per share to the class B stock and $.50 per share to the class A. In 1972 the corporation had no earnings and in lieu of a $5 dividend distributed one share of class B stock for each outstanding share of class B. No distribution was made to the class A stock. Since, in 1972, it was not reasonable to anticipate that the class B stock would participate in the current and anticipated earnings and growth of the corporation beyond its preferred interest, the class B stock is preferred stock and the distribution of class B shares to the class B shareholders is a distribution to which sections 305(b)(4) and 301 apply.

Example (9). Corporation P is organized with 10,000 shares of class A stock and 1,000 shares of class B stock. The terms of the class B stock require that the class B have a preference of $5 per share with respect to dividends and $100 per share with respect to liquidation. In addition, upon a distribution of $5 per share to the class A stock, class B participates equally in any additional dividends. The terms also provide that upon liquidation the class B stock participates equally after the class A receives $100 per share. Corporation P has accumulated earnings and profits of $100,000. In 1971 it earned $75,000. The corporation is in an industry in which it is reasonable to anticipate a growth in earnings of 10 percent per year. In 1971 the book value of corporation P's assets totalled $5 million. In that year the corporation paid a dividend of $5 per share to the class B stock, $5 per share to the class A stock, and it distributed an additional $1 per share to both class A and class B stock. In 1972 the corporation had earnings of $82,500. In that year it paid a dividend of $5 per share to the class B stock and $5 per share to the class A stock. In addition, the corporation declared stock dividends of one share of class B stock for every 10 outstanding shares of class B and one share of class A stock for every 10 outstanding shares of class A. Since, in 1972, it was reasonable to anticipate that both the class B stock and the class A stock would participate in the current and anticipated earnings and growth of the corporation beyond their preferred interests, neither class is preferred stock and the stock dividends are not distributions to which section 305(b)(4) applies.

§ 1.305–6 Distributions of convertible preferred.

(a) *In general.* (1) Under section 305(b)(5), a distribution by a corporation of its convertible preferred stock or rights to acquire such stock made or considered as made with respect to its stock is treated as a distribution of property to which section 301 applies unless the corporation establishes that such distribution will not result in a disproportionate distribution as described in § 1.305–3.

(2) The distribution of convertible preferred stock is likely to result in a disproportionate distribution when both of the following conditions exist: (i) The conversion right must be exercised within a relatively short period of time after the date of distribution of the stock; and (ii) taking into account such factors as the dividend rate, the redemption provisions, the marketability of the convertible stock, and the conversion price, it may be anticipated that some shareholders will exercise their conversion rights and some will not. On the other hand, where the conversion right may be exercised over a period of many years and the dividend rate is consistent with market conditions at the time of distribution of the stock, there is no basis for predicting at what time and the extent to which the stock will be converted and it is unlikely that a disproportionate distribution will result.

(b) *Examples.* The application of section 305(b)(5) may be illustrated by the following examples:

Example (1). Corporation Z is organized with one class of stock, class A common. During the year the corporation declares a dividend on the class A stock payable in newly authorized class B preferred stock which is convertible into class A stock for a period of 20 years from the date of issuance. Assuming dividend rates are normal in light of existing conditions so that there is no basis for predicting the extent to which the stock will be converted, the circumstances will ordinarily be sufficient to establish that a disproportionate distribution will not result since it is impossible to predict the extent to which the class B stock will be converted into class A stock. Accordingly, the distribution of class B stock is not one to which section 301 applies.

Example (2). Corporation X is organized with one class of stock, class A common. During the year the corporation declares a dividend on the class A stock payable in newly authorized redeemable class C preferred stock which is convertible into class A common stock no later than 4 months from the date of distribution at a price slightly higher than the market price of class A stock on the date of distribution. By prearrangement with corporation X, corporation Y, an insurance company, agrees to purchase class C stock from any shareholder who does not wish to convert. By reason of this prearrangement, it is anticipated that the shareholders will either sell the class C stock to the insurance company (which expects to retain the shares for investment purposes) or will convert. As a result, some of the shareholders exercise their conversion privilege and receive additional shares of class A stock, while other shareholders sell their class C stock to corporation Y and receive cash. The distribution is a distribution to which section 301 applies since it results in the receipt of property by some shareholders and an increase in the proportionate interests of other shareholders.

§ 1.305–7 Certain transactions treated as distributions.

(a) *In general.* Under section 305(c), a change in conversion ratio, a change in redemption price, a difference between redemption price and issue price, a redemption which is treated as a distribution to which section 301 applies, or any transaction (including a recapitalization) having a similar effect on the interest of any shareholder may be treated as a distribution with respect to any shareholder whose proportionate interest in the earnings and profits or assets of the corporation is increased by such change, difference, redemption, or similar transaction. In general, such change, difference, redemption, or similar transaction will be treated as a distribution to which sections 305(b) and 301 apply where—

(1) The proportionate interest of any shareholder in the earnings and profits or assets of the corporation deemed to have made such distribution is increased by such change, difference, redemption, or similar transaction; and

(2) Such distribution has the result described in paragraphs (2), (3), (4), or (5) of section 305(b).

Where such change, difference, redemption, or similar transaction is treated as a distribution under the provisions of this section, such distribution will be deemed made with respect to any shareholder whose interest in the earnings and profits or assets of the distributing corporation is increased thereby. Such distribution will be deemed to be a distribution of the stock of such corporation made by the corporation to such shareholder with respect to his stock. Depending upon the facts presented, the distribution may be deemed to be made in common or preferred stock. For example, where a redemption price in excess of a reasonable call premium exists with respect to a class of preferred stock and the other requirements of this section are also met, the distribution will be deemed made with respect to such preferred stock, in stock of the same class. Accordingly, the preferred shareholders are considered under sections 305(b)(4) and 305(c) to have received a distribution of preferred stock to which section 301 applies. See the examples in §§1.305–3(e) and 1.305–5(d) for further illustrations of the application of section 305(c).

(b) *Antidilution provisions.* (1) For purposes of applying section 305(c) in conjunction with section 305(b), a change in the conversion ratio or conversion price of convertible preferred stock (or securities), or in the exercise price of rights or warrants, made pursuant to a bona fide, reasonable, adjustment formula (including, but not limited to, either the so-called "market price" or

"conversion price" type of formulas) which has the effect of preventing dilution of the interest of the holders of such stock (or securities) will not be considered to result in a deemed distribution of stock. An adjustment in the conversion ratio or price to compensate for cash or property distributions to other shareholders that are taxable under section 301, 356(a)(2), 871(a)(1)(A), 881(a)(1), 852(b), or 857(b) will not be considered as made pursuant to a bona fide adjustment formula.

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

Example. (i) Corporation U has two classes of stock outstanding, class A and class B. Each class B share is convertible into class A stock. In accordance with a bona fide, reasonable, antidilution provision, the conversion price is adjusted if the corporation transfers class A stock to anyone for a consideration that is below the conversion price.

(ii) The corporation sells class A stock to the public at the current market price but below the conversion price. Pursuant to the antidilution provision, the conversion price is adjusted downward. Such a change in conversion price will not be deemed to be a distribution under section 305(c) for the purposes of section 305(b).

(c) *Recapitalizations.* (1) A recapitalization (whether or not an isolated transaction) will be deemed to result in a distribution to which section 305(c) and this section apply if—

(i) It is pursuant to a plan to periodically increase a shareholder's proportionate interest in the assets or earnings and profits of the corporation, or

(ii) A shareholder owning preferred stock with dividends in arrears exchanges his stock for other stock and, as a result, increases his proportionate interest in the assets or earnings and profits of the corporation. An increase in a preferred shareholder's proportionate interest occurs in any case where the fair market value or the liquidation preference, whichever is greater, of the stock received in the exchange (determined immediately following the recapitalization), exceeds the issue price of the preferred stock surrendered.

(2) In a case to which subparagraph (1)(ii) of this paragraph applies, the amount of the distribution deemed under section 305(c) to result from the recapitalization is the lesser of (i) the amount by which the fair market value or the liquidation preference, whichever is greater, of the stock received in the exchange (determined immediately following the recapitalization) exceeds the issue price of the preferred stock surrendered, or (ii) the amount of the dividends in arrears.

(3) For purposes of applying subparagraphs (1) and (2) of this paragraph with respect to stock issued before July 12, 1973, the term "issue price of the preferred stock surrendered" shall mean the greater of the issue price or the liquidation preference (not including dividends in arrears) of the stock surrendered.

(4) For an illustration of the application of this paragraph, see example (12) of § 1.305–3(e) and examples (1), (2), (3), and (6) of § 1.305–5(d).

(5) For rules relating to redemption premiums on preferred stock, see § 1.305–5(b).

§ 1.305–8 Effective dates.

(a) *In general.* Section 421(b) of the Tax Reform Act of 1969 (83 Stat. 615) provides as follows:

(b) *Effective dates.* (1) Except as otherwise provided in this subsection, the amendment made by subsection (a) shall apply with respect to distributions (or deemed distributions) made after January 10, 1969, in taxable years ending after such date.

(2) (A) Section 305(b)(2) of the Internal Revenue Code of 1954 (as added by subsection (a)) shall not apply to a distribution (or deemed distribution) of stock made before January 1, 1991, with respect to stock (i) outstanding on January 10, 1969, (ii) issued pursuant to a contract binding on January 10, 1969, on the distributing corporation, (iii) which is additional stock of that class of stock which (as of January 10, 1969) had the largest fair market value of all classes of stock of the corporation (taking into account only stock outstanding on January 10, 1969, or issued pursuant to a contract binding on January 10, 1969), (iv) described in subparagraph (C)(iii), or (v) issued in a prior distribution described in clause (i), (ii), (iii), or (iv).

(B) Subparagraph (A) shall apply only if—

(i) The stock as to which there is a receipt of property was outstanding on January 10, 1969 (or was issued pursuant to a contract binding on January 10, 1969, on the distributing corporation), and

(ii) If such stock and any stock described in subparagraph (A)(i) were also outstanding on January 10, 1968, a distribution of property was made on or before January 10, 1969, with respect to such stock, and a distribution of stock was made on or before January 10, 1969, with respect to such stock described in subparagraph (A)(i).

(C) Subparagraph (A) shall cease to apply when at any time after October 9, 1969, the distributing corporation issues any of its stock (other than in a distribution of stock with respect to stock of the same class) which is not—

(i) Nonconvertible preferred stock,

(ii) Additional stock of that class of stock which meets the requirements of subparagraph (A)(iii), or

(iii) Preferred stock which is convertible into stock which meets the requirements of subparagraph (A)(iii) at a fixed conversion ratio which takes account of all stock dividends and stock splits with respect to the stock into which such convertible stock is convertible.

(D) For purposes of this paragraph, the term "stock" includes rights to acquire such stock.

(3) In cases to which Treasury Decision 6990 (promulgated January 10, 1969) would not have applied, in applying paragraphs (1) and (2) April 22, 1969, shall be substituted for January 10, 1969.

(4) Section 305(b)(4) of the Internal Revenue Code of 1954 (as added by subsection (a)) shall not apply to any distribution (or deemed distribution) with respect to preferred stock (including any increase in the conversation ratio of convertible stock) made before January 1, 1991, pursuant to the terms relating to the issuance of such stock which were in effect on January 10, 1969.

(5) With respect to distributions made or considered as made after January 10, 1969, in taxable years ending after such date, to the extent that the amendment made by subsection (a) does not apply by reason of paragraph (2), (3), or (4) of this subsection, section 305 of the Internal Revenue Code of 1954 (as in effect before the amendment made by subsection (a)) shall continue to apply.

(b) *Rules of application.* (1) The rules contained in section 421(b)(2) of the Tax Reform Act of 1969 (83 Stat. 615), hereinafter called "the Act", shall apply with respect to the application of section 305(b)(2), section 305(b)(3), and section 305(b)(5). Thus, for example, section 305(b)(5) of the Code will not apply to a distribution of convertible preferred stock made before January 1, 1991, with respect to stock outstanding on January 10, 1969 (or which was issued pursuant to a contract binding on the distributing corporation on January 10, 1969), provided the distribution is pursuant to the terms relating to the issuance of such stock which were in effect on January 10, 1969.

(2)(i) For purposes of section 421(b)(2)(A), (B)(i), and (C) of the Act, stock is considered as outstanding on January 10, 1969, if it could be acquired on such date or some future date by the exercise of a right or conversion privilege in existence on such date (including a right or conversion privilege with respect to stock issued pursuant to a contract binding, on January 10, 1969, on the distributing corporation). Thus, if on January 10, 1969, corporation X has outstanding 1,000 shares of class A common stock and 3,000 shares of class B common stock which are convertible on a one-to-one basis into class A stock, corporation X is considered for purposes of section 421(b)(2)(A), (B)(i), and (C) of the Act to have outstanding on January 10, 1969, 4,000 shares of class A stock (1,000 shares actually outstanding and 3,000 shares that could be acquired by the exercise of the conversion privilege contained in the class B stock) and 3,000 shares of class B stock.

(ii) For the purposes of section 421(b)(2)(A) (other than for the purpose of determining under section 421(b)(2)(A)(iii) that class of stock which as of January 10, 1969, had the largest fair market value of all classes of stock of the corporation), (B)(i), and (C) of the Act, stock will be considered as outstanding on January 10, 1969, if it is issued pursuant to a conversion privilege contained in stock issued, mediately or immediately, as a stock dividend with respect to stock outstanding on January 10, 1969.

(3) If, after applying subparagraph (2) of this paragraph, the class of stock which as of January 10, 1969, had the largest fair market value of all classes of stock of the corporation is a class of stock which is convertible into another class of nonconvertible stock, then for purposes of section 421(b)(2)(C)(ii) of the Act stock issued upon conversion of any such convertible stock (whether or

not outstanding on January 10, 1969) into stock of such other class shall be deemed to be stock which meets the requirements of section 421(b)(2)(A)(iii) of the Act.

(4) For purposes of section 421(b) of the Act, stock of a corporation held in its treasury will not be considered as outstanding and a distribution of such stock will be considered to be an issuance of such stock on the date of distribution. Stock of a parent corporation held by its subsidiary is not considered treasury stock.

(5) The following stock shall not be taken into account for purposes of applying section 421(b)(2)(B)(i) of the Act: (i) Stock issued after January 10, 1969, and before October 10, 1969 (other than stock which was issued pursuant to a contract binding on January 10, 1969, on the distributing corporation); (ii) stock described in section 421(b)(2)(C)(i), (ii), or (iii) of the Act; and (iii) stock issued, mediately or immediately, as a stock dividend with respect to stock of the same class outstanding on January 10, 1969. For example, if on June 1, 1970, corporation Y issues additional stock of that class of stock which as of January 10, 1969, had the largest fair market value of all classes of stock of the corporation, such additional stock will not be taken into account for the purpose of meeting the requirement under section 421(b)(2)(B)(i) of the Act that the stock as to which there is a receipt of property must have been outstanding on January 10, 1969, and thus subparagraph (A) of section 421(b)(2) of the Act will not, where otherwise applicable, cease to apply.

(6) Section 421(b)(2)(A) of the Act, if otherwise applicable, will not cease to apply if the distributing corporation issues after October 9, 1969, securities which are convertible into stock that meets the requirements of section 421(b)(2)(A)(iii) of the Act at a fixed conversion ratio which takes account of all stock dividends and stock splits with respect to the stock into which the securities are convertible.

(7) Under section 421(b)(4) of the Act, section 305(b)(4) does not apply to any distribution (or deemed distribution) by a corporation with respect to preferred stock made before January 1, 1991, if such distribution is pursuant to the terms relating to the issuance of such stock which were in effect on January 10, 1969. For example, if as of January 10, 1969, a corporation had followed the practice of paying stock dividends on preferred stock (or of periodically increasing the conversion ratio of convertible preferred stock) or if the preferred stock provided for a redemption price in excess of the issue price, then section 305(b)(4) would not apply to any distribution of stock made (or which would be considered made if section 305(b)(4) applied) before January 1, 1991, pursuant to such practice.

(8) If section 421(b)(2) is not applicable and, for that reason, a distribution (or deemed distribution) is treated as a distribution to which section 301 applies by virtue of the application of section 305(b)(2), (b)(3), or (b)(5), it is irrelevant that, by reason of the application of section 421(b)(4) of such Act, section 305(b)(4) is not applicable to the distribution.

§ 1.306–3 [Amended]

PAR. 2. Paragraph (c) of § 1.306–3 is amended by striking out all but the first sentence.

PAR. 3. Section 1.368–2 is amended by revising paragraph (e) (5) to read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(e) * * *

(5) An exchange is made of an amount of a corporation's outstanding preferred stock with dividends in arrears for other stock of the corporation. However, if pursuant to such an exchange there is an increase in the proportionate interest of the preferred shareholders in the assets or earnings and profits of the corporation, then under § 1.305–7 (c) (2), an amount equal to the lesser of (i) the amount by which the fair market value or liquidation preference, whichever is greater, of the stock received in the exchange (determined immediately following the recapitalization) exceeds the issue price of the preferred stock surrendered, or (ii) the amount of the dividends in arrears, shall be treated under section 305 (c) as a deemed distribution to which sections 305 (b) (4) and 301 apply.

* * * * *

PAR 4. Section 1.1036–1 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 1.1036–1 Stock for stock of the same corporation.

(a) * * * See paragraph (e) (5) of § 1.368–2 for certain transactions which result in deemed distributions under section 305 (c) to which sections 305 (b) (4) and 301 apply.

* * * * *

(Sec. 305 (c) (83 Stat. 614; 26 U.S.C. 305 (c)) and section 7805 (68A Stat. 917; 26 U.S.C. 7805), Internal Revenue Code of 1954)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: July 5, 1973.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

[FR Doc.73–14110 Filed 7–11–73;8:45 am]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Treasury Department

Section 213.3105 is amended to show that 30 positions of investigator for special assignments have been transferred from the Internal Revenue Service to the Bureau of Alcohol, Tobacco, and Firearms.

Effective on July 12, 1973, paragraph (e)(1) is amended and paragraph (g) is added under § 213.3105 as set out below.

§ 213.3105 Treasury Department.

* * * * *

(e) *Internal Revenue Service.* (1) Twenty positions of investigator for special assignments.

* * * * *

(g) *Bureau of Alcohol, Tobacco, and Firearms.* (1) Thirty positions of investigator for special assignments.

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

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

[FR Doc.73–14248 Filed 7–11–73;8:45 am]

PART 213—EXCEPTED SERVICE

National Commission on Productivity

Section 213.3199 is amended to show that the Schedule A authority covering positions at grade GS–15 and below on the staff of the National Commission on Productivity is extended from June 30, 1973, to June 30, 1974.

Effective July 1, 1973, § 213.3199(n)(1) is amended as set out below.

§ 213.3199 Temporary Boards and Commissions.

* * * * *

(n) *National Commission on Productivity.* (1) Until June 30, 1974, positions in grade GS–15 and below on the staff of the Commission.

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

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

[FR Doc.73–14246 Filed 7–11–73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of State

Section 213.3304 is amended to show that one position of Secretary to the Director, Bureau of International Scientific and Technological Affairs, is excepted under Schedule C.

Effective on July 12, 1973, § 213.3304(x) is added as set out below.

§ 213.3304 Department of State.

* * * * *

(x) *Office of the Director, Bureau of International Scientific and Technological Affairs.* (1) One Secretary to the Director.

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

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

[FR Doc.73-14245 Filed 7-11-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of the Treasury

Section 213.3305 is amended to show that one position of Special Assistant to the Assistant Secretary for International Affairs is excepted under Schedule C.

Effective on July 12, 1973, § 213.3305(a) (46) is added as set out below.

§ 213.3305 Treasury Department.

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

(46) Special Assistant to the Assistant Secretary for International Affairs

* * * * *

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

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

[FR Doc.73-14247 Filed 7-11-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of the Interior

Section 213.3312 is amended to reflect a reorganization in the Department of the Interior.

Effective on July 12, 1973, § 213.3312 is amended as set out below.

§ 213.3312 Department of the Interior.

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

(3) Seven Special Assistants (Field Representatives).

* * * * *

(5) Three Special Assistants to the Assistant Secretary for Fish and Wildlife and Parks, and one Confidential Assistant (Administrative Assistant) to each of three Assistant Secretaries for Energy and Minerals, Land and Water Resources, and Fish and Wildlife and Parks.

* * * * *

(30) One Special Assistant to the Assistant Secretary for Management.

(31) One Confidential Assistant to the Assistant Secretary for Management.

* * * * *

(33) One Assistant to the Assistant Secretary for Management.

(34) Two Staff Assistants to the Assistant Secretary for Program Development and Budget.

(35) One Special Assistant to the Director, Office of Communications.

(36) One Confidential Assistant to the Assistant Secretary for Program Development and Budget.

(37) One Special Assistant to the Assistant Secretary for Energy and Minerals.

(38) One Staff Assistant to the Assistant Secretary for Energy and Minerals.

(39) One Staff Assistant to Director, Office of Communications.

* * * * *

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

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

[FR Doc.73-14243 Filed 7-11-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Agriculture

Section 213.3313 is amended to show that one position of Special Assistant to the Secretary for Consumer Affairs is excepted under Schedule C.

Effective on July 12, 1973, § 213.3313 (a)(34) is added as set out below.

§ 213.3313 Department of Agriculture.

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

(34) One Special Assistant to the Secretary for Consumer Affairs.

* * * * *

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

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

[FR Doc.73-14242 Filed 7-11-73;8:45 am]

PART 213—EXCEPTED SERVICE

U.S. Department of Labor

Section 213.3315 is amended to reflect the following title changes: (1) From one Private Secretary to one Assistant to the Deputy Under Secretary; and (2) from Staff Assistant to the Special Assistant for Legislative Liaison to Special Assistant to Deputy Under Secretary for Legislative Affairs.

Effective on July 12, 1973, paragraphs (a)(21) and (a)(29) of § 213.3315 are amended as set out below.

§ 213.3315 U.S. Department of Labor.

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

(21) One Assistant to the Deputy Under Secretary.

* * * * *

(29) One Special Assistant to Deputy Under Secretary for Legislative Affairs.

* * * * *

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

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

[FR Doc.73-14249 Filed 7-11-73;8:45 am]

PART 213—EXCEPTED SERVICE

Securities and Exchange Commission

Section 213.3330 is amended to show that one position of Secretary to the General Counsel and one Secretary to the Chief Accountant are excepted under Schedule C.

Effective on July 12, 1973, § 213.3330 (f) and § 213.3330(g) are added as set out below.

§ 213.3330 Securities and Exchange Commission.

* * * * *

(f) One Secretary to the General Counsel.

(g) One Secretary to the Chief Accountant.

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

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

[FR Doc.73-14244 Filed 7-11-73;8:45 am]

Title 9—Animals and Animal Products

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

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

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

Areas Quarantined

This amendment quarantines a portion of Webb County and additional portions of Nueces and Duval Counties in Texas because of the existence of splenetic or tick fever. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of cattle and certain materials from or through quarantined areas as contained in 9 CFR Part 72, as amended, will apply to the quarantined areas.

Pursuant to the provisions of sections 1–4 of the Act of March 3, 1905, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, sections 4–7 of the Act of May 29, 1884, as amended, and sections 3 and 11 of the Act of July 2, 1962 (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f), § 72.5 of Part 72, Title 9, Code of Federal Regulations which quarantines certain portions of Texas because of splenetic or tick fever in cattle, a contagious, infectious, and communicable disease, is hereby amended in the following respects:

In § 72.5, paragraph (i) is amended and a new paragraph (j) is added to read:

§ 72.5 Areas quarantined in Texas.

* * * * *

(i) That portion of Duval, Webb, Kleberg, McMullen, Nueces, Live Oak, and Jim Wells Counties bounded by a line

beginning at the junction of U.S. Highway 59 and State Highway 16 at Freer in Duval County; thence, following U.S. Highway 59 in a northeasterly direction to Farm Road 624 in McMullen County; thence, following Farm Road 624 in an easterly, then southeasterly direction to the Jim Wells-Nueces County line; thence, following the Jim Wells-Nueces County line in a southwesterly direction to an unnamed caliche county road which connects Farm Road 70 with the Jim Wells-Nueces County line; thence, following the unnamed caliche county road in an easterly direction to Farm Road 70 in Nueces County; thence, following Farm Road 70 in a southerly, then easterly direction to Farm to Market Road 1355; thence, following Farm to Market Road 1355 in a southerly direction to the northern city limits of the city of Kingsville in Kleberg County; thence, following the Kingsville City limits in a westerly, then southerly direction to State Highway 141; thence, following State Highway 141 in a northwesterly direction to U.S. Highway 281 in Jim Wells County; thence, following U.S. Highway 281 in a southwesterly direction to the Jim Wells-Brooks County line; thence, following the Jim Wells-Brooks County line in a westerly direction to the junction of the Brooks-Jim Wells-Duval County lines; thence, following the Brooks-Duval County line in a westerly direction to State Highway 339; thence, following State Highway 339 in a northwesterly direction to Farm to Market Road 2295, at Benavides in Duval County; thence, following Farm to Market Road 2295 in a westerly direction to State Highway 16; thence, following State Highway 16 in a northern direction for approximately 4 miles to the southeast corner of the Peters Ranch on the west side of State Highway 16; thence, following the south fence line of the Peters Ranch in a westerly direction for approximately 2 miles to the southeast corner of the Hamilton Ranch; thence, following the south fence line of the Hamilton Ranch in a westerly direction for approximately 2¾ miles to the southeast corner of the Viggo Gruy Perez Pasture; thence, following the southwest boundary of the Viggo Gruy Perez Pasture in a westerly, then northerly, then westerly, then northerly direction to the south fence boundary of the south pasture of the Peal Ranch; thence, following the south fence line of the south pasture of the Peal Ranch in a westerly direction to the Webb-Duval County line; thence, following the Webb-Duval County line in a northerly direction to the southeast corner of the north pasture of the Peal Ranch in Webb County; thence, following the fence line of the north pasture of the Peal Ranch in a westerly, then northerly, then easterly direction to the Webb-Duval County line; thence, following the Webb-Duval County line in a northern direction to to the north fence line of the north pasture of the Peal Ranch in Duval County; thence, following the north fence line of the north pasture of the Peal Ranch in an easterly direction for approximately 1⅞ miles to the western boundary of the Duval Ranch; thence, following the western boundary of the Duval Ranch in a generally northeasterly direction for approximately 1¾ miles to the northeast corner of the north fence line of the Duval Ranch; thence, following the north fence line of the Duval Ranch in a southeasterly direction to the Jarita Pasture of the O. C. Deviller Ranch; thence, following the western, then northern, then eastern fence line of the Jarita Pasture of the O. C. Deviller Ranch in a generally southeasterly direction for approximately 4 miles to the northeast corner of the Dougherty Ranch; thence, following the northeast boundary of the Dougherty Ranch (north of the Burro and Pital Pastures) in a southerly direction for approximately 1¾ miles to State Highway 16; thence, following State Highway 16 in a northerly direction to its junction with U.S. Highway 59 at Freer in Duval County.

(j) That portion of *Neuces County* bounded by a line beginning at the junction of the San Fernando Creek and the southeast boundary fence of the Oliver Till Farm; thence, following the San Fernando Creek in a northwesterly direction to the southwest boundary of the Oliver Till Farm; thence, following the western boundary of the Oliver Till Farm in a northeasterly, then southeasterly direction to the northwest corner of the Gibson Farm; thence, following the northern boundary of the Gibson Farm in a southeasterly, then southwesterly direction to the northeastern boundary of the A & I Pasture; thence, following the eastern boundary of the A & I Pasture in a southwesterly direction to its junction with the southeastern boundary of the Oliver Till Farm; thence, following the south eastern boundary of the Oliver Till Farm in a southerly direction to its junction with the San Fernando Creek.

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

Effective date. The foregoing amendment shall become effective July 12, 1973.

The amendment imposes certain further restrictions necessary to prevent the interstate spread of Texas (splenetic) fever in cattle, and must be made effective immediately to accomplish its purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 6th day of July, 1973.

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

[FR Doc.73-14207 Filed 7-11-73;8:45 am]

[Docket No. 73-521]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

This amendment quarantines portions of Hamilton and Tipton Counties in Indiana because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to the quarantined areas.

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

In § 76.2, a new paragraph (e)(1) relating to the State of Indiana is added to read:

§ 76.2 Notice relating to existence of the contagious or vectors of hog cholera and other swine diseases; prohibition of movement of any hog cholera virus, exceptions; spread of disease through raw garbage; regulations; quarantines; eradication states; free states.

* * * * *

(e) * * *

(1) *Indiana.* The adjacent portions of Hamilton and Tipton Counties, bounded by a line beginning at the junction of State Highway 19 and the Jackson-Noblesville Township line in Hamilton County; thence, following the Jackson-Noblesville Township line in a westerly direction to the junction of the Jackson-Noblesville-Washington-Adams Township lines; thence, following the Adams-Washington Township line in a westerly direction to State Highway 38; thence, following State Highway 38 in a northwesterly direction to Jerkwater Road; thence, following Jerkwater Road in a northerly direction to Secondary Road 1100 W in Tipton County; thence, following Secondary Road 1100 W in a northerly direction to Secondary Road 400 S; thence, following Secondary Road 400 S in an easterly direction to Secondary Road 700 W; thence, following Secondary Road 700 W in a southerly direction to Secondary Road 450 S; thence, following Secondary Road 450 S in an easterly direction to Secondary Road

500 W; thence, following Secondary Road 500 W in a northerly direction to Secondary Road 400 S; thence, following Secondary Road 400 S in an easterly direction to State Highway 19; thence, following State Highway 19 in a southeasterly, then southerly direction to its junction with the Jackson-Noblesville Township line in Hamilton County.

* * * * *

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

Effective date. The foregoing amendment shall become effective July 6, 1973.

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

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

Done at Washington, D.C., this 6th day of July, 1973.

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

[FR Doc.73-14208 Filed 7-11-73;8:45 am]

Title 12—Banks and Banking

CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

SUBCHAPTER B—REGULATIONS AND STATEMENTS OF GENERAL POLICY

PART 329—INTEREST ON DEPOSITS

Penalty on Payment of Time Deposits Before Maturity

1. Section 329.4 of the rules and regulations of the Federal Deposit Insurance Corporation (12 CFR 329.4) provides that no time deposit may be paid before maturity except as authorized by paragraph (d) of that section. Paragraph (d) permits the payment of all or part of a time deposit prior to maturity only where the depositor signs a statement that he is in need of the funds in his deposit account and forfeits accrued and unpaid interest for a period of not less than three months on the amount withdrawn.

The Board of Directors of the Federal Deposit Insurance Corporation has decided to revise paragraph (d) so as to eliminate the requirement for a statement of need. Under the revision, an insured State nonmember bank may pay any time deposit prior to maturity so long as the rate of interest on the amount withdrawn does not exceed the maximum rate which the bank may pay on savings deposits on the date of withdrawal. In addition, the depositor must forfeit all interest on the amount withdrawn (calculated at the savings deposit rate) for a period of three months, or for the length of time the funds have been on deposit if less than three months.

The provisions regarding loans upon the security of time deposits which formerly appeared in paragraph (d) are now separately stated in a new paragraph (e).

2. Section 329.4 is amended by revising paragraph (d) and adding a new paragraph (e). As amended, § 329.4 reads as follows:

§ 329.4 Payment of time deposits before maturity.

* * * * *

(d) *Penalty on payment of time deposits before maturity.* In the event of withdrawal of all or any portion of a time deposit before the maturity thereof, the depositor may not receive interest from the date of deposit on the amount withdrawn at a rate in excess of the maximum rate which may be paid on savings deposits by the depository bank on the date of withdrawal under § 329.6(c) or § 329.7(b)(1), and the depositor shall forfeit all interest, calculated at such savings deposit rate, whether accrued and unpaid, or paid to or for the depositor's account, on the amount withdrawn for a period of three months or for the period since the date of the deposit, whichever is less. Where necessary to comply with this requirement, interest already paid to or for the account of the depositor shall be deducted from the amount requested by the depositor to be withdrawn.[11]

(e) *Loans upon security of time deposits.* An insured nonmember bank may make a loan to the depositor upon the security of his time deposit. The rate of interest on such loan, however, shall be not less than 2 percent per annum in excess of the rate of interest on the time deposit.

(Sec. 9, 18(g), 64 Stat. 881–82, Pub. L. No. 93–63, sec. 1 (July 6, 1973); 12 U.S.C. 1819, 1828(g).)

3. The requirements of sections 553 (b) and (d) of Title 5, United States Code, and §§ 302.1, 302.2, and 302.5 of the rules and regulations of the Federal Deposit Insurance Corporation, with respect to notice, public participation, and deferred effective date were not followed in connection with this amendment because the Board found that the public interest compelled it to make the action immediately effective.

4. *Effective date.* The effective date of this amendment is July 1, 1973.

By order of the Board of Directors, July 5, 1973.

FEDERAL DEPOSIT INSURANCE CORPORATION,
[SEAL] ALAN R. MILLER,
Executive Secretary.

[FR Doc.73-14150 Filed 7-11-73;8:45 am]

[11] This amendment applies to all time deposit contracts entered into after July 5, 1973 and to all existing time deposit contracts which are renewed or extended after such date: *Provided, however,* That any time deposit contract which is automatically renewed after July 5, 1973, without any change in the interest rate payable thereon or the maturity thereof, shall be subject instead to the restrictions in effect prior to this amendment which allowed withdrawal only in the event of need and required the forfeiture of not less than three months' accrued and unpaid interest. This amendment also applies to all existing time deposits upon which interest is paid on or after July 1, 1973 at a rate in excess of the maximum rate payable on such deposits as of June 30, 1973.

PART 329—INTEREST ON DEPOSITS

Maximum Rates of Interest

1. Sections 329.6 and 329.7 of the rules and regulations of the Federal Deposit Insurance Corporation (12 CFR 329.6 and 329.7) establish maximum interest rates that insured State nonmember banks (including FDIC-insured mutual savings banks) may pay on time and savings deposits.

The Board of Directors of the Federal Deposit Insurance Corporation has decided to amend §§ 329.6 and 329.7 by establishing new interest rate structures for consumer-type deposits in insured nonmember commercial and mutual savings banks. The amendments, effective July 1, 1973, (1) authorize insured nonmember banks to increase the maximum rate of interest they may pay on passbook savings deposits; (2) authorize insured nonmember banks to increase the maximum interest rates payable on most categories of time deposits; and (3) establish a new category of time deposits on which there is no interest rate ceiling. Deposits in this latter category must mature in not less than four years and must be in amounts of $1,000 or more.

2. Section 329.6 is amended to read as follows:

§ 329.6 Maximum rates of interest payable on time and savings deposits by insured nonmember banks other than insured nonmember mutual savings banks.[12]

(a) *Single maturity time deposits—*(1) *Deposits of $100,000 or more.* There is no maximum rate of interest presently prescribed on any single maturity time deposit of $100,000 or more.

(2) *Deposits of less than $100,000.* Except as provided in paragraph (a)(3) of this section, no insured nonmember bank shall pay interest on any single

[12] The maximum rates of interest payable by insured nonmember banks on time and savings deposits as prescribed herein are not applicable to any deposit which is payable only at an office of an insured nonmember bank located outside of the States of the United States and the District of Columbia.

maturity time deposit of less than $100,000 at a rate in excess of the applicable rate under the following schedule:

Maturity	Maximum percent per annum
30 days or more but less than 90 days	5
90 days or more but less than 1 year	5½
1 year or more but less than 30 months	6
30 months or more	6½

(3) *Deposits of $1,000 or more with maturities of 4 years or more.* There is no maximum rate of interest presently prescribed on any single maturity time deposit of $1,000 or more with a maturity of 4 years or more.

(b) *Multiple maturity time deposits.* No insured nonmember bank shall pay interest on a multiple maturity time deposit at a rate in excess of the applicable rate under the following schedule:

Maturity intervals	Maximum percent per annum
30 days or more but less than 90 days	5
90 days or more but less than 1 year	5½
1 year or more but less than 30 months	6
30 months or more	6½

(c) *Savings deposits.* No insured nonmember bank shall pay interest at a rate in excess of 5 percent on any savings deposit.

3. Section 329.7 is amended to read as follows:

§ 329.7 Maximum rate of interest or dividends payable on deposits by insured nonmember mutual savings banks.[24]

(a) *Definition.* For the purposes of this section, the term "mutual savings bank" includes any mutual savings bank and any guaranty savings bank which operates in the State of New Hampshire substantially under and pursuant to the laws of that State pertaining to mutual savings banks so long as such guaranty savings bank does not engage in commercial banking.

(b) *Maximum rates payable*—(1) *General.* Except as provided in paragraphs (b) (2), (3), (4), and (5) of this section and paragraph (e) of this section, no insured nonmember mutual savings bank shall pay interest or dividends at a rate in excess of 5¼ percent per annum on any deposit. Section 329.3(b) relating to modification of deposit contracts to conform to regulations shall apply to insured nonmember mutual savings banks.

(2) *Single maturity time deposits of $100,000 or more.* There is no maximum rate of interest or dividends presently prescribed on any single maturity time deposit of $100,000 or more.

(3) *Single maturity time deposits of less than $100,000.* Except as provided in paragraph (b)(4) of this section, no insured nonmember mutual savings bank shall pay interest or dividends on any single maturity time deposit of less than $100,000 at a rate in excess of the applicable rate under the following schedule:

Maturity	Maximum percent per annum
90 days or more but less than 1 year	5¾
1 year or more but less than 30 months	6½
30 months or more	6¾

(4) *Single maturity time deposits of $1,000 or more with maturities of 4 years or more.* There is no maximum rate of interest presently prescribed on any single maturity time deposit of $1,000 or more with a maturity of 4 years or more.

(5) *Multiple maturity time deposits.* No insured nonmember mutual savings bank shall pay interest on a multiple maturity time deposit at a rate in excess of the applicable rate under the following schedule:

Maturity intervals	Maximum percent per annum
90 days or more but less than 1 year	5¾
1 year or more but less than 30 months	6½
30 months or more	6¾

(c) *Compounding interest.* In determining the maximum amount of interest or dividends permitted to be paid, the effects of compounding may be disregarded.

(d) *Grace periods in computing interest.* An insured nonmember mutual savings bank may pay interest or dividends on a deposit received during the first 10 calendar days of any calendar month at the applicable maximum rate prescribed in paragraph (b) of this section calculated from the first day of such calendar month until such deposit is withdrawn or otherwise ceases to constitute a deposit upon which interest or dividends are payable; and an insured nonmember mutual savings bank may pay interest or dividends on a deposit withdrawn during the last 3 business days of any calendar month ending a regular quarterly or semiannual or dividend period at the applicable maximum rate prescribed in paragraph (b) of this section calculated to the end of such calendar month.

(e) *Systematic savings account deposits in insured nonmember mutual savings banks in Massachusetts.* No insured nonmember mutual savings bank located in the Commonwealth of Massachusetts shall pay interest or dividends on any systematic savings account deposit, as defined in section 22B of chapter 168 of the General Laws of the Commonwealth of Massachusetts, at a rate in excess of the applicable rate under the following schedule:

Minimum period	Maximum percent per annum
48 months	5½
96 months	5¾

(f) *Time deposits.* The provisions of this Part 329 with respect to time deposits, except the provisions of § 329.6, shall apply to all such deposits in insured nonmember mutual savings banks.

(Sec. 9, 18(g), 64 Stat. 881-82, Pub. L. No. 93-63, § 1 (July 6, 1973); 12 U.S.C. 1819, 1828(g).)

4. The requirements of sections 553(b) and (d) of Title 5, United States Code, and §§ 302.1, 302.2, and 302.5 of the rules and regulations of the Federal Deposit Insurance Corporation, with respect to notice, public participation, and deferred effective date were not followed in connection with these amendments because the Board found that the public interest compelled it to make the action immediately effective.

5. *Effective date.* The effective date of the amendments is July 1, 1973.

By order of the Board of Directors, July 5, 1973.

FEDERAL DEPOSIT INSURANCE CORPORATION,
[SEAL] ALAN R. MILLER,
Executive Secretary.

[FR Doc.73-14151 Filed 7-11-73;8:45 am]

[24] The maximum rates of interest payable by insured nonmember mutual savings banks as prescribed herein are not applicable to any deposit which is payable only at an office of an insured nonmember mutual savings bank located outside of the States of the United States and the District of Columbia.

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 12987; Amdt. No. 872]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3, 8260-4, or 8260-5 and made a part of the public rulemaking dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 FR 5609).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue, SW., Washington, D.C. 20591 or from the applicable FAA regional office in accordance with the fee

schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $150.00 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for $30.00 each.

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

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by originating, amending, or canceling the following VOR-VOR/DME SIAPs, *effective August 23, 1973.*

Alton, Ill.—Civic Memorial Arpt., VOR-A, Amdt. 2
Buffalo, N.Y.—Greater Buffalo Int'l Arpt., VOR Rwy 32, Amdt. 15
Carlsbad, Calif.—Palomar Arpt., VOR-A, Amdt. 2
Carlsbad, Calif.—Palomar Arpt., VOR/DME-B, Orig.
Danville, Ill.—Vermilion County Arpt., VOR/DME Rwy 3, Amdt. 3
Danville, Ill.—Vermilion County Arpt., VOR Rwy 21, Amdt. 5
Jonesboro, Ark.—Jonesboro Municipal Arpt., VOR Rwy 23, Amdt. 2
Kent, Ohio—Andrew W. Paton of Kent State University Arpt., VOR-A, Amdt. 7
Newberry, Mich.—Luce County Arpt., VOR Rwy 11, Amdt. 2
Newberry, Mich.—Luce County Arpt., VOR Rwy 29, Amdt. 2
Newton, Kan.—Newton-City-County Arpt., VOR/DME Rwy 35, Amdt. 2
Pasco, Wash.—Tri-Cities Arpt., VOR-A, Amdt. 3
South Haven, Mich.—South Haven Municipal Arpt., VOR Rwy 22, Amdt. 3
Terre Haute, Ind.—Sky King Arpt., VOR-A, Amdt. 1

* * * *effective July 19, 1973.*

Beatrice, Neb.—Beatrice Municipal Arpt., VOR Rwy 13, Amdt. 8
Owensboro, Ky.—Owensboro-Daviess County Arpt., VOR Rwy 35, Amdt. 8

* * * *effective July 2, 1973.*

Bryce Canyon, Utah—Bryce Canyon Arpt., VOR-A, Amdt. 3

2. Section 97.25 is amended by originating, amending, or canceling the following SDF-LOC-LDA SIAPs, *effective August 23, 1973.*

Columbus, Ohio—Port Columbus Int'l Arpt., LOC (BC) Rwy 10R, Amdt. 10
Columbus, Ohio—Port Columbus Int'l Arpt., LOC (BC) Rwy 28R, Amdt. 1
Jacksonville, Fla.—Jacksonville Int'l Arpt., LOC (BC) Rwy 31, Orig.
Middletown, Ohio—Hook Field Municipal Arpt., LOC Rwy 23, Amdt. 3

3. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADF SIAPs, *effective August 23, 1973.*

Bellingham, Wash.—Bellingham Int'l Arpt., NDB-B, Amdt. 1
Bellingham, Wash.—Bellingham Int'l Arpt., NDB Rwy 16, Orig.
Buffalo, N.Y.—Greater Buffalo Int'l Arpt., NDB Rwy 5, Amdt. 7
Buffalo, N.Y.—Greater Buffalo Int'l Arpt., NDB Rwy 23, Amdt. 11
Carroll, Iowa—Arthur N. Neu Arpt., NDB Rwy 31, Amdt. 3
Columbus, Ohio—Port Columbus Int'l Arpt., NDB Rwy 10L & 10R, Amdt. 5, Canceled
Columbus, Ohio—Port Columbus Int'l Arpt., NDB Rwy 10L, Orig.
Columbus, Ohio—Port Columbus Int'l Arpt., NDB Rwy 10R, Orig.
Columbus, Ohio—Port Columbus Int'l Arpt., NDB Rwy 28L, Amdt. 6
Ft. Scott, Kan.—Ft. Scott Municipal Arpt., NDB Rwy 17, Amdt. 2
Knoxville, Tenn.—McGhee Tyson Arpt., NDB Rwy 4L, Amdt. 25, Canceled
Knoxville, Tenn.—McGhee Tyson Arpt., NDB Rwys 4L & 4R, Orig.
Newton, Kan.—Newton-City-County Arpt., NDB Rwy 17, Amdt. 2
Middletown, Ohio—Hook Field Municipal Arpt., NDB Rwy 5, Amdt. 8
Middletown, Ohio—Hook Field Municipal Arpt., NDB Rwy 23, Amdt. 3
Paragould, Ark.—Paragould Municipal Arpt., NDB Rwy 5, Amdt. 4
San Diego, Calif.—San Diego Int'l/Lindbergh Field, NDB Rwy 9, Amdt. 13
Shawnee, Okla.—Shawnee Municipal Arpt., NDB Rwy 17, Amdt. 1

* * * *effective July 19, 1973.*

NDB Rwy 13, Orig.
Beatrice, Nebr.—Beatrice Municipal Arpt., Owensboro, Ky.—Owensboro-Daviess County Arpt., NDB Rwy 35, Amdt. 5, Canceled
Owensboro, Ky.—Owensboro-Daviess County Arpt., NDB Rwy 35, Orig.

* * * *effective June 28, 1973.*

Huntingburg, Ind.—Huntingburg Arpt., NDB Rwy 27, Amdt. 2

4. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAPs, *effective August 23, 1973.*

Buffalo, N.Y.—Greater Buffalo Int'l Arpt., ILS Rwy 5, Amdt. 8
Buffalo, N.Y.—Greater Buffalo Int'l Arpt., ILS Rwy 23, Amdt. 22
Columbus, Ohio—Port Columbus Int'l Arpt., ILS Rwy 10L, Amdt. 6
Columbus, Ohio—Port Columbus Int'l Arpt., ILS Rwy 28L, Amdt. 18
Knoxville, Tenn.—McGhee Tyson Arpt., ILS Rwy 4L, Amdt. 29
Richmond, Va.—Richard Evelyn Byrd Int'l Arpt., ILS Rwy 33, Amdt. 2

* * * *effective July 19, 1973.*

Owensboro, Ky.—Owensboro-Daviess County Arpt., ILS Rwy 35, Amdt. 2

5. Section 97.31 is amended by originating, amending, or canceling the following RADAR SIAPs, *effective August 23, 1973.*

Buffalo, N.Y.—Greater Buffalo Int'l Arpt., RADAR-1, Amdt. 9
Columbus, Ohio—Port Columbus Int'l Arpt., RADAR-1, Amdt. 12

6. Section 97.33 is amended by originating, amending, or canceling the following RNAV SIAPs, *effective August 23, 1973.*

Buffalo, N.Y.—Greater Buffalo Int'l Arpt., RNAV Rwy 32, Amdt. 2
Miami, Fla.—Miami Int'l Arpt., RNAV Rwy 9L, Amdt. 3

Correction. In Docket No. 12882, Amendment 867, to Part 97 of the Federal Aviation Regulations, published in the FEDERAL REGISTER dated June 7, 1973, on page 14916, under Section 97.25, effective July 19, 1973, change effective date of Sarasota (Bradenton), Fla.—Sarasota-Bradenton Arpt., LOC (BC) Rwy 13, Orig., to July 26, 1973.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1948; 49 U.S.C. 1438, 1354, 1421, 1510, Sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c) and 5 U.S.C. 552(a)(1)).

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

JAMES M. VINES,
Chief,
Aircraft Programs Division.

NOTE: Incorporation by reference provisions in §§ 97.10 and 97.20 (35 FR 5610) approved by the Director of the Federal Register on May 12, 1969.

[FR Doc.73-14155 Filed 7-11-73;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER A—PROCEDURES AND RULES OF PRACTICE

PART 4—MISCELLANEOUS RULES

Records

The Commission announces the following amendment to Chapter I of Title 16 of the Code of Federal Regulations. This amendment which deals with records which may be obtained without charge upon request to the Secretary of the agency, is effective on July 12, 1973.

Section 4.9(c)(3) is revised to read as follows:

§ 4.9 Public records.

* * * * *

(c) * * *

(3) Cease-and-desist orders and orders of divestiture, industry guides, digests of advisory opinions and compliance advice believed to be of interest to the public generally, and other administrative interpretations;

* * * * *

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46)

By direction of the Commission dated July 3, 1973.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.73-14209 Filed 7-11-73;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER C—DRUGS

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

PART 135g—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

Sulfaethoxypyridazine

The Commissioner of Food and Drugs has evaluated a new animal drug appli-

cation (47–033V) filed by American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, proposing the safe and effective use of controlled release sulfaethoxypyridazine tablets for the treatment of cattle. The application is approved.

The tolerance for residues of sufaethoxypyridazine in food is being revised to establish a negligible tolerance for residues of sulfaethoxypyridazine in the uncooked edible tissues of cattle.

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 135c and 135g are amended as follows:

1. Part 135c is amended in § 135c.14 by adding a new item 2. to Table 2 in paragraph (e) as follows:

§ 135c.14 Sulfaethoxypyridazine.

* * * * *

(e) * * *

TABLE 2.—IN TABLETS

	Amount	Limitations	Indications for use
1. * * *	* * *	* * *	* * *
2. Sulfaethoxypyridazine	15 gram controlled release tablets.	For cattle; administer 100 milligrams per pound of body weight; do not treat within 16 days of slaughter; as sole source of sulfonamide; not for use in lactating dairy cows; Federal law restricts this drug to use by or on the order of a licensed veterinarian.	Treatment of foot rot and respiratory infections (shipping fever and pneumonia) caused by sulfonamide-susceptible pathogens (*E. coli*, streptococci, staphylococci, *Sphaerophorus necrophorus* and Gram-negative rods including *Pasteurella*); for use prophylactically in cattle during periods of stress for reducing losses due to sulfonamide sensitive disease conditions.

2. Part 135g is amended by revising § 135g.35 to read as follows:

§ 135g.35 Sulfaethoxypyridazine.

Tolerances for residues of sulfaethoxypyridazine in food are established as follows:

(a) Zero in the uncooked edible tissues of swine and in milk.

(b) 0.1 part per million (negligible residue) in uncooked edible tissues of cattle.

Effective date. This order shall be effective on July 11, 1973.

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

Dated: July 3, 1973.

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

[FR Doc.73-14057 Filed 7-11-73;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 73-140R]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Pascagoula River, Miss.

The amendment adds regulations for the U.S. 90 drawbridge across the Pascagoula River to permit overhaul of operating machinery. These regulations will begin on October 8, 1973 and end on January 4, 1974.

This rule is issued without notice of proposed rulemaking. The Coast Guard has found that good cause exists for taking this action on the basis that it would be contrary to the public interest to delay this work.

Accordingly, part 117 of title 33 of the Code of Federal Regulations is amended by adding the following statement to § 117.495 to read as follows:

§ 117.495 Pascagoula River, Mississippi U.S. 90 bridge.

* * * From October 8, 1973 through January 4, 1974 from 8:30 a.m. to 12:30 p.m. and 1:30 p.m. to 5:30 p.m., Mondays through Fridays except national holidays, the draw need not open for the passage of vessels.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(c)(4))

Effective date. This revision shall be effective from October 8, 1973 through January 4, 1974.

Dated: July 5, 1973.

J. D. MCCANN,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc.73-14224 Filed 7-11-73;8:45 am]

Title 24—Housing and Urban Development

CHAPTER I—OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—EMPLOYMENT AND BUSINESS OPPORTUNITY

[Docket No. R-73-111]

PART 130—EQUAL EMPLOYMENT OPPORTUNITY UNDER HUD CONTRACTS AND HUD ASSISTED CONSTRUCTION CONTRACTS

Contracts With State or Local Government

Pursuant to section 201 of Executive Order 11246 and 41 CFR 60-1.6(c) the Department is amending Equal Employment Opportunity regulations under 24 CFR Part 130. The amendment eliminates the exemption of State and local government educational institutions and medical facilities from the requirement of filing an annual compliance report and maintaining affirmative action programs. Unlike other State and local agencies, these institutions and facilities are required by the amendment to file annual compliance reports and maintain affirmative action programs when they participate in work under a HUD contract containing the equal opportunity clause.

In the FEDERAL REGISTER on January 19, 1973, at page 1932, the Department of Labor published a revision of the Office of Federal Contract Compliance regulations at 41 CFR 60-1.5(a)(4) to achieve the above result regarding all contracts under its jurisdiction. The HUD regulations affected here have, before the OFCC amendment, paralleled the scope of exemptions to State and local agencies under the OFCC regulations. The purpose of the Department in amending its regulation is to conform to the change in the OFCC regulation.

FHA contracts have been affected automatically by the OFCC amendment because the contents of the amended OFCC section are incorporated by reference in FHA regulations in § 200.425(d). Hence the present amendment has no effect on FHA contracts.

Because the Department of Labor regulations to which this amendment conforms have already been subjected to public comment before publication in their final form, and because the amendment was submitted to the Director of OFCC prior to issuance and approved as prescribed under 41 CFR § 60-1.6(c), comment and public procedure are unnecessary, and good cause exists for making these changes effective on August 13, 1973.

Paragraph (a)(4) of § 130.20 is amended to read as follows:

§ 130.20 Exemptions.

(a) * * *

(4) *Contracts with State or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract. In addition, any agency, instrumentality or subdivision of such government, except for educational institutions and medical facilities, is exempt from the requirements of filing the annual compliance report provided for by § 130.50 and maintaining a written affirmative action compliance program prescribed in §§ 130.30 and 130.35.

* * * * *

(Sec. 201, Executive Order 11246, 30 FR 12319; 41 CFR 60-1.6(c))

Effective date. This amendment shall be effective August 13, 1973.

JAMES T. LYNN,
Secretary of Housing and Urban Development.

[FR Doc.73-14210 Filed 7-11-73;8:45 am]

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

SUBCHAPTER B—NATONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-167]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

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

§ 1914.4 **Status of participating communities.**

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Illinois	Cook	Glenwood, Village of.				July 9, 1973, Emerg.
Pennsylvania	Allegheny	Coraopolis, Borough of.				Do.
Do.	Clinton	Lamar, Township of.				Do.
Do.	Lackawanna	Ransom, Township of.				Do.
Do.	Bucks	Sellersville, Borough of.				Do.
Do.	Blair	Tyrone, Borough of.				Do.
Do.	Northampton	West Easton, Borough of.				Do.
Do.	Lancaster	West Lampeter, Township of.				Do.
Do.	Berks	Union, Township 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: July 6, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-14101 Filed 7-11-73;8:45 am]

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

SUBCHAPTER L—LEASING AND PERMITTING

PART 132—PRESERVATION OF ANTIQUITIES

Issuance of Archeological Permits

The authority to issue regulations on Indian Affairs is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

Part 132, Subchapter L, Chapter I, of Title 25 of the Code of Federal Regulations is amended by revising §§ 132.2 and 132.5 and deleting § 132.4. This revision and deletion is being made to reflect the transfer of authority to grant archeological permits on Indian land from the Commissioner of Indian Affairs to the Director, National Park Service. The revision and deletion are made under the authority contained in sections 3 and 4 of the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 432).

Amendment 95 to Secretarial Order 2508 revoked the delegation made to the Commissioner in section 13(k) of Secretarial Order 2508 of authority to grant archeological permits on Indian land. Amendment 95 was published on page 5514 of the March 16, 1972, FEDERAL REGISTER (37 FR 5514). Since the regulations are being revised to reflect the revocation of authority already made by the Secretary and currently in effect, advance notice and public procedure thereon are deemed unnecessary. Therefore, advance notice and public procedure are dispensed with under the exception provided in subsection (b)(B) of 5 U.S.C. 553 (1970).

Since the regulations are being revised to reflect the revocation of authority already in effect, the 30-day deferred effective date would only delay this revision unnecessarily. Therefore, the 30-day deferred effective date is dispensed with under the exception provided in subsection (d)(3) of 5 U.S.C. 553 (1970). Accordingly, these regulations will become effective on July 12, 1973.

Part 132 of Subchapter L, Chapter I, Title 25 of the Code of Federal Regulations is amended as follows:

1. Section 132.2 is revised to read as follows:

§ 132.2 **Permits.**

The Departmental Consulting Archeologist may grant permits for the examination of ruins, the excavation of archeoligical sites, and the gathering of objects of antiquity on Indian tribal lands or on individually owned trust or restricted Indian lands. Permit application forms may be obtained from the Departmental Consulting Archeologist, National Park Service, Interior Building, Washington, D.C. 20240. Completed applications should be directed to the Departmental Consulting Archeologist who will grant permits to reputable museums, universities, colleges or other recognized scientific or educational institutions, or to their duly authorized agents, subject to the regulations in this Part and 43 CFR Part 3. Copies of these regulations will be attached to the permit. Permits may be granted only after obtaining the consent of the Indian landowners, who may impose special conditions for inclusion in the permit, and the concurrence of the Bureau of Indian Affairs official having immediate jurisdiction over the property. Said Bureau official should not permit any excavation or explorations except as granted to the holders of permits.

§ 132.4 **[Deleted]**

2. Section 132.4 is deleted from this Part.

3. Section 132.5 is revised to read as follows:

§ 132.5 Restoration of land after work completed.

After the work is completed, institutions and persons receiving permits for excavation shall restore the lands upon which they have worked to their customary condition, to the satisfaction of the Indian owners and the Bureau of Indian Affairs official having immediate jurisdiction over said lands.

JOHN C. WHITAKER,
Acting Secretary of the Interior.

JULY 5, 1973.

[FR Doc.73-14181 Filed 7-11-73;8:45 am]

Title 39—Postal Service

CHAPTER I—U.S. POSTAL SERVICE

PART 145—PERMIT IMPRINTS

Revocation

Regulations dealing with the use of permit imprints are amended to state certain grounds for revocation of the permit. Accordingly, § 145.1 is amended on July 12, 1973, by the addition of paragraph (b) as follows:

§ 145.1 Permit.

* * * * *

(b) *Revocation.* The permit may be revoked if used in operating any unlawful scheme or enterprise, for non-use during any consecutive 12 months, or for any non-compliance with the regulations governing the use of permit imprints. The method of revoking a permit is described in § 144.2(c)(1) of this chapter.

(39 U.S.C. 401)

ROGER P. CRAIG,
Deputy General Counsel.

JULY 6, 1973.

[FR Doc.73-14225 Filed 7-11-73;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

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

Carbaryl

A petition (PP 3F1330) was filed by Union Carbide Corp. 1730 Pennsylvania Avenue, NW., Washington DC 20006, in accordance with provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), proposing establishment of an interim tolerance for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate) and its metabolite 1-naphthel, calculated as 1-naphthyl *N*-methylcarbamate, in eggs at 0.5 part per million.

Based on consideration given the data submitted in the petition and other relevant material, it is concluded that:

1. The insecticide is useful for the purpose for which the interim tolerance is being established.

2. Residues of this insecticide in eggs will not exceed the proposed interim tolerance, and residues of this insecticide in the meat and fat of poultry will not exceed the established tolerance.

3. The tolerance established by this order will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs 408(d)(2), 68 Stat. 512; 21 U.S.C. 436a(d)(2)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (36 FR 9038), Part 180 is amended as follows:

1. In § 180.169, by revising the last paragraph "Zero in eggs * * *" to read as follows:

§ 180.169 Carbaryl; tolerances for residues.

* * * * *

Zero in or on the grains of barley, oats, rye, and wheat.

2. In § 180.319, by revising the item "Carbaryl * * *" in the table to read as follows:

§ 180.319 Interim tolerances.

* * * * *

Substance	Use	Tolerance in parts per million	Raw agricultural commodity
* * *	* * *	* * *	* * *
Carbaryl (1-naphthyl *N*-methylcarbamate and its metabolite 1-naphthol, calculated as 1-naphthyl *N*-methylcarbamate).	Insecticide	0.5	Eggs and potatoes.
* * *	* * *	* * *	* * *

Any person who will be adversely affected by the foregoing order may at any time on or before August 13, 1973, file with the Hearing Clerk, Environmental Protection Agency, Room 3902A, 4th & M Streets, SW., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective July 11, 1973.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated July 6, 1973.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.73-14099 Filed 7-11-73;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 5A—FEDERAL SUPPLY SERVICE, GENERAL SERVICES ADMINISTRATION

MISCELLANEOUS AMENDMENTS

This amendment (i) deletes from this chapter the instructions concerning price certifications, which are now prescribed in FPR Temporary Regulation 32, (ii) clarifies instructions for the distribution of amendments to solicitations when copies of the basic solicitation were furnished to a prospective bidder by the Business Service Center, and (iii) adds a notice to be included in solicitations to prospective bidders concerning copies of solicitations.

PART 5A-1—GENERAL

The table of contents for Part 5A-1 is amended to delete §§ 5A-1.321 thru 5A-1.321-8.

Subpart 5A-1.3—General Policies

Subpart 5A-1.3 is amended to delete §§ 5A-1.321 thru 5A-1.321-8.

PART 5A-2—PROCUREMENT BY FORMAL ADVERTISING

The table of contents for Part 5A-2 is amended to delete §§ 5A-2.203-72 and 5A-2.204, and to add the following new entry:

Sec.
5A-2.203-70 Solicitation Copies clause.

Subpart 5A-2.2—Solicitation of Bids

1. Section 5A-2.203-1 is amended as follows:

§ 5A-2.203-1 Mailing or delivering to prospective bidders.

* * * * *

(d) Prior to mailing or otherwise furnishing solicitations to prospective bidders, procuring activities shall prepare a handlist of all active bidders; i.e., current contractors and bidders that responded to recent similar solicitations. The names on this handlist shall be checked against the bidders mailing list printout to see whether these names are also listed on the printout. If not, action shall be taken in accordance with § 5A-76.306(i)(2).

(e) Addressees on the bidders mailing list printout shall be furnished one copy of the solicitation. Active bidders (see paragraph (d) of this section) shall be furnished complete bid sets (normally, and unless otherwise justified, three copies of the solicitation of which two are to be submitted with the bid and one to be retained for the bidder's own record). Where active bidders are also listed in the bidders mailing list printout, procuring activities shall void this printout label or take such other actions necessary to ensure that active bidders will not receive BOTH the single copy of the solicitation AND the complete bid set, but only the latter. Procuring activities shall manually prepare the required gummed addressed labels or addressed

envelopes for the active bidders and furnish them to the local printing and distribution activity.

(f) A complete bid set will be mailed or otherwise furnished by the Business Service Centers to prospective bidders who request bid sets in response to announcements such as in the Commerce Business Daily. Procuring activities shall respond expeditiously to all requests from Business Service Centers for required solicitation copies.

(g) All solicitations for offers shall contain the Solicitation Copies clause set forth in § 5A-2.203-70.

(h) Contracting officers are responsible for ensuring that all amendments to solicitations and related notices are furnished promptly to addressees which were previously furnished solicitations by the contracting officer and by the Business Service Center (see § 5-2.204).

2. Section 5A-2.203-70 is added as follows:

§ 5A-2.203-70 Soliciation Copies clause.

The following clause shall be included in all solicitations for offers:

SOLICITATION COPIES

To reduce costs, only a single copy of this solicitation is mailed to addressees on our bidders mailing list, except active bidders who are being furnished a complete bid set. Active bidders are bidders who responded to previous similar solicitations from this office. If you did not receive this solicitation in more than one copy and you wish to bid, you *must submit your bid in the original and one copy* by the date specified in the solicitation. You may reproduce the required additional copies yourself, provided they are complete in every respect, or you may obtain them from ----------*

*Enter address of local Business Service Center or other address, as indicated by the issuing office.

§§ 5A-2.203-72 and 5A-2.204 [Deleted]

3. Sections 5A-2.203-72 and 5A-2.204 are deleted.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 41 CFR 5-1.101(c))

Effective date. These regulations are effective on the date shown below.

Dated: June 28, 1973.

M. J. TIMBERS,
Commissioner,
Federal Supply Service.

[FR Doc.73-14199 Filed 7-11-73;8:45 am]

COST OR PRICING DATA

The following change implements the instructions in FPR 1-3.807-3, concerning requirements for cost or pricing data.

PART 5A-3—PROCUREMENT BY NEGOTIATION

Subpart 5A-3.8—Price Negotiation Policies and Techniques

Section 5A-3.807-3 is revised as follows:

§ 5A-3.807-3 Requirements for cost or pricing data.

(a) When contract pricing is to be based on established catalog or market prices of commercial items sold in substantial quantities to the general public, contracting officer shall include in solicitations the "Basis for Price Negotiation Provision" prescribed in § 5A-73.121(a) in the format prescribed in § 5A-76.313. However, when this format is used in solicitations for other than multiple-award Federal Supply Schedule contracts, it must be appropriately modified to delete material pertinent only to multi-award contracts.

(b) Whenever a contractor refuses to provide cost or pricing data, the matter shall be referred to the Assistant Commissioner for Procurement (FP). (See §§ 1-3.807-3(b) and 1-3.807-6.)

PART 5A-73—FEDERAL SUPPLY SCHEDULE PROGRAM

Subpart 5A-73.1—Production and Maintenance

Section 5A-73.121(a) is amended as follows:

§ 5A-73.121 Basis for price negotiation of multiple award schedule contracts.

(a) The following provisions shall be included in all solicitations for multiple-award schedule contracts. (See § 5A-3.807-3 for use of this provision in other than multiple-award solicitations where prices are based on established catalog or market prices.)

* * * * *

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 41 CFR 5-1.101(c))

Effective date. These regulations are effective on the date shown below.

Dated: July 3, 1973.

M. J. TIMBERS,
Commissioner,
Federal Supply Service.

[FR Doc.73-14227 Filed 7-11-73;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5348]

[Wyoming 34551]

WYOMING

Correction of Public Land Order No. 5345

That part of paragraph 1 following the land descriptions is changed to read as follows: The areas described aggregate 10,950.34 acres in Johnson and Washakie Counties.

JACK O. HORTON,
Secretary of the Interior.

JULY 6, 1973.

[FR Doc.73-14157 Filed 7-11-73;8:45 am]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Dependent Children of Unemployed Fathers

Notice of proposed regulations regarding the definition of unemployed father in the program of Aid to Families with Dependent Children was published in the FEDERAL REGISTER of January 3, 1973 (38 FR 49). The notice presented two alternatives relating to the inclusion of fathers who are on strike or otherwise disqualified for unemployment compensation:

A: Give States option as to including or excluding;

B: Establish hours of work as the sole criterion, thus precluding exclusion of strikers otherwise eligible.

Thousands of comments were received, coming from all States. As could be expected, most of the responses were from management and labor; there were also many from private citizens and a number from Congressmen.

It is apparent from these comments that no one solution is going to satisfy all those who wrote. There was a fully predictable, although relatively close, division.

After consideration of the conflicting views presented, the Department has adopted alternative "A", leaving the States free to determine whether or not those on strike qualify for AFDC-UF. This is the only course fully consistent with the "New Federalism" policies of this Administration. This permits States wide flexibility in the administration of Federal/State programs, so that they may determine the best course of action in the light of their individual situations and varying circumstances. A Federal mandate either to include or exclude strikers would be undue interference with States' decisions on the extent of the program. If such a mandate is desired it should be set by Congress through the customary legislative process. Accordingly, alternative "A" is considered the acceptable alternative and is reflected in the amended regulation.

Section 233.100(a)(1), Chapter II, Title 45 of the Code of Federal Regulations is revised to read as follows:

§ 233.100 Dependent children of unemployed fathers.

(a) *Requirements for State plans.* * * *

(1) Include a definition of an employed father which shall apply only to families determined to be needy in accordance with the provisions in § 233.20 of this chapter. Such definition must include any father who:

(i) Is employed less than 100 hours a month; or

(ii) Exceeds that standard for a particular month, if his work is intermittent and the excess is of a temporary nature as evidenced by the fact that he was under the 100-hour standard for the prior 2 months and is expected to be under the standard during the next month;

except that, at the option of the State, such definition need not include a father whose unemployment results from participation in a labor dispute or who is unemployed by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under the State's unemployment compensation law.

* * * * *

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))

Effective date. The regulations in this section shall be effective on July 12, 1973.

Dated: July 6, 1973.

JAMES S. DWIGHT, Jr.,
Administrator, Social and Rehabilitation Service.

Approved: July 9, 1973.

CASPAR W. WEINBERGER,
Secretary.

[FR Doc.73-14304 Filed 7-11-73;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 73-743]

PART 0—COMMISSION ORGANIZATION

Authentication of Licensing Documents by Commission Seal Only

Order. In the matter of amendment of Part 0 of the Commission's rules to provide for authentication of licensing documents by Commission seal only.

The purpose of this order is to delete from the rules the statement that the signature of the Secretary appears on license forms issued by the Commission. Effective July 1, 1973, such forms have been authenticated solely by the seal of the Commission and by the signature of an official of the issuing bureau or office, when such a signature is required on the authorizing document. To avoid application processing delays, the Commission will continue to use forms bearing the signature of the former Secretary of the Commission until new forms are available.

Accordingly, Part 0 of the Commission's rules is amended to reflect this change. Authority for the attached amendment is contained in sections 4(i) and 303(r) of Communications Act of 1934, as amended. Because the amendment relates to internal Commission organization and internal procedure, the prior notice and effective date provisions of section 4 of the Administrative Procedures Act (5 U.S.C. 553) do not apply.

In view of the foregoing: *It is ordered,* Effective July 1, 1973, That Part 0 of the rules and regulations is amended as set forth below.

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

Adopted: July 6, 1973.

Released: July 10, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Acting Secretary.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Section 0.204(c)(6) is revised to read:

§ 0.204 The exercise of delegated authority.

* * * * *

(c) * * *

(6) With the exception of license forms requiring the signature of an appropriate official of the issuing bureau or office, license forms bear only the seal of the Commission.

* * * * *

[FR Doc.73-14219 Filed 7-11-73;8:45 am]

Title 50—Wildlife and Fisheries

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

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Erie National Wildlife Refuge, Pa.; Correction

Special regulations governing public access, use, and recreation on Erie National Wildlife were originally published as Doc. 73-238 on page 879 of the January 5, 1973 issue of the FEDERAL REGISTER.

The third sentence of the original regulation is amended to read: Use of the picnic area is permitted on Saturdays and Sundays from 6:00 a.m. to 9:30 p.m. May 30 to October 15 and on weekdays by reservation.

RICHARD E. GRIFFITH,
Regional Director, Bureau of Sport Fisheries and Wildlife.

JULY 5, 1973.

[FR Doc.73-14200 Filed 7-11-73;8:45 am]

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER F—AID TO FISHERIES

PART 258—FISHERMEN'S PROTECTIVE ACT PROCEDURES

Provision for Fees

Section 7 of the Fishermen's Protective Act, as amended, (22 U.S.C. 1971-1977) authorizes, among other things, the Secretary of Commerce to from time to time establish by regulation fees which shall be paid by the owners of vessels entering into agreements under section 7 of the Act. These fees are credited to the Fishermen's Guarantee Fund and used to carry out the provisions of section 7 of the Act. Section 7 of the Act guarantees to the owners of vessels entering into agreements payment of certain costs and losses resulting from the seizure of a vessel of the United States by a foreign country on the basis of rights or claims in territorial waters or the high seas which are not recognized by the United States.

Regulations governing administration of section 7 of the Act, Fishermen's Protective Act Procedures (50 CFR Part 258), have annually established fees based on anticipated claims projected from prior experience. The purpose of the following amendment to § 258.5 of Fishermen's Protective Act Procedures is to establish fees for the present agreement year (July 1, 1973, through June 30, 1974). Although fees for the present agreement year are now being established without an increase above those previously established for the last agreement year, such an increase is being considered (presently, only for tuna vessels) and the fees now being established may be adjusted upward in the near future. Such an increase is being considered because the number of seizures of vessels owned by agreement holders during the last agreement year was higher than during any other agreement year since inception of the Fishermen's Guarantee Fund. When and if such an adjustment occurs, all parties will be notified and the adjusted fees will be payable in accordance with § 258.5(c) of Fishermen's Protective Act Procedures.

All parties whose agreements for the last agreement year were extended through June 30, 1974, by Amendment Number 2 must submit their fees in accordance with § 258.5(b) of the following amendment. Failure to do so will result in termination of those Agreements in accordance with the terms and conditions of Amendment Number 2.

This amendment relates to matters which are exempt from the rule making requirements of the Administrative Procedures Act (5 U.S.C. 553). In addition, the amendment makes no substantive change in the program's conduct. This amendment is hereby adopted and will become effective on July 12, 1973.

Section 258.5 of Fishermen's Protective Act Procedures (50 CFR Part 258) is hereby amended by deleting the present section and substituting therefor the following:

§ 258.5 Fees.

(a) The fees are established to provide for payment of the administrative costs and at least one-third of the estimated claims to be paid from the fund. They are set on the basis of anticipated losses and prior experience. The fees may be adjusted from time to time by amendment to this part at any time, after appropriate notice, in order to meet the requirements of the Act.

(b) Fees to be paid by applicants for, or holders of, guarantee agreements executed (by amendment or otherwise) for the period beginning July 1, 1973, and terminating June 30, 1974, shall be as follows: For each vessel, $60 plus $1.80

per gross ton as listed on the vessel's document (fractions of a ton are not included). Although fees are due on July 1, 1973, all parties holding guarantee agreements as of July 1, 1973, (by amendment or otherwise) for the period terminating June 30, 1974, shall have until August 1, 1973, (midnight, local time) to pay the fees established herein.

(c) No return of a fee or portion of a fee will be made after a guarantee agreement is executed by the Secretary. Failure to pay increased fees within 30 days of adjustment shall constitute a basis for termination of the guarantee agreement.

(d) A guarantee agreement may, with the consent of the Secretary, be assigned to a new owner of a vessel if the ownership of the vessel is transferred during the period in which the agreement is in force.

Dated: July 6, 1973.

By order of the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

ROBERT W. SCHONING,
Acting Director.

[FR Doc.73-14161 Filed 7-11-73;8:45 am]

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 140—COST OF LIVING COUNCIL FREEZE REGULATIONS

Procedures for Requesting Exemptions and Exceptions

The purpose of these amendments is to add Subpart H to Part 140 of Chapter I of Title 6 of the Code of Federal Regulations to set forth procedural regulations for seeking exceptions or exemptions from the freeze regulations. In addition, § 140.40 is amended to provide that it is a violation to take retaliatory action against any person who exercises his rights under the Economic Stabilization Act. Subpart F is amended to add a new section which provides that a District Director of Internal Revenue may refer to the Attorney General any matter involving noncompliance with a remedial order. Technical and clarifying amendments have been made in §§ 140.1, 140.42 and 140.56.

Prior to this amendment, § 140.1(d) provided that the Cost of Living Council Phase II procedures as set forth in Part 105 of Chapter I of Title 6 of the Code of Federal Regulations govern the submission of a request for an exception or an exemption. This amendment adds a Subpart H which sets forth procedures for initial requests for exception and exemption from the provisions of Part 140 and reconsideration of denials or partial denials of such requests. Exceptions and exemptions are granted for purposes of preventing or correcting serious hardship or gross inequity which results from application of the freeze regulations. A person will not be considered to have exhausted his administrative remedies until he has filed a request for reconsideration of a denial of an exemption or exception. The mandatory reconsideration requirement differs from the Part 105 procedures where a person whose request for exemption was denied in whole or in part could either request reconsideration or wait 30 days and seek judicial review of the Council's action.

All requests for exemption or exception are initiated pursuant to Part 401 of Chapter IV of Title 6 of the Code of Federal Regulations, which requires that requests be filed with the appropriate District Director of Internal Revenue. The initial action on all such requests will be by the Special Freeze Group of the Cost of Living Council. After consideration of the request, the Special Freeze Group will issue a decision in writing including the basis therefor directed to the person filing the request.

The particulars of the procedures for initial requests and reconsiderations are set forth in Subpart H.

Because the purpose of these regulations is to provide immediate guidance as to Cost of Living Council decisions, the Council finds that publication in accordance with normal rulemaking procedure 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, Special Freeze Group, 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. 11723, 38 FR 15765; Cost of Living Council Order No. 30, 38 FR 16267)

In consideration of the foregoing, Part 140 of Chapter I of Title 6, Code of Federal Regulations is amended as follows, effective July 10, 1973.

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

JAMES W. MCLANE,
Director, Special Freeze Group.

Part 140 of Chapter I of Title 6 of the Code of Federal Regulations is amended as follows:

1. Paragraph (d) of § 140.1 of Title 6 of the Code of Federal Regulations is amended to read as follows:

§ 140.1 Purpose and scope.

* * * * *

(d) The Cost of Living Council may permit any exceptions or exemptions that it considers appropriate with respect to the requirements prescribed in this part. Requests for execptions or exemptions from the requirements of this Part shall be submitted in accordance with the provisions of Subpart H of this part.

* * * * *

2. Subpart E is amended in § 140.40 to add a new paragraph (b) to read as follows:

§ 140.40 Violations.

* * * * *

(b) No person may take retaliatory action against any other person who files or manifests an intent to file a complaint of alleged violation of, or who otherwise exercises any rights conferred by, the Economic Stabilization Act of 1970, as amended, any provision of this part, or any order issued under this part. For the purposes of this paragraph, "retaliatory action" includes any refusal to continue to sell or lease, any reduction in quality, any reduction in quantity of services or products customarily available for sale or lease, any violation of privacy, any form of harassment, or any inducement of others to retaliate.

3. Subpart E is further amended in § 140.42 to read as follows:

§ 140.42 Injunctions and other relief.

Notwithstanding any other provision of this Part, whenever it appears to the Council that any person has engaged, is engaged, or is about to engage in any acts or practices which constitute particularly flagrant violations of any order or regulation issued under this title, the Council may immediately request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices. The relief sought may include a mandatory injunction commanding any person to comply with any such order or regulation and restitution of moneys received in violation of any such order or regulation.

4. Subpart F of Part 140 of Title 6 of the Code of Federal Regulations is amended in § 140.56 to read as follows:

§ 140.56 Who may request modifications or rescission of an order issued under § 140.55.

The person to whom an order is issued under § 140.55, other than an order issued after temporary suspension of an order pursuant to § 140.60(c), may file a request for modification or rescission of that order.

5. Subpart F of Part 140 of Title 6 of the Code of Federal Regulations is further amended to add a new § 140.61 to read as follows:

§ 140.61 Noncompliance.

If the recipient of a remedial order fails to comply with the terms and conditions of any order or regulation issued under this Part, the District Director may refer the matter to the Attorney General for the initiation of proceedings in a U.S. District Court pursuant to section 208 or section 209 of the Act.

6. Part 140 of Title 6 of the Code of Federal Regulations is amended to add a new Subpart H to read as follows:

Subpart H—Procedures—Exceptions and Exemptions

Sec.
140.80 Purpose and scope.
140.81 Initiation of request.
140.82 Initial action by Council.
140.83 Reconsideration requests.
140.84 Hearing.
140.85 Decision by Council.

AUTHORITY: 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.

Subpart H—Procedures—Exceptions and Exemptions

§ 140.80 Purpose and scope.

(a) This part establishes procedures for initial actions on requests for exceptions and exemptions from the provisions of Part 140 of this Title and reconsideration of denials of such requests in whole or in part.

(b) An exception or exemption will be granted by the Council for purposes of preventing or correcting a serious hardship or a gross inequity resulting from application of Part 140 of this Title.

(c) The Council will not consider that an applicant has exhausted his administrative remedies upon a request for an exception or an exemption until it has filed a request for reconsideration under § 140.83 and final action thereon has been taken by the Council under § 140.85.

§ 140.81 Initiation of request.

Requests for exceptions and exemptions are initiated pursuant to Subpart D of Part 401 of this Title.

§ 140.82 Initial action by Council.

Initial action on a request for an exception or exemption will be taken by the Council. After considering the record, the Council will issue a decision in writing including the basis therefor directed to the person filing the request for exception or exemption.

(a) If the Council grants a request for an exception or exemption, it will serve upon the applicant a copy of its decision.

(b) If the Council refuses to grant an exception or exemption, in whole or in part, it will—

(1) Serve upon the applicant a copy of its decision;

(2) Advise him that he may request reconsideration of the Council's denial pursuant to the provisions of § 140.83 of this Title.

§ 140.83 Reconsideration requests.

(a) *Who may file request.* Any person whose request for an exception or exemption was denied by the Council pursuant to § 140.82(b) in whole or in part may request reconsideration.

(b) *Where to file request.* A request for reconsideration shall be filed with the Special Freeze Group, Cost of Living Council, 2025 M Street, N.W., Washington, D.C. 20508.

(c) *When to file.* A request for reconsideration must be filed within 30 days of service of the decision refusing to grant the exception or exemption in whole or in part.

(d) *Contents of request.* A request for reconsideration shall—

(1) Be in writing and signed by appellant;

(2) Be designated clearly as a request for reconsideration;

(3) Contain a concise statement of the grounds for reconsideration and the requested relief;

(4) Be accompanied by briefs, if any; and

(5) Be marked on the outside of the envelope: "Reconsideration."

(e) *Review by council.* (1) The Council will reconsider its decision and order denying an exception or exemption in whole or in part if a request for reconsideration:

(i) Is made by a person whose request for exception or exemption was denied by the Council in whole or in part:

(ii) It is timely: and

(iii) Makes a prima facie showing that the Council's initial action was erroneous in fact or in law.

(2) The Council may summarily dismiss a request for reconsideration which is not timely or which was filed by a person other than the one whose request for exception, or exemption was denied in whole or in part.

(3) The Council may summarily dismiss a request for reconsideration which fails to make a prima facie showing that the Council's initial action was erroneous in fact or in law, in which case it will notify the appellant of its action. Such appellant may seek judicial review under the Act.

(4) When a petition for reconsideration meets the requirements set forth in paragraph (e)(1) of this section, the Council will proceed in accordance with §§ 140.84 and 140.85.

(5) The Council on its own motion may consider any additional evidence that it deems relevant and which in its opinion the party did not have a reasonable opportunity to present previously.

§ 140.84 Hearing.

(a) If the Council in its discretion deems that a hearing is advisable, it will, as expeditiously as possible after receiving the request for reconsideration, direct that a hearing be held before a Hearing Officer, or where the Council deems it appropriate, before the Council in the first instance.

(b) When a hearing has been directed in accordance with paragraph (a) of this section, it will be conducted not less than 10 days after written notice has been served on the appellant, at such time and place as the Council may direct.

(c) When a hearing is conducted in accordance with this Section, the appellant may present oral argument and submit such additional documentary evidence as the Hearing Officer allows.

(d) Where administratively feasible, within 10 days after the close of the hearing, the Hearing Officer will submit to the Council a report and any recommendation he deems appropriate with respect to the appellant's request for reconsideration.

§ 140.85 Decision by Council.

When administratively feasible, within 30 days of receipt of a request for reconsideration or within 30 days of a Hearing Officer's report when a hearing has been directed, the Council will issue a decision in writing including the basis therefor directed to the person filing the request for reconsideration.

(a) If the Council grants the reconsideration requested, it will serve upon the applicant a copy of its decision.

(b) If the Council refuses to grant the reconsideration requested, in whole or in part, it will—

(1) Serve upon the applicant a copy of its decision;

(2) Advise him that he has exhausted his administrative remedies.

[FR Doc.73-14319 Filed 7-10-73;12:24 pm]

PART 140—COST OF LIVING COUNCIL FREEZE REGULATIONS

Special Freeze Group Questions and Answers No. 17

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 July 9, 1973.

ANDREW T. H. MUNROE,
General Counsel,
Special Freeze Group.

Appendix A of Part 140 is amended by adding the following:

SPECIAL FREEZE GROUP

QUESTIONS AND ANSWERS

No. 17

1. Q. A, a brick manufacturer, has had a long term contract to supply B, a builder, with 100% of B's brick requirements at 5¢/brick from July 1, 1972, to June 30, 1973. A's freeze price for bricks to all other purchasers is 7¢/brick. None of the other purchasers has a long term contract, but many of these customers have been purchasing their entire supply of bricks from A, and buy the same quantity B buys. A has notified B that, effective July 1, 1973, A will supply B with 50% of his requirement under a new contract at the 5¢ price. The remaining 50% will be sold to B in over the counter transactions at the price of 7¢. May A lawfully charge B 7¢/brick in over the counter transactions?

A. No. B is a separate class of purchaser for purposes of the freeze regulations because he took deliveries under a long term contract with a fixed price during the freeze base period. A is not required to renew the old contract with B, but he may not transfer B to another class of purchaser which has a higher freeze price in order to avoid the freeze price rules. As long as A continues to supply B during the freeze, whether by contract or over the counter, A may charge no higher than 5¢/brick.

2. Q. Since May 1, 1973, a hardware store has sold lead pipe according to a fixed, 3-step pricing formula. In the first step, a price is found on a pricing table which contains

100 prices based on 10 length sizes and 10 diameter sizes of the product offered. The price of each size is based on weight times a uniform price per pound for lead pipe. After the price is determined according to the desired length and diameter, it is multiplied by a grade factor (both a superior quality "A" and a standard quality "B" is offered). Finally, a quantity discount is offered for high-volume purchases.

Q. All sales of lead pipe were made under this 3-step pricing formula during the freeze base period including at least one high-volume and one regular volume transaction in both the quality "A" and "B" categories, but the store did not have a transaction in each, of the 400 different pricing categories possible under the formula. May the formula be used to determine freeze prices for all sizes, grades, and quantities offered or only for those for which a transaction occurred during the freeze base period?

A. The formula establishes freeze prices for all sizes, grades and quantities of lead pipe offered during the freeze base period. The freeze price is the highest price at or above which at least 10% of the items were priced in transactions with the class of purchaser concerned during the freeze base period. The class of purchaser is determined according to customary price differentials, and this includes price distinctions based on quality (Step 2) and volume (Step 3). In this case, there are no customary price differentials involved in Step 1 because the same over-all unit price per pound is charged. The pricing formula used creates price differentials in only four different categories. Therefore, only four classes of purchaser exist. Because transactions occurred with each of the four classes of purchasers during the freeze base period, freeze prices were established for all items priced under the formula. Since there were no price changes during the freeze base period for any of these classes of purchasers, the 10% transactions test is met.

3. Q. During the freeze base period, a manufacturer sold product X to a retailer with a promotional allowance of 10¢ per item to compensate the retailer for local advertising of the product. The retailer also reduced the price of product X 10¢ to his customers during this time but was not reimbursed for this reduction. When the retailer ceased advertising product X during the freeze, the manufacturer raised his price 10¢ to reflect the elimination of the promotional allowance in accordance with the Answers Sheet No. 4. May the retailer now also increase the price to his customers by 10¢?

A. No. The freeze price includes a special sale, deal or allowance in effect during the freeze base period. The manufacturer in this example is permitted to eliminate its promotional allowance on the basis that it is no longer receiving in exchange services of value equal to the allowance. The ultimate consumer has not been performing any promotional service such as providing advertising material or facilities for the retailer. Therefore, the retailer's sale price to the consumer may not be increased during the period of the freeze.

4. Q. Does the exemption for the sale of agricultural products which retain their original physical form and have not yet been processed apply to mixed plant seeds and to seedlings for planting?

A. Yes.

5. Q. Company A sells 10 categories of screws at different prices which are not determined by formula pricing. On June 1 Company A put a 5% price increase in effect for all 10 categories of screws. During the period June 1 through June 8 Company A sold screws from 6 of the 10 categories, but had no sales of screws in the other 4 categories. May Company A sell all of its screws at the higher announced prices since the screws are similar commodities or must the firm calculate a freeze price for each category of screws?

A. Freeze prices must be calculated for each sale of a commodity to each class of purchaser. A class of purchaser is composed of all purchasers to whom a person has charged a comparable price for comparable property or service during the freeze base period pursuant to customary price differentials between these purchasers and other purchasers. Customary price differentials include price distinctions based on a discount, allowance, add-on, premium, and an extra based on a difference in volume, grade, quality, or location or type of purchaser, or a term or condition of sale or delivery.

Because each category of screws is sold at a different price not determined by formula pricing, a customary price differential exists between purchasers buying one category of screw and purchasers who buy another category. Therefore, each category of screw is sold to a separate class of purchaser and Company A must calculate a freeze price for each category. For the four categories which were not sold during the June 1 through June 8 period, Company A must calculate the freeze price by going back in 7-day time blocks until there was a sale in each of the categories.

6. Q. During the freeze, a wheat grower sells his wheat to a grain storage concern which in turn sells the wheat to an export terminal operator. The latter exports some of the wheat and sells the rest to a domestic flour miller. Which of these transactions are exempt?

A. All of them. Under the raw agricultural products exemption, all sales of agricultural products which retain their original physical form and have not been processed, other than those products sold for ultimate consumption in their original physical form, are exempt. This includes the first, second and any subsequent sales in a chain of market transactions involving the same raw agricultural product.

6. A. For agricultural products which are of a type sold for ultimate consumption in their original physical form, such as tomatoes and apples, only the first sale is exempt. Wheat, however, is not a product of this type.

The export sale of the wheat is exempt under both the raw agricultural products exemption and the export exemption.

7. Q. A firm had been selling its product in the Northeast and on April 1, 1973, it began marketing its product in the Southwest. At the time of entering the Southwest market the firm decided to offer a 3% discount for four months to purchasers in the Southwest in order to test the Southwest's market demand for its product. The product has been well received in the Southwest, and pursuant to its original plan the firm wishes to eliminate its 3% discount on July 15, 1973. May the firm raise the prices 3% in the Southwest during the freeze?

A. No. The freeze price rule provides that no person may charge to any class of purchaser a price for any commodity which exceeds the freeze price charged in transactions with the same class of purchaser during the freeze base period. The purchasers in the Southwest would be a separate class of purchaser because the firm has implemented a customary price differential of 3% between purchasers in the Northeast and purchasers in the Southwest based on the location and type of purchasers (old versus new). The price charged customers in the Southwest during the freeze base period is the freeze price for the Southwest. The fact that there was a 3% discount for market testing in the Southwest during the freeze base period does not permit the firm to increase the prices at the time when the firm planned to discontinue the discount. The definition of freeze price specifically provides that in computing the freeze price a seller may not exclude any temporary special sale, deal or allowance in effect during the freeze base period.

8. Q. A farmer grows peanuts. He delivers and sells them to a peanut sheller who takes title to the nuts. The sheller then shells the peanuts and sells them to manufacturers. Is the sale of the shelled peanuts from the sheller to the manufacturer subject to the freeze?

A. No. Shelling is not considered a processing activity for the purpose of the raw agricultural products exemption. Roasting or salting, however, is a processing activity and the sale of roasted or salted peanuts is subject to the freeze.

9. Q. A firm in the mail order business wishes to print and mail during the freeze a catalog for the 1973 Christmas season. How should such a retailer price the items in his catalog?

A. Prices for goods sold after the freeze will be subject to the rules of Phase IV. Whenever an order is received for shipment after the freeze for goods priced in the catalog higher than the price permitted under Phase IV, the firm may charge no more than the Phase IV price, and if payment is included with the order, must refund to the purchaser the difference between the listed price and the Phase IV price. Firms preparing such catalogs are encouraged to include a prominent statement of this requirement.

10. Q. May U.S. flag vessels increase their shipping rates to foreign customers during the freeze?

A. Yes. The carriage service provided by a U.S. flag vessel to a foreign purchaser is considered an export of a service and is therefore exempt from the freeze. The sale of the service to a foreign purchaser is considered an export whether or not the sale takes place through a U.S. agent. Transactions between U.S. ocean carriers and U.S. purchasers are not exports of services and, therefore, are fully subject to the freeze.

[FR Doc.73-14318 Filed 7-10-73;12:24 pm]

PART 140—COST OF LIVING COUNCIL FREEZE REGULATIONS

Special Freeze Group Questions and Answers No. 16

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 July 5, 1973.

ANDREW T. H. MUNROE,
General Counsel,
Special Freeze Group.

Appendix A of Part 140 is amended by adding the following:

SPECIAL FREEZE GROUP

QUESTIONS AND ANSWERS

No. 16

The following is a list of questions asked most frequently by consumers about obtaining freeze price information and freeze price posting requirements.

1. Q. Are all stores, regardless of size, obligated to provide information on their freeze prices?

A. Yes, as of 11:59 pm, e.s.t., June 24, 1973, *every* seller of goods or services (retailer, wholesaler, manufacturer, and service organization), regardless of size of the business, must provide freeze prices, or ceiling prices, for its products or services. There are no exemptions in the freeze for small businesses.

2. Q. How can I obtain freeze price information?

A. In every place of business, you should see a prominent sign measuring no less than 22" by 28" which tells you how to obtain freeze price information.

3. Q. Does the seller have to tell me the freeze price on the spot?

A. With the exception of certain large food retailers who have more stringent requirements, any seller of goods or services must provide the customer with a Freeze Price Information Request Form. This form must have provisions for the item, the price, the style number, the department, and the requesting customer's name and address. The seller then has 48 hours in which to forward the freeze price information to the customer by mail.

4. Q. How do requirements for the large food retailers differ?

A. Any food retail outlet owned by a firm which derives $25 million or more in food sales must comply with a requirement to post, in each department, a sign announcing the availability and location of a freeze price inspection list within the department. This list must show the freeze price for the 40 items in that department which had the highest dollar sales during the last fiscal year ending prior to June 13, 1973, or, those items which accounted for at least 50 percent of the total dollar sales of the department—whichever is less. In addition, the store must have Freeze Price Information Request Forms available for freeze price requests on items not included in the inspection lists.

Note: These stores have the option instead to maintain one centrally located list of freeze prices for all of their items and to post a sign announcing the availability and location of this list.

5. Q. Do sellers of meat have special posting regulations?

A. Yes. Retail sellers of meat must comply with Phase III regulations to post the ceiling price for meat items available for sale. This list must be posted in a prominent place where the majority of meat items are sold. (Note: meat ceiling prices are determined in accordance with Phase III meat ceiling price regulations effective 9 pm, e.s.t., March 29, 1973.)

6. Q. What if I do not see a freeze price information sign or I receive no response to requests for information?

A. If you see no sign, or if a seller either refuses or is unable to give you freeze price information, contact your nearest local IRS office with your complaint.

7. Q. What if I suspect that the freeze price I am quoted is higher than it should be?

A. Again, file a complaint with your nearest local IRS office.

[FR Doc.73-14153 Filed 7-9-73;9:02 am]

Title 7—Agriculture

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

[Valencia Orange Reg. 440]

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

Limitation of Handling

This regulation fixes the quantity of California-Arizona Valencia oranges that may be shipped to fresh market during the weekly regulation period July 13–19, 1973. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 908. The quantity of Valencia oranges so fixed was arrived at after consideration of the total available supply of Valencia oranges, the quantity of Valencia oranges currently available for market, the fresh market demand for Valencia oranges, Valencia orange prices, and the relationship of season average returns to the parity price for Valencia oranges.

§ 908.740 Valencia Orange Regulation 440.

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

(2) The need for this regulation to limit the respective quantities of Valencia oranges that may be marketed from District 1, District 2, and District 3 during the ensuing week stems from the production and marketing situation confronting the Valencia orange industry.

(i) The committee has submitted its recommendation with respect to the quantities of Valencia oranges that should be marketed during the next succeeding week. Such recommendation, designed to provide equity of marketing opportunity to handlers in all districts, resulted from consideration of the factors enumerated in the order. The committee further reports that the fresh market demand for Valencia oranges is generally steady.

Prices f.o.b. averaged $3.13 per carton on a sales volume of 453 carlots during the week ended July 5, 1973, compared with $3.16 per carton on sales of 513 carlots a week earlier.

Track and rolling supplies at 273 cars were down 30 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the respective quantities of Valencia oranges which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on July 10, 1973.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period July 13, 1973, through July 19, 1973, are hereby fixed as follows:

(i) District 1: 94,000 cartons;

(ii) District 2: 385,000 cartons;

(iii) District 3: 71,000 cartons.

(2) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: July 11, 1973.

CHARLES R. BRADER,
Acting Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc.73-14420 Filed 7-11-73;12:24 pm]

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Expenses and Rate of Assessment

This document states that the expenses of the Washington Apricot Marketing Committee for the 1973–74 season will be $3,311, and, to obtain such funds, pre-

scribes a rate of assessment of $2.00 per ton, payable by each handler.

On June 22, 1973, notice of proposed rule making was published in the FEDERAL REGISTER (38 FR 16363) regarding proposed expenses and the related rate of assessment for the period April 1, 1973, through March 31, 1974, pursuant to the marketing agreement, as amended, and Order No. 922, as amended (7 CFR Part 922), regulating the handling of apricots grown in designated counties in Washington. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The notice afforded interested persons until July 6, 1973, to submit written data, views, or arguments in connection with said proposals. None were received. After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Washington Apricot Marketing Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 922.213 Expenses and rate of assessment.

(a) *Expense.* Expenses that are reasonable and likely to be incurred by the Washington Apricot Marketing Committee during the period April 1, 1973, through March 31, 1974, will amount to $3,311.

(b) *Rate of assessment.* The rate of assessment for said period, payable by each handler in accordance with § 922.41, is fixed at $2.00 per ton of apricots.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of the current crop of apricots grown in designated counties in Washington are now being made; (2) the relevant provisions of said marketing agreement and this part require that the rate of assessment herein fixed shall be applicable to all assessable apricots handled during the aforesaid period; and (3) such period began on April 1, 1973 and said rate of assessment will automatically apply to all such apricots beginning with such date.

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

Dated: July 9, 1973.

CHARLES R. BRADER,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.73–14261 Filed 7–11–73;8:45 am]

Title 15—Commerce and Foreign Trade

CHAPTER III—DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER B—EXPORT REGULATIONS

[13th Gen. Rev., Export Regs., Amdt. 64]

PART 377—SHORT SUPPLY CONTROLS

Hardship Licensing and Increase of Shipping Tolerance for Ferrous Scrap

Hardship licensing of exports of commodities subject to validated licensing requirements under Part 377; increase of shipping tolerance allowance for exports of ferrous scrap.

Section 377.4(d) and Supplement No. 1 to Part 377 are amended and a new § 377.5 is established, to read as set forth below.

Effective date: July 10, 1973.

RAUER H. MEYER,
Director, Office of Export Control.

I. *Licensing of Hardship Situations.* Notwithstanding the terms of the validated licensing requirements imposed under Part 377 of the Export Regulations, in cases of special hardship, the Office of Export Control may issue validated licenses for exports of any of the commodities listed in Supplement No. 1 to Part 377.

II. *Increase Shipping Tolerance Allowance for Exports of Ferrous Scrap.* The FEDERAL REGISTER issuance of July 3, 1973, which established a licensing system for exports of ferrous scrap, reduced the shipping tolerance allowance for licenses issued thereunder to 2½ percent. This allowance is now increased to 5 percent.

Accordingly, § 377.4(d) and Supplement No. 1 to Part 377 are amended and a new § 377.5 is established, to read as set forth below.

1. In § 377.4, paragraph (d) is amended to read as follows:

§ 377.4 Ferrous scrap.

* * * * *

(d) Section 386.7(b)(1) of the Export Control Regulations states, in part, that commodities listed in Supplement No. 1 to Part 377 are subject to the tolerance set forth in Part 377. Shipping tolerances applicable to the commodities subject to the requirements of this § 377.4(d) are accordingly shown in Supplement No. 1 to Part 377.

2. A new § 377.5 is established to read as follows.

§ 377.5 Hardships.

A U.S. exporter who believes the provisions of this Part 377 work a unique hardship on his operations may file a request for an exception to or waiver of any of its provisions. The request shall be by letter and shall be submitted with the related export license application. In the event the application is already on file in the Office of Export Control, the request shall cite the applicant's reference number (Item 6 on Form FC–419) and BEWT Case Number, if known. The letter should explain in full the circumstances that the exporter believes justify the exception or waiver.

3. Supplement No. 1 to Part 377 is amended by revising the shipping tolerance allowances to read as follows:

Supplement No. 1 to Part 377

Supplement No. 1—Commodities Subject to Short Supply Quota Controls

Schedule B Number	*Ferrous Scrap Commodity Description*	*Shipping Tolerance Allowance*
282.0010	No. 1 heavy-melting steel scrap, except stainless	5%
282.0020	No. 2 heavy-melting steel scrap, except stainless	5%
282.0030	No. 1 bundles steel scrap, except stainless	5%
282.0040	No. 2 bundles steel scrap, except stainless	5%
282.0050	Borings, shoveling and turnings, iron or steel, except stainless	5%
282.0060	Stainless steel scrap	5%
282.0065	Shredded steel scrap	5%
282.0078	Other steel scrap, including tin-plated and terne-plate	5%
282.0080	Iron scrap, except borings, shoveling and turnings	5%
282.0090	Rerolling material of iron or steel	5%

[FR Doc.73–14459 Filed 7–11–73;2:22 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 LABOR

Office of the Secretary

[29 CFR Part 29]

LABOR STANDARDS FOR THE REGISTRATION OF APPRENTICESHIP PROGRAMS

Extension of Time for Comments

In FR Doc. 73-10435, 38 FR 13894, May 25, 1973, the deadline for written data, views, and arguments was stated as June 25, 1973.

An additional period is allowed for comments. Accordingly, interested persons may submit written data, views, and arguments to the Secretary of Labor, U.S. Department of Labor, Washington, D.C. 20210, on or before July 25, 1973.

Dated at Washington, D.C., July 6, 1973.

PETER J. BRENNAN,
Secretary of Labor.

[FR Doc.73-14215 Filed 7-11-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 273]

BIOLOGICAL PRODUCTS

Proposal Regarding Testing and Potency Requirements for Poliovirus Vaccine, Live, Oral

The Commissioner of Food and Drugs is proposing revisions in certain of the biological products regulations that appear under Subpart B—Additional Standards for Viral Vaccines as they pertain to Poliovirus Vaccine, Live, Oral. The proposal concerns amendments to four sections of the regulations, §§ 273.1024(b)(2), 273.1025, 273.1026(c) and 273.1027 (21 CFR 273.1024, 273.1025, 273.1026, and 273.1027). The intent of the proposal is to clarify some of the testing and potency requirements and to incorporate knowledge gained in this field since the present regulations were promulgated. The proposed revision of the current regulations deletes reference to 50 percent end-point titration calculation ($TCID_{50}$) to clearly allow performance of the Test for virus titer and Potency test using either $TCID_{50}$ or a plaque test and provide for the subparagraph on *Dose* to include infectivity as measured by $TCID_{50}$ and plaque tests.

As presently worded, § 273.1024(b) appears to restrict testing to a $TCID_{50}$ titration system even though the subparagraph does allow for a test of demonstrated equivalent sensitivity. The new language in the proposed revision clearly permits other tests such as the test for virus titer using either $TCID_{50}$ or a plaque test. In addition, it includes a statement to assure that the requirement for performing a parallel test on the reference virus is not interpreted as a means of adjusting the titer of the lot of poliovirus vaccine but is intended to validate the test system.

The proposed revision of § 273.1025 is intended, as with the Test for virus titer, to clearly reflect provision for other tests and assure there is no improper use of parallel reference titration results. In a further change, the final sentence concerning concentration of each type of live virus contained in a lot of vaccine has been deleted from this section and requirements as to how vaccines shall be constituted relative to infectivity titer has been set forth under § 273.1026(c).

The Commissioner proposes to revise § 273.1026(c) to broaden the statement on required concentration of virus for monovalent and trivalent vaccines so as to provide for infectivity titer limits as measured by $TCID_{50}$ or a plaque test. In addition, he proposes to establish a lower limit of potency for Type 1 Virus.

Since sufficient data and experience have been accumulated to indicate that tests for the measurement of neutralizing antibody may be of variable sensitivity, there is little need to specify certain required antibody levels in order to determine the antigenicity of the vaccine. Thus, the Commissioner proposes to amend § 273.1027 to eliminate the requirement that type specific neutralizing antibody must rise from less than 1:4 before vaccine treatment to 1:16 or greater after treatment in a specified percentage of individuals. Based upon data submitted by each manufacturer requesting licensure and comparative testing by the Food and Drug Administration, it is the intent of the Commissioner to establish the requisite antibody levels indicating seroconversion which must be met by the manufacturer.

Therefore, pursuant to provisions of the Public Health Service Act (sec. 351, 58 Stat. 702 as amended; 42 U.S.C. 262) and under authority delegated to him (21 CFR 2.120) the Commissioner proposes to amend Part 273 (21 CFR Part 273) as follows:

1. By revising § 273.1024(b)(2) to read as follows:

§ 273.1024 Test for safety.

* * * * *

(b) * * *

(2) *Test for virus titer.* The concentration of living virus in each monovalent virus pool or lot expressed as infectivity titer/ml for cell cultures shall be determined using the Reference Poliovirus, Live, Attenuated of the same type as a control. A titration of the monovalent virus pool or lot shall not constitute a valid test unless the titration of the reference virus when tested in parallel is within ± 0.5 $\log_{10}$ of its established titer. The titration of the parallel reference is intended to validate the test system and shall not be used to adjust the titer of the lot under test.

* * * * *

2. By revising § 273.1025 to read as follows:

§ 273.1025 Potency test.

The virus content expressed as infectivity titer/ml for cell cultures shall constitute the potency measurement. The accuracy and validity of the titration used to determine the concentration of live virus in the lot tested shall be confirmed by performing the titration with a Reference Poliovirus, Live, Attenuated of the appropriate type. The reference titration, when tested in parallel, shall be ± 0.5 $\log_{10}$ of its established titer, and shall not be used to adjust the titer of the lot under test.

3. By revising § 273.1026(c) to read as follows:

§ 273.1026 General requirements.

* * * * *

(c) *Dose.* Each monovalent vaccine shall be constituted to have an infectivity titer of not less than $10^{5.5}$ nor greater than $10^{6.5}$ per human dose. The human dose of vaccines containing all three virus types shall be constituted to have infectivity titers in the final container material of $10^{6.4}$ to $10^{6.4}$ for Type I, $10^{5.5}$ to $10^{6.5}$ for Type II, and $10^{5.3}$ to $10^{6.3}$ for Type III.

4. By revising § 273.1027 to read as follows:

§ 273.1027 Clinical trials to qualify for license.

To qualify for license, the antigenicity of the vaccine shall have been determined by clinical trials of adequate statistical design. Such clinical trials shall be conducted with five consecutive lots of poliovirus vaccine which have been manufactured by the same methods, each of which has shown satisfactory results in all prescribed tests. Type specific neutralizing antibody shall be induced in 80 percent or more of susceptibles when administered orally as a single dose, or in 90 percent or more of susceptibles when administered orally after a series of doses. A separate clinical trial shall

have been conducted for each monovalent and each polyvalent vaccine for which a license application is made.

Interested persons may, on or before September 10, 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 regular business hours, Monday through Friday.

Dated: July 5, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-14217 Filed 7-11-73;8:45 am]

Office of Education

[45 CFR Part 102]

STATE VOCATIONAL EDUCATION PROGRAMS—INDUSTRIAL ARTS, VOLUNTEER FIREMEN

Notice of Proposed Rule Making

Pursuant to the authority contained in the Vocational Education Act of 1963, 82 Stat. 1064-1091 as amended (20 U.S.C. 1241 to 1391), notice is hereby given that the Commissioner of Education, wtih the approval of the Secretary of Health, Education, and Welfare, proposes to amend Part 102 of Title 45 of the Code of Federal Regulations by revising §§ 102.3 and 102.4 as set forth below. The proposed revisions are made for the purpose of implementing the amendments made by section 202 (a) and (b) of Public Law 92-318 which add industrial arts education to the definition of vocational education and include volunteer firemen in those programs designed to prepare individuals for gainful employment.

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed revisions to the Commissioner of Education. Attention: Deputy Commissioner, Bureau of Occupational and Adult Education, U.S. Office of Education, Room 5130, Seventh and D Streets, SW., Washington, D.C. 20202. Comments received in response to this notice will be available for public inspection at the above office on Mondays through Fridays between 8:30 a.m. and 4:30 p.m., E.d.t. All relevant material received on or before August 13, 1973, will be considered.

(Catalog of Federal Domestic Assistance Nos. 13.493, 13.496-13.502, Vocational Education)

Dated: June 18, 1973.

JOHN OTTINA,
Acting U.S. Commissioner of Education.

Approved: July 9, 1973.

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

Part 102 of Title 45 of the Code of Federal Regulations is amended as follows:

1. Section 102.3 is amended by adding a new paragraph (q) and redesignating current paragraphs (q) through (aa) as (r) through (bb). New paragraph (q) is amended to read as follows:

§ 102.3 Definitions.

* * * * *

(q) "Industrial arts education programs" means those education programs (1) which pertain to the body of related subject matter, or related courses, organized for the development of understanding about the technical, consumer, occupational, recreational, organizational, managerial, social, historical, and cultural aspects of industry and technology including learning experiences involving activities such as experimenting, designing, constructing, evaluating, and using tools, machines, materials, and processes which provide opportunities for creativity and problem solving; and (2) which the Commissioner has determined, pursuant to § 102.4(b)(5), will accomplish or facilitate one or more of the purposes of the first sentence of section 108(1) of the Act.

(20 U.S.C. 1248(1))

2. Section 102.4 is amended by revising paragraph (b)(1)(i), by adding new paragraphs (b)(5) and (b)(6), by adding a new paragraph (j) and by redesignating current paragraph (j) as paragraph (k), as follows:

§ 102.4 Vocational instruction.

* * * * *

(b) *Objective of instruction.* (1) Vocational instruction shall be designed to—

(i) Prepare individuals for gainful employment, including volunteer firemen, as semiskilled or skilled workers or technicians or semiprofessionals in recognized occupations and in new or emerging occupations, or

* * * * *

(5) Industrial arts education instructional programs with the objectives specified in subparagraph (1) of this paragraph shall be designed to:

(i) Assist individuals in the making of informed and meaningful occupational choices in industry and technology. In order to accomplish or facilitate this purpose, such programs shall:

(*a*) Provide occupational information and instruction pertaining to a broad range of occupations, including training requisites, working conditions, salaries or wages, and other relevant information;

(*b*) Provide exploratory experiences in shops, laboratories, and observations in business or industry to acquaint students with jobs in the occupations included in this purpose;

(*c*) Provide guidance and counseling for students enrolled in the industrial arts program under § 102.4(b)(5) of this part to assist them in making informed and meaningful choices in selected occupational fields; and

(*d*) Employ industrial arts teachers who have qualifications as provided in the State plan pursuant to § 102.38; or

(ii) Prepare individuals for enrollment in advanced or highly skilled vocational and technical education programs. In order to accomplish or facilitate this purpose, such programs shall:

(*a*) Provide individuals with occupational information and exploratory experience to meet the specific requirements for enrollment in such programs;

(*b*) Provide occupational information and exploratory experiences directly related to current practices in industry; and

(*c*) Be conducted in an institution approved by the State Board of Vocational Education and by industrial arts teachers and guidance and counseling personnel who have qualifications as provided in the State plan pursuant to § 102.38.

(6) Instruction for volunteer firemen with the objectives specified in paragraph (b)(1)(i) of this section, whether or not such firemen are paid for services performed, shall include instruction of the type described in subparagraph (2) of this paragraph.

(20 U.S.C. 1248(1))

(j) *Industrial arts youth organizations.* Industrial arts education programs may provide for students to participate in club activities as an integral part of the instruction which are offered as indicated by § 102.4 and which are supervised by industrial arts personnel.

(20 U.S.C. 1248(1))

[FR Doc.73-14229 Filed 7-11-73;8:45 am]

Public Health Service

[42 CFR Part 57]

HEALTH PROFESSIONS STUDENT LOANS

Notice of Proposed Rule Making

Sections 740 and 744 of the Public Health Service Act authorize the Secretary of Health, Education, and Welfare to enter into agreements with health professions schools for the establishment of student loan funds from which loans are to be made to their students.

Notice is hereby given that the Director, National Institutes of Health, with the approval of the Secretary of Health, Education, and Welfare, proposes to adopt the following regulations set forth in tentative form below.

The proposed regulations would implement four major statutory changes made by section 105 of the Comprehensive Health Manpower Training Act of 1971 (P.L. 92-157): (1) An increase in the maximum amount of loan to a student for any academic year to $3,500; (2) an elimination of the five year tolling limitation for advanced professional training for those loans made after November 17, 1971; (3) a provision whereby an individual is eligible for repayment of a percentage of his educational loans if

he signs an agreement with the Secretary to practice for at least two years in an area designated as having a shortage of and need for persons trained in his profession; and (4) a new provision whereby the Secretary may repay all or any portion of an individual's educational loans when he determines that the individual has failed his studies leading to the first professional degree and is not expected to resume such studies within two years, is in exceptionally needy circumstances and comes from a low-income or disadvantaged family. There are also several technical and clarifying changes.

Written comments concerning the proposed regulations are invited from interested persons. Inquiries may be addressed and data, views and arguments relating to the proposed regulations may be presented in writing, in triplicate, to Associate Director (Program Implementation), Bureau of Health Manpower Education, National Institutes of Health, Building 31, Room 5 C 12, 9000 Rockville Pike, Bethesda, MD 20014. All comments received in response to this notice will be available for public inspection at the Office of Grants Policy, Bureau of Health Manpower Education, National Institutes of Health, Building 31, Room 5 B 36, 9000 Rockville Pike, Bethesda, MD 20014, on weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m. All relevant material received on or before August 13, 1973, will be considered.

It is therefore proposed to repeal Subpart C of Part 57 and to substitute in lieu thereof a new Subpart C as set forth below.

Dated: February 12, 1973.

JOHN F. SHERMAN,
Acting Director,
National Institutes of Health.

Approved: July 9, 1973.

CASPAR W. WEINBERGER,
Secretary.

Amend Part 57 as follows:

(1) Revise Subpart C of the table of contents to read as follows:

Subpart C—Health Professions Student Loans

AUTHORITY: Sec. 215, 58 Stat. 690; as amended, 42 U.S.C. 216.

(2) Revise Subpart C to read as follows:

Subpart C—Health Professions Student Loans

§ 57.201 Applicability.

The regulations of this subpart are applicable to Federal Capital Contributions and Federal Capital Loans made by the Secretary to public or other nonprofit health professions schools under Subpart I of Part C of Title VII of the Public Health Service Act (42 U.S.C. 294–294f), and to loans made to students by such schools pursuant thereto.

§ 57.202 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) "Act" means the Public Health Service Act, as amended.

(b) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(c) "School" means a public or other nonprofit school of medicine, dentistry, osteopathy, optometry, podiatry, pharmacy, or veterinary medicine which provides a course of study, or a portion thereof, which leads respectively to a degree of doctor of medicine, doctor of dental surgery or an equivalent degree, doctor of osteopathy, doctor of optometry or an equivalent degree, doctor of podiatry or an equivalent degree, bachelor of science in pharmacy or an equivalent degree, or doctor of veterinary medicine or an equivalent degree, and which is accredited as provided in section 721(b)(1)(B) of the Act.

(d) "State" means a State, the District of Columbia, Puerto Rico or the Virgin Islands.

(e) "Health Professions Student Loan Fund or Funds" means a fund established at a school pursuant to Subpart I of Part C of Title VII of the Act, either with Federal Capital Contributions together with Institutional Capital Contributions, or with Federal Capital Loans. Where a school receives monies from both methods of payment, reference is made to Funds.

(f) "Federal Capital Contribution" means the capital portion allotted by the Secretary to a school for deposit in a Health Professions Student Loan Fund pursuant to section 742 of the Act.

(g) "Institutional Capital Contribution" means the money provided by a school, in an amount not less than one-ninth of the Federal Capital Contribution, and deposited in a Health Professions Student Loan Fund.

(h) "Federal Capital Loan" means a loan made by the Secretary to a school pursuant to section 744(a) of the Act, the proceeds of which are to be deposited by such school in a Health Professions Student Loan Fund.

(i) "Health professions student loan" means the amount of money advanced to a student by a school from a Health Professions Student Loan Fund under a properly executed promissory note.

(j) "Educational loan" means a health professions student loan as defined in paragraph (i) of this section or the amount of money provided to a student under any other bona fide loan which the Secretary determines was reasonably necessary for meeting the student's costs of attending a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, or podiatry, taking into account the tuition, fees, books, equipment, living expenses and such other expenses as the Secretary determines were reasonably necessary to enable an individual to attend such school.

(k) "Full-time student" means a student who is enrolled in a school and pursuing a course of study which constitutes a full-time academic workload, as determined by the school, leading to a degree specified in paragraph (c) of this section.

(l) "Date upon which a student ceases to be a full-time student" means the first day of the month which is nearest to the date upon which he ceases to be a full-time student as defined in paragraph (k) of this section.

(m) "Academic year" means the traditional, approximately 9-month September to June annual session. For the purpose of computing academic year equivalents for students who, during a 12-month period, attend for a longer period than the traditional academic year, the academic year will be considered to be of 9 months' duration.

(n) "Fiscal year" means the Federal fiscal year commencing on the first day of July and ending on the 30th day of June.

(o) "Permanently and totally disabled" means the inability to engage in any substantial gainful activity because of a medically determinable impairment, which impairment is expected to continue for a long and indefinite period of time, or to result in death.

(p) "Uniformed service" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Ocean Survey, and the U.S. Public Health Service.

(q) "National of the United States" means (1) a citizen of the United States or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States (8 U.S.C. 1101(a)(22)).

(r) "State health authority" means the Director of the agency responsible for administering or supervising the administration of the State plan for health services under section 314(d) of the Act.

§ 57.203 Eligibility of schools.

To be eligible for a Federal Capital Contribution or a Federal Capital Loan under this subpart, the applicant school shall meet the applicable requirements of section 740(a) and 744(a) of the Act.

§ 57.204 Application by school.

(a) Each school desiring a Federal Capital Contribution or a Federal Capital Loan under the Act shall submit an application in such form and at such time as the Secretary may require.[1] The application shall be executed by an official authorized to act for the applicant school and to assume on behalf of the applicant school the obligations imposed by the terms and conditions of any Federal Capital Contribution or Federal Capital Loan, including the regulations of this subpart.

(b) Each application shall be reviewed to determine institutional eligibility and the reasonableness of the amount of Federal support requested. When necessary to these ends, the Secretary may require the submission of additional data.

§ 57.205 Agreements for Federal Capital Contributions and Federal Capital Loans.

(a) *Federal capital contribution agreements.* No application for a Federal Capital Contribution shall be approved unless there is in effect an agreement between the Secretary and the applicant school for Federal Capital Contributions pursuant to section 740 of the Act.

(b) *Federal capital loan agreements.* No application for a Federal Capital Loan shall be approved unless there is in effect an agreement between the Secretary and the applicant school for Federal Capital Loans containing the terms required by section 744(b) of the Act and such additional terms and conditions, consistent with the applicable provisions of section 740 of the Act, as the Secretary deems appropriate.

§ 57.206 Allotment and payment of Federal Capital Contributions and Federal Capital Loans.

(a) *Annual allotment.* At a time determined by him, the Secretary shall make allotments to each school with which he has entered into an agreement pursuant to § 57.205. If the total of the amounts requested for any fiscal year by all schools for Federal Capital Contributions and Federal Capital Loans exceeds the amount of Federal funds determined by the Secretary at the time of such allotment to be available for such purposes for such fiscal year, the allotment to each such school, whether in the form of Federal Capital Contributions or Federal Capital Loans or a combination of both, shall be reduced to whichever of the following is the smaller: (1) The amount requested in the application or (2) An amount which bears the same ratio to the total amount of Federal funds determined by the Secretary at the time of such allotment to be available for such fiscal year for the Health Professions Student Loan Program as the number of full-time students estimated by the Secretary to be enrolled in such school bears to the estimated total number of full-time students in all such schools during such year. Amounts remaining after such allotment shall be reallotted in accordance with subparagraph (2) of this paragraph among schools whose applications requested more than the amounts so allotted to them, but with such adjustments as may be necessary to prevent the total allotted to any school from exceeding the total requested by it.

(b) *Supplementary allotment from revolving fund only.* From funds which become available during any fiscal year for payment to schools from the revolving fund established by section 744(a) of the Act after the allotments pursuant to paragraph (a) of this section for such fiscal year have been made, the Secretary may, in his discretion and at such time as he shall determine, make supplementary allotments to schools with which he has Federal Capital Loan Agreements and whose requests for funds for such fiscal year exceed the amounts allotted to them pursuant to paragraph (a) of this section. If the total need for supplementary funds exceeds the amounts determined by the Secretary to be available for supplementary allotments, the supplementary allotment to each school shall be reduced to whichever of the following is the smaller: (1) The supplementary amount requested or (2) an amount which bears the same ratio to the amount determined by the Secretary to be available for supplementary allotment as the number of full-time students estimated by the Secretary to be enrolled in such school bears to the estimated total number of full-time students enrolled for such year in all schools which request supplementary allotments. Any amounts remaining after such supplementary allotment may be allotted among schools in such manner as the Secretary determines will best carry out the purposes of the Act.

(c) *Payment.* The allotment of Federal Capital Contributions and/or Federal Capital Loans to a school shall be paid in such amounts, at such times, and in such installments as will not result in unnecessary accumulation of money in any Health Professions Student Loan Fund.

§ 57.207 Federal Capital Loan Promissory Note.

Each Federal Capital Loan shall be made subject to the terms of a promissory note which shall be executed by an authorized official on behalf of the borrowing school. Each such note shall include such terms with respect to the payment of interest and the repayment of principal as are consistent with the provisions of section 744 of the Act, and shall include such other terms as the Secretary finds reasonably necessary to protect the financial interests of the United States and to promote the purposes of the applicable provisions of the Act.

§ 57.208 Health Professions Student Loan Funds.

(a) *Funds established with Federal Capital Contributions.* Any fund established by a school with Federal Capital Contributions shall be deposited and carried in a special account of such school. There shall be in such fund at all times monies representing the Institutional Capital Contribution, equal to at least one-ninth of the amount of the balance of the Federal Capital Contributions in such fund.

(1) Except for funds transferred as provided for in subparagraph (2) of this paragraph, such fund shall be used by such school only for (i) health professions student loans to full-time students; (ii) capital distribution as provided in section 743 of the Act or as agreed to by the school and the Secretary; and (iii) costs of litigation and, to the extent specifically approved by the Secretary, other collection costs that are in excess of the usual expenses incurred in the collection of health professions student loans.

(2) Not to exceed 20 per centum of the amount paid to any such school from the appropriation for any fiscal year for Federal Capital Contributions may be transferred to the sums available to the school for scholarship awards under section 780 of the Act, to be used for the same purpose as such sums: *Provided, however,* That where the Secretary finds in a particular case that a school has demonstrated an unusual need for scholarship funds, he may approve the transfer of an amount in excess of 20 per centum of the amount so paid. In the case of any transfer pursuant to this subparagraph, the proportionate amount of the Institutional Capital Contribution (i.e., one-ninth of the amount so transferred) may be withdrawn by the school from such fund.

(b) *Funds established with Federal Capital Loans.* Any funds established by a school with Federal Capital Loans shall be deposited and carried in a special account of such school, and shall be used by such school only for (1) health professions student loans to fulltime students; (2) repayments of principal and interest on Federal Capital Loans; and (3) costs of litigation and, to the extent specifically approved by the Secretary, other collection costs that are in excess of the usual expenses incurred in the collection of health professions student loans.

§ 57.209 Nondiscrimination.

(a) No eligible applicant shall be denied a health professions student loan on the grounds of sex or creed.

(b) Attention is called to the requirements of section 799A of the Act and the regulations issued by the Secretary pursuant thereto (45 CFR Part 83), which together provide that the Secretary may not enter into a contract under Title VII of the Act with any

[1] Applications and instructions are available from the Division of Physician and Health Professions Education, Bureau of Health Manpower Education, National Institutes of Health, Building 31, 9000 Rockville Pike, Bethesda, MD 20014.

entity unless he receives satisfactory assurances that the entity will not discriminate on the basis of sex in the admission of individuals to its training programs.

(c) Attention is called to the requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d et seq.) 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 subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such Title VI, which is applicable to Federal Capital Contributions and Federal Capital Loans made under Subpart I of Part C, Title VII of the Act, has been issued by the Secretary with the approval of the President (45 CFR Part 80).

§ 57.210 Eligibility and selection of health professions student loan recipients.

(a) *Eligibility.* Health professions student loans from any fund may be made only to students who are:

(1) Nationals of the United States or permanent residents of the Trust Territory of the Pacific Islands or who are in the United States, Puerto Rico, the Virgin Islands, or Guam for other than temporary purposes and intend to become permanent residents thereof.

(2) Enrolled, or accepted for enrollment in the school as full-time students; and

(3) In need of the amount of the loan to pursue a full-time course of study at the school.

(b) *Selection of health professions student loan recipients and determination of need.* It shall be the responsibility of the school to select qualified applicants and to make a reasonable determinations of need. In determining whether a student is in need of a health professions student loan to pursue a full-time course of study at the school, the school shall take into consideration:

(1) The financial resources available to the student; and

(2) The costs reasonably necessary for the student's attendance at the school, including any special needs and obligations which directly affect the student's ability to attend the school on a full-time basis.

(c) *Records of approval or disapproval.* The records of the school shall indicate the basis for approval or disapproval of all or any part of each student application for a health professions student loan.

§ 57.211 Maximum amount of health professions student loan.

Effective on November 18, 1971, the total of the health professions student loans made from the Fund or Funds to any student for an academic year may not exceed $3,500. The maximum amount loaned during a 12-month period to any student enrolled in a school which provides a course of study longer than the 9-month academic year may be proportionately increased.

§ 57.212 Evidence of student indebtedness—promissory note; security.

(a) *Evidence of indebtedness—promissory note.* Each health professions student loan to a student from any Fund or Funds shall be evidenced by a promissory note, executed by the student borrower in such form as shall be approved by the Secretary.

(1) Any substantive deviations from the promissory note form so approved shall be made only pursuant to approval by the Secretary prior to the making of any loan evidenced thereby, except that a school which elects to require security or endorsement in cases permitted under paragraph (b) of this section may include a provision reflecting such election without prior approval.

(2) Each promissory note shall include a provision stating that the loan evidenced thereby shall bear interest, on the unpaid balance of such loan, computed only for periods during which repayment of the loan is required, at the rate of 3 percent per year.

(3) A copy of each executed note shall be supplied by the school to the student maker thereof.

(b) *Security.* Neither security nor endorsement shall be required except that if the borrower is a minor and if under the applicable State law the note executed by him would not create a binding obligation, then the school is permitted to require security or endorsement.

§ 57.213 Payment of health professions student loans.

(a) Health professions student loans from any Fund or Funds shall be paid to or on behalf of student borrowers in such installments as are deemed appropriate by the school, except that no school shall pay to or on behalf of any borrower more during any given installment period (e.g., semester, term, or quarter) than the school determines he needs for such period.

(b) No payment shall be made from any Fund or Funds to or on behalf of any student borrower if at the time of such payment such borrower is not a full-time student as defined in § 57.202(k).

§ 57.214 Repayment and collection of health professions student loans.

(a) *Repayment of health professions student loans.* Subject to the provisions of this paragraph any health professions student loan, including interest accrued thereon, shall be repayable in equal or graduated periodic installments in amounts calculated on the basis of a 10-year repayment period. Except as otherwise provided in this paragraph, repayment of all such loans made after June 30, 1969, shall begin 1 year after the student ceases to be a full-time student.

(1) When a borrower, within such 1-year period, reenters the same or another school as a full-time student, the date upon which interest accrual and the repayment period begin shall be related to and determined by the date on which he last ceases to be a full-time student at any such school.

(2) The following periods shall be excluded from the 10-year repayment period: (i) All periods of up to a total of 3 years of active duty performed by the borrower as a member of a uniformed service; (ii) all periods of up to a total of 3 years of service as a volunteer under the Peace Corps Act; and (iii) all periods of advanced professional training: *Provided,* That, with respect to health professions student loans made prior to November 18, 1971, but subsequent to June 30, 1969, such periods of advanced training may not exceed a total of 5 years: *Provided further,* That, with respect to student loans made before July 1, 1969, all periods up to a total of 5 years of advanced professional training after June 30, 1969, may be excluded from such repayment period where so agreed by the school which made the loan and the Secretary, except that in no such case may the total of the periods of advanced professional training so excluded from the repayment period and the period between the date on which the borrower ceases to be a full-time student and the date on which, under the terms of the promissory note evidencing such loan, the repayment period is to begin, exceed 6 years. For purposes of this subdivision advanced professional training shall include only (i) internship and residency programs or (ii) full-time training beyond the first professional degree of at least 1 academic year which is provided by an accredited institution or an affiliate thereof, and which will advance the borrower's knowledge of and strengthen his skills in the health profession for the study of which he received the loan.

(3) Each student borrower may (subject to the provisions of paragraph (b)(3) of this section) choose the repayment schedule which he prefers from those in use by the school and approved by the Secretary, but a student borrower may, at his option and without penalty, prepay all or part of the principal and accrued interest at any time.

(b) *Collection of health professions student loans.* (1) Each school at which a Fund is established shall exercise due diligence in the collection of all health professions student loans due the Fund. The school shall use such collection practices as are generally accepted among institutions of higher education and which are at least as extensive and effective as those used in the collection of other student loan accounts due the school.

(2) With respect to any health professions student loan made after June 30, 1969, the school may assess a charge for failure of the borrower to pay all or any part of an installment when it is due, and, in the case of a borrower who is entitled to deferment benefits under section 741(c) of the Act, or cancellation benefits or repayment under section 741(f) of the Act for any failure to file timely and satisfactory evidence of such entitlement. The amount of such charge may not exceed $1 for the first month or part

of a month by which such installment or evidence is late and $2 for each such month or part of a month thereafter. The school may elect to add the amount of such charge to the principal amount of the loan as of the first day after the day on which such installment or evidence was due, or to make the amount of the charge payable to the school not later than the due date of the next installment after receipt by the borrower of notice of the assessment of the charge.

(3) With respect to any health professions student loan made after June 30, 1969, the school may provide that during the repayment period of such loan, payments of principal and interest by the borrower with respect to all the outstanding loans made to him from any Health Professions Student Loan Fund shall be at a rate equal to not less than $15 per month.

§ 57.215 Cancellation of health professions student loans for disability and death.

(a) *Permanent and total disability.* Determinations as to whether or not a student borrower is entitled to a cancellation of indebtedness in accordance with section 741(d) of the Act on the basis of permanent and total disability as defined in § 57.202(o) shall be made by the Secretary on the recommendation of the school to whose fund the borrower is indebted, supported by such medical certifications as the Secretary may require relating to the borrower's disability.

(b) *Death.* The determination as to whether or not a student borrower is entitled to a cancellation of indebtedness in accordance with section 741(d) of the Act because of the death of the borrower shall be made by the school to which the borrower is indebted on the basis of a certification of death or such other official proof as is conclusive under State law.

§ 57.216 Repayment or cancellation of loans for practice.

(a) *Practicing in a shortage area.* (1) Subject to the provisions of section 741(f) of the Act and of this paragraph, any person who has obtained a degree specified in § 57.202(c) and who obtained any educational loan as defined in § 57.202(j), and who enters into an agreement with the Secretary to spend all or substantially all of his professional time (as a member of the National Health Service Corps or otherwise) for a period of at least two consecutive years practicing his profession in, and helping to meet the need for professional services of the population of an area in a State designated under section 329(b) of the Act, or otherwise determined by the Secretary, after consultation with the State health authority, to have a shortage of and need for persons trained in his profession, is entitled to have a portion of such loan repaid by the Secretary as follows:

(i) Upon completion by the borrower of the first year of practice as specified in the agreement, the Secretary shall pay 30 percent of the principal of, and the interest on, each such loan which was unpaid as of the date the borrower began such practice.

(ii) Upon completion by the borrower of the second year of such practice the Secretary shall pay another 30 percent of the principal of, and the interest on, each such loan which was unpaid as of the date the borrower began such practice.

(iii) Upon completion by the borrower of a third year of such practice, the Secretary shall pay another 25 percent of the principal of, and interest on, each such loan which was unpaid as of the date the borrower began such practice.

(2) Notwithstanding the requirement in subparagraph (1) of this paragraph of completion of such practice, the Secretary shall, on or before the due date thereof, pay any loan or loan installment which may fall due within the period of practice for which the borrower is eligible to receive such payments. Such payments will be contingent upon a declaration by the borrower at such time and in such manner as the Secretary may prescribe that the borrower is then engaged in practice eligible for such payments and will continue to be so engaged for the period required (in the absence of this paragraph) to entitle the borrower to have such payments made: *Provided*, That not more than 85 percent of the principal of any such loan which was unpaid on the date the borrower began such practice shall be paid by the Secretary pursuant to this paragraph.

(3) A borrower who fails to complete two years of practice pursuant to the agreement entered into with the Secretary shall be liable to reimburse the Secretary for any payments made pursuant to such agreement.

(4) A borrower who fails to complete a third year of practice shall be liable to reimburse the Secretary for any payments made pursuant to subparagraph (2) of this paragraph in consideration of such practice.

(5) In accordance with section 741(f) of the Act, an area in a State, other than one designated under section 329(b) of the Act, may be determined by the Secretary, after consultation with the State health authority, to have a shortage of and need for persons trained in the health professions, based upon consideration of, among other pertinent factors: (i) The latest reliable statistical data available to him regarding numbers of health professions practitioners and the population to be served by such practitioners; (ii) inaccessibility of medical services to the residents of the area; and (iii) particular local health problems. A list of areas in which practice will qualify a borrower for repayment under this paragraph shall be promulgated periodically by the Secretary and published in the Federal Register together with the methodology used in determining such areas.

(b) *Continuation of provisions for cancellation of loans made prior to November 18, 1971*—(1) *Practicing in a shortage area.* Any person who obtained prior to November 18, 1971, one or more loans from a Fund or Funds established under Part C of Title VII of the Act, and who engages in the practice of medicine, dentistry, optometry, or osteopathy in an area having a shortage of and need for physicians (M.D. and D.O.), dentists, or optometrists and whose practice is certified by the State health authority (as designated for purposes of section 314(d) of the Public Health Service Act) as helping to meet the shortage of and need for such professional services, shall be entitled, upon compliance with the statute, regulations, and instruction, to have a portion of such loans canceled as follows: 10 per centum of the total of such loans (plus accrued interest on such amount) which is unpaid as of the date that such person's professional services begin in such area, for each year of such practice thereafter, up to 50 per centum of the total of such unpaid amount, plus accrued interest thereon.

(i) For purposes of subparagraph (1) of this paragraph, the State health authority may designate as areas in the State in which there is a shortage of and need for physicians, dentists, or optometrists any county (or established comparable political subdivision in those States in which there are no counties) in which the ratio of practicing physicians, dentists, or optometrists, respectively, to the most recent available estimated population in the county is lower than the following ratios:

Physicians (M.D. and D.O.)	1:1,500
Dentists	1:3,000
Optometrists	1:15,000

Provided, That the State health authority may, with the approval of the Secretary, designate as shortage areas: (*a*) Geographical areas other than counties where he finds that the use of another classification of areas of the State will better reflect the health manpower needs of the State as related to particular administrative, geographical, or other factors, and (*b*) those counties or other geographical, areas in which the ratio of such professional personnel to population is equal to or greater than the ratios specified above in special circumstances such as (*1*) inaccessibility of medical services to the residents of the area, (*2*) age or incapacity of professionals rendering service, and (*3*) particular local health problems.

(ii) For purposes of subparagraph (1) of this paragraph, in determining whether the practice of a physician, dentist, or optometrist in a shortage area helps to meet the shortage of and need for such professional services in the area, the State health authority shall take into consideration the amount of time which the practitioner devotes to serving the health needs of persons living in the area; the extent to which his services are generally available to residents of the area; and such other factors as will permit the State health authority to determine that the physician, dentist, or optometrist is substantially helping to

meet the shortage of and need for professional services for residents of the area.

(iii) For purposes of subparagraph (1) of this paragraph, a year of practice in a shortage area means any 12-month period of continuous practice (*a*) after the date the person begins practice in such area if the area is at that time designated as an area in which there is a shortage of and need for physicians, dentists, or optometrists, or (*b*) after the date the area is designated a shortage area if the area was so designated subsequent to the date that such person began practicing in such area: *Provided*, That, when an area's designation is changed, after a practitioner would otherwise be eligible for cancellation of a portion of his loan by practicing in such area, so that such area is no longer a shortage area, such change in designation shall not affect the eligibility of such practitioner to have a portion of his loan canceled for any year in which he continues to practice his profession in such area.

(iv) For the purposes of subparagraph (1) of this paragraph, the State health authority shall certify to the Secretary in such form and at such times as the Secretary may prescribe: (*a*) The areas of his State which he has determined to be shortage areas and (*b*) the names of loan recipients whose practice in such areas he has determined helps to meet the shortage of and need for the designated area in accordance with physicians, dentists, or optometrists in the criteria prescribed in this paragraph.

(v) A list of areas in which practice will qualify borrowers for cancellation under the provisions of this paragraph will be promulgated by the Secretary and published in the FEDERAL REGISTER.

(2) *Practicing in a rural shortage area characterized by low family income.* Any person who obtained prior to November 18, 1971, one or more loans from a C of Title VII of the Act and who en- Fund or Funds established under Part gages in the practice of medicine, dentistry, optometry, or osteopathy in an area which has been determined by the Secretary pursuant to this paragraph to be a rural shortage area characterized by low family income, and whose practice is certified by the State health authority pursuant to subparagraph (1) of this paragraph as helping to meet the shortage of and need for such professional services, shall be entitled, upon compliance with the statute, regulations, and instructions, to have a portion of such loans canceled as follows: 15 per centum of the total of such loans (plus accrued interest on such amount) which is unpaid as of the date that such person's professional services begin in such area, for each year of such practice thereafter, up to 100 per centum of the total of such unpaid amount (plus accrued interest thereon).

(i) For purposes of subparagraph (2) of this paragraph, the Secretary, after consultation with the appropriate State health authority, may determine an area to be arural shortage area characterized by low family income if the area has been designated as a shortage area pursuant to subparagraph (1) of this paragraph and is an area in which (*a*) at least 50 per centum of the total population is rural (as determined in accordance with the most recent available data of the U.S. Bureau of the Census), or there is no municipality of more than 10,000 population, and (*b*) at least 30 per centum of all persons have an income of less than 125 per centum of the poverty level as determined in accordance with the most recent available data of the U.S. Bureau of the Census.

(3) Nothing in this paragraph shall be construed to prevent any person from entering into an agreement with the Secretary under section 741(f) of the Act, as amended by the Comprehensive Health Manpower Training Act of 1971 (P.L. 92–157), as provided in paragraph (a) of this section.

§ 57.217 Repayment of loans made subsequent to November 17, 1971 for failure to complete program of study.

In the event the Secretary undertakes to repay educational loans pursuant to section 741(*l*) of the Act, he shall utilize the following criteria in making his determination as to each applicant's eligibility:

(a) An applicant will be considered to have failed to complete the course of study leading to his first professional degree for which an eligible educational loan was made upon certification by a health professions school that the individual ceased to be enrolled in such school subsequent to November 17, 1971;

(b) An applicant will be considered to be in exceptionally needy circumstances if, upon comparison of the income and other financial resources of the applicant with his expenses and financial obligations, the Secretary determines that repayment of such loan would constitute a serious economic burden on the applicant. In making such determination the Secretary shall take into consideration the net financial assets of the applicant and the relationship of the income available to the applicant to the low-income levels published annually by the Secretary pursuant to paragraph (c) of this section;

(c) An applicant will be considered to be from a low-income family if the applicant comes from a family with an annual income below a level based on low-income thresholds by family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index and multiplied by a factor to be determined by the Secretary for adaptation to this program, and the family has no substantial net financial assets. Such factor and income levels as adjusted will be published annually by the Secretary in the FEDERAL REGISTER.

(d) An applicant will be considered to be from a disadvantaged family if the individual comes from a family in which the annual income minus unusual expenses which contribute to the economic burdens borne by the family does not exceed the low-income levels published by the Secretary pursuant to paragraph (c) of this section and the family has no substantial net financial assets;

(e) An applicant will be considered as not having resumed his health professions studies within two years following the date the individual ceased to be a student upon a certification so stating from the applicant; and

(f) An applicant will be considered as not reasonably expected to resume his health professions studies within two years following the date upon which he terminated such studies based upon consideration of the reasons for the applicant's failure to complete these studies, taking into account such factors as academic, medical, or financial difficulties.

Provided however, That the Secretary shall only repay educational loans made subsequent to November 17, 1971.

§ 57.218 Records, reports, inspection and audit.

(a) *Records and reports.* (1) Each Federal Capital Contribution and Federal Capital Loan shall be subject to the condition that the school shall maintain such records, and file with the Secretary such reports relating to the operation of its Health Professions Student Loan Fund or Funds, as the Secretary may find necessary to carry out the purposes of the Act and the regulations. Where any school has both a Fund established with Federal Capital Contributions and a Fund established with Federal Capital Loans, records shall be kept separately for each Fund. All records shall be retained until such time as agreed upon with the Secretary that there is no further need for retention.

(2) The following individual student records not related to the operation of the Fund or Funds must be retained for five years after the individual student has ceased to be a full-time student:

(i) Approved and disapproved student applications for assistance;

(ii) Documentation of the financial need of applicants;

(iii) Reasons for approval or disapproval of applications: and

(iv) Such other records as the Secretary may prescribe.

Such individual student records may be destroyed at the end of such five-year period, except that in all cases where questions have arisen as a result of Federal audit, such records shall be retained until resolution of all such questions.

(b) *Inspection and audit.* Any application for a Federal Capital Contribution or a Federal Capital Loan shall constitute the consent of the applicant school to inspection and fiscal audit by the Secretary and the Comptroller General of the United States or any of their duly authorized representatives of the fiscal and other records of the applicant school which relate to such Contribution or Loan.

§ 57.219 Additional conditions.

The Secretary may with respect to any agreement entered into with any school pursuant to § 57.205, 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 purposes of the agreement, the interest of the public health or the conservation of funds awarded.

§ 57.220 Noncompliance.

Whenever the Secretary finds that a participating school has failed to comply with the applicable provisions of the Act or the regulations of this subpart, he may, on reasonable notice to the school withhold further payments of Federal Capital Contributions or Federal Capital Loans, and take such other action, including the termination of any agreement, as he finds necessary to carry out the purposes of the applicable provisions of the Act and regulations. In such case no further expenditures shall be made from the Health Professions Student Loan Fund or Funds involved until the Secretary determines that there is no longer any such failure of compliance.

[FR Doc.73-14231 Filed 7-11-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGD 73-139P]

COOPER RIVER, S.C.

Proposed Drawbridge Operation Regulations

At the request of the Seaboard Coast Line Railroad, the Coast Guard is considering amending the regulations for its bridge across the Cooper River near Cordesville to require that the draw open on signal from 7 a.m. to 12 noon and from 1 p.m. to 4 p.m. The present requirement is that the draw open on signal from 8 a.m. to 4 p.m. This change is being considered because of an increase in vessel traffic between 7 a.m. and 8 a.m. and fewer requests for openings between 12 noon and 1 a.m.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander (oan), Seventh Coast Guard District, Room 1018, Federal Building, 51 S.W. 1st Avenue, Miami, Florida, 33130. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Seventh Coast Guard District.

The Commander, Seventh Coast Guard District, will forward any comments received before August 14, 1973, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by revising subparagraph (17) of paragraph (g) of § 117.245 to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(g) * * *

(17) Cooper River, S.C., Seaboard Coast Line Railroad bridge near Cordesville. The draw shall open on signal from 7 a.m. to 12 noon and from 1 p.m. to 4 p.m. At all other times the draw shall open on signal if at least 24 hours notice is given.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(c)(4))

Dated: July 5, 1973.

J. D. McCann,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc.73-14223 Filed 7-11-73;8:45 am]

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 73-WA-3]

HOUSTON, TEXAS, TERMINAL CONTROL AREA

Proposed Adoption

The Federal Aviation Administration (FAA) is considering the adoption of a Group II Terminal Control Area (TCA) for Houston, Tex. Rules for the control and segregation of all aircraft operated within terminal control areas are contained in Part 91, §§ 91.70 and 91.90 of the Federal Aviation Regulations. Further information concerning flight within TCAs is contained in FAA Advisory Circular 91-30, Terminal Control Areas (TCAs), dated 6/11/70.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received within 60 days after publication of this notice in the Federal Register will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

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

The establishment of terminal control areas at 22 large hub airports was proposed in Notice 69-41 and supplemental notices thereto, and adopted on May 20, 1970 (35 FR 7782), to create a safer environment in those congested terminal areas. The need for TCAs has been well established, and a priority implementation schedule has been developed which is based on the air traffic congestion at each location, the capability of the terminal air traffic control facility to provide separation service to VFR aircraft, the experience gained from earlier established TCAs, and the publication dates of associated aeronautical charts.

The issue of whether or not to establish a TCA at each of the specified locations was decided as a result of Notice 69-41 and is not within the scope of this Notice. This Notice is intended to produce the input necessary to design an appropriate airspace configuration that can provide the safest environment with the least impact on the airspace users. TCAs have now been designated at all Group I locations, and this Notice proposes a configuration for a Group II TCA at Houston, Tex.

On January 31, 1973, the Federal Aviation Administration held an FAA/Industry meeting in Houston, Tex., with representatives of airspace user groups to consider their operational requirements. The proposal contained herein reflects a revision to the TCA configuration presented at the meeting.

The proposed TCA floor in the vicinity of David Hooks Airport has been adjusted to allow earlier turn-ons to the ILS course for aircraft landing to the east at Houston Intercontinental Airport. This revised configuration has been coordinated with the owners of the David Hooks Airport.

In consideration of the foregoing and for reasons stated in Docket No. 9880 (35 FR 7782), it is proposed to amend Part 71 of the Federal Aviation Regulations by adding the following to § 71.401(b) Group II Terminal Control Areas.

Houston, Tex., Terminal Control Area

Primary Airport. Houston Intercontinental Airport. (Lat. 29°59'08"N., Long. 95°20'46" W.)

Boundaries. Humble VORTAC (IAH) (Lat. 29°57'24"N., Long. 95°20'44"W.)

1. *Area A.* That airspace extending upward from the surface to and including 7,000 feet MSL, within 8-miles of the IAH VORTAC excluding that airspace within and underlying Area D, hereinafter described.

2. *Area B.* That airspace extending upward from 1,800 feet MSL to and including 7,000

feet MSL, within a 15-mile radius of the IAH VORTAC, excluding Area A, previously described, that airspace within and underlying Areas C and D described hereinafter and that airspace south of an east-west line extending from the IAH VORTAC 124°T (117°M) radial 20-mile DME point to the IAH VORTAC 232°T (225°M) radial 20-mile DME point.

3. *Area C.* That airspace northwest of IAH extending from 3,000 feet MSL to and including 7,000 feet MSL, bounded on the northeast by the IAH VORTAC 312°T (305°M) radial, on the east by the 8-mile DME arc of the IAH VORTAC, on the south by a line 2 miles north of and parallel to the IAH Runway 8L centerline extended, and on the west by the 15-mile DME arc of the IAH VORTAC.

4. *Area D.* That airspace extending upward from 4,000 feet MSL to and including 7,000 feet MSL between the 15 and 20-mile radii of the IAH VORTAC and that airspace southwest of the IAH VORTAC bounded on the east by the 7-mile DME arc of the IAH VORTAC, on the southeast by the 214°T (207°M) radial of the IAH VORTAC, on the west by the 15-mile DME arc of the IAH VORTAC, and on the north by the 257°T (250°M) radial of the IAH VORTAC. Excluding that airspace within a 2-mile radius of Lakeside Airport (Lat. 29°49'02"N., Long. 95°40'29"W.) and that airspace south of an east-west line extending from the IAH VORTAC 124°T (117°M) radial 20-mile DME point to the IAH VORTAC 232°T (225°M) radial 20-mile DME point.

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

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

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

[FR Doc.73-14156 Filed 7-11-73;8:45 am]

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 3-3; Notice 7]

FLAMMABILITY OF INTERIOR MATERIALS

Proposed Covered Components

This notice proposes an amendment of the list of components that must meet the requirements of Motor Vehicle Safety Standard No. 302, "Flammability of Interior Materials" (49 CFR 571.302), substituting "mattresses" for "mattress covers" in Paragraph S4.1 of the standard.

The enumeration of "mattress covers" as a component subject to the requirements of Standard 302 is inconsistent with the naming of similar components such as "seat backs" and "seat cushions". Since a procedure has been established in the standard for testing any materials within one-half inch of the surface (with amendments proposed on May 10, 1973, 38 FR 12934), it appears desirable to apply this procedure to mattresses, and not just their covers, in the same manner that it is applied to components such as seat cushions.

In light of the above, it is proposed that S4.1 of Motor Vehicle Safety Standard No. 302, 49 CFR 571.302, be amended by substituting "mattresses" for "mattress covers".

Interested persons are invited to submit comments on the proposed amendment. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5221, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the address above, both before and after the closing date. To the extent possible, comments filed after the closing date will also be considered by the Administration. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The Administration will continue to file relevant material, as it becomes available, in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new materials.

Comment closing date: August 13, 1973.

Proposed effective date: September 1, 1973.

(Secs. 103, 119, Public Law 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1407; delegations of authority at 38 FR 12147)

Issued on July 3, 1973.

JAMES E. WILSON,
Associate Administrator, Traffic Safety Programs.

[FR Doc.73-14198 Filed 7-11-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 18979; FCC 73-695]

TELEVISION BROADCAST STATIONS IN KERRVILLE-FREDERICKSBURG, TEXAS

Proposed Table of Assignments; Terminating Proceeding

Memorandum opinion and order terminating proceeding. In the matter of amendment § 73.606(b), *Table of assignments,* Television Broadcast Stations. (Kerrville - Fredericksburg, Texas), Docket No. 18979, RM-1387.

1. The Commission has before it for consideration the petition for reconsideration filed by United-Tecon, a joint venture, on July 20, 1972, directed against the Commission's Report and Order released on June 13, 1972, (FCC 72-504, 35 F.C.C. 2d 510) and published at 37 FR 16554, August 16, 1972, which denied the United-Tecon request for the assignment of Channel 2 to Kerrville-Fredericksburg, Texas, as a hyphenated assignment. An opposition to the petition for reconsideration was filed by Kingstip Communications, Inc., licensee of UHF Station KHFI-TV, Austin, Texas.

2. The United-Tecon proposal assumed the use of a highly directionalized antenna with a maximum to minimum radiation ratio in the horizontal plane of 60 dB in order to minimize impact on UHF service in nearby areas. The maximum ratio permitted for VHF stations under § 73.685(e) of the Rules is 10 dB, so that use of such an antenna would have required a waiver. In the Report and Order, the Commission observed that it could not evaluate the antenna proposal with specificity until it was before it in the application stage; that there was no assurance that the petitioner would be the successful applicant for the channel if it was assigned; that in the past the greatest deviation that had been permitted by waiver of § 73.685(e) was 39.4 dB; that United-Tecon stated its proposed directional antenna was based on test facility measurements; that such measurements were acceptable under ordinary conditions but unacceptable for the great deviation proposed and that the only proof of the proposal would be by measurement under actual operating conditions; that since this could not be done the proposal was an unreasonable one and the requested waiver would be denied; and hence, since the proposal was not technically feasible, the requested channel assignment would not be made.

3. Although the decision turned on lack of technical feasibility, the Commission also treated the "UHF impact" issue and was of the opinion that economic factors would likely cause the operation of a Channel 2 station in Kerrville-Fredericksburg to be marginal at best. It indicated that there was a likelihood that the operator of such a station would seek to modify its highly directional operation to an omnidirectional one in order to gain additional revenues, and that a significant impact on UHF development in Austin (which has one VHF and two UHF stations) and possibly in other nearby areas might result from this.

4. United-Tecon, in its petition for reconsideration, contends (1) that the Commission's holding with respect to the request for waiver of § 73.685(e) was wholly inconsistent with the relevant facts, and (2) the Commission's "dictum" with respect to UHF impact totally ignores the facts that should be controlling on that question.

5. Specifically, United-Tecon claims that the Commission's finding with respect to the waiver of § 73.685(e) was based on two premises:

(a) That "the greatest deviation thus far permitted by waiver of § 73.685(e) has been 39.4 db * * *" and

(b) That the measurements of a test antenna, "while acceptable under ordinary conditions, cannot be relied on where * * * a vast departure from (the Commission's) rule is involved."

United-Tecon asserts that the first determination as to the size of the departure from the permissible dB ratio is factually incorrect, because the WWVU–TV antenna (Morgantown, West Virginia) has a maximum to minimum ratio of 46 dB, and the KZAZ(TV) antenna (Nogales, Arizona) has a ratio of 56.5 dB.[1] It then avers that the latter two suppressions are "clearly well within the current state of the art," and that such departures have been authorized and are being employed by operating stations.

6. As to the Commission's finding that reliance cannot be placed on the measurements of a test antenna, United-Tecon contends that it flies in the face of the basic laws of science, because the validity of measurement data does not turn on the question of whether the data being measured falls within the parameters of a rule (or a minor departure therefrom). United-Tecon then contends that, assuming the validity premise to be true, it does not mean that its proposal cannot be effectuated. After construction, it claims, the operation can be measured by recognized techniques to insure that the specified radiation is not being exceeded. Thus, it is contended that the waiver of § 73.685(e) should have been granted.

7. Concerning the "UHF impact" question, United-Tecon contends that such impact must be judged on its directionalized proposal and not in the context of an assumed omnidirectional operation. Secondly, it is contended that the Commission ignored the fact that the three Austin stations have primary network affiliations which assure their viability.

8. United-Tecon points out that the Commission conceded that there is a need for television service at Kerrville-Fredericksburg and that Channel 2 is available for assignment there. It strongly urges the Commission to take into account the fact that the two Austin UHF stations are network affiliated and this factor is far more important than exclusion of VHF competition. Finally, it points out that the Commission, in accordance with the WCOV case,[2] must balance its UHF impact policy against competing policies and that the Court noted that the policy is not to be looked upon as an inflexible across-the-board barrier to a VHF assignment. Based on the foregoing, United-Tecon concludes that its proposed assignment should be made rather than waste the VHF frequency since the need for television service has been shown.

9. The Kingstip opposition states that the holdings in the Commission's Report and Order were eminently reasonable with regard to the two technical grounds that United-Tecon set forth in its Petition for Reconsideration and which it contends were not a sound basis for denying the waiver. Kingstip notes that of two waivers of § 73.685(e) heretofore granted for over 40 dB ratio, neither was as great as 60 dB, and most waivers have been for less than 40 dB. It also notes that scale model measurements are inconclusive in such critical situations. Kingstip also states that the Commission's assessment of the facts concerning UHF impact was reasonable because the Commission necessarily had to consider the economic viability of the proposed VHF station.

10. The Commission has considered the petition for reconsideration filed by United-Tecon and is of the opinion that its Report and Order should be reaffirmed. The Commission has carefully analyzed the waivers granted for UHF Station WWVU–TV and VHF Station KZAZ (TV) and has concluded that, based on best available data, the WWVU–TV ratio is 30 dB and the KZAZ(TV) ratio is 46 dB. The permissible ratios for UHF and VHF stations as contained in § 73.685(e) are 15 dB and 10 dB respectively; thus the respective departures are 15 dB (WWVU–TV) and 36 dB (KZAZ(TV)). The departure in this case would be 50 dB, which is a much more significant departure because the radiated signal multiplies much greater than as in an arithmetic progression as the size of the departure from the ratios permitted by the rules increases. To illustrate the latter principle, the magnitude of the departure of the rules is that departures of 15, 36 and 50 dB represent multiplying the allowed radiated signal intensity by factors of 6, 63 and 316, respectively. As to the United-Tecon contention that rejection of scale model data flies full in the face of the basic laws of science, all that need be said is that the Commission must satisfy itself that such an antenna suppression ratio can be maintained. Where a departure is so great, as here, such data are inconclusive.

11. The WCOV case, which is cited by United-Tecon, involved a situation whereby a VHF station was expanding its Grade B contour so that it involved a 3 percent increase in Grade B overlap. The Commission found that this increase in overlap was minimal, the station expanding its radiation was a weaker station (much weaker than WCOV, the complaining UHF station), the two stations had different network affiliations, and that although the complaining UHF station had suffered losses in the past, it was now in fairly stable financial condition. Based on these circumstances, the Commission found that there was not sufficient adverse impact on UHF Station WCOV to invoke the UHF impact policy. The Court affirmed the Commission's finding stating: "The UHF impact doctrine is, of course, a creation of the Commission and the Commission is free to give it such weight as it chooses, provided it is not arbitrary or irrational * * *" (citing WLVA, Inc. v. F.C.C., 459 F. 2d 1286 (1972)). In its consideration of the UHF impact question as it affected the Austin UHF stations, the Commission necessarily had to consider the possible economic viability of the proposed highly suppressed Channel 2 operation at Kerrville-Fredericksburg, Texas. Past history of small market television stations is such that when those operations face financial difficulties that result in a marginal or a loss condition, the stations will seek to serve new areas. Directionalized television antennas can be modified for omnidirectional operation with relative ease and low expense especially when such an eventuality is taken into account prior to fabrication. A licensee on Channel 2 at Kerrville-Fredericksburg would be no exception to this possibility if it became apparent that survival could be achieved only by changing to omnidirectional to serve the city of Austin. Thus, based on the factors presented in this case, the Commission's action was reasonable and in no way arbitrary or irrational.

12. In view of the foregoing: *It is ordered*, That the petition for reconsideration of the Report and Order in this proceeding (Docket No. 18979) is denied.

13. *It is further ordered*, That the termination of this proceeding is affirmed.

Adopted: June 27, 1973.

Released: July 6, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[3]

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

[FR Doc.73-14220 Filed 7-11-73;8:45 am]

[1] This claim was originally made in the reply pleading filed by United-Tecon on February 9, 1971. A further analysis of the claim does indicate that we had previously authorized a departure of 46 dB for the KZAZ antenna, as more fully set forth in paragraph 10, infra.

[2] WCOV, Inc. v. F.C.C., 464 F. 2d 812 (1972).

[3] Chairman Burch abstaining from voting; Commissioner Johnson dissenting; Commissioners H. Rex Lee, Reid, and Wiley concurring in the result.

FEDERAL RESERVE SYSTEM

[12 CFR Part 225]

[Reg. Y]

BANK HOLDING COMPANIES

Nonbanking Activities

The Board of Governors is considering further implementation of its regulatory authority under section 4(c)(8) of the Bank Holding Company Act to permit bank holding companies to perform management consulting services for nonaffiliated banks. Such activities are of the type presently performed through correspondent banking relationships. The proposal would permit such activities to be performed by a nonbank subsidiary of a holding company or the holding company directly, would require explicit pricing for such services, and would foster competition for such services.

In the proposal, the Board takes into account the possibility that the management consulting arrangement involved could be used as a device to control a bank that is not part of the same holding company system, contrary to the purposes of the Act. In order to guard against such a result, such services would not be permitted to be furnished to a

non-affiliated bank if the bank holding company or any of its subsidiaries owned or controlled any equity securities in such bank, or any officer, director, or employee of the bank holding company or any of its subsidiaries serves at the same time in a similar capacity with the recipient bank. Such conditions are minimum safeguards only and in an appropriate case the rebuttable presumption of control specified in § 225.2(b)(3) of Regulation Y may still be applied. Further, in order to minimize possible conflicts of interests, a consultant company furnishing services pursuant to this authority would be required to disclose to each potential client bank the names of banks with which the consultant is affiliated and the names of all other client banks located in the same market area as the client bank.

The Board has previously determined that, except for general management consulting services that are expressly authorized by statute to be furnished by bank holding companies to its affiliates, a bank holding company may not engage in general management consulting. (12 CFR 225.126; 1972 Federal Reserve Bulletin 571.) The present proposal relates to the furnishing of management consulting services to non-affiliated banks and arises, in part, from a pending application by The Citizens & Southern Corporation, Charleston, South Carolina, for permission to perform for non-affiliated banks, through a proposed subsidiary, Bank Management Advisory Services, Inc., Charleston, South Carolina, management consulting services of a type similar to that which would be authorized by the proposed regulation. Thus, the proposed amendment is limited to management consulting services for non-affiliated banks and does not contemplate the furnishing of such services by a bank holding company to unaffiliated, non-banking companies. The proposed bank management consulting activity and the application of The Citizens & Southern Corporation are subject to the procedures of § 225.4(b) of Regulation Y.

Accordingly, the Board proposes to amend § 225.4(a) of Regulation Y to permit bank holding companies, subject to the procedures of § 225.4(b), to perform management consulting services for banks only. The text of the proposed amendment reads as follows:

§ 225.4 Nonbanking activities.

(a) *Activities closely related to banking or managing or controlling banks.* * * * The following activities have been determined by the Board to be a proper incident thereto:

* * * * *

(11) providing management consulting services for non-affiliated banks, including, but not limited to, site planning and evaluation, advice regarding bank mergers and the establishment of new branches, personnel recruitment and training, marketing, capital adequacy and planning, accounting procedures, investment advice (as authorized in paragraph (a)(5) of this section), and computer operations: *Provided*, That (i) neither the bank holding company nor any of its subsidiaries own or control any equity securities in the client bank; (ii) no officer, director, or employee of the bank holding company or any of its subsidiaries serves as an officer, director, or employee of the client bank; (iii) the services are performed on an explicit fee basis without regard to correspondent balances maintained by the client bank at any subsidiary bank of the bank holding company; and (iv) disclosure is made to each potential client bank of (*a*) the names of all banks which are affiliates of the consulting company and (*b*) the names of all other client banks located in the same market area as the client bank.

* * * * *

To aid in the consideration of these matters by the Board, interested persons are invited to submit relevant data, views, or argument. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than July 31, 1973. Such material will be made available for inspection and copying upon request except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information. The application of The Citizens and Southern Corporation may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Richmond.

Board of Governors of the Federal Reserve System, June 18, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73-14180 Filed 7-11-73;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF STATE

SUBCOMMITTEE ON CODE OF CONDUCT FOR LINER CONFERENCES

Notice of Meeting

A meeting of the Subcommittee on the Code of Conduct for Liner Conferences will be held at 10 am on Thursday, July 19, 1973, in Room 1207, Department of State, to discuss the results of the second session of the Preparatory Committee on the UN Conference for a Code of Conduct for Liner Conferences held at Geneva, June 4–29, 1973. The Subcommittee will also consider its future preparations for the UN Conference of Plenipotentiaries on the Code, which is scheduled to be held at Geneva, November 12 to December 15, 1973.

For further information regarding the meeting, contact Mr. Richard K. Bank, Secretary, Shipping Coordinating Committee, Department of State, Washington, D.C. 20520, telephone (area code 202) 632–0704.

Dated: July 6, 1973.

RONALD A. WEBB,
Chairman,
Shipping Coordinating Committee.

[FR Doc.73-14162 Filed 7-11-73;8:45 am]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

GRANTING OF RELIEF

Notice is hereby given that pursuant to 18 U.S.C., section 925(c) the following named persons have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to my satisfaction that the circumstances regarding the convictions and each applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public interest.

Adkins, George C., Route 1, Box 125, Fultondale, Alabama, convicted on June 10, 1936, in the United States District Court for the Northern District of Alabama, and on September 18, 1939, in the Alabama Circuit Court, Jefferson County, Birmingham, Alabama.

Apostolo, Albert P., 5 Mastick Court, Alameda, California, convicted on June 20, 1969, by the Alameda County Superior Court, California.

Bara, Martin D., 1208 East Third Street, Austin, Texas, convicted on March 21, 1940, November 3, 1943, February 2, 1954, and August 8, 1960, in the Superior Court of the State of California in and for the County of Los Angeles.

Barnette, Sidney Atmar, P.O. Box 190, Granbury, Texas, convicted on November 5, 1962, in District Court Lubbock County, Texas.

Bentley, Ephriam, 136 North Second Street, Saginaw, Michigan, convicted on April 26, 1954, by the Oakland County Circuit Court, Michigan.

Broadus, Harry K., 20444 Washburn Street, Detroit, Michigan, convicted on or about September 30, 1931, in General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina.

Brown, James R., 1010 South Wayside #712, Houston, Texas, convicted on March 28, 1969, by the Criminal District Court, Hannis County, Texas, and on January 24, 1969, by the Criminal District Court, Jefferson County, Texas.

Campbell, William D., 11609 Scottwood Avenue, Cleveland, Ohio, convicted June 26, 1957, in Recorders Court for the City of Detroit, Detroit, Michigan.

Doyle, Dennis C., 1700 Glendon Road, Salem, Virginia, convicted on July 2, 1964, by the Roanoke County Court, Roanoke County, Virginia.

Duprie, Joseph W., Jr., West 1204 Alice Avenue, Spokane, Washington, convicted on June 12, 1970, in the Superior Court of the State of Washington for Whitman County.

Edwards, George, 8065 Central Avenue, Detroit, Michigan, convicted on April 13, 1938, in the Recorders Court for the City of Detroit, Michigan.

English, James J., 3401 Gaviota Avenue, Long Beach, California, convicted on April 26, 1941, in the District Court of Howard County, Texas.

Epperson, James W., 523 Jackson Street, Bristol, Tennessee, convicted on February 1, 1937, in the United States District Court, Western Division, Virginia.

Gullett, John A., 830 Glastonbury Road, Apartment 309, Nashville, Tennessee, convicted on February 28, 1969, United States District Court for the Middle District of Florida.

Hamilton, Louis E., 3031 W. Acapulco Lane, Phoenix, Arizona, convicted on July 29, 1969, in Superior Court, Maricopa County, Arizona.

Harris, Harold A., 4148 West Church, Springfield, Missouri, convicted on or about October 31, 1941, in McDonald County, Missouri, February 22, 1943, in the Circuit Court of Wright County, Missouri, December 5, 1945, in the Circuit Court of Atchison County, Missouri, October 13, 1955, in the Greene County, Missouri, Circuit Court, and on July 6, 1955, in the Polk County, Missouri, Circuit Court.

Hostetler, Duane H., 438 South Illinois Street, Wichita, Kansas, convicted on October 10, 1955, in District Court, Harper City, Kansas.

Howard, Warren L., 6520 Fourth Avenue, N.W., Seattle, Washington, convicted on June 7, 1932, in the Superior Court for the State of Washington for the County of King, on September 8, 1933, in the Circuit Court of the State of Oregon in and for the County of Coos, and on January 9, 1935, in Superior Court of the State of Washington in and for the County of Pierce.

Hurst, Joseph D., Route 1, Box 213, Lot E, Portsmouth, Virginia, convicted on May 27, 1963, in the Court of Hustings, Portsmouth, Virginia.

Isbell, John T., 103 7th Place North East, Arab, Alabama, convicted on or about November 24, 1959, in the United States District Court for the Middle Division of the Northern District of Alabama, and on January 26, 1960, in the Marshall County, Alabama, Circuit Court, Albertville Division.

Jayroe, Richard S., 1808 Nelva Street, Waco, Texas, convicted on June 30, 1969, in the 54th District Court of McLennan County, Texas.

Jones, Wiley F., Route 4, Box 406A, Snohomish, Washington, convicted on October 21, 1966, in the Superior Court for the State of Washington, King County.

Lee, William F., Jr., 3930 Madrid Avenue, Dayton, Ohio, convicted on December 7, 1965, in the Montgomery County Common Pleas Court (Criminal Division), Dayton, Ohio.

Lenz, Joseph J., 121 Benzel Avenue South, Madelia, Minnesota, convicted on February 23, 1971, in the 5th District Court, Blue Earth County, Minnesota.

Lobban, Jimmy R., Route 1, Box 318, Mabank, Texas, convicted on January 6, 1970, in the United States District Court for the Northern District of Oklahoma.

Marshall, Robert E., Sr., 981 East 100th Place, Chicago, Illinois, convicted on January 26, 1948, in the United States District Court, Western District of Tennessee.

Messmann, David E., 2065 McCloud Avenue, Reno, Nevada, convicted on November 5, 1970, in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe.

Mettler, Maynard M., 4801 Fairview Drive, Des Moines, Iowa, convicted on June 1, 1955 by the Polk County District Court, Des Moines, Iowa.

Mitchell, Bruce E., 1519 Hinton Trail North, Lake Elmo, Minnesota, convicted on December 2, 1970, in the District Court, Second Judicial District, County of Ramsey, State of Minnesota.

Morales, Rudy P., 2835 S.E. Washington Street, Milwaukee, Oregon, convicted on May 6, 1960, in the Circuit Court of the State of Oregon for Umatilla County.

Naig, Melvin W., 105 East 37th Street, Minneapolis, Minnesota, convicted on July 9, 1955, in the District Court, Eighteenth Judicial District, County of Wright, State of Minnesota.

Paige, Herbert M., 11715 NW. 25th Street, Vancouver, Washington, convicted on March 17, 1972, in the United States District Court, Western District of Washington.

Pitts, Robert L., 247 East Bridge Street, Westbrook, Maine, convicted on March 18, 1963, in the Superior Court of San Diego, California.

Ramos, Rueben E., 3811 South Rutland Avenue, St. Francis, Wisconsin, convicted on March 9, 1970, in the United States District Court, Eastern Judicial District of Wisconsin.

Sheputis, Stanley P., 2810 South Christian, Chicago, Illinois, convicted on November 4, 1955, in the Criminal Court of Cook County, Illinois.

Sherek, Wilfred J., Lankin, North Dakota, convicted on December 17, 1952, in the United States District Court, District of North Dakota.

Smith, W., William, 2412 East Grant, Fresno, California, convicted on January 19, 1951, in the Circuit Court, Winnebago County, Illinois.

Speakman, James T., 127 East Palmer, Taylorville, Illinois, convicted on January 8, 1953, in the United States District Court, Southern District of Illinois.

Stoe, Dale R., 712 Pine Street, Crookston, Minnesota, convicted on July 14, 1960, by the District Court, Ninth Judicial District, Roseau County, Minnesota, convicted on March 12, 1964, by the District Court, Ninth Judicial District, Roseau County, Minnesota.

Theriault, David T., 58½ Spring Street, Rockville, Connecticut, convicted on December 2, 1969, in Aroostook County Superior Court, Houlton, Maine.

Thompson, Bobby L., Route 5, Box 173-2, Joplin, Missouri, convicted on January 18, 1956, in the District Court of Pinney County, Garden City, Kansas.

Tonnar, Michael E., 109 East Lincoln Street, Carrollton, Missouri, convicted on April 19, 1962 by the Chariton County Court, Keytesville, Missouri.

Vassar, Daniel, 7217 Girard Court, Spokane, Washington, convicted on October 31, 1962, by the Supreme Court of Spokane, Washington.

White, Hilliard H., 13984 Archdale, Detroit, Michigan, convicted on May 19, 1954, by the United States District Court, Detroit, Michigan.

Williams, John C., 18010 Anglin Street, Detroit, Michigan, convicted on January 16, 1931, in the Detroit Recorder's Court, Detroit, Michigan.

Zerelli, Anthony J., 5505 West Wrightwood, Chicago, Illinois, convicted on September 10, 1956, in the Circuit Court of DuPage County, Wheaton, Illinois.

Signed at Washington, D.C., this 28th day of June 1973.

[SEAL] REX D. DAVIS,
Director, Bureau of Alcohol, Tobacco and Firearms.

[FR Doc.73-14258 Filed 7-11-73;8:45 am]

Office of the Secretary

DEBT MANAGEMENT ADVISORY COMMITTEES

Notice of Meetings

Notice is hereby given, pursuant to section 10 of Public Law 92-463, that meetings will be held in Washington on July 24 and 25, 1973, of the following debt management advisory committees:

American Bankers Association, Government Borrowing Committee.

Securities Industry Association, Government Securities and Federal Agencies Committee.

The agenda for the meetings will include briefings for the advisory committees by Treasury staff on current debt management problems on July 24, separate deliberations by the two committees on July 24, and separate reports to the Secretary of the Treasury and Treasury staff on the morning of July 25.

A determination as required by section 10(d) of the Act has been made that these meetings are concerned with matters listed in section 552(b) of title 5 of the United States Code, and that the meetings will not be open to the public.

[SEAL] PAUL A. VOLCKER,
Under Secretary for Monetary Affairs.

[FR Doc.73-14257 Filed 7-11-73;8:45 am]

DEPARTMENT OF DEFENSE

Office of the Secretary

ADVISORY GROUP ON ELECTRON DEVICES

Notice of Advisory Committee Meeting

The Department of Defense Advisory Group on Electron Devices (Working Group on Lasers) will meet in closed session at the Stanford Research Institute, Menlo Park, California, August 6-7, 1973.

The purpose of the DoD Advisory Group on Electron Devices is to provide the Director of Defense Research and Engineering and the Military Departments with advice and recommendations on the conduct of economical and effective Research and Development programs in the field of electron devices, e.g., lasers, radar tubes, transistors, infrared sensors, etc. The group is also the vehicle for interservice coordination of planned R&D efforts.

In accordance with Public Law 92-463, section 10d, the Director of Defense Research and Engineering has determined, on February 28, 1973, that the meetings of the Advisory Group are matters which fall within policies analogous to those recognized in section 552(b) of Title 5 of the United States Code and that the public interest requires such activities to be withheld from disclosure insofar as the requirements of Subsection (a)(1) and Subsection (b) of section 10, Public Law 92-463 are concerned.

MAURICE W. ROCHE,
Director, Correspondence and Directives Division, OASD (Comptroller).

JULY 9, 1973.

[FR Doc.73-14189 Filed 7-11-73;8:45 am]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

PRIVATE SECURITY ADVISORY COMMITTEE AND ITS COMMITTEES

Notice of Meeting

Notice is hereby given that the Private Security Advisory Committee and its Committees to the Law Enforcement Assistance Administration will be meeting on July 26, and 27, 1973, at the Decathlon Athletic Club, 7800 Cedar Avenue South, Bloomington, Minnesota.

The meeting will be open to the public. Any interested person may file a written statement with the council for its consideration.

Statements may be sent to or information requested from Robert Macy, Law Enforcement Assistance Administration, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20530.

JACK A. NADOL,
Advisory Committee Management Officer, Office of General Counsel.

[FR Doc.73-14218 Filed 7-11-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

EARL D. DRYER

Statement of Changes in Financial Interests

In accordance with the requirements of section 710 (b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) Additions: Hesston Corp., PPG Industries.
(3) No change.
(4) No change.

This statement is made as of June 11, 1973.

Dated: June 11, 1973.

EARL D. DYER.

[FR Doc.73-14191 Filed 7-11-73;8:45 am]

ELMER HALL

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of May 21, 1973.

Dated: May 21, 1973.

ELMER HALL.

[FR Doc.73-14192 Filed 7-11-73;8:45 am]

FREDERICK L. PETERSEN

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28,

1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of May 21, 1973.

Dated: May 21, 1973.

FREDERICK L. PETERSEN.

[FR Doc.73-14193 Filed 7-11-73;8:45 am]

JOHN R. VOGEL

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of May 25, 1973.

Dated: May 25, 1973.

JOHN R. VOGEL.

[FR Doc.73-14196 Filed 7-11-73;8:45 am]

HUGH C. VAN HORN

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of May 24, 1973.

Dated: May 24, 1973.

HUGH C. VAN HORN.

NOTE: This statement also includes the period July 1, 1972 thru December 31, 1972.

[FR Doc.73-14195 Filed 7-11-73;8:45 am]

KEITH E. SPENCER

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) None
(2) None
(3) None
(4) None

This statement is made as of May 21, 1973.

Dated: May 21, 1973.

KEITH E. SPENCER.

[FR Doc.73-14194 Filed 7-11-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

U.S. MEAT ANIMAL RESEARCH CENTER ADVISORY COMMITTEE

Notice of Public Meeting

Pursuant to the provisions of the Federal Advisory Committee Act of October 6, 1972, (Public Law 92-463, 86 STAT. 770-776), notice is hereby given that a public meeting of the U.S. Meat Animal Research Center Advisory Committee will be held on July 25 and 26, 1973, at the Research Center, Clay Center, Nebraska. The meetings will convene at 8:30 p.m. on both days in the auditorium. The meeting is open to the public.

The purpose of the meeting is to bring committee members up to date on the research being carried out at the center, as well as future plans for research.

Further information concerning these meetings may be obtained by contacting the Director, U.S. Meat Animal Research Center, P.O. Box 166, Clay Center, Nebraska 68933. Interested persons may file written statements with the Committee before or after the meeting.

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

T. W. EDMINISTER,
Administrator,
Agricultural Research Service.

[FR Doc.73-14201 Filed 7-11-73;8:45 am]

Forest Service

MOOSE CREEK PLANNING UNIT

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the Multiple Use Plan—Moose Creek Planning Unit, Forest Service Report Number USDA-FS-FES (Adm) 73-4.

The environmental statement concerns implementation of a revised Multiple Use Plan for the Moose Creek Planning Unit, Sula Ranger District, Bitterroot National Forest, in Ravalli County, Montana. About 20,000 acres of National Forest lands are impacted, of which approximately 15,700 acres are currently roadless and essentially undeveloped. The plan is intended to provide the District Ranger with more detailed management guidance for the unit. The unit is zoned into eight subunits (management units) of similar resource problems and potential, with key value(s) identified in each subunit.

This final environmental statement was filed with CEQ July 3, 1973.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Building, Room 3230
12th St. & Independence Ave., SW.
Washington, D.C. 20250

USDA, Forest Service
Northern Region
Federal Building, Room 3077
Missoula, Montana 59801

USDA, Forest Service
Bitterroot National Forest
316 North Third Street
Hamilton, Montana 59840

A limited number of single copies are available upon request to:

Orville L. Daniels, Forest Supervisor
Bitterroot National Forest
316 North Third Street
Hamilton, Montana 59840

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines.

PHILIP L. THORNTON,
Deputy Chief,
Forest Service.

JULY 5, 1973.

[FR Doc.73-14202 Filed 7-11-73;8:45 am]

PERENOSA TIMBER SALE REVISION

Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the revision of the Perenosa Timber Sale. USDA-FS-DES (Adm) 73-80.

The environmental statement concerns a proposed action to revise a timber sale made in 1968 to include resource/environmental modifications.

This draft environmental statement was filed with CEQ on 7-3-73.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service South Agriculture Bldg., Room 3230 12th St. & Independence Ave., SW Washington, D.C. 20250

USDA, Forest Service Suite 205 121 West Fireweed Lane Anchorage, Alaska 99503

A limited number of single copies are available upon request to Forest Supervisor, Chugach National Forest, Suite 205, 121 W. Fireweed Lane, Anchorage, Alaska 99503.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the

name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State and local agencies as outlined in the Council on Environmental Quality Guidelines.

Comments are invited from the public and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor, Chugach National Forest, Suite 205, 121 W. Fireweed Lane, Anchorage, Alaska 99503. Comments must be received by August 17, 1973, in order to be considered in the preparation of the final environmental statement.

PHILIP L. THORNTON
Deputy Chief,
Forest Service.

JULY 5, 1973.

[FR Doc.73-14203 Filed 7-11-73;8:45 am]

SALMON RIVER, ROARING RIVER LAND USE PLAN, MT. HOOD NATIONAL FOREST

Notice of Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Salmon River-Roaring River Land Use Plan, Mt. Hood National Forest, Oregon USDA-FS-DES-Adm 73-82.

The environmental statement concerns a proposed plan for the management of 81,700 acres in the Mt. Hood National Forest, including portions of two inventoried roadless areas. The proposal allocates land use and establishes management direction for eight subunits which are identified as being suitable for multiple-use, back country, landscape management zones or special interest areas.

This draft environmental statement was filed with CEQ 7-3-73.

Copies are available for inspection during regular working hours at the following locations:

USDA Forest Service
South Agriculture Bldg., Room 3230
12th St. & Independence Ave., SW.
Washington, D.C. 20250

USDA Forest Service
Pacific Northwest Region
319 S.W. Pine Street
Portland, Oregon 97208

USDA Forest Service
Mt. Hood National Forest
340 N.E. 122nd Avenue
Portland, Oregon 97216

A limited number of single copies are available upon request to Forest Supervisor, Wright T. Mallery, Mt. Hood National Forest, P.O. Box 16040, Portland, Oregon 97216.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement when ordering.

Copies of the environmental statement have been sent to various Federal, State and local agencies as outlined in the Council on Environmental Quality Guidelines.

Comments are invited from the public and from State and local agencies which are authorized to develop and enforce environmental standards and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor, Wright T. Mallery, Mt. Hood National Forest, P.O. Box 16040, Portland, Oregon 97216. Comments must be received by August 17, 1973 in order to be considered in the preparation of the final environmental statement.

PHILIP L. THORNTON,
Deputy Chief,
Forest Service.

JULY 5, 1973.

[FR Doc. 73-14204 Filed 7-11-73;8:45 am]

TARGHEE NATIONAL FOREST, IDAHO

Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the purpose of identifying and evaluating the effects of implementing the proposed plan for the Centennial Mountain Planning Unit. The Forest Service Report Number is USDA-FS-DES(Adm.). 73-81.

The environmental statement concerns a proposed land use plan governing the management of lands on the Targhee National Forest. Proposed management includes timber harvesting, forage utilization by domestic livestock, watershed improvement practices, maintenance of suitable wildlife habitat, provision for minerals extraction, recreation, road construction, protection of esthetic values, and other uses which are available from the National Forests.

This draft environmental statement was filed with CEQ July 3, 1973.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
Federal Office Building, Room 2025
324 25th Street
Ogden, Utah 84401

Forest Supervisor's Office
Targhee National Forest
420 North Bridge Street
St. Anthony, Idaho 83445

District Ranger's Office
Dubois Ranger District
Dubois, Idaho 83423

District Ranger's Office
Island Park Ranger District
Island Park, Idaho 83429

A limited number of single copies are available upon request to Robert H. Tracy, Forest Supervisor, Targhee National Forest, 420 North Bridge Street, St. Anthony, Idaho 83445.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151 at a cost of $7.00 per copy. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the Council on Environmental Quality Guidelines.

Comments are invited from the public and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor, Targhee National Forest, 420 North Bridge Street, St. Anthony, Idaho 83445. Comments must be received by August 17, '73 in order to be considered in the preparation of the final environmental statement.

PHILIP L. THORNTON,
Deputy Chief,
Forest Service.

JULY 5, 1973.

[FR Doc.73-14206 Filed 7-11-73;8:45 am]

WINTER PARK MANAGEMENT UNIT

Notice of Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a Draft Environmental Statement for the Winter Park Management Unit of the Arapaho National Forest, Forest Service Report Number USDA-FS-DES (Adm) 73-83.

The Environmental Statement concerns implementation of management direction for the Winter Park Management Unit that (A) protects its suitability for winter sports activities, and (B) permits expansion of the existing winter sports area.

The Draft Environmental Statement was filed with CEQ on 7-3-73.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3230
12th St. & Independence Ave., S.W.
Washington, D.C. 20250

Regional Forester
Bldg. 85, Denver Federal Center
Denver, Colorado 80225

Acting Forest Supervisor
% Roosevelt National Forest
Federal Building
301 So. Howes Street
Fort Collins, Colorado 80521

A limited number of single copies are available upon request to W. K. Kelso, Acting Forest Supervisor, in care of Roosevelt National Forest, Federal Building, 301 So. Howes Street, Fort Collins, Colorado 80521.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State and local agencies as outlined in the Council on Environmental Quality Guidelines.

Comments are invited from the public and from the State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to W. K. Kelso, Acting Forest Supervisor, % Roosevelt National Forest, Federal Building, 301 So. Howes Street, Fort Collins, Colorado 80521. Comments must be received by 8-17-73, in order to be considered in the preparation of the final environmental statement.

PHILIP L. THORNTON,
Deputy Chief,
Forest Service.

JULY 5, 1973.

[FR Doc.73-14205 Filed 7-11-73;8:45 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. Sub-B-50]

PAN-ALASKA FISHERIES, INC.

Supplementary Notice of Hearing

JULY 9, 1973.

Pan-Alaska Fisheries, Inc., has applied for permission to transfer the operations of the 267.4' registered length Royal Sea (ex Seafreeze Pacific), 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 to 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 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 August 13, 1973, at 10 a.m., e.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 a 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.

The foregoing notice supersedes a notice on this same subject which appeared in 38 FR 16925, dated June 27, 1973.

ROBERT W. SCHONING,
Acting Director.

[FR Doc.73-14237 Filed 7-11-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

OFFICE OF ASSISTANT SECRETARY FOR HEALTH

Statement of Organization, Functions and Delegations of Authority

In the statement of organization, functions, and delegations of authority of the Department, Chapter 1N, entitled Office of the Assistant Secretary for Health (38 FR 7271-72), should be deleted and the following statement added:

Section IN.00 Mission.—The Assistant Secretary for Health is the principal advisor and assistant to the Secretary on health policy and all health-related activities in the Department. He is responsible for the direction of the health agencies of the Department, for providing leadership and policy guidance for health-related activities throughout the Department and for maintaining relationships with other governmental and private agencies concerned with health.

Section IN.10 Organization.—The Office of the Assistant Secretary for Health consists of the following principal operating components:

1. *General Functions*
   - Office of Administrative Management
   - Office of Policy Development and Planning
   - Office of Program Operations
   - Office of Regional Operations
2. *Special Functions*
   - Regional Health Administrators
   - Executive Secretariat
   - Office of Public Affairs
   - Office of Professional Standards Review
   - Office of International Health
   - Office of Population Affairs
   - Office of Drug Abuse Prevention
   - Office of Nursing Home Affairs

Section IN.20 Functions. A. The Assistant Secretary for Health: (1) Directs the activities of the Public Health Service and its several operating agencies; and (2) as the Secretary's principal advisor on health, provides leadership and guidance on all health and health-related activities, including research and development; education and training; organization financing and delivery of health care services; and problems of public and environmental health. In addition, he is responsible for the direction of nursing home affairs throughout the Department; the coordination of drug abuse activities throughout the Department which includes providing the principal point of contact within the Department with the Special Action Office for Drug Abuse Prevention; and exercising specialized responsibilities in the areas of population affairs, international health, and transportation and disposition of certain hazardous materials. He coordinates the health and health-related functions of the Department with those of other Federal agencies and provides advice and assistance on health matters to such agencies as requested.

B. The principal components of the Office of the Assistant Secretary for Health, operating under the general direction and supervision of the Assistant Secretary, have the following functions and responsibilities:

1. *General Functions.* a. *Office of Administrative Management.* The Director of the Office of Administrative Management advises and assists the Assistant Secretary for Health and the Executive Officer on internal management priorities and policies.

Develops health-wide policy and provides leadership and coordination of agency activities in the area of financial management, contracts and grants, personnel management, organization, management systems and studies, operational planning, administrative services, ADP management and facilities management.

Participates in program and legislative planning and analyzes program operations, in collaboration with the Assistant Secretary for Health staff and agencies, to identify management implications and to ensure responsible administrative planning.

Provides leadership and review of agency administrative management activities for the purpose of assuring compliance with laws, regulations, procedures, sound management policies, and Health-wide management policies, goals and plans.

Furnishes selected supporting and staff services in fiscal management, personnel management, management analysis, and administrative services.

Provides selected centralized common services, including service provided on a fee-for-service basis as authorized by law.

Serves as the principal liaison with the Office of the Secretary, the health agencies, and other government agencies on administrative management activities and as appropriate represents the Assistant Secretary for Health.

(1) *Administrative Services Center.* For the agencies located in and around the Parklawn Building, the Director of the Administrative Service Center plans, coordinates, and administers the provision of technical and administrative services.

Provides administrative operations, such as general services, procurement support, library services, and building and facilities services.

Provides administrative support to accomplish these functions and serves as liaison with GSA and other components within the Department for technical and administrative services related to the health agencies.

(2) *Office of Organization and Management Systems.* The Director of the Office of Organization and Management Systems serves as the principal advisor on all Health organization and management activities.

Develops and disseminates Health-wide policies for organization, computer, and management systems and evaluates or directs the review of agency management systems, procedures and activities.

Serves as the focal point for coordinating agency management activities with the Office of the Secretary and other Federal agencies and offices.

Provides leadership and direction for the development and implementation of (a) agency cross-servicing arrangements (b) compatible organization, computer and management systems, and (c) procedures designed to improve efficiency and economy of operations in the Health establishment.

Fosters the efficient management of Health manpower through a manpower utilization program.

(3) *Office of Personnel Management.* The Director of Personnel Management is the principal advisor in Health for personnel management and training activities.

Develops personnel management objectives for Health activities and the policies and standards necessary to advance these objectives; and provides leadership and direction for coordinated personnel management programs embracing the Commissioned Corps and Civil Service personnel in Health activities.

Plans, develops, and administers the Commissioned Corps personnel system; provides centralized operating personnel services for the health agencies located at Parklawn; and conducts evaluation studies of all Health Personnel activities to assure performance in accordance with standards and policies established by the Public Health Service, the Department, and the Civil Service Commission.

Coordinates the personnel management activities of the Health agencies with the Department, the Civil Service Commission, the Office of Management and Budget, the Department of Defense, the Veterans Administration, and the Congress on matters of common concern.

(4) *Office of Resource Management.* The Director of the Office of Resource Management serves as principal resource within the Public Health Service on all phases of financial management inherent in the operation of the Health agencies; plans, directs, coordinates, and evaluates financial management activities for the Health agencies to assure effective utilization and control of management resources; formulates policies for, and makes the official fiscal allocation of, resources for Health activities in accordance with priorities based on program goals and objectives; directs an integrated operational planning process for Health activities; serves as focal point for overall policy and fiscal management of contracts and grants activities; provides leadership and direction to the Health agencies for the development of resource management systems; monitors financial, operational planning, and contracts and grants programs of Health activities to assure a coordinated effort toward achieving the goals and objectives established by the Assistant Secretary for Health; serves as principal resource within the Department on all phases of facility management inherent in the operation of the Health agencies; furnishes consultant services to program officials on health facility needs; and maintains liaison with the Office of the Secretary on resource management activities.

b. *Office of Policy Development and Planning.* The Director of the Office of Policy Development and Planning serves as the principal advisor to the Assistant Secretary for Health concerning the development of a national health policy and strategy.

Directs or conducts the health policy development and research, planning, and program evaluation activities of the Public Health Service.

Provides guidance for policy analysis and research, planning, and program evaluation activities within the health agencies and with respect to health and health-related issues.

(1) *Office of Planning and Evaluation.* The Director of the Office of Planning and Evaluation provides staff advice on matters of national policy planning and evaluation of health programs in the Department of Health, Education, and Welfare.

Conceives and directs a process of planning leading to development of national and Departmental policies and strategies for Health.

Manages and oversees the total program planning process, developing forward plans for resource allocation decisions in cooperation with health agencies and the Office of Regional Operations.

Cordinates implementation of forward plans and budgets consistent with health policies in cooperation with the Office of Administrative Management, the Office of Regional Operations, and other staff offices.

Assures a continuing evaluation of health program goals, policies, and operations by health agencies and the Office of Regional Operations by providing general guidance, assistance where necessary, and review of general plans and strategies for consistency with overall policy.

Conducts special program evaluations which are of particular relevance to the Assistant Secretary for Health and which impact on national health policies.

Provides liaison with all health agencies to assure adoption of standardized data elements and formats for reporting.

(2) *Office of Policy Analysis and Research.* The Director of the Office of Policy Analysis and Research provides indepth analytical and research capability in health and related fields in order to conduct, support, manage, and oversee policy analyses and research, thus developing and facilitating policy formulation and decisions.

Directs and conducts analyses of health policy issues, including cost/benefit analyses of health policy alternatives.

Develops and oversees execution of the Department's health services research plan.

Coordinates and directs interagency research and experimentation in health services.

Provides analyses of current and prospective developments and findings from research which may impact health policies.

Maintains liaison with the National Center for Health Services Research and Development and with other public and private health services research programs and policy institutes.

c. *Office of Program Operations.* The Director of the Office of Program Operations serves as the principal advisor to the Assistant Secretary for Health concerning resolution of operating problems, monitoring implementation of program policies and objectives, and coordination of legislative activities.

Analyzes medical and scientific implication of both current and proposed health policies and programs to (a) determine and recommend need for changes; (b) interpret interaction of health components and HEW officials; and (c) review and recommend approval of new or revised regulations.

Coordinates and reviews Congressional correspondence, reports, legislative initiatives, and Congressional testimony.

Coordinates committee management activities for Health.

Provides a focal point for public interaction in such areas as patent appeals, freedom of information, special interest groups, environmental health and health and scientific liaison.

Serves as a focus for the Department's responsibilities relating to hazardous materials.

Plans systems to determine data intelligence requirements and utilizes data input from the agencies and Office of Regional Operations for program coordination.

Responds to special requests from the health agencies for consultative assistance relating to aspects of national health and scientific policy.

Analyzes the medical and scientific aspects of Health programs, assessing the implications of current policies and priorities and provides advice on findings.

(1) *Office of Policy Coordination and Review.* The Director of the Office of Policy Coordination and Review resolves problems and issues identified in the process of reviewing operating matters and tracking selected program objectives.

Appraises selected health activities for mission effectiveness, including interagency policy reviews to streamline operations.

Provides leadership to the health agencies in implementing specific policies and new legislative initiatives and monitors results.

Reviews and approves program statistical reports prepared by the agencies and the Office of Regional Operations for the Office of the Secretary, other Federal agencies, and the Congress.

Reviews and clears new or revised regulations.

Provides final clearance for responses to Congressional correspondence, and assures responsiveness and conformance to established policies and objectives.

(2) *Office of Legislative Coordination.* The Director of the Office of Legislative Coordination reviews and assists in the presentation of testimony on proposed legislative matters for Congressional hearings.

Serves as a consultant on legislative activities of the Health agencies.

Participates with the Assistant Secretary for Legislation and health agencies in the formulation of a position on selected legislative proposals.

Develops policies for and reviews agency reports requested by the Congress.

(3) *Office of Health Liaison.* The Director of the Office of Health Liaison maintains liaison with allied health and environmental groups within the elements of the Department, with other Departments, and with major health organizations.

Provides medical-managerial talent to represent the Assistant Secretary for Health at appropriate health and health-related meetings in the governmental and private sectors.

Provides health policy and procedures for the establishment, operation, appointment thereto, and termination of Public Advisory Committees, and reviews agency activity in this area.

Serves as a focal point for public interaction in such areas as patent and freedom of information appeals.

(4) *Office of Special Health Projects.* The Director of the Office of Special Health Projects provides a small cadre of medical-managerial talent to stimulate, plan, and direct highly significant special studies of discrete health and scientific problems which cut across organizational lines and require the direction and coordination of DHEW-wide resources and efforts.

Evaluates selected data from the health agencies, utilizing special task forces made up of agency representatives and/or outside experts and consultants.

Recommends new health and scientific initiatives and approaches.

Serves as a focus for the Office's responsibilities relating to the health implications of environmental health factors working, as necessary, with representatives of other departments and interested groups.

d. *Office of Regional Operations.* The Director of the Office of Regional Operations serves as the principal staff advisor to the Assistant Secretary for Health on matters pertaining to the operation of Regional Offices.

Participates in the development of, and is responsible for interpreting and ensuring implementation of health programs, policies, and operational guidelines to the Regions.

Provides an overview of the interrelated activities of the health agencies conducted at the regional level and assures avoidance of program duplication and overlap.

Resolves policy problems and priorities among regions and between regional offices, headquarters agencies, Assistant Secretary for Health staff, and the Office of the Secretary.

Reviews and approves operating plans, budgets, and staffing requirements, and allocates funds and position to regional offices to assure compliance with national plans and strategy.

Evaluates the overall management performance and resources capabilities of the regional offices.

Initiates actions, in cooperation with Office of the Assistant Secretary for Health staff and the health agencies, to develop training activities and career development programs for regional personnel.

Establishes and implements a Regional Office reporting and management information system.

Works with the staff offices in the Assistant Secretary for Health and the health agencies to insure Regional Office input and participation in policy planning and budget formulation.

Serves as the focal point for managing health-wide decentralization activities.

(1) *Office of Management Assistance.* The Director of the Office of Management Assistance serves as the focal point for assisting Regional Health Administrators in the provision of day-to-day administrative support for resolving special problems in the areas of budget, fiscal, personnel, and other administrative services.

Works with health personnel in Regional Offices, staff of the Regional Directors, the Office of Administrative Management, and the Office of Deputy Under Secretary for Regional Affairs to identify and provide solutions to administrative needs and problems of Regional Offices.

Advises and assists Regional Offices in improving their management capability for organizing, directing and evaluating Regional operations.

Participates in the evaluation of Regional Offices with special emphasis on management capability and performance.

(2) *Office of Planning and Resource Allocation.* The Director of the Office of Planning and Resource Allocation coordinates the development of planning guidelines for regional operations.

Reviews and recommends approval of regional plans, budget, and staffing proposals in light of national health plans and strategies determined by the Assistant Secretary for Health and the health agencies.

Establishes and implements a regional office reporting and management information system.

Allocates funds and positions to regional offices.

Monitors regional office performance in meeting established goals, recommends corrective action as needed, and assists in the implementation of recommended action.

Identifies and initiates, in cooperation with staff offices of the Assistant Secretary for Health and the health agencies, actions to meet training and career development needs of regional personnel.

(3) *Office of Regional Program Implementation.* The Director of the Office of Regional Program Implementation exercises prime responsibility for assuring that regional office operational policy is established in accordance with national priorities and objectives.

Serves as the focal point within the Office of Regional Operations for review and coordination of all health policy statements which will affect Regional programs, assuring that proposed policies are consistent with both national priorities and regional needs and capabilities.

Cooperates with health agency program officials in development and interpretation of program guidelines and priority directives to Regional Offices.

For new and emerging program efforts, especially those involving several health agencies, assembles and directs *ad hoc* task forces to develop recommended policy statements for the Assistant Secretary for Health relating to Regional Office implementation.

Based on knowledge of regional operations, identifies need for new or revised policy statements and recommends appropriate action.

Works with staff offices in the Office of the Assistant Secretary for Health and the Health Agencies to insure continual Regional Office input and participation in policy development and to insure avoidance of program duplication and overlap.

Participates in evaluation of Regional Office performance.

2. *Special Functions.* a. *Regional Health Administrators.* Each Regional Health Administrator is responsible for directing all Regional Office health programs and activities in order to assure a coordinated regional effort in tune with national policies and State and local needs with their region.

Interprets national policies and guidelines, establishes regional goals and objectives, monitors progress and accomplishments, and evaluates and redirects the regional effort accordingly.

Develops the overall regional budget proposal (funds and positions) based on national priorities and regional work plans.

Determines types of personnel needed, recruits and selects, and evaluates performance of regional staff.

Cooperates with the Regional Director in coordinating health programs with other Department of Health, Education, and Welfare programs and with programs of other agencies impacting upon the needs of people.

Awards health grants and contracts in accord with national policies and guidelines and State and local needs.

b. *Executive Secretariat.* The Executive Secretariat has responsibility for reporting on meetings of the Assistant Secretary for Health and following up on action items that result from these meetings; for developing meeting agendas and minutes; for correspondence policies, processing, followup and clearance; and for maintaining Health files.

Assigns, controls, coordinates, follows-up, and provides substantive review of the Office of the Assistant Secretary for Health communications, including memoranda, reports, staff papers, as well as priority correspondence addressed to the President, the Secretary, the Assistant Secretary, and the Surgeon General, and letters from members of Congress.

Establishes procedures for the preparation and management of written communications involving the Office of the Assistant Secretary for Health.

Prepares replies to correspondence when appropriate.

Manages system of rapid communication between the Office of the Assistant Secretary for Health and the health agencies; in collaboration with both groups, produces the Weekly Activity Report to the Secretary and other reports, such as a weekly Current Issues List for the Assistant Secretary and key staff.

Maintains the official files of the Assistant Secretary for Health.

c. *Office of Public Affairs.* The Director of the Office of Public Affairs advises and assists the Assistant Secretary for Health on communications with the various publics served by the Public Health Service, and coordinates the public affairs activities of the five health agencies with policy directives of the Assistant Secretary for Health, and with the overall public affairs policies of the Department of Health, Education, and Welfare.

d. *Office of Professional Standards Review.* The Director of the Office of Professional Standards Review serves as the Department's focal point for managing professional standards review organization (PSRO) activities and directs and coordinates PSRO activities in both the health and non-health agencies.

e. *Office of International Health.* The Director of the Office of International Health provides assistance and guidance on, and coordinates, the international health activities of the Department.

Prepares analyses of selected international health policies and programs for the Department of State.

Maintains liaison with international institutions and organizations and other departments and agencies on international health matters.

Arranges international technical assistance in the health field at the request of other departments and agencies.

f. *Office of Population Affairs.* The Deputy Assistant Secretary for Population Affairs advises on programs of national importance in the fields of population dynamics, fertility, sterility, and family planning and directs population and family planning activities within the five health agencies of the Department.

g. *Office of Drug Abuse Prevention.* The Special Assistant for Drug Abuse Prevention serves as the principal Departmental contact with the Special Action Office for Drug Abuse Prevention, receiving, referring, and following up on all major Special Action Office for Drug Abuse Prevention requests.

Coordinates all intra-DHEW staff work on major drug abuse issues and, with the Assistant Secretary for Health, brings directly to the attention of the Secretary major issues requiring Secretarial decision.

h. *Office of Nursing Home Affairs.* The Director of the Office of Nursing Home Affairs serves as the Departmental focal point for managing nursing home affairs and directs and coordinates nursing home activities in both the health and non-health agencies.

* * * * *

Dated: July 3, 1973.

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

[FR Doc.73-14228 Filed 7-11-73;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[Docket No. NFD-105]

VERMONT

Notice of Major Disaster and Related Determinations

Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11725 of June 27, 1973; and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-73-238; and by virtue of the Act of December 31, 1970, entitled "Disaster Relief Act of 1970" (84 Stat. 1744), as amended by Public Law 92-209 (85 Stat. 742); notice is hereby given that on July 6, 1973, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Vermont from severe storms, flooding, and landslides, beginning about June 26, 1973, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 91-606. I therefore declare that such a major disaster exists in the State of Vermont. You are to determine the specific areas within the State eligible for Federal assistance under this declaration.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11725, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-73-238, to administer the Disaster Relief Act of 1970 (Public Law 91-606, as amended), I hereby appoint Mr. John F. Sullivan, HUD Region 1, to act as the Federal Coordinating Officer to perform the duties specified by section 201 of that Act for this disaster.

I do hereby determine the following areas in the State of Vermont to have been adversely affected by this declared major disaster:

The Counties of:

Addison	Lamoille
Bennington	Orange
Caledonia	Orleans
Chittenden	Rutland
Essex	Washington
Franklin	Windham
Grande Isle	Windsor

Dated: July 9, 1973.

(Catalog of Federal Domestic Assistance Program No. 50.002, Disaster Assistance)

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.73-14239 Filed 7-11-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

ARIZONA

Notice of Proposed Action Plan

The Arizona Highway Department has submitted to the Federal Highway Administration of the U.S. Department of Transportation a proposed Action Plan as required by Policy and Procedure Memorandum 90-4 issued on September 21, 1972. The Action Plan outlines the organizational relationships, the assignments of responsibility, and the procedures to be used by the State to assure that economic, social and environmental effects are fully considered in developing highway projects and that final decisions on highway projects are made in the best overall public interest, taking into consideration: (1) Needs for fast, safe and efficient transportation; (2) public services; and (3) costs of eliminating or minimizing adverse effects.

The proposed Action Plan is available for public review at the following locations:

1. Arizona Highway Department
   206 South 17th Avenue
   Phoenix, Arizona 85007
2. Arizona Division Office
   3500 North Central Avenue, Suite 201
   Phoenix, Arizona 85012
3. Federal Highway Administration, Region 9
   450 Golden Gate Avenue, Box 36096
   San Francisco, California 94102
4. U.S. Department of Transportation
   Federal Highway Administration
   Environmental Development Division
   Nassif Building, Room 3246
   400 7th Street S.W.
   Washington, D.C. 20590

Comments from interested groups and the public on the proposed Action Plan are invited. Comments should be sent to the FHWA Regional Office shown above before August 6, 1973.

Issued on July 5, 1973.

NORBERT T. TIEMANN,
Federal Highway Administrator.

[FR Doc.73-14159 Filed 7-11-73;8:45 am]

WEST VIRGINIA

Notice of Proposed Action Plan

The West Virginia Department of Highways has submitted to the Federal Highway Administration of the U.S. Department of Transportation a proposed Action Plan as required by Policy and Procedure Memorandum 90-4 issued on September 21, 1972. The Action Plan outlines the organizational relationships, the assignments of responsibility, and the procedures to be used by the State to assure that economic, social and environmental effects are fully considered in developing highway projects and that final decisions on highway projects are made in the best overall public interest, taking into consideration: (1) Needs for fast, safe and efficient transportation; (2) public services; and (3) costs of eliminating or minimizing adverse effects.

The proposed Action Plan is available for public review at the following locations:

1. West Virginia Department of Highways
   1900 Washington Street East
   Charleston, West Virginia 25305

District Headquarters, West Virginia Department of Highways:

2. District One
   1334 Smith Street
   Charleston, West Virginia 25305
3. District Two
   2224 Fifth Avenue
   Huntington, West Virginia 25701
4. District Three
   Depot Street
   Parkersburg, West Virginia 26101
5. District Four
   Perry Mine, Route 19
   Clarksburg, West Virginia 26301
6. District Five
   92 North Mineral Street
   Moundsville, West Virginia 26041
7. District Six
   Third & Jefferson Streets
   Moundsville, West Virginia 26014
8. District Seven
   Depot Street
   Weston, West Virginia 26425
9. District Eight
   Davis Avenue
   Elkins, West Virginia 26211
10. District Nine
    122 North Court Street
    Lewisburg, West Virginia 24901
11. District Ten
    Scott Street
    Princeton, West Virginia 24740

Regional Council Offices as noted:

12. Region One Planning and Development Council
    Suite 201 Blair Building
    Beckley, West Virginia 25801
13. KYOVA Interstate Planning Commission
    Room 305
    Cabell County Courthouse
    Huntington, West Virginia 25701
14. B-C-K-P Regional Intergovernmental Council
    410 Kanawha Boulevard, East
    Charleston, West Virginia 25301
15. Region Four Planning and Development Council
    City Hall
    Fayetteville, West Virginia 25840
16. Region Five Planning and Development Council
    275 Fourth Street
    Parkersburg, West Virginia 26101
17. Region Six Planning and Development Council
    City Building
    Fairmont, West Virginia 26554
18. Region Seven Planning and Development Council
    Upshur County Courthouse
    Buckhannon, West Virginia 26201
19. Region Eight Planning and Development Council
    1 Virginia Avenue
    Petersburg, West Virginia 26847
20. Eastern Panhandle Regional Planning and Development Council
    108 West Burke Street
    Martinsburg, West Virginia 25401
21. Bel-O-Mar Interstate Planning Commission
    2177 National Road
    Wheeling, West Virginia 26003
22. B-H-J Interstate Planning Commission
    3600 Mailand Heights Road
    Weirton, West Virginia 26062

Office of the Clerk of County Court at the Court House in the following County Seats:

23. Beckley, West Virginia
24. Berkeley Springs, West Virginia
25. Buckhannon, West Virginia
26. Charleston, West Virginia
27. Charles Town, West Virginia
28. Clarksburg, West Virginia
29. Clay, West Virginia
30. Elizabeth, West Virginia
31. Elkins, West Virginia
32. Fairmont, West Virginia
33. Fayetteville, West Virginia
34. Franklin, West Virginia
35. Glenville, West Virginia
36. Grafton, West Virginia
37. Grantsville, West Virginia
38. Hamlin, West Virginia
39. Harrisville, West Virginia
40. Hinton, West Virginia
41. Huntington, West Virginia
42. Keyser, West Virginia
43. Kingwood, West Virginia
44. Lewisburg, West Virginia
45. Logan, West Virginia
46. Madison, West Virginia
47. Marlington, West Virginia
48. Martinsburg, West Virginia
49. Middlebourne, West Virginia
50. Moorefield, West Virginia
51. Morgantown, West Virginia
52. Moundsville, West Virginia
53. New Cumberland, West Virginia
54. New Martinsville, West Virginia
55. Parkersburg, West Virginia
56. Parsons, West Virginia
57. Petersburg, West Virginia
58. Pineville, West Virginia
59. Philippi, West Virginia
60. Point Pleasant, West Virginia
61. Princeton, West Virginia
62. Ripley, West Virginia
63. Romney, West Virginia
64. Spencer, West Virginia
65. St. Marys, West Virginia
66. Summersville, West Virginia
67. Sutton, West Virginia
68. Union, West Virginia
69. Wayne, West Virginia
70. Webster Springs, West Virginia
71. Welch, West Virginia
72. Wellsburg, West Virginia
73. Weston, West Virginia
74. West Union, West Virginia
75. Wheeling, West Virginia
76. Williamson, West Virginia
77. Winfield, West Virginia
78. West Virginia Division, FHWA
    500 Quarrier Street
    Charleston, West Virginia 25301
79. FHWA Regional Office—Region 3
    31 Hopkins Plaza
    Baltimore, Maryland 21201
    (Room 1615)
80. U.S. Department of Transportation
    Federal Highway Administration
    Environmental Development Division
    Nassif Building, Room 3246
    400 7th Street S.W.
    Washington, D.C. 20590

Comments from interested groups and the public on the proposed Action Plan are invited. Comments should be sent to the FHWA Regional Office shown above before August 10, 1973.

Issued on July 5, 1973.

NORBERT T. TIEMANN,
Federal Highway Administrator.

[FR Doc.73-14160 Filed 7-11-73;8:45 am]

Hazardous Materials Regulations Board

SPECIAL PERMITS

Notice of Issuance

Pursuant to Docket No. HM-1, rulemaking procedures of the Hazardous Materials Regulations Board, issued May 22, 1968 (33 FR 8277) 49 CFR Part 170, following is a list of new DOT Special Permits upon which Board action was completed during June 1973:

Special Permit No.	Issued to—Subject	Mode or Modes of Transportation
6731	The U.S. Department of Defense, Washington, D.C., to ship chemical kits containing minute quantities of various hazardous materials.	Highway, Cargo-only Aircraft
6733	Shippers registered with this Board to ship solid methane and solid ammonia in a cryogen cooler overpacked in a non-DOT specification container.	Highway, Cargo-only Aircraft
6754	Eaton Corporation, Troy, Mich., to ship a compressed inert gas mixture in non-refillable, welded, steel pressure vessels (toroidal shaped).	Highway, Rail Cargo-only Aircraft, Cargo Vessel
6765	Shippers registered with this Board to ship liquefied helium & liquefied hydrogen in an insulated, containerized portable tank.	Highway, Cargo Vessel
6769	Shippers registered with this Board to ship trifluoromethane in insulated DOT Specification MC-331 cargo tanks, and DOT Specification 105A600W tank cars.	Highway, Rail

Special Permit No.	Issued to—Subject	Mode or Modes of Transportation
6770	BASF Wyandotte Corp., Parsippany, N.J., to ship certain flammable liquids in, foreign-made non-DOT specification open-head steel drums equal to DOT-17H drums.	Highway Rail Cargo Vessel
6771	Shippers registered with this Board to ship large quantities of radioactive materials, n.o.s. in the Suntac Waste Shipping Container Model No. SN-1.	Highway, Rail Cargo Vessel
6772	Shippers registered with this Board to ship certain corrosive liquids, and poisonous liquids, in inside glass or plastic bottles not exceeding 1-gallon capacity overpacked in a DOT Specification 17H steel drum.	Highway
6773	Shippers registered with this Board to ship vinylidene fluoride in DOT Specification 105A600W tank cars.	Rail
6774	Shippers registered with this Board to ship helium in non-DOT specification cylinders complying with DOT Specification 3HT except as otherwise provided.	Highway
6775	Shippers registered with this Board to ship certain Class B poisonous liquids (organic phosphate compounds and mixtures thereof) in MC-331 tank motor vehicles via private carriage.	Highway
6776	Shippers registered with this Board to ship helium in an inside non-DOT specification welded cylinder having a maximum capacity of 60 cubic inches.	Highway, Rail Cargo-only Aircraft.
6777	Shippers registered with this Board to ship liquefied hydrogen in non-DOT specification insulated, steel portable tank.	Highway

ALAN I. ROBERTS,
Secretary.

[FR Doc.73-14102 Filed 7-11-73;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket Nos. 50-400, 50-402, 50-403]

CAROLINA POWER & LIGHT CO.

Notice of Hearing

Take notice, that pursuant to the Atomic Energy Commission's "Notice of Hearing on Application for Construction Permits" dated September 21, 1972 (37 FR 20,344) and in accordance with the Commission's rules of practice (10 CFR Part 2), a public hearing will be held commencing at 10:00 a.m. e.d.t. August 6, 1973 in Courtroom 2, U.S. District Court, 7th Floor, New Federal Building, 310 New Bern Avenue, Raleigh, North Carolina 27611.

This evidentiary hearing before an Atomic Safety and Licensing Board designated by the U.S. Atomic Energy Commission is for the purpose of considering the application of the Carolina Power and Light Company (the Applicant) for construction permits for four pressurized water nuclear reactors, described as the Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4, each of which is designed for initial operation at 2775 thermal megawatts and 915 megawatts electric. The proposed facilities would be located on the Applicant's site approximately 20 miles southwest of Raleigh, North Carolina, in Wake and Chatham Counties.

The Atomic Safety and Licensing Board (Board) to hear the evidence in this proceeding was designated by the Atomic Energy Commission in a notice published in the FEDERAL REGISTER on November 18, 1972, 37 FR 24,697.

There have been two prehearing conferences held in this proceeding, a Special Prehearing Conference on January 30, 1973 and a regular Prehearing Conference on July 2, 1973, at which times key issues were identified, matters in controversy were determined, and stipulations, scheduling and other procedural matters were discussed with attorneys for all the parties.

This evidentiary hearing will concern the radiological health and safety matters and environmental matters set forth in the Commission's September 21, 1972 Notice of Hearing, supra, and the specific contentions or matters in controversy identified in the Board's Special Prehearing Conference Orders dated February 14 and February 26, 1973.

The hearing will continue daily from 9:30 a.m. to 5:00 p.m. the week of August 6-11, 1973, including Saturday, if necessary to complete the proceedings. Monday's session (August 6) will commence at 10:00 a.m. e.d.t. Persons making limited appearances will be heard early on the first day of the hearing. Limited appearance statements may also be presented in writing, without the necessity of personality appearing at the hearing itself, and all such statements will be seriously considered by the Board. Such written limited appearances may be mailed to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attn: Chief, Public Proceedings Branch.

All interested members of the public are invited to attend the hearing.

Issued at Washington, D.C., this 6th day of July 1973.

It is so ordered.

For the Atomic Safety and Licensing Board.

THOMAS W. REILLY,
Chairman.

[FR Doc.73-14190 Filed 7-11-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 25595; Order 73-7-21]

CONTINENTAL AIR LINES, INC.

Order of Approval To Engage in Capacity Reduction Discussions in Specific Markets

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 6th day of July, 1973.

Continental Air Lines requests authorization to engage in intercarrier discussions looking towards an agreement on mutual capacity limitations in the Chicago-Los Angeles and Chicago-Denver markets.[1] The cities of Chicago and Denver, and American, Trans World, United, Braniff and Frontier have filed answers.

Upon consideration of the pleadings and other relevant facts, we have decided to authorize the discussions requested by Continental for the same reasons as those advanced in prior, related proceedings.[2] Among the matters that we have previously emphasized[3] is the potentially favorable effect of capacity agreements on fuel conservation (and, consequently, the environment). We remind the carriers of the Board's previous statement that "capacity agreements should provide for both a reasonable schedule spread and flights properly timed to accommodate the needs of the markets concerned." Order 73-4-98 at page 5. While the desirability of building flexibility into any ensuing agreement is self-evident, nevertheless we feel that the agreement should directly in terms demonstrate its accommodation to these criteria.

We have also considered requiring the submission of certain additional information as suggested in the comments by one of the respondents.[4] The Board's staff representative will submit, and make publicly available at the first discussion session, service segment data for each carrier in the instant markets for the two most recent calendar years in respect to passenger, cargo, and mail data. The purpose of such data is to facilitate an evaluation of the possible impact any agreement resulting from the capacity reduction discussions approved herein may have on the affected communities, the public, and other carriers party to the discussions.

In addition, United Air Lines has expressed concern in a related proceeding[5] with regard to the lack of authority of some carrier representatives and their inability to make commitments as to their company's position during capacity reduction meetings. With this in mind, we urge all participating carriers to these discussions to select responsible repre-

[1] Capacity reduction discussions and resultant agreements have been previously approved by the Board, see Order 73-4-98, April 24, 1973, and previous orders referred to therein. American Airlines, Continental Air Lines, Trans World Airlines, and United Air Lines serve Chicago-Los Angeles; Continental Air Lines, Trans World Airlines and United Air Lines serve Chicago-Denver.

[2] See Order 73-4-98. With regard to the Chicago-Denver market we note that in 1972 Approximately 971,000 passengers were carried by carriers with an average load factor for this market of 49.9 percent.

[3] Order 73-4-98.

[4] The City of Chicago has requested that civic parties to be affected by capacity reduction discussions be served with segment traffic data for the two most recent calendar years.

[5] See application of Trans World Airlines, Docket 25604.

sentatives with the authority to establish the positions of their companies.[6]

Accordingly, it is ordered, That: 1. The application for approval of discussions regarding capacity reductions in the below-specified city-pairs,[7] 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) Participation in the discussion shall be limited to carriers certificated to provide single-plane scheduled service in the market under discussion;

(c) Representatives of the Civil Aeronautics Board and any other local, state or Federal Government Agency; civic, trade, or consumer association, group or representative; or air carrier expressing an interest shall be permitted to attend and view the discussions as observers;

(d) A full transcript shall be maintained of all meetings, at the expense of the carriers, and two copies of said transcript shall be filed with the Board within three days after the conclusion of each day's meeting, and shall be available for purchase by any person;

(e) 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 seven 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;

(f) Comments pertaining to any agreements filed pursuant to subparagraph (e) shall be filed within 14 days from the date of the filing of such agreements with the Board;

(g) Comments in reply to any previously filed document authorized to be filed in paragraphs (e) and (f) shall be filed within ten days of the date of filing of such document;

(h) The relief granted herein shall expire within 90 days of the date of this order and may be revoked or amended at any time in the discretion of the Board;

(i) This authorization does not extend to discussions of rates, fares, charges, or inflight or other services pertaining to air transportation; and

(j) The Board's staff representative will submit, and make publicly available at the first discussion session, service segment data for each carrier for the city-pairs authorized herein for the two most recent calendar years.[8]

2. Copies of this order shall be served on the Departments of Defense, Justice and Transportation; the U.S. Postal Service; the Cities of Chicago, Denver and Los Angeles; all certificated and supplemental air carriers; the Environmental Defense Fund; and ALPA; 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.73-14241 Filed 7-11-73;8:45 am]

[Dockets 22670 and 22500; Order 73-7-20]

LOS ANGELES AIRWAYS, INC.

Order Concerning Applications for Continuation of Temporary Suspension of Service and for Exemption Authority

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 6th day of July, 1973.

By Order 70-12-146, dated December 28, 1970, Los Angeles Airways, Inc. (LAA) was authorized to temporarily suspend service on its route 84 for a period of one year. By Order 72-2-79, dated February 22, 1972, LAA was authorized to continue its suspension of service ". . . for two years or until sixty days after final Board action in the *Golden West/Los Angeles Airways Acquisition Agreement,* Docket 23652, whichever occurs first." By Order 73-3-20, dated March 8, 1973, the Board dismissed the application at issue in Docket 23652.

On May 4, 1973, LAA filed an application requesting continuation of its temporary suspension of service for an indefinite period.[1] In support of its request, the carrier states, inter alia, that it is presently in bankruptcy pursuant to Chapter XI of the Bankruptcy Act; that its affairs are subject to the jurisdiction of the United States District Court for the Central District of California; that counsel for the debtor LAA is under Court instructions to file a plan of arrangement with creditors on or before June 4, 1973, with hearings to be held subsequent thereto; and that it would be an undue burden on LAA to submit periodic applications to the Board for extension of its suspension authority.

The City of Newport Beach, California, filed a response to LAA's application in which it states that it neither supports nor opposes that application, but wishes the record to reflect that the LAA terminal point in Newport Beach has been abandoned and the lease therefor terminated by order of the United States District Court on March 24, 1972.

Upon consideration of the pleadings and all relevant facts, we have decided to deny LAA's application for further suspension authority and will order that LAA shall resume service in conformity with the terms and conditions of its certificate within ninety days from the date of this order. LAA filed a petition under Chapter XI of the Bankruptcy Act on October 6, 1970, and its Court-appointed receiver determined the following day that its operations had to be suspended. No scheduled route service has been provided by LAA since that time. Further, in seeking the extension of its suspension authority in 1972, LAA stated that it was unable to resume operations, and in Order 72-2-79, in granting an extension, we referred to the carrier's "financial and operational difficulties." There is still no sign that LAA will be able to resume operations in the near future. Against this background, serious questions are raised as to the necessity and desirability of continuing the effectiveness of LAA's certificate. Consequently, finding that such action is required in the public interest, we shall deny LAA's application for an indefinite extension of its suspension authority and order that it shall resume service over route 84 in conformity with the terms and conditions of its certificate within ninety days from the effective date of this order. We are hereby instituting an investigation, to be set down for hearing after the expiration of the ninety-day period, for the purpose of determining whether, if operations are not resumed within the ninety-day period, LAA's authority should be suspended, or whether the Board should direct that LAA's certificate cease to be effective under § 401(f) of the Act[2], or whether some

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[6] Frontier's request to establish procedural safeguards to protect non-agreement markets from operation of excessive capacity is more appropriately dealt with in the context of the Board's review of any resulting agreement.

[7] The authorized city-pairs are: Chicago-Los Angeles and Chicago-Denver.

[8] The data will include by month the following: passengers on board, available seat miles, revenue passengers, revenue passenger miles, load factor and number of departures.

[1] The carrier also invoked the continuation of authority clause of 5 U.S.C. § 558(c) and requested a waiver of the timeliness requirements of Sec. 377.10 of the Board's Special Regulations. By Order 73-5-39, dated May 8, 1973, LAA was granted the requested waiver, thus continuing the suspension authority granted by Order 72-2-79 pending the Board's final determination of the instant application on the merits.

[2] Section 401(f) of the Federal Aviation Act and section 205.10 of the Board's Economic Regulations provide, in part, that if, for a period of ninety days, any service authorized by a certificate is not operated, the Board may, by order entered after notice and hearing, direct that such certificate shall thereupon cease to be effective to the extent of such service.

other appropriate action (including revocation under § 401(g)) should be taken by the Board.[2]

Accordingly, it is ordered, that: 1. The period beginning with the effective date of this order and terminating October 4, 1973, be and it hereby is designated as the period within which Los Angeles Airways, Inc. shall resume service over route 84 in accordance with the authorization contained in its certificate of public convenience and necessity;

2. An investigation, to be set for hearing at a time and place to be hereafter designated, be and it hereby is instituted to determine whether, in the event that Los Angeles Airways, Inc. does not resume service in accordance with the terms of paragraph "1", above, the Board shall (a) grant temporary suspension of Los Angeles Airways, Inc.'s authority on route 84; or (b) direct that Los Angeles Airways, Inc.'s certificate of public convenience and necessity for route 84 shall cease to be effective under section 401(f) of the Act or shall be revoked under section 401(g).

3. The investigation instituted by paragraph "2" above should also determine whether the application by Los Angeles Airways, Inc., in Docket 22500, for renewal of the "area" exemption authority granted in Order E–22798 and amended in Order 69–4–82, should be renewed, and Docket 22500 be and it hereby is consolidated with Docket 22670;

4. Los Angeles Airways, Inc. and its receiver in bankruptcy are hereby made parties to such proceeding;

5. The application of Los Angeles Airways, Inc., in Docket 22670, for continuation of temporary suspension be and it hereby is denied;

6. Copies of this order shall be served on Los Angeles Airways, Inc., its receiver in bankruptcy, and the Mayor of the City of Newport Beach.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73–14240 Filed 7–11–73;8:45 am]

[2] On August 24, 1970, LAA filed, in Docket 22500, an application requesting that the "area" exemption authority granted to it in Order E–22798, dated October 25, 1965, and amended in Order 69–4–82, dated April 17, 1969, be renewed for an indefinite period, or for such other period as may be deemed appropriate by the Board. The requested exemption would continue LAA's authority to engage in air transportation within a 50-mile radius of the Post Office Terminal Annex Building in downtown Los Angeles, California, and between such points and the additional point San Bernardino, California. An answer in opposition to LAA's application was filed by Golden West Airlines, Inc. LAA filed a reply to Golden West's answer. We have decided, in view of our action herein, that it would be appropriate to include the question of the renewal of LAA's area exemption in the investigation which we shall order instituted.

CIVIL SERVICE COMMISSION

DEPARTMENT OF JUSTICE

Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Justice to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Attorney General, Office of Legislative Affairs.

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

[FR Doc.73–14254 Filed 7–11–73;8:45 am]

DEPARTMENT OF COMMERCE

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Commerce to fill by noncareer executive assignment in the excepted service the position of Deputy Director, Office of Strategic Business Studies, Assistant Secretary for Domestic and International Business.

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

[FR Doc.73–14250 Filed 7–11–73;8:45 am]

DEPARTMENT OF COMMERCE

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Commerce to fill by noncareer executive assignment in the excepted service the position of Director, National Marine Fisheries Services, National Oceanic and Atmospheric Administration.

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

[FR Doc.73–14251 Filed 7–11–73;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant to the Secretary for Public Affairs, Office of Public Affairs, Office of the Secretary.

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

[FR Doc.73–14253 Filed 7–11–73;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Director, Office of Planning and Management Grants, Office of Assistant Secretary for Community Planning and Management.

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

[FR Doc.73–14256 Filed 7–11–73;8:45 am]

COST OF LIVING COUNCIL

Revocation of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Cost of Living Council to fill by noncareer executive assignment in the excepted service the position of General Counsel, Price Commission, Office of the General Counsel.

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

[FR Doc.73–14252 Filed 7–11–73;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

Revocation of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Office of Management and Budget to fill by noncareer executive assignment in the excepted service the position of Assistant General Counsel, Office of the Director.

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

[FR Doc.73–14255 Filed 7–11–73;8:45 am]

COST OF LIVING COUNCIL

[Order No. 15F]

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

(a) Compromise civil penalties with respect to late filing of Form CLC-2 by price recordkeeping firms, due June 30, 1973, as required by § 130.9(b);

(b) Compromise civil penalties with respect to late filing of Form CLC-2 by price reporting firms, due June 21, 1973, as required by § 130.21 in those cases referred to the Internal Revenue Service by the Associate Director for Operations, Cost of Living Council.

2. The Commissioner may redelegate to any official of the Internal Revenue Service the 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 July 9, 1973.

WILLIAM N. WALKER,
Acting Deputy Director,
Cost of Living Council.

[FR Doc.73-14230 Filed 7-9-73;3:14 pm]

[Order No. 15E]

COMMISSIONER OF INTERNAL REVENUE

Delegation of Authority

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 profit margin violations by price Category III firms (as defined in 6 CFR 101.15(a)) for the last fiscal year ending before January 11, 1973:

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 July 6, 1973.

WILLIAM N. WALKER,
Acting Deputy Director,
Cost of Living Council.

[FR Doc.73-14197 Filed 7-9-73;11:46 am]

ENVIRONMENTAL QUALITY COUNCIL

ENVIRONMENTAL IMPACT STATEMENTS

List of Statements Received

Environmental impact statements received by the council from June 25 through June 29, 1973.

NOTE: At the head of the listing of statements received from each agency is the name of an individual who can answer questions regarding those statements.

DEPARTMENT OF AGRICULTURE

Contact: Dr. T. C. Byerly
Office of the Secretary
Washington, D.C. 20250
(202) 447-7803
Forest Service

Draft — *Date*

Multiple-Use Plan, Bitterroot National Forest 06/05
Montana
County: Ravalli
The proposed action is the implementation of a revised multiple use plan for the Skalkaho-Gird and Sleeping Child Planning Units of the Bitterroot National Forest. A total of 121,820 acres of National Forest land will be affected. The plan calls for unroaded management of 17,880 acres, roaded management of 83,940 acres and timber harvesting. Impacts stemming from the project are: increased siltation and water pollution caused by logging and road construction; reduction of domestic livestock grazing on the unit; loss of or increased danger to fish and wildlife habitat (especially to deer and elk populations); and increased air pollution. (83 pages)

(ELR ORDER # 30951) (NTIS ORDER # EIS 73 0951D)

Gee Creek Eastern Wilderness, Cherokee N.F. 06/15
Tennessee
County: Polk
Proposed is the designation of 1,069 acres of the Cherokee National Forest in Polk County, Tennessee as the Gee Creek Eastern Wilderness, a unit of the Eastern Wilderness Preservation System. Increased recreation will probably result in sanitary and littering problems. (21 pages)

(ELR ORDER # 31011) (NTIS ORDER # EIS 73 1011D)

Weyerhaeuser Company—Gifford Pinchot N.F. 06/05
Washington
County: several
The statement is concerned with the proposed land ownership adjustment plan between Weyerhaeuser and the Forest Service. Three exchanges are involved. Weyerhaeuser is offering 11,569 acres of its land to the Forest Service in exchange for 11,847 acres of National Forest Lands. The exchange will consolidate public and private lands. Adverse impacts of the exchanges are: reduction in Forest Service annual sell of board; loss of 84 jobs affecting 311 families; extensive logging by Weyerhaeuser on the lands they will own; and loss of lands which outdoor groups have proposed be included in a National Monument. (43 pages)

(ELR ORDER # 30952) (NTIS ORDER # EIS 73 0952D)

Final — *Date*

Kirkwood Winter Sports Complex, El Dorado N.F. 06/28
California
County: Alpine Amador El Dorado
The statement refers to the proposed development of the Kirkwood Winter Sports Complex in the forest. The development will include 13 ski lifts, a day lodge, support facilities, and commercial and residential construction to accommodate 2,500 living units (including some year round units). Some wildlife habitat will be lost; species particularly affected will be the pine marten and the Columbian black-tailed deer. Major impact will be upon soil, water qualities, and aesthetics. (201 pages)

COMMENTS MADE BY: EPA DOI COE HEW (ELR ORDER # 91080) (NTIS ORDER # EIS 73 1080F)

St. Louis Peaks, Arapahoe National Forest 06/27
Colorado
County: Grand Clear Creek
The statement considers land use management of the St. Louis Peaks roadless area of the Arapahoe National Forest. Being considered is the development for key resources of 8,000 of 21,000 acres. Included would be the construction of roads. Also involved is the construction of a 115 kV transmission line from Henderson East to Portal Substation. The line will provide the necessary reliability for mining and milling molybdenum. There will be disruption of scenic values, and an adverse impact to air, water, and noise qual-levels. (96 pages)

COMMENTS MADE BY: USDA DOI EPA (ELR ORDER # 31063) (NTIS ORDER # EIS 73 1063F)

RURAL ELECTRIFICATION ADMINISTRATION

Draft — *Date*

Milton R. Young—Center Station 06/21
North Dakota Minnesota
The statement refers to the construction of a 400 MW coal-fired steam electric unit as an addition to existing facilities near Center, North Dakota. Also involved is construction of 456 miles of 250 kV transmission line. Counties affected include Oliver, Burleigh, Kidder, Stutsman, Barnes, Cass, Ranson, and Richland in North Dakota, and Wilkin, Ottertail, Becker, Wadena, Hubbard, Crow Wing, Cass, Aitkin, and St. Louis in Minnesota. The boiler will discharge through a 600' stack; cooling will be by water pumped from Lake Nelson and returned at 18 degrees above ambient. (3 volumes)

(ELR ORDER # 31039) (NTIS ORDER # EIS 73 1039D)

SOIL CONSERVATION SERVICE

Draft — *Date*

Mush Creek Watershed 06/27
Alabama
County: Dallas Lowndes
Proposed is the development of a watershed protection project. Included are land treatment measures and floodwater retarding structures. Flood protection will be provided on 3,062 acres of flood plain lands. Approximately 1,450 acres of forest land will be converted to agricultural use with concommitant effect to wildlife; 614 acres will be committed to flood pools. (22 pages)

(ELR ORDER # 31062) (NTIS ORDER # EIS 73 1062D)

Crawford Creek, Little Sioux River 06/27
Iowa
County: Ida
Proposed is a protection project in Crawford Creek Subwatershed, Little Sioux River Watershed. Approximately 1020 acres will be protected from gully erosion; floodwater damage will be reduced by 90 % on 45 acres; sediment will be reduced; a 250 acre public area will be created. Crop production will be lost on 246.7 acres; pasture production will be lost on 24.4 acres. One hundred and twenty-five acres of land and 5.9 miles of ephemeral stream channel (including 3.5 miles of wildlife travel lanes), will be inundated.
(19 pages)

(ELR ORDER # 31061) (NTIS ORDER # EIS 73 1061D)

North Fork Nolin River Watershed 06/25
Kentucky
County: Larue
Proposed is a watershed protection project on the 34,610 acre watershed. Project features include land treatment measures, two single purpose structures and two multiple purpose structures. The project is intended to reduce erosion and sedimentation, and provide flood control protection, water supply, and recreation opportunities. Adverse impact will include 840 acres committed to project measures, 7 miles of inundated stream, and relocation of five families and two farms. (25 pages)

(ELR ORDER # 31053) (NTIS OREDR # EIS 73 1053D)

Final *Date*
Pennsylvania
County: Luzerne
The statement refers to the watershed protection and flood protection project for the 50,880 acre watershed. Land treatment measures will be used on 11,500 acres in order to control erosion and reduce stream sedimentation; special measures will be used on 360 severely eroded acres, an 830 acre recreation acres of land, along with 28 residences, 3 lake will be created. Approximately 3500 farms, and 2 businesses will be acquired for the project. Five miles of trout stream and 830 acres of wildlife habitat will be inundated. (49 pages)

COMMENTS MADE BY: COE HEW DOI EPA

(ELR ORDER # 31075) (NTIS ORDER # EIS 73 1075F)

ATOMIC ENERGY COMMISSION

Contact: For Non-Regulatory Matters:
Mr. Robert J. Catlin, Director,
Division of Environmental Affairs
Washington, D.C. 20545
(202) 973-5391
For Regulatory Matters:
Mr. A. Giambusso, Deputy Director
for Reactor Projects, Directorate
of Licensing
(202) 973-7373
Washington, D.C. 20545

Draft *Date*
Millstone Nuclear Power Station, Unit 3 06/28
Connecticut
Proposed is the issuance of a construction permit to the Millstone Point Company for Unit 3, a 3579 MWt, 1209 MWe (gross) pressurized reactor unit. (Two other units at the site produce 2011 MWt, 642.1 MWe, net, and 2700 MWt, 820 MWe, net, respectively.) Exhaust steam from the Station will be condensed by a once-through flow of water from Niantic Bay, which will be discharged through a quarry pond to Long Island Sound. Some marine life will be lost on water intake screens. (250 pages)

(ELR ORDER # 31069) (NTIS ORDER # EIS 73 1069D)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler
Deputy Assistant Secretary for
Environmental Affairs
Department of Commerce
Washington, D.C. 20230
(202) 967-4335

Draft *Date*
Conservation and Management of Fisheries 06/27
The statement refers to bill S. 1069, which would provide authority for the Secretary of Commerce to promulgate regulations for the management and conservation of the nation's fisheries over U.S. vessels seaward of the territorial sea, and over foreign vessels, pursuant to international agreements.
(27 pages)

(ELR ORDER # 31092) (NTIS ORDER # EIS 73 1092D)

DEPARTMENT OF DEFENSE
ARMY CORPS

Contact: Mr. Francis X. Kelly
Director, Office of Public Affairs
Attn: DAEN-PAP
Office of the Chief of Engineers
U.S. Army Corps of Engineers
1000 Independence Avenue, S.W.
Washington, D.C. 20314
(202) 693-7168

Draft *Date*
Savannah Harbor, Sediment Basin Project 06/01
The proposed project is the construction of a sediment basin and tide-gate structure in Back River, Savannah Harbor, and construction of a fresh-water diversion system for the Savannah National Wildlife Refuge and adjacent areas. Adverse impacts stemming from the project are lowering of water quality, upstream advancement of the salt water wedge in Middle and Back Rivers, and the use of abandoned rice fields as spoil areas. (24 pages)

(ELR ORDER # 30939) (NTIS ORDER # EIS 73 0939D)

Transmission Line, Delaware River, Supplement 06/29
The document provides supplemental information to a final environmental impact statement that was filed with the Council on May 4, 1973, 500 kV Transmission Line, Delaware River, Deemer's Beach to Kelly Point (ELR Order # 00758, NTIS Order # ELS 73 0785F). (39 pages)

(ELR ORDER # 31093) (NTIS ORDER # EIS 73 1093F)

Closure of Academy Creek Brunswick Harbor 06/01
Georgia
The proposed project is the construction of a dam across East River, a dam across Academy Creek, a canal to connect the upper reach of Academy Creek with the upper reach of East River and a dike along the west side of Academy Creek. The project will cause the destruction of 7 to 8 acres of marsh and the elimination of the benthic community in the immediate area of the Academy Creek Closure dam. There will be an increase in water turbidity.
(33 pages)

ELR ORDER # 30938) (NTIS ORDER # EIS 73 0938D)

Providence River and Harbor 06/01
Rhode Island
Proposed is navigation improvement to remove shoals in the Providence River. The dump site is an ocean disposal site 4.6 miles from Brenton Reef Light. Adverse impacts resulting from the project are disruption of benthic communities and increased water pollution.
(39 pages)

(ELR ORDER # 30937) (NTIS ORDER # EIS 73 0937D)

Final *Date*
Guadalupe River 06/28
Texas
County: Victoria Calhoun Refugio
The statement refers to the proposed removal of 4 major log jams on the river, in order to prevent flooding and improve navigation. Shelter for aquatic species will be eliminated and wildlife habitat on 15 acres of right-of-way will be disturbed. The burning of the logs will create air pollution.
(82 pages)
COMMENTS MADE BY: USDA HEW HUD DOI DOT EPA

(ELR ORDER # 91076) (NTIS ORDER # EIS 72 1076F)

DEPARTMENT OF DEFENSE
SUPPLY AGENCY

Final *Date*
Procurement of Coal for Military Installations 06/15
The proposed action relates to procurement of coal by the Defense Supply Agency for Military and Federal Government activities in the United States. The coal procurement will necessitate the mining of coal by underground and/or surface mining operations, in the following states: Alabama, Alaska, Colorado, Illinois, Indiana, Kentucky, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, Virginia, West Virginia, and Wyoming. The mining operations will increase air, noise and water pollution. Other adverse effects of the action are: waste disposal, reclamation of surface-mined lands, soil erosion, contamination of streams and lakes, and fires in coal refuse banks. COMMENTS MADE BY: USDA ARC DOI, EPA TVA concerned states

(ELR ORDER # 31014) (NTIS ORDER # EIS 73 1014F)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Sheldon Meyers
Director, Office of Federal Activities
Room 3630 Waterside Mall
Washington D.C. 20460
(202) 755-0940

Supplement
Bethany Beach Sewage, Supplement 06/25
Delaware
County: Sussex
The document supplements a final environmental impact statement which was filed on January 2, 1973 (ELR Order No. 0002; NTIS Order # EIS 73 0002F). The document is intended to expand and clarify the final statement. (173 pages)

(ELR ORDER # 31056) (NTIS ORDER # EIS 73 1056F)

Draft *Date*
Upper Thompson Sanitation District 06/28
Colorado
The statement refers to a proposed project of the Upper Thompson Sanitation District, near Estes Park. Intercepter Sewers would be constructed in the major subdrainages of the Big Thompson River above Olympus Dam. Sewage would be transported to a proposed tertiary treatment plant to be located on lands administered by the Bureau of Reclamation. Effluent would be discharged to the Big Thompson River below Olympus Dam. There will be construction disruption. Population growth will significantly change the character of the area and cause localized pressures on use of Rocky Mountain National Park and Roosevelt National Forest.

(ELR ORDER # 31068) (NTIS ORDER # EIS 73 1068D)

Final *Date*

Treatment Facility, City of Santa Cruz 06/26
California
The statement refers to the proposed consolidation and expansion of existing waste water treatment facilites. The capacity of the treatment plant of the City of Santa Cruz will be expanded from 7 to 21 MGD; the existing plant at East Cliff will be abandoned; the flows from East Cliff and Capitola Sanitation Districts will be diverted to the enlarged plant. Discharge to Monterey Bay will be eliminated; discharge at Point Santa Cruz will increase. (290 pages) COMMENTS

MADE BY: DOC DOD DOI
(EL ORDER # 31057) (NTIS ORDER # EIS 73 1057F)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Rod Kreger
Acting Administrator
GSA–AD
Washington, D.C. 20405
(202) 343–6077

Final *Date*

Edward A. Garmatz Building 06/29
Maryland
County: Baltimore
The proposed project is the construction of a ten-story, 440,450 gross square feet Courthouse and Federal Office Building in the City of Baltimore. The facility will house approximately 700 employees and provide parking space for 68 vehicles. Dust, noise and equipment traffic will create adverse effects during construction. (The draft statement referred to the building as the Courthouse and Federal Office Building.) (54 pages)

COMMENTS MADE BY: EPA HUD AHP OEO
(ELR ORDER # 91090) (NTIS ORDER # EIS 73 1090F)

Richard H. Poff Federal Building, Roanoke 06/29
Virginia
County: Roanoke
The statement refers to the proposed construction of a 14-story, 307,806 gross square feet Federal Office Building and Courthouse in the City of Roanoke. The building will house postal service facilities, courtrooms, and other government offices; parking will be provided for 210 vehicles. Noise and dust pollution will occur during construction. (52 pages)

MOMMENTS MADE BY: AHP HUD EPA
(ELR ORDER # 91091) (NTIS ORDER # EIS 73 1091F)

DEPARTMENT OF THE INTERIOR

Contact: Mr. Bruce Blanchard
Director, Environmental Project Review
Room 7260
Department of the Interior
Washington, D.C. 20240
(202) 343–3891

BUREAU OF OUTDOOR RECREATION

Final *Date*

Spirit Mountain Recreation Area 06/25
Minnesota
County: St. Louis
The project is the proposed development of public outdoor recreational facilities in the City of Duluth. A 100-unit campground plus support facilities is proposed for funding with Land and Water Conservation Fund assistance. A ski facility, which will include nine ski runs, three lifts, a central recreation building, and support facilities and utility lines, is proposed with Economic Development Administration and Upper Great Lakes Regional Commission grants. The purpose of the project is to provide economic stimulation and recreation opportunities.
(101 pages)

COMMENTS MADE BY: DOC DOT DOI USDA COE
(ELR ORDER #31051) (NTIS ORDER #EIS 73 1051F)

Cuyahoga Valley 06/25
Ohio
County: Cuyahoga Summit
The statement refers to the proposed acquisition by the Ohio Department of Natural Resources, of 14,500 acres of land. This would be maintained as open space and will provide public outdoor recreation opportunities. Adverse effects of the action will be the loss of tax base, the relocation of 29 residences, the restriction of land uses, and an expected influx of visitors.
(206 pages)

COMMENTS MADE BY: EPA FPC HUD DOT USDA DOI
(ELR ORDER # 31050) (NTIS ORDER # EIS 73 1050F)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director
Office of Environmental Quality
400 7th Street, S.W.
Washington, D.C. 20590
(202) 466–4357

FEDERAL AVIATION ADMINISTRATION

Valdez Airport 06/28
Alaska
The proposed project is the construction of a new runway, parking apron, three connecting taxiways, lighting and fencing. An increase in noise pollution levels will occur.
(15 pages)

(ELR ORDER # 31074) (NTIS ORDER # EIS 73 1074D)

Goodnews Bay Airport 06/29
Alaska
Proposed is the construction of a new airport and access road, which will replace two existing airstrips at Goodnews Bay. Adverse impacts include the loss of vegetative cover and possible silt contamination of the Goodnews River.
(12 pages)

(ELR ORDER # 31088) (NTIS ORDER # EIS 73 1088D)

Gould Peterson Municipal Airport, Tarkio 06/28
Maryland
County: Atchison
The proposed project includes the acquisition of an unspecified amount of land; extending runway 17/25 to 75' x 1000' and ultimately constructing and extending Runway 12/30 to 75' x 3200'; installing VASI and constructing parallel taxiways for the runways. Adverse effects are increased air and noise pollution.
(22 pages)

(ELR ORDER # 31072) (NTIS ORDER # EIS 73 1072D)

Creighton Municipal Airport 06/28
Nebraska
County: Knox
Proposed is the acquisition of land for airport development, including construction of a primary runway (3100' x 500'), an apron (150' x 250'), taxiways, parking area and an access road; installation of segmented circle, wind cone, and perimeter and safety fencing; and preparation of an airport layout plan. Approximately 39 acres will be committed to the project. Temporary increases in air and water pollution will occur. (16 pages)

(ELR ORDER # 31071) (NTIS ORDER # EIS 73 1071D)

Houston International Airport 06/28
Texas
The proposed project is the construction, marking and lighting of a 4000' x 150' extension to existing Runway 14–32, including taxiways, a safety area, and clear zones, and the relocation of service roads. Increases in noise pollution will occur.
(34 pages)

(ELR ORDER # 31073) (NTIS ORDER # EIS 73 1073D)

Final *Date*

Marshfield Municipal Airport 06/25
Wisconsin
County: Wood
The proposed project involves constructing and marking a 1900' x 100' northwesterly extension to the NW/SE runway; rebuilding, overlaying and expanding the apron area; constructing a 30' wide taxiway; and installing medium intensity runway lights (MIRL). Approximately 27 acres of land (23 acres—fee; 4 acres—easement) will be acquired for airport development and clear zones.
(87 pages)

COMMENTS MADE BY: USDA EPA DOI
(ELR ORDER # 31052) (NTIS ORDER # EIS 73 1052F)

FEDERAL HIGHWAY ADMINISTRATION

Draft *Date*

I–75, Zilwaukee Bridge 06/28
Michigan
County: Saginaw
The statement refers to the proposed reconstruction of the Zilwaukee Bridge over the Saginaw River. Length of the project is 2.3 miles. Section 4(f) land from the Zilwaukee City Recreation Area and the Crow Island State Game Area may be encroached upon. Approximately 120 acres will be acquired for right of way. Adverse impacts include possible lowering of water quality in the Saginaw River, loss of tax base, and increased noise and air pollution levels. (147 pages)

(ELR ORDER # 31079) (NTIS ORDER # EIS 73 1079D)

Routes 752 and I–229, Missouri 06/26
Missouri
County: Buchanan
Proposed is the construction of a new roadway on new alignment between Route 371 and Interstate 229 in St. Joseph. Length of the project is 1.0 mile. Approximately 20 acres of undeveloped residential land will be acquired for right of way; one family will be displaced. Noise and air pollution levels will increase. (13 pages)

(ELR ORDER # 31058) (NTIS ORDER # EIS 73 1058D)

Route 141, Missouri 06/26
Missouri
County: Jefferson St. Louis
The statement refers to the proposed improvement of 6.9 miles of Route 141 from Fenton to Route I–55. The facility will be a four-lane divided highway constructed on new alignment within a 250' right-of-way. A total of 306.17 acres of right-of-way will be acquired; 145 families and 26 commercial establishments will be relocated. The natural channel of several creeks and an overflow ditch will be disturbed. (20 pages)

(ELR ORDER # 31059) (NTIS ORDER # EIS 73 1059D)

Whipple Avenue (State Route 297), Ohio
Ohio 06/28
County: Stark
The statement refers to the proposed improvement of 5.5 miles of Whipple Avenue (State Route 297). The improvement consists of reconstructing a four and five lane roadway to replace the existing two lane roadway, constructing a new underpass of the Penn Central Railroad and constructing a trunk storm sewer. Seven residences, seven mobile homes and two businesses will be displaced. (47 pages)

(ELR ORDER # 31077) (NTIS ORDER # EIS 73 1077D)

Monroe Boulevard Extension, Ogden 06/20
Utah
County: Weber
The proposed project is the initial 1.6 mile extension of Monroe Boulevard and a future 1.2 mile extension to the route. The facility will displace five homes. Increases in air, noise, and water pollution will occur; soil erosion and siltation to the Ogden River will affect fish life. (177 pages)

(ELR ORDER # 31030) (NTIS ORDER # EIS 73 1030D)

I-91, Vermont 06/28
Vermont
County: Caledonia
The proposed project is the completion of 24 miles of I-91. Right-of-way acquisition will include approximately 2608 acres of land, 98 residential units, 6 businesses and 2 farms. Approximately 1200 acres of woodland with water storage properties and wildlife will be lost. Other adverse effects stemming from the project are increased soil erosion causing siltation in surrounding streams and increased air and noise pollution levels. (150 pages)

(ELR ORDER # 31078) (NTIS ORDER # EIS 73 1078D)

Interstate Route 595, Virginia 06/28
Virginia
County: Arlington
Proposed is the upgrading of Primary Route 1 (Jefferson Davis Highway), to a six to eight-lane divided facility to meet Interstate standards. The project will begin at the Airport Connection and extend 0.772 mile north to 12th Street where it will tie in with I-95. Adverse effects of the action are increased ambient noise levels, displacement of 15 businesses, loss of two "green-space" areas, and temporary loss of parking in the project area. (108 pages)

(ELR ORDER # 31066) (NTIS ORDER # EIS 73 1066D)

Airport Spur, I-94 to General Mitchell Field
Wisconsin
County: Milwaukee
The statement refers to the proposed construction of a freeway connection directly linking General Mitchell Field with Interstate Route 94. The 1.5 mile facility will be constructed as a four-lane divided freeway and is designed to improve ingress and egress from Mitchell Field. Adverse impacts include the acquisition of land for right of way, the displacement of families and businesses, and increased noise and air pollution. (133 pages)

(ELR ORDER # 31054) (NTIS ORDER # EIS 73 1054D)
County: Houston

Final *Date*
Project F-170, (US 84) 06/28
Alabama
Project F-170(7) is the construction of U.S. 84 from a point one mile east of the Dothan Traffic Circle easterly to a connection with U.S. 84 near Gordon. Length of the project is 16.538 miles. Eighteen businesses and 69 families will be displaced by the project. Adverse impacts include minor water pollution, noise and dust during construction and increased traffic volumes.
(39 pages)

COMMENTS MADE BY: USDA DOI EPA DOT COE HUD
state agencies

(ELR ORDER # 31067) (NTIS ORDER # EIS 73 1067F)

Kentucky-18 06/28
Kentucky
County: Boone
The proposed project is the widening of existing KY-18 from a 2-lane to a 4-lane road. Project length is 1.35 miles. Displacements will include 29 families and 4 businesses.
(48 pages)

COMMENTS MADE BY: USDA DOI DOT EPA
(ELR ORDER # 31064) (NTIS ORDER # EIS 73 1064F)

I-895 06/27
New Jersey Pennsylvania
County: Bucks Burlington
Proposed construction of I-895, beginning at I-95 in Pennsylvania and ending with a connection to I-295 in New Jersey. The total project length is 6 miles, including a bridge over the Delaware River. Approximately 73 to 332 families and 20 to 21 businesses will be displaced for right-of-way. An unspecified amount of land will be acquired for right of way. The project will increase air and noise pollution levels.
(168 pages)

COMMENTS MADE BY: USDA USA USCG DOC DOI DOT EPA HEW
(ELR ORDER # 31060) (NTIS ORDER # EIS 73 1060F)

Argonne Road Interchange, Washington 06/25
Washington
County: Spokane
The proposed project is the improvement of the existing Argonne Road interchange located on Interstate 90, (SR 90), 3.5 miles east of Spokane. The action will involve major ramp revisions and a new 3-lane freeway crossing tying the the interchange into the one-way County Road Couplet. Adverse impacts are the taking of land (including one business) for right of way and increased noise and air pollution resulting from increased traffic volumes. (32 pages)

COMMENTS MADE BY: USDA COE EPA HUD
state agencies

(ELR ORDER # 31055) (NTIS ORDER # EIS 73 1055F)

I-79 06/28
West Virginia
County: Kanawha
The statement contains a location study for construction of a portion of I-79 beginning near Charleston and ending near the community of Big Chimmey. The number of families and businesses displaced will depend upon the alternate selected Adverse impacts include increases in air, noise and water pollution and temporary erosion and siltation during construction. (188 pages)

COMMENTS MADE BY: USDA EPA OEO DOI EPC
(ELR ORDER # 31070) (NTIS ORDER # EIS 73 1070F)

TIMOTHY ATKESON,
General Counsel.

[FR Doc.73-14117 Filed 7-11-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

BOISE CASCADE CORPORATION

Notice of Application for Exemption To Use a Pesticide Containing DDT

Notice is hereby given of the receipt of application from the Law Firm of Davies, Biggs, Strayer, Stoel, and Boley, Portland, Oregon, representing the Boise Cascade Corporation for exemption from the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act of 1947, as amended by the Federal Environmental Pesticide Control Act (P.L. 92-516), to allow the use of a pesticide containing DDT on Douglas-fir and associated firs to control the Douglas-fir tussock moth on 56,000 acres of Boise, Cascade Corporation land in north eastern Oregon for a period of not more than 30 days.

Notice is given in order that any Federal agency or other interested party may comment in writing with respect to this request, and solely as a matter of information. It should not be construed as indicating a decision by this Agency on the application. Please address comment to the Director, Registration Division, Office of Pesticides Programs, EPA, Washington, D.C. 20460, and refer to DDT-Tussock Moth.

DAVID D. DOMINICK,
Assistant Administrator for Categorical Programs.

[FR Doc.73-14263 Filed 7-11-73;8:45 am]

MEASURES FOR RESTORATION AND ENHANCEMENT OF QUALITY OF FRESHWATER LAKES

Notice of Availability of Report

The Environmental Protection Agency report "Measures for the Restoration and Enhancement of Quality of Freshwater Lakes", has been completed in accordance with section 304(i), PL 92-500. A limited number of copies will be available from the Office of Public Inquiries, Environmental Protection Agency, Washington, D.C. 20460. Copies will be available in approximately six weeks from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

ROBERT L. SANSOM,
Assistant Administrator for Air and Water Programs.

JULY 6, 1973.

[FR Doc.73-14262 Filed 7-11-73;8:45 am]

NATIONAL COTTON COUNCIL

Notice of Request for Use of DDT on Cotton

Notice is hereby given that the National cotton Council, together with other grower groups, has requested this Agency to permit the use of DDT-containing products on cotton during the 1973 growing season, in view of the emergency conditions resulting from adverse weather conditions this winter and spring.

Notice is given in order that any Federal agency or other interested party may comment in writing with respect to this request, and solely as a matter of information. It should not be construed as indicating a decision by this Agency on the application. Please address comment to the Director, Registration Division, Office of Pesticides Program, EPA, Washington, D.C. 20460, and refer to DDT-Cotton.

Dated: July 3, 1973.

DAVID D. DOMINICK,
Assistant Administrator for Categorical Programs.

[FR Doc.73-14264 Filed 7-11-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 11227, etc.; FCC 73R-247]

CITY OF NEW YORK MUNICIPAL BROADCASTING SYSTEM (WNYC) AND MIDWEST RADIO-TELEVISION, INC. (WCCO)

Memorandum Opinion and Order Enlarging Issues

In regard applications of City of New York Municipal Broadcasting System (WNYC) New York, New York, Docket No. 11227, File No. BSSA-266, for special service authorization to operate additional hours from 6 A.M. (EST) to sunrise, New York, New York, and from sunset, Minneapolis, Minnesota; City of New York Municipal Broadcasting System (WNYC), New York, New York, Docket No. 17588, File No. BP-16148; Midwest Radio-Television, Inc. (WCCO), Minneapolis, Minnesota, Docket No. 19403, File No. BP-19151, for construction permits.

1. Before the Review Board is a petition to enlarge issues,[1] filed January 24, 1973, by Midwest Radio-Television, Inc. (WCCO), requesting the addition of the following issues against the City of New York Municipal Broadcasting System (WNYC):

(a) To determine whether the transmitter site proposed by the City of New York Municipal Broadcasting System is actually available to it.

(b) To determine whether the City of New York Municipal Broadcasting System has failed to keep its application current as required by § 1.65 of the Commission's rules.

(c) To determine whether the City of New York Municipal Broadcasting System has misrepresented its proposal for the location of its antenna site to the Commission, to the public, or to any other official, government agency, body or representative.[2]

2. In March, 1964, WNYC filed an application to move from its present antenna site to a 50-acre portion of the Seaview Hospital Grounds on Staten Island in order to increase power and to accommodate a six-tower directional array. WCCO contends that during a November 14, 1972, hearing session, public witnesses made certain disclosures which indicate that the antenna site proposed by WNYC is not available for that use and that WNYC has failed to keep the Commission fully and accurately apprised of the status of its proposed site.[3] In support of its request for a site availability issue, WCCO first alleges that on April 24, 1970, New York City (City) leased a part of the proposed antenna site at Seaview to the Jewish Community Center (Center) for a campsite and other recreational purposes for a 75-year term. According to petitioner, the lease contains a covenant for quiet enjoyment which would prohibit the necessary encroachment of the proposed ground system on the Center's property.[4] Second, WCCO notes that in June, 1970, the City leased its hospitals and facilities to the New York City Health and Hospital Corporation, including the remainder of WNYC's proposed site, for an indefinite term. Petitioner asserts that according to its enabling statutes,[5] the directors of the Hospital Corporation must approve every disposition of the corporation's real estate, and that no such approval has yet been given with respect to WNYC's proposed antenna site.[6] Finally, noting that the New York City Site Selection Board is responsible for selecting sites for all capital projects of the City, petitioner alleges that in the almost nine years since its application was filed, WNYC has not obtained Site Selection Board approval of the Seaview property for its proposed antenna site.[7] In view of these actions by the City, which WCCO alleges are inconsistent with WNYC's proposal, petitioner asserts that it is incumbent upon WNYC to offer something more than mere assurances from the applicant that the site will be available. Petitioner cites WATR, Inc., 28 FCC 2d 501, 21 RR 2d 675 (1971) in support of its request. As a related matter, WCCO argues that since WNYC has failed to report these developments which, it contends, consttiute "a substantial change as to * * * [a] * * * matter which may be of decisional significance * * *", a § 1.65 issue is warranted. Finally, in support of its contention that WNYC has not been prosecuting its antenna site proposal in good faith, WCCO argues that the City's conveyance of its antenna site to non-City organizations without any reservation of use for WNYC is not consistent with a continuing intent to use the property for WNYC's site. Moreover, petitioner claims that certain City officials have been representing to City governing bodies and to the public that the City was not committed to the use of the Seaview site and might actually use another.[8] These representations, petitioner contends, give rise to a serious question whether the licensee "has misrepresented its proposal for the location of its antenna site to the Commission or to any other official governmental agency, body or representative" and an appropriate issue is therefore warranted.[9]

3. The Broadcast Bureau first contends that WCCO's petition is grossly untimely, that good cause for the late filing has not been shown, and consequently, that WCCO has not met the test enunciated in The Edgefield-Saluda Radio Co., supra. With respect to the merits of the request for a site availability issue, the Bureau is of the opinion that approval by the site Selection Board and/or the Board of Estimate is roughly analogous to seeking approval from the local zoning authority and, absent some specific information that either Board has denied WNYC authority to use the property, the request for a site availability issue should be denied, citing Edward G. Atsinger, III, 29 FCC 2d 443, 21 RR 2d 1039 (1971). Moreover, giving due consideration to the local opposition to the use of the site, the Bureau contends that

[1] First published at 37 FR 28211, December 21, 1972.

[2] Also before the Board for consideration are: (a) Broadcast Bureau's comments, filed February 2, 1973; (b) opposition, filed February 6, 1973, by WNYC; and (c) reply, filed February 16, 1973, by WCCO.

[3] The Board is constrained to point out that WCCO's petition is predicated, in large part, on facts which have been available for a considerable length of time. However, in view of the serious nature of the allegations raised by the petitioner, the requests for additional issues will, nevertheless, be examined on their merits. See The Edgefield-Saluda Radio Co. (WJES), 5 FCC 2d 148, 8 RR 2d 611 (1966).

[4] Although it would have been preferable for petitioner to have submitted copies of the leases in question, the Board will consider the sections relied upon by petitioner since they are quoted and are not disputed.

[5] Petitioner refers to, but does not quote Hospital Corporation Law, § 7385.6, 7387.4.

[6] The Board of Estimate must also consent to the transfer of the proposed antenna site from the Hospital Corporation to WNYC.

[7] In this regard, petitioner relies upon hearsay information alleging that the Chairman of the Site Selection Board stated at the Site Selection Board hearing in October, 1972, that the Board had not approved the Seaview site for the WNYC antenna system. This information represents unacceptable hearsay which does not conform to the requirements of § 1.229(c) of the rules.

[8] In support of this contention, petitioner submits the testimony of Mrs. Bokert (who is connected with the PTA of Wagner High School located adjacent to the proposed site), in which she states that Deputy Mayor Morrison explained in a letter addressed to her that the WNYC proposal "was not really predicated upon this particular site"; a statement of Norman Redlich, Corporation Counsel and Counsel to WNYC, to the City's Board of Estimate on April 20, 1972, which includes the following, "Now as to the specific location of the tower in the event we win our proceeding before the FCC, I think as I said, while it is in the Borough of Richmond, the question of specific location is one that will have to await future determination"; and the statement of Mr. Garelik, President of the City Council, which provides in pertinent part, "I was assured by the Administration at that time that this in no way committed the City to any one specific site and that it was a formality needed to prevent the FCC from foreclosing consideration of the application."

[9] In support, WCCO cites Eastern Broadcasting System, Inc., FCC 62-133, 22 RR 961, 962 (1962); cf. Fine Music, Inc., 8 FCC 2d 123, 9 RR 2d 1273 (1967).

the mere fact that difficulty might be encountered in obtaining either Site Selection Board or Board of Estimate approval is not a sufficient basis for enlarging the issues.[10] Similarly, the Bureau believes that there is little basis for questioning whether WNYC has kept the Commission fully informed of significant and material changes in conditions and circumstances relating to the proposed antenna site because WNYC has been and is still actively prosecuting its application for the Seaview site. Finally, the Bureau argues that the allegations relating to statements allegedly made by City officials lack the supporting documentation required by § 1.229(c) and, therefore, cannot support the requested enlargement.[11]

4. In its opposition, WNYC first contends that WCCO's petition to enlarge is untimely and without merit. In support of its claim that there is reasonable assurance that the Seaview site is available to it, applicant submits an affidavit of Ira Duchan, Commissioner of Real Estate of the City of New York and Deputy Administrator of the Municipal Service Administration, which attests to the fact that the leases entered into with the Jewish Center and the Hospital Corporation are not irreversible. WNYC also submits an affidavit of Norman Redlich, Corporation Counsel of the City of New York, in which he states that the City has the power to regain those portions of the proposed site leased to the Center and the Hospital Corporation through purchase, condemnation or otherwise whenever required for a public or municipal use or purpose. Additionally, applicant contends that none of the events relied upon by WCCO in its petition are of decisional significance because they would not preclude construction of the proposed WNYC facility at that site.[12] Finally, in response to the request for a misrepresentation issue, WNYC asserts that, contrary to WCCO's assertion, the testimony of public witnesses clearly shows the intention of the City to construct on the Seaview site. In this regard, applicant charges that Deputy Mayor Morrison never made the statement attributed to him by Mrs. Bokert, but rather said just the opposite of what Mrs. Bokert claims he said.[13] Furthermore, applicant argues that WCCO's reliance upon the representation by Norman Redlich before the Board of Estimate on April 20, 1972, is likewise without merit to show lack of good faith; as explained by Redlich in an attached affidavit, although he was generally familiar with the facts of the WNYC application at the time he made the statement, he was not apprised of the particular day-to-day developments, and his statement to the Board was simply a reference to the fact that the WNYC transmitter site would have to be approved by the Site Selection Board. Finally, WNYC submits the affidavit of Sheldon Hoffman, Director of the City of New York Municipal Broadcasting System, who attests to WNYC's firm intention to construct the facility at the Seaview site, if the construction permit is granted. In view of the foregoing, the applicant concludes that no misrepresentation by City officials has been or can be shown by WCCO.

5. In reply, WCCO alleges that in view of the leases executed by the City and the Jewish Center and Hospital Corporation, the Center and Hospital—and not the City—have the right to the immediate and future use of the WNYC site. Even assuming the leases may be reversible, petitioner contends that there is no showing that they will be reversed; thus, there is no showing that the City has taken the internal steps necessary which would indicate that it would exercise its alleged power to acquire interests in property by purchase, condemnation or otherwise under these circumstances.[14]

In this connection, petitioner alleges that there is a substantial question as to whether the City can condemn the lease to the Jewish Center in view of the express covenant for quiet enjoyment contained in the lease; and in addition, that the only mention in the lease of "condemnation" is in reference to a "body having a power of eminent domain superior to that of the landlord [the City]". Moreover, WCCO notes, the City agreed to subordinate its fee to any leasehold mortgage by the Center. Finally, petitioner notes the heavy financial burdens and protracted length of time which would necessarily be involved in acquiring property by condemnation. Given the above, petitioner contends with respect to the § 1.65 issue, that WNYC failed to report matters of "decisional significance" concerning the availability of its site. Finally, with regard to the misrepresentation issue, petitioner asserts that Mr. Redlich's statements before the Board of Estimate had a plain factual meaning beyond legal advice that the Seaview site required Site Selection Board approval; the plain meaning was that though the site would be on Staten Island, the specific location was not yet fixed and would "await future determination."[15]

6. It is well established that the Commission will not attempt to prejudge actions pertaining to land planning which are within the jurisdiction of local authorities, absent a showing indicating that the applicant will be unable to obtain approval of proposed site plans from local authorities.[16] Accordingly, but for the leases executed between the City and the Hospital Corporation and the Jewish Community Center, the Board would refrain from adding an issue inquiring into whether WNYC could obtain appropriate City approval for its proposed site. In the Board's view, however, WCCO has raised a substantial question as to whether the City has entered into leasehold agreements which may be impediments to utilization of the proposed site by WNYC.[17] Thus, there is no indication that there is a provision in the Hospital Corporation lease which provides for repossession of the proposed site,[18] or a letter from the Hospital Corporation indicating an intention to discuss the retransfer of the property leased to that organization,[19] or some other indication that the Hospital Corporation would have no objection to restoring possession of the property to the City. Nor is it clear from the pleadings that the City can condemn a portion of the property leased to the Jewish Community Center, especially in view of the provisions of the lease cited by WCCO. Moreover, even assuming there was no question concerning the City's right to condemn property leased to the Center (or to the Hospital Corporation), condemnation necessarily presents problems of time and expense that could very well be pertinent to the availability of the site. Therefore, under the circumstances as presented, we believe that there is sufficient doubt as to whether reasonable assurance exists as to the availability of WNYC's proposed site to warrant enlargement of the issues as requested by the petitioner. In view of this conclusion, WNYC's failure to report the City's alienation of its proposed site warrants addition of a § 1.65 issue. Finally, the Board believes that petitioner's allegations are inadequate

[10] Citing John Hutton Corp., 27 FCC 2d 214, 20 RR 2d 1159 (1971); Lester H. Allen, 20 FCC 2d 478, 17 RR 2d 914 (1969); and HGR Broadcasting Co., 3 FCC 2d 658, 6 RR 2d 1698 (1966).

[11] In this connection ,the Bureau submits the letter sent to Mrs. Bokert from Deputy Mayor Morrison which directly controverts Mrs. Bokert's statement.

[12] In this connection, WNYC argues that considering the long pendency of this proceeding, interim utilization of this land for public purposes can hardly be deemed unreasonable.

[13] In support thereof, WNYC also attaches a copy of the letter that Deputy Mayor Morrison sent Mrs. Bokert and which formed the basis for Mrs. Bokert's testimony.

[14] WCCO argues that the functions of the Site Selection Board and Board of Estimates may not be characterized as local intragovernmental actions, roughly analogous to local zoning authorities; rather than being quasi-judicial bodies, the two city agencies are legislative and political in character, petitioner asserts.

[15] Petitioner concedes that Mrs. Bokert's testimony was in error in ascribing the Deputy Mayor's reassurance that Seaview would not be used in a letter she received from him; however, WCCO attaches to its reply an affidavit by Mrs. Bokert allegedly showing that her understanding was based on a conference with the Deputy Mayor.

[16] See Massillon Broadcasting Co., FCC 61-1102, 22 RR 95 (1961); Eastside Broadcasting Co., FCC 63R-528, 1 RR 2d 763 (1963); El Camino Broadcasting Corp., 14 FCC 2d 361, 13 RR 2d 1260 (1968).

[17] Cf. Marvin C. Hanz, 21 FCC 2d 420, 18 RR 2d 310 (1970); Michael S. Rice, 8 FCC 2d 15, 9 RR 2d 1254 (1967); and Azalea Corp., 38 FCC 2d 95, 25 RR 2d 975 (1972).

[18] See Seaborn Rudolph Hubbard, 19 FCC 2d 630, 17 RR 2d 177 (1969).

[19] See Marvin C. Hanz, supra.

to support addition of the requested misrepresentation issue. Aside from the fact that WCCO's allegations in this regard do not comport with the provisions of § 1.229(c) requiring affidavits of a person or persons having personal knowledge of the facts alleged,[20] there is no basis for assuming that the statements made by City officials to which WCCO refers are more than the expression of individual opinion. See Edward G. Atsinger, III, supra. Finally, we have no reason to doubt the sworn affidavit of Mr. Redlich explaining what he meant in his statement to the Board of Estimate concerning the proposed site. Therefore, we are unable to conclude that a serious question has been raised warranting a misrepresentation issue against WNYC.

7. *Accordingly, it is ordered*, That the petition to enlarge issues filed January 24, 1973, is granted to the extent indicated below, and is denied in all other respects; and

8. *It is further ordered*, That the issues in this proceeding are enlarged by the addition of the following issues:

(a) To determine whether the City of New York Municipal Broadcasting System has reasonable assurance of the availability of its proposed transmitter site.

(b) To determine whether the City of New York Municipal Broadcasting System has kept the Commission fully informed of significant and material changes in conditions and circumstances relating to its proposed antenna site and, if not, the effect thereof on the basic or comparative qualifications of the applicant to be a Commission licensee.

9. *It is further ordered*, That the burden of proceeding with the introduction of the evidence and the burden of proof under issue (a) added herein shall be on the City of New York Municipal Broadcasting System; and that the burden of proceeding with the introduction of evidence under issue (b) added herein shall be upon Midwest Radio-Television, Inc., and the burden of proof under issue (b) shall be upon the City of New York Municipal Broadcasting System.

Adopted: July 2, 1973.

Released: July 9, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[21]
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-14221 Filed 7-11-73;8:45 am]

[Docket No. 19568, 19569; FCC73R-248]

LEXINGTON COUNTY BROADCASTERS, INC. AND WILLIAM D. HUNT

Memorandum Opinion and Order Enlarging Issues

In regard to applications of Lexington County Broadcasters, Inc. Cayce, South Carolina Docket No. 19568, File No. BPH-7605, and William D. Hunt, Cayce, South Carolina Docket No. 19569, File No. BPH-7658, for construction permits.

1. This proceeding involves the mutually exclusive applications of Lexington County Broadcasters, Inc. (Lexington County) and William D. Hunt (Hunt) for authorization to construct a new FM broadcast station in Cayce, South Carolina (38 FR 8554). It was designated for a comparative hearing by Order, released August 15, 1972.[1] Now before the Review Board is a petition to enlarge issues, filed by Hunt on December 11, 1972, requesting the addition of issues to determine whether Lexington County, as licensee of standard broadcast Station WCAY, Cayce, South Carolina, has misrepresented its commercialization and news practices in its renewal applications for Station WCAY, and whether it has complied with the fairness doctrine and personal attack rule in connection with the operation of that station.[2]

TIMELINESS

2. Hunt concedes that his petition is filed late, but contends that good cause exists to warrant its acceptance. In support, petitioner maintains that a "substantial portion" of the materials supporting his petition consist of Station WCAY's program logs which were not obtained by petitioner until November 24, 1972, "after no small resistance from Lexington."[3] The Broadcast Bureau contends that the petition should be accepted and considered on its merits for the reasons set forth by petitioner and also because of the public interest considerations underlying the allegations in the petition. Lexington County opposes the petition, arguing that good cause does not exist for its acceptance because the petition is predicated upon information that was available to petitioner before the period specified by § 1.229(b) of the Rules expired. In reply, Hunt acknowledges that some of the information contained in his petition was available prior to the expiration of the time for filing the instant request, but contends that the program logs provide evidence necessary to support his petition. The Board believes that the data contained in the program log is essential to petitioner's request.[4] Though untimely, the request was filed within a reasonable time after petitioner obtained WCAY's program logs. In these circumstances, good cause exists for consideration of the petition on the merits. Cf. United Television Co., Inc. (WFAN-TV), 33 FCC 2d 424, 23 RR 2d 644 (1972); Folkways Broadcasting Co., Inc., 27 FCC 2d 619, 21 RR 2d 163 (1971).

MISREPRESENTATION OF COMMERCIALIZATION AND NEWS PRACTICES

3. In support of petitioner's request for the addition of an issue to determine whether Lexington County made misrepresentations to the Commission regarding its commercialization practices, Hunt asserts that copies of WCAY program logs[5] and tape transcriptions of WCAY programming in 1972[6] reveal discrepancies between the station's promises regarding its commercial practices and its performance. Petitioner notes that Lexington County proposed in WCAY's 1969 license renewal application to restrict its commercial broadcasting for the 1969-72 period to a maximum of 30 percent of its broadcast time between 6:00 a.m. and 6:00 p.m., and 25 percent during all broadcast hours. Petitioner maintains that Lexington County stated in this application that it would not exceed its proposed maximum level of commercialization of 22 minutes an hour and that excesses would not occur during any more than 5 percent of the hours in any week. Petitioner contends that, in spite of this representation, WCAY engaged in excessive commercialization on six of the 12 days for which it had program logs during this renewal period. Specifically, Hunt contends that WCAY broadcast more than 18 commercial minutes per hour during 21 one-hour broadcast periods between 6:00 a.m. and 6:00 p.m., which represents 13.2 percent of the hourly segments in the logs for this period. Hunt contends, moreover, that WCAY broadcast more than 20 minutes of commercials during eight of these 21 one-hour segments, and more than 22 minutes during one of these segments. In addition, petitioner asserts, tape recordings of WCAY's programming during specified dates in 1972 disclose that WCAY broadcast in excess of 18 minutes of commercials during five one-hour segments, four of these containing in excess of 22 commercial minutes. Regarding WCAY's 1966-69 renewal period, petitioner notes that Lexington County proposed in WCAY's 1966 renewal application to broadcast commercial matter during only 31.7 percent of all broadcast hours and that the applicant had stated

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[20] See Wilkes County Radio, 10 FCC 2d 175, 11 RR 2d 341 (1967); Eastern Broadcasting Corp., 29 FCC 2d 472, 21 RR 2d 1147 (1971).

[21] Board Member Nelson not participating.

[1] The Order issued by the Chief of the Broadcast Bureau, acting under delegated authority of the Commission, was published in the Federal Register on August 19, 1972, 37 FR 16820.

[2] Also before the Review Board are: (a) The Broadcast Bureau's comments, filed January 9, 1973; (b) reply to (a) by Hunt, filed January 19, 1973; (c) opposition by Lexington County, filed February 1, 1973; and (d) reply to (c) by Hunt, filed February 13, 1973.

[3] Initially, petitioner requested these logs in a motion for the production of documents, filed September 1, 1972. Their production was ordered by the Administrative Law Judge in an oral Order issued October 25, 1972. A petition by Lexington County for leave to appeal or modify that Order was denied by Memorandum Opinion and Order, FCC 72M-1401, released November 10, 1972.

[4] See paras. 3 and 8, *infra*.

[5] The WCAY program logs upon which Hunt bases the arguments in his petition are the composite week logs from 1967 to 1971, consisting of fourteen days of program logs in 1967-1969, and twelve days of program logs in 1970 and 1971. However, petitioner only submitted two days of program logs with his enlargement request.

[6] The recorded portions of WCAY programming, transcripts of which were attached to the petition along with a supporting affidavit, were recorded on June 30 and July 6, 7 and 22, 1972.

that the maximum amount of commercial matter WCAY would broadcast in any one-hour segment would be 19 minutes. However, Hunt contends, the program logs in his possession reveal that during this period WCAY broadcast more than 19 commercial minutes during 31 one-hour segments. In addition, petitioner contends, nine of these hourly segments contained more than 22 minutes of commercial broadcasts. In support of his request regarding the purported misrepresentation by Lexington County of WCAY's news broadcasting, petitioner notes that Lexington County proposed during WCAY's 1969–72 renewal period to devote 15 percent of WCAY's news to matters local in content, and that it proposed to devote during WCAY's 1966–69 renewal period one-half of the total news coverage to local and regional news. Petitioner maintains that, in spite of these representations, there is no indication from the program logs in Hunt's possession that any local or regional news was broadcast by WCAY during this period.

4. The Broadcast Bureau supports addition of the requested issues conditioned upon Hunt's submission of all the logs in his possession together with an affidavit of a person who has examined them. As additional support for enlargement, the Bureau notes that, in a letter dated November 8, 1972, the Commission requested a full explanation from Lexington County of discrepancies between Station WCAY's proposed commercial policy and the station's practices which were revealed in its 1972 renewal application. In reply, Hunt submits a copy of all WCAY program logs in his possession as well as a supporting affidavit. The affidavit modifies slightly the original allegations, stating that the WCAY program log of September 12, 1967, indicates that 8½ minutes of local news was broadcast that day.

5. In opposition, Lexington County contends that the affidavits which were furnished by petitioner do not satisfy the requirements of § 1.229(c) because they only verify the accuracy of the transcription of WCAY program recordings and not the tapes themselves. With specific regard to alleged overcommercialization, Lexington County contends that spot checks of one of the daily program logs relied upon by petitioner (December 13, 1968) reveal five errors in petitioner's calculations of commercial time broadcast by WCAY. Furthermore, Lexington County contends that there were only occasional departures from its "self-imposed" hourly commercial limits; that it stayed well within the bounds of its overall commercial limits;[7] that it has disclosed to the Commission all variances between its commercial broadcast proposals and its actual performance during the composite week; that its commercial policy was adopted in good faith and modified only when necessary to serve the public interest by providing local merchants an opportunity to promote sales when most advertising time had been purchased in advance; and that it has taken affirmative steps to eliminate any further departures from its hourly commercial limits.[8] Lexington County also denies that any misrepresentations were made in WCAY's 1966 and 1969 renewal applications in connection with the amount of local and regional news it intended to broadcast. Lexington County maintains that the 15 percent figure in WCAY's 1969 renewal application represents an estimate of the amount of local news broadcast during the 1966–69 period, not an estimate of local and regional news to be carried during the next renewal period. Furthermore, Lexington County contends that petitioner fails to take into account WCAY's broadcast of weather reports which may, it maintains, be classified as news. The general absence of separate logging notations, it asserts, results, not from the fact that the station did not cover such matter, but from the fact that past coverage of local and regional news was often interspersed in regularly scheduled programs.[9] Lexington County concludes that no misrepresentation issue is warranted.

6. In reply, Hunt asserts that there is no basis for the objective by Lexington County that petitioner has not furnished an affidavit verifying the accuracy of the tapes when it is apparent from the tapes themselves that they are recordings of WCAY programming, and when the transcripts of the tapes have been verified. Furthermore, petitioner contends, calculations by Lexington County of its commercial broadcasts on December 13, 1968, were erroneous because they failed to account for the commercials broadcast during the network news programs which WCAY aired.[10] Petitioner disputes Lexington County's argument that WCAY stayed well within the bounds of its overall commercial limits since Lexington County's promises in its renewal applications were framed in terms of the amount of advertising to be broadcast in each one-hour segment. Petitioner also argues that Lexington County does not adequately explain in its opposition the absence of notations in its program logs indicating the broadcast of local and regional news and notes that Lexington County's assertions concerning its practice of interspersing local and regional news in other programs was made without specifying the frequency of such broadcasts. Finally, petitioner contends, Lexington County fails to provide supporting affidavits from persons who provide the station with the "Hot-Line" phone tips.

7. In the opinion of the Review Board, although Hunt has adequately verified the materials underlying the allegations in the petition, he has not raised a substantial question of misrepresentation by Lexington County of WCAY's commercialization and news broadcast practices. With respect to commercialization, the Board finds no support for Hunt's allegations that statements made in WCAY's renewal applications concerning such practices were intended to mislead the Commission. Lexington County disclaims such intent and the affidavit of its president explains the variations between the proposed and actual amounts of commercial time in terms of errors in judgment, as well as the need to modify its proposals in order to serve its community. This explanation is not inherently improbable and any intent to misrepresent is further belied by the fact that WCAY operated well within its overall commercial limits. In these circumstances, we will not add a misrepresentation of commercialization practices issue. See Southern Broadcasting Co. (WGHP–TV), 31 FCC 2d 661, 22 RR 2d 929 (1971). Cf. Chicago Federation of Labor, and Industrial Union Council, 38 FCC 2d 417, 25 RR 2d 1147 (1972). Likewise, Hunt has not adequately substantiated his claim that the news estimates contained in WCAY's renewal applications represented wilfull misstatements of the licensee's intentions. However, the apparent variances between the amounts of local and regional news and the amounts of commercial matter promised in the applications, and that actually programmed, are significant and raise a serious question as to the reliability of Lexington County's present proposal. While a licensee's prerogative to exercise flexibility and discretion in its programming is well established, a licensee retains the duty to substantially carry out the programming policies embodied in its renewal proposal or, in the alternative, justify substantial variations to the Commission. KORK, Inc., 31 FCC 85, 21 RR 781 (1961). Such justification is not present here. Although Lexington County asserts that WCAY has remained faithful to its news programming proposals contained in these renewal applications, it has not specifically shown that WCAY's

[7] In this regard, Lexington County contends that it proposed in the WCAY renewal applications to limit broadcast of commercials during WCAY's 1966 renewal period to no more than 31.7 percent of the station's total programming each week, and to no more than 30 percent of the weekly programming during the 1969 renewal period. Lexington County maintains that composite week figures for 1969 and 1972 indicate that for the earlier period only 16.5 percent of WCAY's total programming contained commercial matter, and that this rate rose to only 20.9 percent during the latter period.

[8] In an affidavit attached to the opposition, J. Olin Tice, Jr., president of Lexington County, states that Lexington County proposed a more flexible commercialization proposal in WCAY's 1972 renewal application in order to avoid miscalculations in the future.

[9] Lexington County contends that WCAY periodically broadcasts telephone reports from the Cayce police and fire departments and "Hot-Line" phone tips from listeners. Lexington County also submits that two regular broadcast programs, Bulletin Board and Lexington Show, often cover material "readily classifiable" as news.

[10] Petitioner attaches to his pleading Exhibit 6 of WCAY's 1969 renewal application consisting of the Mutual Network logs for the 1968 composite week, and contends that these logs reveal that 1½ to 2 minutes of commercials were broadcast during each network news broadcast.

programming logs support its position or that WCAY has carried the percentages of local and regional news it proposed. Moreover, whether the statement made by Lexington County in its 1969 renewal application concerning news broadcasts was intended as a proposal for programming during the renewal period or as a comment concerning WCAY's performance during 1966–1969 is unclear and must be explored at the hearing as well. Finally, Lexington County concedes that it broadcast more commercial matter than it had proposed, and in some instances the amount of commercial matter broadcast substantially exceeded the specific amount proposed. While neither the alleged discrepancy in local news nor commercial matter, standing alone, would be sufficient to raise a substantial question as to Lexington County's qualifications, the Board is of the view that, considered together, they do raise such a question thereby warranting an evidentiary inquiry. Therefore, the Board will add an issue to determine whether the Commission can rely upon Lexington County to operate the FM station as proposed. See Southern Broadcasting Co. (WGHP–TV), 26 FCC 2d 998, 20 RR 2d 689 (1970); Regal Broadcasting Corp. (WHRL–FM), 14 FCC 2d 845, 14 RR 2d 407 (1968).

FAIRNESS DOCTRINE AND PERSONAL ATTACK RULE VIOLATIONS

8. In support of his request for the addition of an issue to determine whether Lexington County has complied with the fairness doctrine and personal attack rule in connection with the operation of Station WCAY, petitioner cites portions of four WCAY broadcasts recorded during June and July, 1972, which dealt with capital punishment, the food stamp program, proposals for the value-added tax, and the flying of the Confederate flag.[11] Petitioner contends that only one side of each of these "plainly controversial" topics was ever presented, and notes that none of the WCAY program logs in his possession contain any indication that discussion programs or editorials were ever broadcast by WCAY which may have presented opposing viewpoints. Petitioner concludes that "[w]hile it is not within Hunt's power to establish conclusively that WCAY never broadcast any viewpoints opposing those of Mr. Dekel's on controversial issues, nonetheless, the logs and tapes in his possession serve as an adequate threshhold demonstration that Lexington has violated its Fairness obligation." The alleged personal attack violation arose, petitioner contends, out of WCAY's failure to comply with § 73.123(a) of the Commission's rules[12] following a comment made by Mr. Dekel during the broadcast of the program concerning the flying of the Confederate flag in which he referred to the American Civil Liberties Union (ACLU), as a "known Communist outfit" having "Communist ties" going back many years. In support, petitioner furnishes a copy of an affidavit signed by the president and the executive secretary of the ACLU of South Carolina stating that that organization has not received a transcript of the statements allegedly made during the broadcast or an offer to respond to those statements.

9. The Bureau contends that petitioner has not adequately established that Lexington County violated the fairness doctrine, even if it is assumed that the four broadcasts cited dealt with controversial issues of public importance. The Bureau notes that the logs relied upon by petitioner to show that WCAY had only presented one side of controversial issues of public importance predate the broadcasts referred to in the petition by more than a year; and, even if petitioner had program logs for the periods subsequent to the broadcasts, nothing in these logs would indicate whether WCAY ever presented views contrasting Mr. Dekel's. The Bureau contends that the fairness doctrine only requires that the licensee offer a reasonable opportunity for presentation of contrasting views and that there is evidence from the transcripts of WCAY recordings of at least one such offer being made. Regarding the alleged broadcast of the personal attack, the Bureau argues that, even if WCAY did not comply with the personal attack rule, the addition of an issue would be unwarranted because petitioner fails to show that the attack was more than an isolated incident. Lexington County agrees with the Bureau and adds that it has never received complaints that WCAY's programming on any issue was one-sided and unfair. Furthermore, Lexington County contends, it is its policy to make time available to responsible spokesmen to express views on the air opposing those of Station WCAY and that such offers have been made on the "Friendly Ben Show". Lexington County also states that the WCAY management was totally unaware of the purported personal attack at the time it allegedly occurred and that the WCAY staff "has been warned that any violation of § 73.123 is cause for dismissal."

10. In reply to the Bureau, Petitioner maintains that adoption of the Bureau's position would excuse Lexington County's "shadow compliance" with the fairness doctrine and would significantly dilute that doctrine. Hunt maintains that, by using the only means available at his disposal (WCAY program logs) to document his allegations, he has made a sufficient showing to warrant the addition of the requested issue, and that it would be unfair to require petitioner to prove with certainty that WCAY never presented contrasting views. Petitioner also contends that the alleged personal attack broadcast by WCAY should not be considered as an isolated incident because the personal attack rule is a part of the fairness doctrine, which petitioner maintains Lexington County has also violated. In response to Lexington County, Hunt submits copies of three complaints which the Commission has received concerning Station WCAY and contends that these complaints demonstrate that WCAY makes no provision for the broadcast of opposing views.[14] Petitioner also maintains that it "defies common sense" to think that the only instance of a personal attack broadcast on WCAY occurred during the short time when Hunt monitored the station's programming, and that it may be presumed that other such attacks have occurred frequently. Finally, petitioner argues that Ben Dekel's invitations for contrasting viewpoints "effectively intimidates the public and chills any desire to oppose Mr. Dekel on his own program * * *."

11. The Review Board will not add an issue to determine whether Lexington County has complied with the fairness doctrine and personal attack rule in connection with WCAY's operation. First, petitioner's showing that WCAY has presented only one side of controversial issues of public importance is inadequate. Although broadcasters are required to provide a reasonable opportunity for each side of such issues to be presented, the Commission requires the complainant, inter alia, to set forth reasonable grounds for concluding that the licensee in his overall programming has not attempted to present opposing views on the issues presented. Applicability of the Fairness Doctrine in Handling of Controversial Issues of Public Importance, 40 FCC 598, 2 RR 2d 1901 (1964). It is the policy of the Commission that fairness doctrine complainants assume the burden of coming forward with evidence which will show a basis for the complaint. The Meredith Corp., 37 FCC 2d 551, 25 RR 2d 428 (1972); Federation of Citizens Association of the District of Columbia, 21 FCC 2d 12, 17 RR 2d 1113 (1969). Here, petitioner's attempt to show that WCAY did not include in its programming views opposing those presented on the "Friendly Ben Show", and did not afford the opportunity for the presentation of opposing views on that or other shows, is insufficient to justify the addition of the issue. There is no substantiation or logic to the charge that offers made during the "Friendly Ben Show" inviting contrasting views were in fact intimidating, nor is there any evidence from the three complaints attached to petitioner's reply pleading to show that WCAY does not broadcast opposing views. With regard to the alleged personal attack, even accepting that such a personal attack was made against the ACLU during a WCAY broadcast, and although there is no indication that WCAY complied with the provisions of § 73.123

[11] The broadcasts petitioner refers to were part of the "Friendly Ben Show" hosted by Mr. Ben Dekel every weekday from 6–9 a.m. on WCAY.

[12] Section 73.123(a) of the rules provides that if a personal attack is made during presentation of views on a controversial issue of public importance, the licensee shall within one week thereof notify the person so attacked of the date, time and identification of the broadcast, provide a script or tape of the attack, and offer a reasonable opportunity to respond over the licensee's facilities.

[14] All three complaints concerned the "Friendly Ben Show". The first concerned a broadcast purportedly racist in content which the complainant found offensive; the second concerned WCAY's failure to air a public service announcement prepared by a federal agency; and the third concerned broadcasts allegedly encouraging disobedience to laws.

(a) of the Rules afterwards, petitioner has failed to substantiate his contention that "other such attacks have frequently occurred." Because there is no indication that the violation was anything other than an isolated incident, and in light of the fact that Lexington County has warned the staff of WCAY that such acts are grounds for their dismissal, the addition of this issue is not warranted.[35] Cf. Regal Broadcasting Corp., 27 FCC 2d 694, 21 RR 2d 61 (1971).

12. *Accordingly, it is ordered*, That the petition to enlarge issues, filed December 11, 1972, by William D. Hunt, is granted to the extent indicated below, and is denied in all other respects; and

13. *It is further ordered*, That the issues in this proceeding are enlarged to include the following:

To determine the extent to which Station WCAY, Cayce, South Carolina, licensed to Lexington County Broadcasters, Inc. has in operation deviated from proposals made in its 1966 and 1969 renewal applications concerning its commercial and news practices and the effect of such deviation on the requisite and comparative qualifications of Lexington County Broadcasters, Inc. to be a Commission licensee.

14. *It is further ordered*, That the burden of proceeding with the introduction of evidence and the burden of proof under the issue added herein shall be on Lexington County Broadcasters, Inc.

Adopted: July 2, 1973.

Released: July 9, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[36]
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-14222 Filed 7-11-73;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CI73-691]

ATLANTIC RICHFIELD CO.

Order Setting Matter for Formal Hearing, Permitting Intervention, Prescribing Procedures and Fixing Date of Hearing

JULY 2, 1973.

On April 15, 1971, the Commission, acting pursuant to the authority of the Natural Gas Act, as amended, particularly sections 4, 5, 7, 8, 10, and 16 thereof (52 Stat. 822, 823, 824, 825, 826, 830; 56 U.S.C. section 717c, section 717d, section 717f, section 717g, section 717i, and section 717), issued Order 431 promulgating a Statement of General Policy with respect to the establishment of measures to be taken for the protection of as reliable and adequate service as present natural gas supplies and capacities will permit.

Atlantic Richfield Company (Arco) has filed, in the above-entitled Docket No. CI73-691, an application, pursuant to section 7(c) of the Natural Gas Act and Order No. 431 in Docket No. R-418, for a limited-term certificate of public convenience and necessity with pre-granted abandonment, authorizing the operation of certain facilities for the sale of emergency gas to Trunkline Gas Company (Trunkline).

The limited-term certificate application provides that Arco sell approximately 75,000 Mcf per day for a term of six (6) months. The contractually agreed rate is 50.0¢ at 14.65 psia, subject to upward Btu adjustment from a base of 1000 Btu's.

In Order 431, the Commission amended Part 2, Subchapter A, General Rules, Chapter I, Title 18 of the Code of Federal Regulations by adding a new § 2.70, which reads:

(3) The Commission recognizing that additional short-term gas purchases may still be necessary to meet the 1971-1972 demands, will continue the emergency measures referred to earlier for the stated 60-day period. If the emergency purchases are to extend beyond the 60-day period, paragraph 12 in the Notice issued by the Commission on July 17, 1970, in Docket No. R-389A should be utilized (35 FR 11638). The Commission will consider if the pipeline demonstrates emergency need * * *

Paragraph 12 of R-389A provided, in part, that applicants, requesting certificates for sales of natural gas in excess of the ceiling or guideline rate, shall state the grounds for claiming that the present or future public convenience and necessity requires issuance of a certificate on the terms proposed in the application.

The application in this proceeding represents a sizeable volume of gas potentially available to the interstate market. It is of critical importance that interstate pipelines procure emergency supplies of gas to avoid disruption of service to consumers; nevertheless, we must determine whether the rate to be paid serves the public convenience and necessity. It is therefore necessary that this application be set for public hearing and expeditious determination. The hearing will be held to allow presentation, cross-examination, and rebuttal of evidence by any participant. This evidence should be directed to the issue of whether the present or future public convenience and necessity requires issuance of a limited-term certificate on the terms proposed in that application.

Pursuant to the notice of the instant application, Trunkline Gas Company filed a petition to intervene.

The Commission finds.

(1) Good cause exists to set for formal hearing the application for a limited-term certificate herein.

(2) It may be in the public interest to permit Trunkline Gas Company, which filed a timely petition, to intervene in this proceeding.

The Commission orders.

(A) The application for limited-term certificate for sale of natural gas filed in Docket No. CI73-691 is hereby set for hearing.

(B) Pursuant to the authority contained in and subject to the authority conferred upon the Federal Power Commission by the Natural Gas Act, including particularly sections 7, 15, and 16, and the Commission's rules and regulations under that Act, a public hearing shall be held commencing July 19, 1973, at 10:00 a.m., e.d.t. at a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, concerning whether the present or future convenience and necessity requires the issuance of a limited-term certificate for the sale of natural gas on the terms proposed in this application and whether the issuance of said certificate should be conditioned in any way.

(C) Trunkline Gas Company of America is hereby permitted to become an intervenor, subject to the rules and regulations of the Commission: *Provided, however*, That participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene: *And, provided, further*, That the admission of such intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order of the Commission entered in these proceedings.

(D) The applicant seeking the limited-term certificate and the proposed purchaser, Trunkline, shall, on or before July 10, 1973, file with the Commission and serve on all parties to this proceeding, including Commission Staff, all testimony to be sponsored in support of the instant application.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73-14023 Filed 7-10-73;8:45 am]

[Docket No. E-7803]

CONSUMERS POWER CO.

Order Modifying Prior Order

JULY 2, 1973.

Consumers Power Company (Consumers), on June 4, 1973, filed a motion for reconsideration of the Commission's order issued herein on May 22, 1973, and a supplement to the motion on June 12, 1973. In the May 22 order we granted a request by the Cities/Coops group[1]: *And provided*, That the anticompetitive issues raised in this proceeding be tried in advance of the other issues, but that the Administrative Law Judge issue a single initial decision in this proceeding based upon the entire evidentiary record. The

[35] The circumstances surrounding Lexington County's alleged violation of Section 73.123(a) of the Rules, however, may, upon a prima facie showing to the Judge of "unusually poor" past broadcast record, be investigated in connection with WCAY's past programming during the comparative phase of the hearing.

[36] Board Member Nelson not participating. Board Member Berkemeyer dissenting in part and voting to add requested issue on fairness and personal attack. Board Member Kessler dissenting in part and voting to add a comparative issue only with respect to over-commercialization.

[1] The Cities of Bay City, Charlevoix, Coldwater, Harbor Springs, Hillsdale, Marshall, Petoskey, St. Louis and Union City, The Village of Chelsea and the Northern Michigan Electric Cooperative, Inc., The Southeastern Michigan Rural Electric Cooperative, Inc., and the Wolverine Electric Cooperative, Inc.

procedural dates as to other issues had been extended by Notice of the Secretary issued on May 4, 1973.

Consumer's bases its motion for reconsideration on the fact that they intend to present evidence on the anticompetitive aspects of this proceeding and our order separating this issue for early consideration does not allow them sufficient time to proceed with their own discovery and evidentiary presentation in this matter.

We also note that in a Cities/Coops' letter to all parties accompanying their testimony on this issue filed June 5, 1973, the intervenors state that they intend to put "additional testimony concerning anticompetitive, as well as other rate issues, * * * with our cost-of-service presentation." Furthermore, from their response to Consumers' motion, which Cities/Coops filed on June 14, 1973, it is apparent that Cities/Coops seeks only to litigate the "price squeeze" issue in the early phase of the hearing.

Since our order separating the anticompetitive aspects of this proceeding for early hearing was designed to provide a full and complete hearing on the entire anticompetitive issue, and since neither Consumers nor Cities/Coops appear able to go forward with this issue at that hearing, we shall amend our order of May 22, 1973, to provide for trial of the anticompetitive issue together with the other issues in accordance with the procedural dates contained in the Notice of the Secretary, issued May 4, 1973. This will give all parties the opportunity to present full and complete evidence on the anticompetitive issue as well as all other issues at the same hearing.

The Commission finds.

Good cause has been shown to amend our order of May 22, 1973, as hereinafter set forth.

The Commission orders.

(A) Consumer's Motion for Reconsideration filed on June 4, 1973, is hereby granted.

(B) The revised schedule of procedural dates for *all* issues in this proceeding is as follows:

Staff Testimony July 24, 1973
Intervenor's Testimony August 8, 1973
Prehearing Conference August 22, 1973
Applicant's Rebuttal September 12, 1973
Hearing September 19, 1973

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73-14021 Filed 7-10-73;8:45 am]

[Docket No. CI73-918]

STEPHENS PRODUCTION CO.

Notice of Application

JULY 3, 1973.

Take notice that on June 22, 1973, Stephens Production Company (Applicant), 115 North 12th Street, Fort Smith, Arkansas 72901, filed in Docket No. CI73-918 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale of natural gas in interstate commerce to the Arkansas Louisiana Gas Company from the Mathers Ranch Field, Hemphill County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell approximately 75,000 Mcf of gas for one year at 45.0 cents per Mcf at 14.65 psia within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70).

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before July 19, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by section 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-14020 Filed 7-10-73;8:45 am]

[Docket No. RP72-98]

TEXAS EASTERN TRANSMISSION CORP.

Order Rejecting Stipulation and Agreement and Remanding for Further Proceedings

JUNE 28, 1973.

On April 13, 1973, the Presiding Administrative Law Judge in this proceeding certified to the Commission for its consideration a Revised Stipulation and Agreement proposing to settle the issues in this proceeding, together with statements of the parties with respect to such Agreement, all of which were made a part of the record at a hearing held on April 11, 1973. This Revised Stipulation and Agreement is essentially the same as the Original Stipulation and Agreement which had been previously certified to us and which we remanded to the Presiding Administrative Law Judge by our order issued March 5, 1973, except for a provision which permits the tracking of advance payments and an increase in the commodity charge to reflect increased curtailments anticipated for the year commencing in March 1973.

While the revised rates reflect an increase in the commodity component of 2.6¢ per Mcf over that those now in effect subject to refund,[1] the evidence submitted in support of such rates indicates that the revenue resulting from the zone commodity charges falls short of that which would result from the application of unmodified Seaboard[2] rates by approximately $28,125,000.

In our March 5, 1973, remand order we stated:

> In our order in this docket issued August 9, 1972, Accepting Revised Tariff Sheets With Conditions, we stated that we intended to review our pricing mechanism of Texas Eastern, including cost classification, allocation and rate design in Docket No. RP72-98. The arguments advanced by counsel and testimony presented on the record by witnesses in this proceeding in support of the settlement rate design has not convinced us that the proposed rate design is just and reasonable and in the public interest, or that any departure from the principles enunciated in Opinion No. 600-A[4] is warranted. Accordingly we shall remand the proceeding to the Administrative Law Judge for further proceedings with encouragement to the parties to reopen discussions which may lead to the Agreement, modified to reflect, in the design of rates, classification of costs in accordance with the unmodified Seaboard method.

The rates contained in the Revised Stipulation and Agreement now before us are not in conformity with that instruction and the record as made before the Presiding Judge on remand has not convinced us that the rate design therein contained is just and reasonable and in the public interest or that any departure from unmodified Seaboard rates is warranted. Further we note that while the Revised Stipulation and Agreement provides for a trial of the rate design issue if the Commission finds the settlement design unacceptable, the parties have stipulated that such rate design as the Commission may find appropriate after hearing and final decision may be effective prospectively only. In the interim Texas Eastern would continue to sell gas based on modified Seaboard rates.

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[1] The increase in commodity component results in a decrease in the demand component of the rate of 82¢ per Mcf below that in the currently effective rates.

[2] Atlantic Seaboard Corp., et al., 11 FPC 43 (1952).

[4] El Paso Natural Gas Company, —— FPC ——, Opinion No. 600-A, Docket No. RP69-6, et al., issued May 8, 1972.

We strongly disapprove of further delay in the establishment of unmodified Seaboard rates. The settlement procedure proposed would frustrate implementation of a rate design which we have already found to be the minimum acceptable. (See Michigan-Wisconsin Pipe Line Company, order issued April 10, 1973, in Docket No. RP72-118). Acceptance of the proposed procedure would allow continuation of a tilted rate design which serves to encourage off peak industrial sales of gas at less than compensatory Seaboard rate levels. For the aforestated reasons, we find the propsed settlement rate design unacceptable and we shall remand the proceeding to the Presiding Judge for trial. In this connection, we reiterate the caveat in our August 9, 1972, order setting this case for hearing that "to the extent that the commodity component of Texas Eastern's two part rates and its straight rates claimed in Docket No. RP72-98 do not recover fully allocated costs, as may be determined after hearing and decision therein, Texas Eastern may be required to absorb the impact of any undercollection under these rates as may have occurred."

Further, we note that the record before us is devoid of any evidence with respect to the propriety of the conjunctive billing practices on the Texas Eastern system. We intend to review and reevaluate the merits of conjunctive billing as it relates to Texas Eastern and request the parties including our Staff to address themselves to this issue in the remanded proceedings.

Because the test period utilized in the rate increase filing was the twelve months ended September 30, 1971, as adjusted, we will afford the parties an opportunity to substitute actual data for any estimates which may have been utilized in such test period and submit evidence on the issue of conjunctive billing. Accordingly, we will establish procedural dates for the service of evidence and provide a date for hearing.

The Commission finds.

For the reasons stated above, the Revised Stipulation and Agreement as certified to us on April 13, 1973, by the Presiding Administrative Law Judge, may not be in the public interest and should be remanded to the Presiding Judge as hereinafter provided.

The Commission orders.

(A) The aforesaid Stipulation and Agreement is hereby rejected and the subject docket is hereby remanded to the Presiding Judge for further proceedings consistent with this order.

(B) Evidence of actual experience during the test period and evidence on conjunctive billing which the parties may desire that the Presiding Judge and the Commission consider in determining just and reasonable rates for Texas Eastern shall be filed pursuant to the following schedule:

1. Texas Eastern, on or before August 1, 1973.
2. Commission Staff and Intervenors on or before August 21, 1973.
3. Texas Eastern's Rebuttal Evidence, on or before September 5, 1973.

(C) A hearing with respect to this matter shall be held commencing at 10:00 a.m., (e.d.t.), on September 18, 1973, in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. at which time such evidence, subject to proper motions, shall be made a part of the record and immediately be subject to cross examination.

(D) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-14022 Filed 7-10-73;8:45 am]

NATIONAL POWER SURVEY; TECHNICAL ADVISORY COMMITTEE ON RESEARCH AND DEVELOPMENT TASK FORCE ON ENVIRONMENTAL RESEARCH

Agenda of Meeting

Sixth Meeting of the Technical Advisory Committee on Research and Development Task Force on Environmental Research to be held at the Federal Power Commission Offices Union Center Plaza Building 825 North Capitol Street, N.E. Washington, D.C.; 1:00 p.m., July 19, 1973, Room 5200.

1. Meeting called to order by FPC Coordinating Representative.
2. Approval of minutes of previous meeting.
3. Objectives and purposes of meeting.
A. Review and Discussion of Second Drafts of Report
1. Energy Production, Conversion and Transmission
2. Control Technology
3. Health Welfare & Ecology
4. Transportation Process
5. Instrumentation
6. Monitoring
7. Implementation Research
8. Long Term Environmental Studies
B. Assignments for Final Editing
C. Other Business
D. Date of next meeting (if needed).
4. Adjournment

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee—which statements, if in written form, may be filed before or after the meeting, or, if oral, at the time and in the manner permitted by the committee.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-14238 Filed 7-11-73;8:45 am]

FEDERAL RESERVE SYSTEM

DOMINION BANKSHARES CORP.

Acquisition of Bank

Dominion Bankshares Corporation, Roanoke, Virginia, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares of The First National Exchange Bank of Montgomery County, Blacksburg, Virginia, a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Richmond. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than July 19, 1973.

Board of Governors of the Federal Reserve System, June 29, 1973.

[SEAL] CHESTER B. FELDBERG, *Assistant Secretary of the Board.*

[FR Doc.73-14165 Filed 7-11-73;8:45 am]

FIRST BANCSHARES, INC.

Formation of Bank Holding Company

First Bancshares, Incorporated, Bartlesville, Oklahoma, 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 (less directors' qualifying shares) of the successor by merger to First National Bank of Bartlesville, Bartlesville, Oklahoma. 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 Kansas City. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than July 16, 1973.

Board of Governors of the Federal Reserve System, June 28, 1973.

[SEAL] CHESTER B. FELDBERG, *Assistant Secretary of the Board.*

[FR Doc.73-14174 Filed 7-11-73;8:45 am]

FIRST & MERCHANTS CORP.

Proposed Acquisition of Security-Atlantic Life Insurance Company

First & Merchants Corporation, Richmond, Virginia, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of Security-Atlantic Life Insurance Company, Phoenix, Arizona, a proposed new company. Notice of the application was published on May 24, 1973 in the Richmond Times-Dispatch, a newspaper circulated in Richmond, Virginia, and on May 26, 1973 in the Arizona Republic and Phoenix Gazette, a newspaper circulated in Phoenix, Arizona.

Applicant states that the proposed subsidiary would engage de novo in the business of reinsuring credit life and credit accident and health insurance risks on certain credit customers of Applicant's banking and non-banking subsidiaries.

Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Richmond.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than July 26, 1973.

Board of Governors of the Federal Reserve System, June 29, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73-14173 Filed 7-11-73;8:45 am]

FIRST NEWTON BANKSHARES, INC.

Formation of Bank Holding Company

First Newton Bankshares, Inc., Topeka, Kansas 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 The First National Bank of Newton, Newton, Kansas. 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 Kansas City. 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 16, 1973.

Board of Governors of the Federal Reserve System, June 28, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73-14176 Filed 7-11-73;8:45 am]

FORT WORTH NATIONAL CORP.

Acquisition of Bank

The Fort Worth National Corporation, Fort Worth, Texas, 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 all of the voting shares of Levelland State Bank, Levelland, 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 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 28, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73-14175 Filed 7-11-73;8:45 am]

FORT WORTH NATIONAL CORP.

Acquisition of Bank

Fort Worth National Corporation, Fort Worth, Texas, 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 (less directors' qualifying shares) of Commercial Bank and Trust Company, Midland, 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 Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than July 28, 1973.

Board of Governors of the Federal Reserve System, July 3, 1973.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.73-14163 Filed 7-11-73;8:45 am]

FORT WORTH NATIONAL CORP.

Acquisition of Bank

Fort Worth National Corporation, Fort Worth, Texas 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 (less directors' qualifying shares) of First State Bank of Stratford, Stratford, 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 Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than July 28, 1973.

Board of Governors of the Federal Reserve System, July 3, 1973.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.73-14164 Filed 7-11-73;8:45 am]

FULTON NATIONAL CORP.

Proposed Acquisition of Assets of Martin & Bazzel Insurance Agency, Inc.

Fulton National Corporation, Atlanta, Georgia, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire certain insurance renewal premiums and rights related thereto of Martin & Bazzel Insurance Agency, Inc., Atlanta, Georgia. Notice of the application was published on March 1, 1973 in the Atlanta Journal, a newspaper circulated in Atlanta, Georgia.

Applicant proposes to engage in certain insurance agency activities by virtue of the proposed acquisition. Martin & Bazzel Insurance Agency, Inc. previously served the mortgage loan customers of Martin and Bazzel, Inc. (a mortgage banking corporation purchased by Applicant's banking subsidiary) by acting as insurance agent with respect to homeowners, builders risk, and fire and extended coverage related to mortgages owned or serviced by Martin & Bazzel, Inc. Certain insurance agency activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than July 25, 1973.

Board of Governors of the Federal Reserve System, June 28, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73-14168 Filed 7-11-73;8:45 am]

MIDWESTERN FINANCIAL CORP.

Order Granting Determination Under Bank Holding Company Act

In the matter of the request by Midwestern Financial Corporation, Denver, Colorado ("MFC"), for a determination pursuant to section 2(g)(3) of the Bank Holding Company Act of 1956, as amended.

MFC, a bank holding company within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)), by virtue of its ownership of 98.7 percent of the issued and outstanding voting shares of The First National Bank in Golden, Golden, Colorado ("Bank"), seeks to terminate said status as a bank holding company as a result of transferring all of its shares of Bank to First Golden Bancorporation, Golden, Colorado ("FGB").[1]

MFC seeks a determination pursuant to section 2(g)(3) of the Bank Holding Company Act of 1956, as amended, that notwithstanding an interlocking director relationship between MFC and FGB, MFC will not be capable of controlling the transferee of the shares of the aforementioned Bank. Mr. John L. Tracy, Chairman of the Board of Directors of MFC, is also a Director of FGB.

Under the provisions of section 2(g)(3) of the Act (12 U.S.C. 1841(g)(3)), shares transferred after January 1, 1966, by any bank holding company to a transferee that has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, are deemed to be indirectly owned or controlled by the transferor unless the Board of Governors of the Federal Reserve System, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.

MFC has submitted to the Board documentary evidence to support its contention that MFC does not in fact control FGB.

Notice of an opportunity for hearing with respect to MFC's request for a determination under section 2(g)(3) was published in the FEDERAL REGISTER on May 14, 1973 (38 FR 12628). The time provided for requesting a hearing expired on June 4, 1973. No such request has been received by the Board, nor has any evidence been received to show that MFC is in fact capable of controlling FGB.

It is hereby determined that MFC is not in fact capable of controlling FGB. This determination is based upon the evidence of record in this matter, including (1) a certified copy of a resolution passed by the Board of Directors of MFC on June 4, 1973, to the effect that MFC does not now and will not in the future control or attempt to control, or exert or attempt to exert a controlling influence over, FGB through the common directorship of Mr. John L. Tracy, and that Mr. Tracy was not selected by the Board of Directors of MFC or otherwise on behalf of MFC, to represent MFC's interest on the FGB Board of Directors; (2) an affidavit of May 22, 1973, by Mr. Tracy stating, in essence, that in acting as a director of FGB, he is not acting pursuant to any agreement of understanding with or under any instructions from MFC, that he will not be reporting to MFC the actions taken at directors' meeting of FGB, that he will not be reporting to FGB the actions taken at directors' meetings of MFC, that in acting in his capacity as director of FGB he is not and will not be subject to control by MFC; and (3) a letter of May 23, 1973, from Counsel for MFC containing an analysis of the legal and factual implications of potential corporate control arising from the subject interlocking directorate, and a statement that there are no contractual restrictions on the transferability of FGB and MFC shares and there is no tying of FGB and MFC shares for sale purposes.

Accordingly, it is ordered, That the request of MFC for a determination pursuant to section 2(g)(3) be and hereby is granted.

By order of the Board of Governors, acting through its General Counsel, pursuant to delegated authority (12 CFR 265.2), June 22, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73-14171 Filed 7-11-73;8:45 am]

OLD KENT FINANCIAL CORP.

Order Approving Acquisition of Bank

Old Kent Financial Corporation, Grand Rapids, Michigan, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire all of the voting shares of the successor by merger to the First National Bank of Cadillac, Cadillac, Michigan ("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 one bank with deposits of $636 million, representing 2.7 percent of the total deposits in commercial banks in Michigan, and is the seventh largest banking organization in the State.[2] Consummation of the proposed acquisition of Bank, with deposits of $14.4 million, would neither significantly increase Applicant's share of commercial bank deposits in Michigan nor result in any significant increase in concentration of banking resources in any section of the State.

Bank is the smaller of two banks headquartered in Cadillac and the third largest of four banking organizations on the basis of deposits within the Cadillac area. Bank's sole office[3] is located approximately 100 miles from the nearest office of any of Applicant's present or proposed banking subsidiaries.[4] There is no meaningful competition between Bank and any of Applicant's present or proposed banking subsidiaries, nor does it appear likely that such competition will develop in the future in light of distances involved and Michigan's restrictive branching laws.

In connection with its review of the proposal herein, the Board's attention has been called to the fact that Applicant intends to withdraw Bank from membership in the Federal Reserve System. In its Order of January 5, 1973, approving the application of Hamilton Bancshares, Inc. to acquire voting shares of Hardeman County Savings Bank (1973 Federal Reserve *Bulletin* 109), the Board expressed concern over the practice of large holding companies converting subsidiary banks from member to nonmember status, thereby shunning their public responsibilities to be a part of and to support the policies of the nation's central bank. The Board wishes to reaffirm its earlier views on this practice which it considers to be a matter of some concern. The question of whether the Board should recommend to Congress that membership in the Federal Reserve System be required for subsidiary banks of bank holding companies remains under active study.

The financial and managerial resources of Applicant, its subsidiary bank and Bank are satisfactory and support approval of the application, particularly in view of Applicant's commitment to increase the capital accounts of Bank by $425 thousand. Applicant also proposes to assist Bank in providing new or improved services with respect to such areas as commercial lending, trust services, and mortgage lending. While it appears that the banking needs of the area are being adequately served, the improved and expanded services would provide customers with an additional alternative source of such services. Considerations relating to the convenience and needs of the communities involved are thus regarded as consistent with approval. It is the Board's judgment that the proposed transaction is, on balance, in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons sum-

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[1] FGB has filed an application for approval of the Board to become a bank holding company, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956.

[2] Banking data are as of June 30, 1972, adjusted to reflect holding company formations and acquisitions approved through April 30, 1973.

[3] Bank is in the process of building a drive-in office.

[4] Applicant has a pending application before the Board to acquire Peoples State Bank of Holland, Holland, Michigan.

marized above.[4] The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this order or (b) later than three months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Chicago pursuant to delegated authority.

By order of the Board of Governors,[5] effective June 27, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73-14166 Filed 7-11-73;8:45 am]

PANNATIONAL GROUP INC.

Order Approving Acquisition of Bank

PanNational Group Inc., El Paso, Texas, 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 100 per cent of the voting shares (less directors' qualifying shares) of Metro Bank of Dallas, Dallas, Texas.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and none has been timely received. The Board has considered the application in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant[1] is the thirteenth largest bank holding company in the State of Texas and controls two banks with aggregate deposits of $294 million, or less than one percent of total deposits in commercial banks in the State. (All banking data are as of December 31, 1972.) Bank ranks 50th among 110 commercial banks in the Dallas RMA and controls approximately $18 million in deposits. Consummation of the proposal would not change Applicant's rank in the State, nor result in a significant increase in the concentration of banking resources.

None of Applicant's subsidiary banks is located in the Dallas RMA. Applicant's closest subsidiary to Bank is 636 miles away and there is no significant existing competition between Bank and any of Applicant's subsidiaries. Consummation of the proposal is not likely to have any adverse effect on existing competition, nor any adverse effect on competing banks. On the facts of record, notably Texas' restrictions against branching, the numerous banking alternatives available in the Dallas market, and the sizes of other banks in the areas intervening between Bank and Applicant's subsidiaries, the consummation of the proposal herein is unlikely to foreclose any significant potential competition between Bank and any of Applicant's subsidiaries. Affiliation with Applicant may enable Bank to compete more effectively with the larger banks in the market. On the basis of the record before it, the Board concludes that consummation of the proposal would not have an adverse effect on competition in any relevant area.

The financial and managerial resources and future prospects of Applicant and its subsidiaries appear generally satisfactory. Bank has had certain past problems, including frequent management changes, heavy loan losses, strain on its capital account, an excessive volume of classified assets, and a suit by the SEC. Under new management dating from 1972, Bank has improved its asset position, even though further improvement in capital, depth of management and overall condition of Bank are desirable. Consummation of the proposal should enable Applicant to serve as a source of capital and provide managerial strength to Bank for growth and for service to the relevant area. Considerations relating to the banking factors weigh in favor of approval. Although there is no evidence that the needs of the Dallas RMA are not well served, considerations relating to convenience and needs of the community are consistent with approval. It is the Board's judgment that the proposed transaction is in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this order or (b) later than three months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Dallas pursuant to delegated authority.

By order of the Board of Governors,[5] effective June 28, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73-14172 Filed 7-11-73;8:45 am]

PHILADELPHIA NATIONAL CORP.

Proposed Retention of Colonial Associates, Inc.

Philadelphia National Corporation (formerly PNB Corporation) Philadelphia, Pennsylvania has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to retain voting shares of Colonial Associates, Inc., Sherman Oaks, California. Notice of the application was published on April 19, 1973 in the Van Nuys News and Valley Green Sheet, a newspaper circulated in Van Nuys News and has been published or is in the process of publication in newspapers of general circulation in Walnut Creek, California; Covina, California; Atlanta, Georgia; San Jose, California; Phoenix, Arizona; Sacramento, California; Santa Ana, California; Reno, Nevada; San Diego, California; Inglewood, California; Tucson, Arizona; Monterey, California; and Sherman Oaks, California. The proposed subsidiary maintains an office in each enumerated community. Applicant states that the proposed subsidiary would engage in the activity of origination of residential mortgage loans for re-sale to certain of its affiliates. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or grains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Philadelphia.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than July 24, 1973.

Board of Governors of the Federal Reserve System, June 27, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73-14169 Filed 7-11-73;8:45 am]

PHILADELPHIA NATIONAL CORP.

Proposed Acquisition of Colonial Mortgage Service Company and Colonial Mortgage Service Co. of California

Philadelphia National Corporation (formerly PNB Corporation), Philadelphia, Pennsylvania, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8))

[4] Concurring Statement of Governor Bucher filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Chicago.

[5] Voting for this action: Chairman Burns and Governors Mitchell, Brimmer, Bucher, and Holland. Absent and not voting: Governors Daane and Sheehan.

[1] In connection with PanNational's 3(a)(1) application of February 29, 1972, the Board ordered that divestiture of PanNational's 28.4 per cent interest in Charles Bassett Inc. (a nonbanking subsidiary engaged in shopping center development) take place within two years. Applicant has advised that divestiture of Charles Bassett, as well as Applicant's approximate 10 per cent interest in Darbyshire Steel, Inc. (acquired through loan foreclosure in 1972) will take place by February 1974.

[5] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Brimmer, Sheehan, Bucher and Holland.

and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of Colonial Mortgage Service Company and of Colonial Mortgage Service Co. of California, both of Philadelphia, Pennsylvania. The shares to be acquired are presently owned by the Philadelphia National Bank, Philadelphia, Pennsylvania, a wholly-owned (except for directors' qualifying shares) subsidiary of Philadelphia National Corporation. Notice of the applications has been published or is in the process of publication in newspapers of general circulation in Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; Columbus, Ohio; Walnut Creek, California; Kensington, Maryland; York, Pennsylvania; Wilmington, Delaware; Haddonfield, New Jersey; Denver, Colorado; San Diego, California; Atlanta, Georgia; and Sherman Oaks, California. One or the other of the proposed subsidiaries maintains an office in each enumerated community.

Applicant states that the proposed subsidiaries would engage in the activities of originating, selling, and servicing mortgage loans and generally conducting a mortgage banking business. Colonial Advisers, Inc., a subsidiary of Colonial Mortgage Service Company, engages in the provision of investment advice and management to PNB Mortgage and Realty Investors, a publicly-owned real estate investment trust. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Philadelphia.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than July 24, 1973.

Board of Governors of the Federal Reserve System, June 27, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73-14170 Filed 7-11-73;8:45 am]

TRINITY DEVELOPMENT CO.

Formation of Bank Holding Company

Trinity Development Company, Liberty, 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 22.9 percent of the voting shares of The First Liberty National Bank, Liberty, Texas, a bank in which Trinity Development Company already holds 22.9 percent of the voting shares. 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 18, 1973.

Board of Governors of the Federal Reserve System, June 29, 1973.

[SEAL] CHESTER B. FELDBERG,
Assistant Secretary of the Board.

[FR Doc.73-14167 Filed 7-11-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[811-2369]

CARDINAL INCOME SECURITIES, INC.

Notice of Filing of Application for Order Declaring That Company Has Ceased To Be an Investment Company

Notice is hereby given that Cardinal Income Securities, Inc. ("Applicant"), One Jefferson First Union Plaza, Room 1200, Charlotte, North Carolina 28202, a Maryland corporation registered as a closed-end diversified management investment company under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations set forth therein, which are summarized below.

On March 30, 1973, Applicant filed a Notification of Registration on Form N-8A pursuant to Section 8(a) of the Act. On that same date, Applicant also filed a Registration Statement on Form N-8B-1 pursuant to Section 8(b) of the Act, and a Registration Statement on Form S-4 pursuant to the Securities Act of 1933 ("1933 Act"). Applicant's 1933 Act Registration Statement has never been declared effective and Applicant has requested that the Registration Statement be withdrawn.

Applicant represents, among other things, that it has no shareholders, no assets, and due to adverse market conditions it does not now intend to offer or sell any of its securities to the public.

Section 3(c)(1) of the Act excepts from the definition of "investment company" any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than July 30, 1973, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after that date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application may be issued by the Commission upon the basis of the information stated in said application, unless an order for a hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] SHIRLEY E. HOLLIS,
Recording Secretary.

[FR Doc.73-14178 Filed 7-11-73;8:45 am]

[811-1626]

COMMODORE GROWTH FUND, INC.

Notice of Filing of Application Pursuant to Order Declaring That Company Has Ceased To Be an Investment Company

Notice is hereby given that Commodore Growth Fund, Inc. ("Applicant"), 1200 Washington Building, Tacoma, Washington 98402, a Washington corporation registered as an open-end diversified management investment company under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 8(f) of the Act for an

order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations as set forth therein which are summarized below.

Applicant registered under the Act on March 22, 1968, by filing a Form N–8A Notification of Registration under the name of Great Republic Growth Fund, Inc. Its name was changed on October 29, 1971. A Registration Statement under the Securities Act of 1933 on Form S–5 and Pre-Effective and Post-Effective Amendments thereto registering the shares of common stock of Applicant sold to the public have been filed and in due course ordered or declared effective.

The Applicant represents that at a meeting of its Board of Directors held on December 18, 1972, the Board determined unanimously, after considering the various options available to the Applicant, that it was in the best interests of its stockholders to liquidate and dissolve the Applicant. At that same meeting the Board suspended the further offering of shares of the Applicant. On February 16, 1973, the stockholders voted in favor of liquidation and dissolution, and the initial procedural and substantive steps have been taken to dissolve the Applicant.

The Applicant further represents, among other things, that on March 9, 1973, the first (and probably only) liquidating dividend in the amount of $4.87 per share, which dividend was equal to the net asset value per share as of the close of business on March 9, 1973, was distributed to the shareholders of record. It is the intention of the Board of Directors of the Applicant, and its investment adviser, to maintain the corporate existence of the Applicant only so long as is necessary to complete those steps incident to the formal dissolution of the Corporation.

Section 3(c)(1) of the Act excepts from the definition of "investment company" any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than July 30, 1973 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application may be issued by the Commission upon the basis of the information stated in said application, unless an order for a hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] SHIRLEY E. HOLLIS,
Recording Secretary.

[FR Doc.73–14179 Filed 7–11–73;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority 12–A; Rev. 1]

DEPUTY ASSOCIATE ADMINISTRATOR FOR FINANCE, ET AL

Redelegation on Financial Assistance

Delegation of Authority No. 12–A (37 FR 24715) is superseded by Delegation of Authority No. 12–A (Revision 1). Revision 1 reflects proper delegations of authority emanating from the Associate Administrator for Finance and Investment rather than from the previous organizational title which became nonexistent effective as of February 2, 1973, the date the Civil Service Commission approved the change. (38 FR 3187)

This document also (1) provides for the redelegation of authority relating to claims owed to sureties on defaulted surety bond guarantees (I.F.8.b and I.H.4.b) as well as all other authorities previously redelegated by Delegation of Authority No. 12–A; and (2) revised I.A.1 to reflect appropriate change of title.

Delegation of Authority No. 12–A (Revision 1) reads as follows:

I. Pursuant to the authority delegated by the Administrator to the Associate Administrator for Finance and Investment in Delegation of Authority No. 12 (38 FR 13063), as amended (38 FR 16001), the following authority is hereby delegated to the specific positions as indicated herein:

A. *Deputy Associate Administrator for Finance.* 1. To perform any and all acts which I, as Associate Administrator for Finance and Investment, am authorized to perform under the aforementioned Delegation of Authority within the financial assistance program.

B. *Director, Office of Financing.* 1. To approve or decline business, economic opportunity, and all types of disaster loan applications, including reconsiderations thereof, and to execute authorizations and amendments pertaining to such loans.

2. To cancel, reinstate, modify and amend authorizations for fully or partially undisbursed loans.

3. To determine eligibility of business, economic opportunity, and all types of disaster loan applicants.

C. *Chief, Program Operations Division.* 1. To approve or decline business, economic opportunity, and all types of disaster loan applications, including reconsiderations thereof, and to execute authorizations and amendments pertaining to such loans.

2. To cancel, reinstate, modify and amend authorizations for fully or partially undisbursed loans.

3. To determine eligibility of business, economic opportunity, and all types of disaster loan applicants.

D. *Director, Office of Loan Administration.* 1. To take all necessary action in connection with the servicing, administration, collection and liquidation of all loans, other obligations and acquired property, with the exception of those loans classified as in litigation, but is not authorized:

(a) To sell any primary obligation or other evidence of indebtedness, exclusive of property acquired, owed to the Agency for a sum less than the total amount due thereon.

(b) To accept or reject a compromise settlement of an indebtedness owed to the Agency for a sum less than the total amount due thereon.

(c) To deny liability of the Small Business Administration under the terms of a participation or guaranty agreement, or the initiation of suit for recovery from a participating bank under any alleged violation of a participation or guaranty agreement.

2. To take all necessary actions in connection with the liquidation of SBIC's and EDA loans for the Department of Commerce.

3. To take all necessary actions in connection with the servicing (financial aspects) of certificates of competency and, as appropriate, financial aspects of contracts let by SBA under Section 8(a) of the Small Business Act, as amended.

E. *Chiefs, Operations Assistance Division and Program and Systems Division.* 1. To take all necessary action in connection with the servicing, collection or liquidation of fully disbursed loans not in litigation and other obligations and acquired property within all loan programs of the Small Business Administration, but is not authorized:

a. To sell any primary obligation or other evidence of indebtedness, exclusive of property acquired, owed to the Agency for a sum less than the total amount due thereon.

b. To accept or reject a compromise settlement of an indebtedness owed to the Agency for a sum less than the total amount due thereon.

c. To deny liability of the Small Business Administration under the terms of

a participation or guaranty agreement, or the initiation of suit for recovery from a participating bank under any alleged violation of a participation or guaranty agreement.

2. To take all necessary actions in connection with the liquidation of SBIC's and EDA loans for the Department of Commerce.

3. To take all necessary actions in connection with the servicing (financial aspects) of certificates of competency and, as appropriate, financial aspects of contracts let by SBA under section 8(a) of the Small Business Act, as amended.

F. *Director, Office of Community Development.* 1. To approve or decline development company (sections 501 and 502) loan applications, including reconsiderations thereof, and to execute authorizations and modifications pertaining to such loans.

2. To cancel, reinstate, modify and amend authorizations for fully undisbursed loans.

3. To determine eligibility of development company loan lease guarantee, and surety bond applicants.

4. To approve or decline applications for the guarantee of the payment of rents under a lease where aggregate rentals do not exceed the lesser of $15,000 per month or $2,500,000 over the term guaranteed.

5. To enter into reinsurance agreements with participating insurance companies and to modify and revise the same whenever necessary.

6. To approve or decline applications for reinsured guarantees received from participating insurance companies for the payment of rents under a lease where the SBA share of such participation does not exceed the lesser of $15,000 per month or $2,500,000 over the term guaranteed.

7. To approve the investment of moneys in the Lease Guarantee revolving fund not needed for the payment of current operating expenses for the payment of claims arising under the Lease Guarantee program, in bonds or other obligations guaranteed as to principal and interest by the United States.

8. a. To guarantee sureties of small business against portions of losses resulting from the breach of bid, payment or performance bonds on contracts up to $500,000.

b. To approve or decline all claim reimbursement requests from participating surety companies on contract defaults bonded with SBA guarantees.

9. To make size determinations for the purpose of the lease guarantee and surety bond programs.

G. *Chief, Development Company Loan Division.* 1. To approve or decline development company (sections 501 and 502) loan applications, including reconsiderations thereof, and to execute authorizations and modifications pertaining to such loans.

2. To cancel, reinstate, modify and amend authorizations for fully undisbursed loans.

3. To determine eligibility of development company loan applicants.

H. *Chief, Underwriting Division.* 1. To approve or decline applications for the guarantee of the payment of rents under a lease where aggregate rentals do not exceed the lesser of $15,000 per month or $2,500,000 over the term guaranteed.

2. To enter into reinsurance agreements with participating insurance companies and to modify and revise the same whenever necessary.

3. To approve or decline applicants for reinsured guarantees received from participating insurancee companies for the payment of rents under a lease where the SBA share of such participation does not exceed the lesser of $15,000 per month or $2,500,000 over the term guaranteed.

4. a. To guarantee sureties of small business against portions of losses resulting from the breach of bid, payment of performance bonds on contracts up to $500,000.

b. To approve or decline all claim reimbursement requests from participating surety companies on contract defaults bonded with SBA guarantees.

5. To determine eligibility of lease guaranty and surety bond applicants.

I. *Central Office Claims Review Committee.* 1. This committee shall consist of the Director, Office of Loan Administration, acting as chairman; Director, Office of Financing; and Associate General Counsel, Office of Litigation.

2. This committee shall meet and consider reasonable and properly supported compromise proposals and make the final decision to accept or reject such proposals, provided the decision of the committee is unanimous.

II. The authority delegated herein may not be redelegated.

III. All authority delegated herein may be exercised by any Small Business Administration employee designated as acting in that position.

Effective date: February 2, 1973.

DAVID A. WOLLARD,
Associate Administrator for Finance and Investment.

[FR Doc.73-14186 Filed 7-11-73;8:45 am]

[Delegation of Authority No. 30-VII, Amdt. 3]

REGION VII

Delegation of Authority to Conduct Program Activities in the Field Offices

Delegation of Authority No. 30-VII (37 FR 17616), as amended (38 FR 6110) and (38 FR 14897), is further amended to include authority for Chief, Regional Community Economic Development Division, to guarantee sureties of small businesses, Part III Section C 2. is revised to read as follows:

* * * * *

PART III—COMMUNITY ECONOMIC DEVELOPMENT (CED) PROGRAM

* * * * *

SEC. C. *Lease guarantee approval authority.* * * *

2. To guarantee sureties of small businesses against portions of losses resulting from the breach of bid, payment, or performance bonds on contracts not to exceed $500,000:

(1) Chief, Regional CED Division.

* * * * *

Effective date—July 1, 1972.

C. I. MOYER,
Regional Director, Region VII.

[FR Doc.73-14187 Filed 7-11-73;8:45 am]

[Notice of Disaster Loan Area 996]

NORTH CAROLINA

Notice of Disaster Relief Loan Availability

As a result of the President's declaration of the State of North Carolina as a major disaster area following severe storms and flooding beginning on or about May 27, 1973, applications for disaster relief loans will be accepted by the Small Business Administration from flood victims in the following Counties: Ashe, Buncombe, Clay, Haywood, Iredell, Jackson, Macon, McDowell and Watauga.

Applications may be filed at the:

Small Business Administration
District Office
222 South Church Street
Charlotte, North Carolina 28202

and at such temporary offices as are established. Such addresses will be announced locally. Applications will be processed under the provisions of Public Law 93-24.

Applications for disaster loans under this announcement must be filed not later than August 28, 1973.

Dated: July 2, 1973.

ANTHONY G. CHASE,
Acting Administrator.

[FR Doc.73-14182 Filed 7-11-73;8:45 am]

[Notice of Disaster Loan Area 998]

TENNESSEE

Notice of Disaster Relief Loan Availability

As a result of the President's declaration of the State of Tennessee as a major disaster area following severe storms and flooding beginning on or about May 26, 1973, applications for disaster relief loans will be accepted by the Small Business Administration from flood victims in the following Counties: Bledsoe, Campbell, Coffee, Cumberland, Grundy, Morgan, Roane, Scott, Van Buren and Warren.

Applications may be filed at the:

Small Business Administration
District Office
500 Union Street
Nashville, Tennessee 37219

and at such temporary offices as are established. Such addresses wil be announced locally. Applications will be processed under the provisions of Public Law 93-24.

Applications for disaster loans under this announcement must be filed not later than August 28, 1973.

Dated: July 2, 1973.

ANTHONY G. CHASE,
Acting Administrator.

[FR Doc.73-14183 Filed 7-11-73;8:45 am]

[Notice of Disaster Loan Area 997]

TEXAS

Notice of Disaster Relief Loan Availability

As a result of the President's declaration of the State of Texas as a major disaster area following severe storms and flooding beginning on or about March 27, 1973, applications for disaster relief loans will be accepted by the Small Business Administration from flood victims in the following Counties: Jefferson, Orange, Red River and Upshur.

Applications may be filed at the:

Small Business Administration
District Office
Niels Esperson Building, Room 1210
808 Travis Street
Houston, Texas 77002

and at such temporary offices as are established. Such addresses will be announced locally. Applications will be processed under the provisions of Public Law 92-385.

Applications for disaster loans under this announcement must be filed not later than August 28, 1973.

Dated: July 2, 1973.

ANTHONY G. CHASE,
Acting Administrator.

[FR Doc.73-14184 Filed 7-11-73;8:45 am]

[Declaration of Disaster Loan Area 999]

VIRGINIA

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of May 1973, because of the effects of a certain disaster, damage resulted to residences and business property located in the State of Virginia;

Whereas, the Small Business Administration has investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act, as amended;

Now, therefore, as Acting Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in Roanoke City, Roanoke County, Pulaski County, and Giles County in the State of Virginia suffered damage or destruction resulting from flooding caused by extreme heavy rains occurring May 27 and May 28, 1973. Applications will be processed under the provisions of Public Law 93-24.

OFFICE

Small Business Administration
District Office
Federal Building, Room 3015
400 North Eighth Street
Richmond, Virginia 23240

2. Applications for disaster loans under the authority of this declaration will not be accepted subsequent to

Dated: July 2, 1973.

ANTHONY G. CHASE,
Acting Administrator.

[FR Doc.73-14185 Filed 7-11-73;8:45 am]

[License Application No. 02/02-5300]

KESER CAPITAL CORP.

Notice of Application for a License as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.), has been filed by Keser Capital Corporation (applicant) with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1973).

The officers and directors of the applicant are as follows:

Charles Kofman, President, General Manager, Director, 1551 47th Street, Brooklyn, New York 11219.

Chani Kofman, Secretary-Treasurer, Director, 1551 47th Street, Brooklyn, New York 11219.

Isaac Pinter, Director, 4910 15th Avenue, Brooklyn, New York 11219.

The applicant, a New York corporation, with its principal place of business located at 745 Fifth Avenue, New York, New York 10022, will begin operations with a combined paid-in capital and paid-in surplus of $525,000, derived from the sale of 5,250 shares of common stock to Charles Kofman.

According to the company's stated investment policy, its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owner and management, and the probability of successful operation of the applicant under that management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Any person may, on or before July 27, 1973, submit to SBA written comments on the proposed licensee. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW, Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York City.

Dated: July 3, 1973.

JAMES THOMAS PHELAN,
Deputy Associate Administrator for Investment.

[FR Doc.73-14158 Filed 7-11-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 294]

ASSIGNMENT OF HEARINGS

JULY 9, 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 108207 Sub 364, Frozen Food Express, Inc., now assigned August 8, 1973, at Dallas, Tex., will be held in Room 5A15-17, Federal Office Building, 1100 Commerce Street.

FD 26241, Penn Central Transportation Company Reorganization, now being assigned pre-hearing conference July 16, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-127042 Sub 111, Hagen, Inc., application dismissed.

MC 138213, Redi Lease Co., now being assigned hearing September 10, 1973, at St. Louis, Mo., in a hearing room to be later designated.

MC 107515 Sub 820, Refrigerated Transport Co., Inc., now being assigned hearing September 12, 1973, at St. Louis, Mo. in a hearing room to be later designated.

MC 127042 Sub 102, Hagen, Inc., now being assigned continued hearing September 17, 1973, at St. Louis, Mo., in a hearing room to be later designated.

MC 87720 Sub 131, Bass Transportation Co., Inc., now being assigned hearing September 19, 1973, at St. Louis, Mo., in a hearing room to be later designated.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-14234 Filed 7-11-73;8:45 am]

[Notice 312]

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 August 1, 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-74282. By order of July 2, 1973, the Motor Carrier Board approved the transfer to Austin Tupler Trucking, Inc., Fort Lauderdale, Fla., of Certificate No. MC-134771 issued June 23, 1971, to Tupler Trucking, Inc., Fort Lauderdale, Fla., authorizing the transportation of scrap metal from points in Monroe, Dade, Broward and Collier Counties, Fla., to Port Everglades and Miami, Fla., restricted to the transportation of traffic having a subsequent movement by water. Richard B. Austin, P.O. Box 7488, Miami, Fla. 33155, Attorney for applicants.

No. MC-FC-74349. By order of July 2, 1973, the Motor Carrier Board approved the transfer to Dennis W. Jamieson, D/B/A Jamieson Trucking, Ouray, Colorado, of Certificate of Registration No. MC-57806 (Sub-No. 1) issued November 13, 1963, to Oliver Fellin, Olliver L. Fellin, Jr., Administrator, and Angelo J. Fellin, D/B/A Fellin Brothers, Ouray, Colorado, evidencing a rights to engage in transportation corresponding in scope to Certificate of Public Convenience and Necessity No. 871, issued by the Public Utilities Commission of the State of Colorado. Victor T. Roushar, Petrie, Woodrow, Roushar & Weaver, P.O. Box 327, Montrose, Colo. 81401, attorney for applicants.

No. MC-FC-74471. By order of June 26, 1973, the Motor Carrier Board approved the transfer to Wayne Daniel Truck, Inc., Mount Vernon, Mo. of the operating rights in Permits Nos. MC-134494 (Sub-No. 1), MC-134494 (Sub-No. 2), and MC-134494 (Sub-No. 4) issued October 29, 1971, April 14, 1972, and June 18, 1973, respectively, to Wayne Daniel, doing business as Wayne Daniel Truck, Mount Vernon, Mo., authorizing the transportation of confectioneries, from St. Louis, Mo. to points in Nevada, California, and Oregon, limited to Sunline, Inc.; candy and confectioneries, sandboxes, blackboards, chalkboards, and furniture, from St. Louis, Mo., to points in California, Oregon, Washington, Idaho, Utah, Colorado, Arizona, New Mexico, and Nevada, limited to Beatrice Foods Company, and its divisions Switzer Licorice Co., and A. W. Schwab Co.; and confectionery, from the plant sites of L. S. Heath & Sons, Inc., at Robinson, Ill., and Fred W. Amend Co., at Danville, Ill., to points in the above-named destination States, subject to restrictions. Frederick J. Coffman, 521 South 14th Street, P.O. Box 80806, Lincoln, Nebr. 68501., attorney for applicants.

No. MC-FC-74477. By order of July 3, 1973, the Motor Carrier Board approved the transfer to Westport Trucking Company, a Missouri corporation, Paola, Kansas, of the operating rights in Certificates No. MC-126822 (Sub-No. 2), MC-126822 (Sub-No. 32), MC-126822 (Sub-No. 33) and MC-126822 (Sub-No. 38) issued January 4, 1972, August 21, 1972, April 4, 1972 and May 31, 1972 respectively to National Expressways, Inc., Kansas City, Kansas, authorizing the transportation of various commodities from, to and between various named points and areas in the United States. David A. Welte, 1020 Commerce Tower, Kansas City, Mo., 64105, attorney for transferee, John E. Jandera, 641 Harrison St., Topeka, Kansas, 66603, attorney for transferor.

No. MC-FC-74537. By order of June 29, 1973, the Motor Carrier Board approved the transfer to Oliver Ratliff, Dale Ratliff and Richard Leaf, a partnership Doing Business As Ratliff Bros. & Co., Kewanee, Ill. 61443, of Certificates No. MC-119380 (Sub-No. 2) and No. MC-119380 (Sub-No. 4) issued May 11, 1961, and June 15, 1965, respectively, to Richard Leaf, Dale Ratliff, Oliver Ratliff and Damon Barritt, a partnership Doing Business As Ratliff Bros. & Co., Kewanee, Ill. 61443, authorizing the transportation of: Rock salt, in dump vehicles, from Buffalo, Iowa, to points in a described part of Illinois; rock salt, in dump vehicles, from Davenport, Iowa, and points within 25 Miles thereof, in Iowa, to points in a described part of Illinois; and coal, in dump vehicles, from points in Henry and Knox Counties, Ill., to points in six named counties in Iowa, George S. Mullins, Registered Practitioner, 4704 W. Irving Park Road, Chicago, Ill. 60641.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-14235 Filed 7-11-73;8:45 am]

[Notice 90]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JULY 3, 1973.

The following are notices of filing of application, 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, for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67, (49 CFR Part 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 5470 (Sub-No. 78 TA) filed June 22, 1973 Applicant: TAJON, INC. P.O. Box 146 R.D. #5 Mercer, Pa. 16137 Applicant's representative: Donald E. Cross 700 World Center Building 918 Sixteenth Street, N.W. Washington, D.C. 20006 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Asphalt*, in bulk, solid, crushed or granular, in dump vehicles, from Perth Amboy, N.J., to West Elizabeth, Pa.; Le Roy, N.Y.; and East Liverpool, Ohio, for 180 days. Note: Applicant intends to tack with MC 5470. SUPPORTING SHIPPER: Witco Chemical Corporation, 277 Park Avenue, New York, N.Y. 10017. SEND PROTESTS TO: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pa. 15222.

No. MC 26396 (Sub-No. 79 TA) filed June 20, 1973 Applicant: POPELKA TRUCKING CO. doing business as THE WAGGONERS P.O. Box 990 201 W. Park Livingston, Mont. 59047 Applicant's representative: Wayne Waggoner (same address as above) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mixer feeders, manure spreaders, horse trailers, small flat bed trailers, tanks, waterers, and feeders*, from the plant sites of B. J. Manufacturing Co., Inc., Dodge City, Kans.; Oswalt Division Butler Manufacturing Co., Garden City, Kans.; W. W. Trailers, Madill, Okla.; Plains Manufacturing Co., Sidney, Nebr.; National Manufacturing and Stamping Co., Jefferson, Iowa; Trojan Division, Ritchie Manufacturing, Conrad, Iowa, Top Hand Production, Inc., Hutchinson, Kans.; and Arkfeld Manufacturing and Distributing Co., Inc., Norfolk, Nebr., to Great Falls and Billings, Mont., for 180 days. SUPPORTING SHIPPER: Western Ranch Supply, 303 North 13th Street, Billings, Mont. 59101. SEND PROTESTS TO: Paul J. Labane, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Rm. 222 U.S. Post Office Building, Billings, Mont. 59101.

No. MC 51146 (Sub-No. 323 TA) filed June 25, 1973 Applicant: SCHNEIDER TRANSPORT, INC. 2661 South Broadway P.O. Box 2298 (Box zip 54306) Green Bay, Wis. 54304 Applicant's representative: Neil DuJardin (same address as

above) Authority sought to operate as a *Common carrier*, by motor vehicle, over irregular routes, transporting: *Clay*, from Colony, Wyo., to Milwaukee, Wis., for 180 days. SUPPORTING SHIPPER: Delta Oil Products Corporation, 6263 North Teutonia Avenue, Milwaukee, Wis. 53209 (James F. Crawford, Vice President—Purchasing). SEND PROTESTS TO: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 96818 (Sub-No. 3 TA) filed June 20, 1973 Applicant: SOUTHERN MARYLAND TRANSPORTATION CO., INC. 4112 Dewmar Court Kensington, Md. 20795 Applicant's representative: Thomas M. Auchincloss, Jr. 918 Sixteenth Street, N.W. Washington, D.C. 20006 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, household goods, commodities in bulk, and commodities requiring special equipment), restricted to the transportation of shipments having a prior or subsequent movement by aircraft, between the Naval Air Station, Norfolk, Va., on the one hand, and, on the other, the Naval Weapons Station, Yorktown, Va.; the Naval Weapons Laboratory, Dahlgren, Va.; Patuxent Naval Air Station, Patuxent, Md.; the Naval Ordnance Station, Indianhead, Md.; and the Navy Yard, Washington, D.C., for 180 days. SUPPORTING SHIPPER: Curtis L. Wagner, Jr., Special Assistant to The Judge Advocate General and Chief, Regulatory Law Office, Department of the Army, Washington, D.C. 20310. SEND PROTESTS TO: Robert D. Caldwell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 12th Street & Constitution Avenue, N.W., Washington, D.C. 20423.

No. MC 102616 (Sub-No. 877 TA) filed June 25, 1973 Applicant: COASTAL TANK LINES, INC. 215 East Waterloo Road P.O. Box 7211 Akron, Ohio 44319 Applicant's representative: James Annand (same address as above) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry terephthalic acid*, in bulk, in tank vehicles, from the facilities of E. I. Dupont de Nemours & Company at or near Wilmington, N.C., to Joliet, Ill., for 180 days. SUPPORTING SHIPPER: E. L. Du Pont de Nemours & Co., 1007 Market Street, Wilmington, Del. 19898. SEND PROTESTS TO: Franklin D. Bail, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 181 Federal Office Bldg., 1240 East Ninth Street, Cleveland, Ohio 44199.

No. MC 118431 (Sub-No. 12 TA) filed June 25, 1973 Applicant: DENVER SOUTHWEST EXPRESS, INC. 605 South 14th Street P.O. Box 2028 Lincoln, Nebr. 68501 Applicant's representative: David R. Parker P.O. Box 82028 Lincoln, Nebr. 68501 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wire and cable*, (a) from Perth Amboy and New Brunswick, N.J., to Lincoln, Nebr.; (b) from Perth Amboy, N.J., to Tampa, Fla.; (c) from Tampa, Fla., to Erie, Pa.; (d) from Monticello, Ill., to Tampa, Fla.; and (e) from Bonham, Tex., to Indianapolis, Ind. and Lincoln, Nebr., (2) *Wire cable and scouring pads*, from Brandon, Miss., to points in the United States (except Mississippi), and (3) *Wire cable and power cord*, from Williamstown and North Adams, Mass. and Pownal, Vt., to points in Illinois in and north of Will, Grundy, LaSalle, Bureau, Henry, and Rock Island Counties, for 180 days. SUPPORTING SHIPPER: James K. McConnell, General Cable Corporation, 26 Washington Street, Perth Amboy, N.J. 08862. SEND PROTESTS TO: Max H. Johnston, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 320 Federal Building & Court House, Lincoln, Nebr. 68508.

No. MC 123233 (Sub-No. 48 TA) filed June 25, 1973 Applicant: PROVOST CARTAGE INC. 7887 2nd Avenue Ville d'Anjou 437, Que., Canada Applicant's representative: J. P. Vermette (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Muriatic acid*, in bulk, in tank vehicles, from the Port of Entry on the International Boundary Line between the United States and Canada located at or near Highgate Springs, Vt., to Winooski, Vt., for 180 days. RESTRICTION: Restricted to traffic having a prior movement in foreign commerce. SUPPORTING SHIPPER: Canadian Industries Limited, 630 Dorchester Blvd. West, Montreal 101, Que., Canada. SEND PROTESTS TO: District Supervisor Norman T. Fowlkes, Interstate Commerce Commission, Bureau of Operations, 52 State Street, Room 5, Montpelier, Vt. 05602.

No. MC 134776 (Sub-No. 22 TA) filed June 7, 1973 Applicant: MILTON TRANSPORTATION, INC. RD 1, P.O. Box 207 Milton, Pa. 17847 Applicant's representative: George A. Olsen 69 Tonnele Avenue Jersey City, N.J. 07306 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper, paper products, and paper, equipment, materials and supplies* used or useful in the manufacture and sale of paper and plastic products (excepts commodities in bulk), between the facilities of U.S. Envelope Co., Williamsburg, Pa., on the one hand, and, on the other, points in Georgia, New York, New Jersey, Connecticut, Massachusetts, Rhode Island, Maine, New Hampshire, Vermont, Ohio, Maryland, Virginia, Delaware, Indiana, Illinois, Michigan, Iowa, Kentucky, Tennessee, Nebraska, Missouri, West Virginia, North Carolina, South Carolina, Florida, Alabama, Mississippi, and the District of Columbia, for 180 days. SUPPORTING SHIPPER: U.S. Envelope Co., Memorial Industrial Park, Box 3300, Springfield, Mass. 01101. SEND PROTESTS TO: Robert W. Ritenour, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 508 Federal Building, P.O. Box 869, Harrisburg, Pa. 17108.

No. MC 134783 (Sub-No. 5 TA) filed May 29, 1973 Applicant: DIRECT SERVICE, INC. P.O. Box 786 Dimmett Highway West Plainview, Tex. 79072 Applicant's representative: Charles J. Kimball 2310 Colorado State Bank Bldg. Denver, Colo. 80202 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Unfrozen bakery products and snack foods*, from the plantsites and storage facilities of Midwest Biscuit Company at or near Burlington, Iowa, to points in Oklahoma and Texas, for 180 days. SUPPORTING SHIPPER: Gil McClung, Wholesale Sales Manager, Midwest Biscuit Company, Box 888, Burlington, Iowa 52601. SEND PROTESTS TO: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H–4395 Herring Plaza, Amarillo, Tex. 79101.

No. MC 134875 (Sub-No. 3 TA) filed June 25, 1973 Applicant: JOHN W. SMOOT Box 124 Mount Jackson, Va. 22840 Applicant's representative: M. Bruce Morgan 201 Azar Building Glen Burnie, Md. 21061 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Basic liquid fertilizer solutions, basic liquid feed solutions and granular fertilizer*, in bags and bulk, from Mount Jackson, Va., to points in Maryland, West Virginia, Pennsylvania, Washington, D.C., New Jersey, Delaware, North Carolina, South Carolina, Connecticut, Rhode Island, Vermont, and New York, for 180 days. SUPPORTING SHIPPER: Valley Fertilizer & Chemical Co., Inc., P.O. Box 443, Mount Jackson, Va. SEND PROTESTS TO: Robert D. Caldwell, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 12th Street and Constitution Avenue, N.W., Washington, D.C. 20423.

No. MC 138805 (Sub-No. 1 TA) filed June 25, 1973 Applicant: S. & L. SERVICES, INC. R.D. #1 Milton, Pa. 17847 Applicant's representative: S. Berne Smith P.O. Box 1166 Harrisburg, Pa. 17108 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt and brewed beverages* (except in bulk), moving on commercial bills of lading, from the facilities of Anheuser-Busch, Inc., at Columbus, Ohio, to the township of West Chillisquaque, Northumberland County, Pa., and Carlisle and Williamsport, Pa., for 180 days. SUPPORTING SHIPPER: Lycoming Beverage Co., 757 Arnold Street, Williamsport, Pa. 17701; Edwin H. Kleckner, Inc., Montandon, Pa. 17850; and Harold H. Blosser, 222 East High Street, Carlisle, Pa. 17013. SEND PROTESTS TO: Robert W. Ritenour, District Supervisor, Bureau of Operations,

Interstate Commerce Commission, 508 Federal Bldg., P.O. Box 869, Harrisburg, Pa. 17108.

No. MC 138845 TA filed June 25, 1973 Applicant: DAYTON TRANSPORT CORPORATION P.O. Box 338 Dayton, Va. 22821 Applicant's representative: Francis J. Ortman 1100 Seventeenth Street, N.W. Suite 613 Washington, D.C. 20036 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Precast and prestressed structural and architectural concrete products*, from the plant site of Formigli Corporation in Spotsylvania County, Pa., to points in Delaware, Kentucky, Maryland, North Carolina, New Jersey, New York, Ohio, Pennsylvania, South Carolina, West Virginia, Tennessee, and the District of Columbia, for 180 days. SUPPORTING SHIPPER: Formigli Corporation, P.O. Box F, Berlin, N.J. 08009. SEND PROTESTS TO: Clatin M. Harmon, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 215 Campbell Avenue, SW., Roanoke, Va. 24011.

By the Commission.

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

[FR Doc.73-14236 Filed 7-11-73;8:45 am]

[Notice No. 54]

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER APPLICATIONS

JULY 6, 1973.

The following applications (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 special rule 1100.247[1] of the Commission's general rules of practice (49 CFR, as amended), published in the FEDERAL REGISTER issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after date of notice of filing of the application is published in the FEDERAL REGISTER. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one (1) copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) of the Commission's rules of practice further provides that each applicant shall, if protests to its application have been filed, and within 60 days of the date of this publication, notify the Commission in writing (1) that it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further processing steps (whether modified procedure, oral hearing, or other procedures) will be determined generally in accordance with the Commission's general policy statement concerning motor carrier licensing procedures, published in the FEDERAL REGISTER issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

No. MC 2229 (Sub-No. 177) filed May 14, 1973 Applicant: RED BALL MOTOR FREIGHT, INC. 3177 Irving Blvd. P.O. Box 47407 Dallas, Tex. 75247 Applicant's representative: Douglas Anderson (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk and commodities which because of size or weight require the use of special equipment), Between Fort Smith, Ark. and Shreveport, La., as an alternate route for operating convenience only in connection with applicant's regular-route operations serving Texarkana, Tex. for the purpose of joinder only: From Fort Smith, Ark., over U.S. Highway 71 to Shreveport, La., and return over the same route. Note: If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex. or Washington, D.C.

No. MC 2860 (Sub-No. 123) filed May 7, 1973 Applicant: NATIONAL FREIGHT, INC. 57 West Park Avenue Vineland, N.J. 08360 Applicant's representative: W. Randall Tye 1500 Candler Building Atlanta, Ga. 30303 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fibrous glass products and materials; plastic products and materials; asphalt and asbestos and asphalt and asbestos products; and materials, supplies and equipment* used in the production and installation of the commodities named above, in straight or mixed shipments, between the plant site of Owens-Corning Fiberglas Corporation at or near Fairburn, Ga., and points in Arkansas. Note: Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga. or Washington, D.C.

No. MC 3854 (Sub-No. 23) filed May 14, 1973 Applicant: BURTON LINES, INC. P.O. Box 11306 East Durham, Station Durham, N.C. 27703 Applicant's representative: Edward G. Villalon 1032 Pennsylvania Building Pennsylvania Ave. & 13th St., N.W. Washington, D.C. 20004 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Composition board, particle board and plywood, accessories, materials and supplies* used in the sale and installation thereof, from points in Calhoun County, Fla., to points in the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, including the District of Columbia; and (2) *materials, supplies and accessories* used in the manufacture and installation of the commodities in (1) above from the destination points specified in part (1) above to the plant and warehouse sites of Abitibi Corporation in Calhoun County, Fla., restricted in (1) and (2) above against the transportation of commodities in bulk. Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich., or Washington, D.C.

No. MC 5227 (Sub-No. 6) (CLARIFICATION) filed April 5, 1973, published in FEDERAL REGISTER issue May 24, 1973 and republished as clarified this issue. Applicant: ECONOMY MOVERS, INC. P.O. Box 201 Mead, Nebr. 68041 Applicant's representative: Gailyn L. Larsen P.O. Box 80806 521 So. 14th Street Lincoln, Nebr. 68501 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Agricultural implements, pumps, water systems, component parts for water systems, tanks, and towers, and parts for agricultural implements and pumps*, between Beatrice, Nebr., Springfield, Mo., Morton, Ill. and Amarillo, Tex., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii); (2) *Equipment, materials and supplies* used in the manufacture or distribution of the above-named commodities (except commodities in bulk), from points in the United States, (except Alaska and Hawaii), to Beatrice, Nebr.,

[1] Copies of special rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Springfield, Mo., Morton, Ill., and Amarillo, Tex.; and (3) *Experimental and show display agricultural implements, pumps, water systems, component parts for water systems tanks and towers, and parts for agricultural implements, and pumps*, between points in the United States (except Alaska and Hawaii). Note: The purpose of this republication is to show that tacking possibilities exist with applicant's existing commodity authority of contractor's equipment, machinery and supplies at points in Colorado, Kansas or Iowa to provide a through service to the destination states named herein. If a hearing is deemed necessary, applicant requests it be held at Lincoln or Omaha, Nebr.

No. MC 6607 (Sub-No. 12) filed May 11, 1973 Applicant: J. J. MINNEHAN, INC. P.O. Box 433 Scarborough, Maine 04074 Applicant's representative: Frederick T. O'Sullivan 622 Lowell Street Peabody, Mass. 01960 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Corn products and blends of corn products with other sweeteners*, in bulk, in tank vehicles, from Boston, Mass., to points in New Hampshire, Vermont, Rhode Island, that part of Maine bounded by a line beginning at the New Hampshire-Maine State line and extending in an easterly direction along U.S. Highway 2 to Norridgewock, Maine, thence in a northerly direction along Alternate U.S. Highway 201 to junction U.S. Highway 201, thence along U.S. Highway 201 to Bingham, Maine, thence in an easterly direction along Maine Highway 16 through Milo and La Grange, Maine, to junction Maine Highway 43, thence along the western shore of the Penobscot River and the Penobscot Bay to the Atlantic Ocean, thence in a southwesterly direction along the Atlantic Ocean to the Maine-New Hampshire State line, and thence along the Maine-New Hampshire State line to the point of beginning, including points on the above-described boundary lines, and that part of Connecticut on and east of a line beginnning at the Connecticut-Massachusetts State line and extending in a southerly direction along Connecticut Highway 159 to Hartford, Conn., thence in a southerly direction along Interstate Highway 91 to the intersection of Interstate Highway 91 and U.S. Highway 5, thence in a southerly direction along U.S. Highway 5 to New Haven, Conn.; and (2) *sugar and blends of sugar with other sweeteners*, from Boston, Mass., to points in the destination areas described in (1) above, under contract with Amstar Corporation, Revere Sugar Refinery, and Boston Molasses Co., Div. SU Crest Corporation. Note: If a hearing is deemed necessary, applicant requests it be held at Boston, Mass.

No. MC 11220 (Sub-No. 131) filed May 11, 1973 Applicant: GORDONS TRANSPORTS, INC. 185 West McLemore Ave. P.O. Box 59 Memphis, Tenn. 38101 Applicant's representative: W. F. Goodwin (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except automobiles setup on wheels, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), Between Chicago, Ill. and Indianapolis, Ind. as an alternate route for operating convenience only in connection with applicant's regular-route operations and serving Indianapolis, Ind. for the purpose of joinder only: From Chicago over Interstate Highway 94 to junction Interstate Highway 65 near Gary, Ind., thence over Interstate Highway 65 to Indianapolis and return over the same route. RESTRICTION: The authority described above is restricted to the transportation of traffic moving from, to or through points in Tennessee. Note: Applicant states that the purpose of this application is to enable applicant to operate over interstate highways for the entire distance between Chicago and Indianapolis in connection with the transportation of traffic moving from, to or through Tennessee. Note: If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn. or Washington, D.C.

No. MC 14702 (Sub-No. 51) filed May 23, 1973 Applicant: OHIO FAST FREIGHT, INC. P.O. Box 808 Warren, Ohio 44482 Applicant's representative: Paul F. Beery 88 East Broad Street, Suite 1660 Columbus, Ohio 43215 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum and aluminum articles*, (except commodities in bulk), between the plantsite of Reynolds Metal Company at or near Rooseveltown, N.Y., on the one hand, and, on the other, points in Indiana, the lower Peninsula of Michigan, and the Chicago, Illinois Commercial Zone. Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 22182 (Sub-No. 22) (CORRECTION) filed May 4, 1973. Published in the FEDERAL REGISTER issue of June 21, 1973, and republished as corrected this issue. Applicant: NU-CAR CARRIERS, INC. 950 Haverford Road P.O. Box 172 Bryn Mawr, Pa. 19010 Applicant's representative: Gerald K. Gimmel 805 McLachlen Bank Building 666 Eleventh Street, N.W. Washington, D.C. 20001 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicles*, in secondary movements, from points in the Norfolk, Va., and Portsmouth, Va., Commercial Zones, to points in Kentucky and Tennessee, restricted to the transportation of traffic originating at the plant sites and facilities of Toyo Kogyo Company located in Japan, and Ford of Europe Incorporated located in England, Germany, and Italy. Note: The purpose of this republication is to indicate applicant's plant site restriction which was previously published in error. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 30319 (Sub-No. 141) filed May 7, 1973 Applicant: SOUTHERN PACIFIC TRANSPORT COMPANY OF TEXAS AND LOUISIANA, a Corporation 7600 South Central Expressway Dallas, Tex. 75216 Applicant's representative: Lloyd M. Roach 1517 West Front Street Tyler, Tex. 75701 Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, (except those of unusual value, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment), Between Del Rio, Tex. and junction of U.S. Highway 277 and Texas Highway 131 (approximately five miles south of Normandy, Tex.), as an alternate route for operating convenience only in connection with applicant's regular-route operations, serving no intermediate points: From Del Rio, Tex., over U.S. Highway 277 to junction Texas Highway 131 and return over the same route. Note: If a hearing is deemed necessary, applicant requests it be held at Dallas, or Houston, Tex.

No. MC 30844 (Sub-No. 463) (AMENDMENT) filed April 30, 1973, published in the FEDERAL REGISTER issue of June 7, 1973, and republished as amended this issue. Applicant: KROBLIN REFRIGERATED XPRESS, INC. 2125 Commercial Street P. O. Box 5000 Waterloo, Iowa 50702 Applicant's representative: Truman A. Stockton The 1650 Grant Street Bldg. Denver, Colo. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packing houses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles, and hides), from Waterloo, and Columbus Junction, Iowa to points in Missouri on and north of U.S. Highway 40 (except Joplin and Kansas City), and points in Oklahoma (except Henrietta, Muskogee, Oklahoma City, Okmulgee, and Tulsa). Note: The purpose of this republication is to indicate that applicant seeks to perform operations to points in Missouri on and north of U.S. Highway 40, rather than south of U.S. Highway 40. Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Des Moines, Iowa, or Washington, D.C.

No. MC 33641 (Sub-No. 102) filed June 7, 1973 Applicant: IML FREIGHT, INC. 2175 South 3270 West Salt Lake City, Utah 80217 Applicant's representative: Carl L. Steiner 39 South La Salle Street Chicago, Ill. 60603 Authority sought to operate as a *common carrier*, by motor

vehicle, over regular routes, transporting: *General commodities*, (except those of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, (other than grain and livestock feed), and commodities requiring special equipment), serving the plant site of Pacific International Freeport Center, located in Tooele County, Utah, as an off route point in connection with carrier's regular-route operations. Note: If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah.

No. MC 35320 (Sub-No. 138) filed May 29, 1973 Applicant: T.I.M.E.-DC, INC. 2598-74th Street P.O. Box 2550 Lubbock, Tex. 79408 Applicant's representative: Robert D. Schuler One Woodward Avenue—Suite 1700 Detroit, Mich. 48226 Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the plant site and facilities of Niedermeyer-Martin Co. at or near Ridgefield, Wash., as an off-route point in connection with carrier's otherwise authorized regular route operations to and from Portland, Oreg. Note: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at either San Francisco, Calif., Seattle, Wash. or Portland, Oreg.

No. MC 52657 (Sub-No. 706) filed May 29, 1973 Applicant: ARCO AUTO CARRIERS, INC. 2140 West 79th Street Chicago, Ill. 60620 Applicant's representative: A. J. Bieberstein 121 West Doty Street Madison, Wis. 53703 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Hoists and cranes*, (2) *refuse containers and packers*, and (3) *materials, supplies, and parts* (except commodities in bulk), used in the manufacture, assembly, and servicing of the commodities in (1) and (2) above, when moving in mixed loads with such commodities, from Richmond, Va., to points in the United States, including Alaska (but excluding Hawaii). Note: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Richmond, Va.

No. MC 52657 (Sub-No. 707) filed June 11, 1973 Applicant: ARCO AUTO CARRIERS, INC. 2140 West 79th Street Chicago, Ill. 60620 Applicant's representative: A. J. Bieberstein 121 West Doty Street Madison, Wis. 53703 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Motor vehicle bodies, hoists including freight gates, lift gates, tail gates, winches, packers, compactors, and containers*, and (2) *materials, supplies* (except commodities in bulk), *and parts* used in the manufacture, assembly or servicing of commodities described in (1) above, when moving with such commodities, (a) from points in Union Township (Licking County), Ohio, to points in the United States, including Alaska, (but excluding Hawaii), and (b) from Enterprise, Ala., to points in Union Township (Licking County), Ohio. Note: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Chicago, Ill.

No. MC 52709 (Sub-No. 319) (CORRECTION) filed March 28, 1973, and published in the FEDERAL REGISTER issue of June 1, 1973, and republished as corrected, this issue. Applicant: RINGSBY TRUCK LINES INC. P.O. Box 192 5773 South Prince Street Littleton, Colo. 80120 Applicant's representative: J. Maurice Andren P.O. Box 1631 Rapid City, S. Dak. 57701 Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment), Between Sioux City, Iowa and Chicago, Ill., serving the intermediate points of Freeport and Rockford, Ill. for purposes of joinder or interchange only: From Sioux City, Iowa over U.S. Highway 20 to Chicago, Ill. and return over the same route. Note: The purpose of this republication is to correct: (1) *regular routes*, in lieu of irregular routes; (2) eliminate the restriction in the commodity description "and those injurious or contaminating to other lading"; and (3) properly set forth the route description as indicated above. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.

No. MC 52883 (Sub-No. 3) filed May 11, 1973 Applicant: TAKIN BROTHERS TRANSFER AND STORAGE COMPANY, a Corporation 326 Sycamore Street Waterloo, Iowa 50703 Applicant's representative: Robert L. Marsch (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Unaccompanied baggage and household goods*, between points in Iowa, restricted to the transportation of shipments moving in interstate commerce. Note: Applicant states that the requested authority can be tacked to serve points between Waterloo, Iowa, and points within 35 miles thereof, on the one hand, and, on the other, points in Illinois, Indiana, Kansas, North Dakota, Michigan, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill. or Washington, D.C.

No. MC 73165 (Sub-No. 327) filed June 12, 1973 Applicant: EAGLE MOTOR LINES, INC. 830 North 33rd Street, P.O. Box 11086 Birmingham, Ala. 35202. Applicant's representative: Robert M. Pearce P.O. Box E Bowling Green, Ky. 42101 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum billets, blooms, ingots, pigs, and slabs, and non ferrous metals* for recycling purposes, from the plantsite of Culp Smelting & Refining Co. at or near Steele, Ala., to points in Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala.

No. MC 74321 (Sub-No. 81) filed May 23, 1973 Applicant: B. F. WALKER, INC. 650 - 17th Street Denver, Colo. 80202 Applicant's representative: Richard P. Kissinger (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Refractories*, from the plantsites of H. K. Porter Company, Inc., located at Wellsville, Hammondsville, and Irondale, Ohio, to points in Illinois, Indiana and Kentucky. Note: Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa. or Washington, D.C.

No. MC 78228 (Sub-No. 41) filed May 24, 1973 Applicant: J MILLER EXPRESS, INC. 152 Wabash Street Pittsburgh, Pa. 15220 Applicant's representative: Henry M. Wick, Jr. 2310 Grant Building Pittsburgh, Pa. 15219 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles* as defined by the Commission, from the plant site of H.K. Porter Company, Inc., at Huntington, W. Va., to points in Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, and West Virginia. Note: Common control was approved in MC-F-11070. Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C. or Pittsburgh, Pa.

No. MC 78228 (Sub-No. 42) filed May 24, 1973 Applicant: J MILLER EXPRESS, INC. 152 Wabash Street Pittsburgh, Pa. 15220 Applicant's representative: Henry M. Wick, Jr. 2310 Grant Building Pittsburgh, Pa. 15219 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Refractories*, from the plantsite of Universal Refractory Co.,

at or near Wampum and Greenville, Pa., to points in Illinois, Indiana, Kentucky, Maryland, Michigan, New York, Ohio, Pennsylvania, and West Virginia. Note: Common control was approved in MC-F-11070. Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no *present* intention to tack, and therefore does not identify the points or territories which can be served through tacking. 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. or Pittsburgh, Pa.

No. MC 100666 (Sub-No. 246) filed May 24, 1973 Applicant: MELTON TRUCK LINES, INC. P.O. Box 7666 Shreveport, La. 71107 Applicant's representative: Wilburn L. Williamson 3535 N.W. 58th 280 National Foundation Life Bldg. Oklahoma City, Okla. 73112 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe, tubing, conduit, mouldings, valves and fittings, compounds joint sealer, bonding cement, primer, coating, thinner, vinyl building products and accessories and hand tools* used in the installation of such products, from Louisville, Ky., to points in the United States (except Alaska and Hawaii). Note: Applicant states that the requested authority can be tacked with its existing authority but in no instance would it permit service to territory which it cannot already serve. 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 Louisville, Ky.

No. MC 106398 (Sub-No. 664) filed May 21, 1973 Applicant: NATIONAL TRAILER CONVOY, INC. 1925 National Plaza Tulsa, Okla. 74151 Applicant's representative: Irvin Tull (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood, composition board, molding and accessories* used in the installation thereof, from Chesapeake, Va., to points in South Carolina, Georgia, and Florida. Note: Common control may be involved. Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 108449 (Sub-No. 355) filed May 21, 1973. Applicant: INDIANHEAD TRUCK LINE, INC., 1947 West County Road C, St. Paul, Minn. 55113. Applicant's representative: W. A. Mylienbeck (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Potato products and frozen potatoes*, from the plant site of the Western Potato Service, Inc., at or near Grand Forks, N. Dak., to points in Kentucky, Maryland, North Carolina, New Jersey, New York, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia; and (2) *materials, supplies, and equipment* used in the manufacture, processing and distribution of potato products, from points in Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, North Carolina, New York, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia and Wisconsin to the plant site of the Western Potato Service, Inc., at or near Grand Forks, N. Dak. Note: Common control may be involved. Applicant states the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn., or Chicago, Ill.

No. MC 108676 (Sub-No. 53) filed May 23, 1973. Applicant: A. J. METLER HAULING & RIGGING, INC. 117 Chicamauga Ave., N.E., Knoxville, Tenn. 37917. Applicant's representative: Carl U. Hurst, P.O. Box E, Bowling Green, Ky. 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities*, the transportation which, because of size or weight, requires the use of special equipment or special handling, and, when moving in connection therewith, *related commodities*, the transportation which, because of size or weight, does not require the use of special equipment or special handling, and (2) *self-propelled articles*, each weighing 15,000 pounds or more, and *related machinery, tools, parts and supplies* moving in connection therewith, between Knoxville, Tenn., and points within 75 miles of Knoxville, on the one hand, and, on the other, points in Alabama, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, and Virginia. Note: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no *present* intention to tack and therefore does not identify the points or territories which can be served through tacking. 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 Knoxville or Nashville, Tenn.

No. MC 109124 (Sub-No. 16) (CORRECTION) filed April 9, 1973, published in the FEDERAL REGISTER issue of June 1, 1973, and republished, as corrected, this issue. Applicant: SENTLE TRUCKING CORPORATION 210 Alexis Road Toledo, Ohio 43612 Applicant's representative: John M. Nader P.O. Box E Bowling Green, Ky. 42101 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Urethane, urethane products, roofing and roofing materials, insulation materials, composition board, and gypsum products, and materials* used in the installation thereof, from the plant site of the Celotex Corporation located in Lockland (Cincinnati), Ohio, to points in the Lower Peninsula of Michigan; those in Indiana on and north of a line beginning at the intersection of Interstate Highway 70 with the Indiana-Ohio State Boundary Line; thence along Interstate Highway 74 to Indianapolis, and thence along Interstate Highway 74 to the Indiana-Illinois State Boundary Line; those in Illinois on, north, and east of Interstate Highway 74; those in Pennsylvania on and north of a line beginning at the Pennsylvania-West Virginia State Boundary Line and extending along U.S. Highway 40 to its intersection with the Pennsylvania-Maryland State Boundary Line, thence eastward along the Pennsylvania-Maryland State Boundary Line to its intersection with U.S. Highway 219, thence northward along U.S. Highway 219 to the Pennsylvania-New York Boundary Line; and those in New York on and west of a line beginning at the New York-Pennsylvania State Boundary Line and extending northward along U.S. Highway 219 to its intersection with U.S. Highway 20, thence northward along U.S. Highway 20 to its intersection with New York Highway 78, and thence along New York Highway 78 to Lake Ontario. Note: The purpose of this republication is to indicate the territorial description in which applicant seeks to perform the requested operations, which was inadvertantly previously published in error. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Cincinnati, Ohio.

No. MC 111375 (Sub-No. 69) filed May 14, 1973 Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC. P.O. Box 3358 Madison, Wis. 53704 Applicant's representative: Charles E. Dye (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs, food ingredients, and advertising material and specialties, and related equipment and supplies*, when moving with foodstuffs and food ingredients, from points in California, to points in Illinois, Indiana, Iowa, Ohio, Michigan, Minnesota and Wisconsin; and (2) *returned and rejected shipments* of the above-described commodities, from the destination States named in (1) above to points in California. Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Los Angeles or San Francisco, Calif.

No. MC 111401 (Sub-No. 389) filed June 7, 1973 Applicant: GROENDYKE TRANSPORT, INC. 2510 Rock Island Boulevard P.O. Box 632 Enid, Okla. 73701 Applicant's representative: Alvin J. Meiklejohn, Jr. Suite 1600 Lincoln Center 1660 Lincoln Center Denver, Colo. 80203 Authority sought to operate as a *common carrier*, by motor vehicle, over

irregular routes, transporting: *Chemicals*, in bulk, from the plant site of Commercial Solvents Corporation at Sterlington, La., to points in Alabama, Arizona, Arkansas, California, Colorado, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Washington and Wyoming, restricted to traffic originating at the above named plant site. Note: Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no *present* intention to tack, and therefore does not identify the points or territories which can be served through tacking. 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 New Orleans, La.

No. MC 111729 (Sub-No. 386) filed May 2, 1973 Applicant: PUROLATOR COURIER CORP. 2 Nevada Drive Lake Success, N.Y. 11040 Applicant's representative: Russell S. Bernhard 1625 K Street, N.W. Washington, D.C. 20423 Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) *Business papers, records, audit and accounting media of all kinds, and advertising material* moving therewith; (a) between Philadelphia, Pa. and Greenwich, Conn.; (b) between New York, N.Y. and York, Pa.; (c) between Brazil and Frankfort, Ind., on the one hand, and, on the other, Champaign and Danville, Ill.; (d) between Valparaiso, Ind., on the one hand, and, on the other, points in Berrien, Cass, Kalamazoo, St. Joseph and Van Buren Counties, Mich.; and Cook, Iroquois, Kankakee, and Will Counties, Ill.; (e) between Peoria, Ill., on the one hand, and, on the other, Milwaukee and Madison, Wis.; (f) between Louisville, Ky., on the one hand, and on the other, Nashville, Tenn.; (g) between Mishawaka, Ind., on the one hand, and, on the other, Port Clinton, Ohio; (h) between Newark, Del., on the one hand, and, on the other, Baltimore, Md.; District of Columbia; points in Delaware, Montgomery, and Philadelphia Counties, Pa.; Essex and Morris Counties, N.J.; Arlington, Fairfax, Loudoun, and Prince William Counties, Va.; (2) *business papers, records, audit and accounting media of all kinds, engineering drawings, and specifications, and small industrial parts* moving therewith, restricted against the transportation of packages or articles weighing in the aggregate more than 50 lbs. from one consignor to one consignee on any one day, between Angola, Ind., on the one hand, and, on the other, Cleveland, Milan, and Napoleon, Ohio; Detroit, Mich.; and Chicago, Ill.; (3) *business papers, records, audit and accounting media of all kinds, and business machines, office equipment and accessories* thereto, limited to articles and packages not to exceed 50 lbs. from one consignor to one consignee on any one day, between Fort Wayne, Ind., on the one hand, and, on the other, Quincy, Mich.; and St. Louis, Mo. Note: Applicant holds contract carrier authority in MC 112750 and Subs, therefore dual operations may be involved. Common control may also be involved. Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no *present* intention to tack and therefore does not identify the points or territories which can be served through tacking. 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. or New York, N.Y.

No. MC 112304 (Sub-No. 68) filed June 1, 1973 Applicant: ACE DORAN HAULING & RIGGING CO., a Corporation 1601 Blue Rock Street Cincinnati, Ohio 45223 Applicant's representative: A. Charles Tell 100 East Broad Street Columbus, Ohio 43215 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic pipe, plastic conduit, plastic or iron fittings and connections, valves, hydrants and gaskets*, (except Oil Field Commodities as defined in Mercer-Extension Oil Field Commodities, 74 M.C.C. 459), from the plant site and warehouse facilities of the Clow Corporation located at or near Columbia, Mo., to points in the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, and (2) *equipment, materials and supplies*, (except commodities in bulk), used in the manufacture and processing of the commodities described in (1) above, from points in the destination territory named in (1) above to the plant site and warehouse facilities of the Clow Corporation located at or near Columbia, Mo., restricted to traffic originating at and/or destined to above named plant and warehouse facilities. Note: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill. or St. Louis, Mo.

No. MC 112963 (Sub-No. 40) filed May 18, 1973. Applicant: ROY BROS., INC., 764 Boston Road, Pinehurst, Mass. 01866. Applicant's representative: Leonard E. Murphy (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, between points in New York (except those in the New York, N.Y. Commercial Zone), on the one hand, and, on the other, points in Connecticut, Massachusetts, New Hampshire, Rhode Island, Vermont and Maine. Note: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no *present* intention to tack and therefore does not identify the points or territories which can be served through tacking. 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 Boston, Mass. or Washington, D.C.

No. MC 114045 (Sub-No. 383) filed May 11, 1973. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 5842, Dallas, Tex. 75222. Applicant's representative: J. B. Stuart (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery*, frozen and other than frozen, in vehicles equipped with mechanical refrigeration, from Downingtown, (Chester County), Pa., to points in California and Texas. Note: Common control was approved in MC–F–8619. Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C. or Philadelphia, Pa.

No. MC 114045 (Sub-No. 384) filed May 11, 1973. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 5842, Dallas, Tex. 75222 Applicant's representative: J. B. Stuart (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen bakery goods*, in vehicles equipped with mechanical refrigeration, from King of Prussia, (Montgomery County), Pa., to points in California. Note: Common control was approved in MC–F–8619. Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C. or Philadelphia, Pa.

No. MC 114106 (Sub-No. 99) filed May 14, 1973 Applicant: MAYBELLE TRANSPORT COMPANY a Corporation P.O. Box 849 Lexington, N.C. 27292 Applicant's representative: Russell E. Stone P.O. Box 90408 Nashville, Tenn. 37209 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, in bulk, from Charlotte, N.C., to points in Georgia, South Carolina, and Virginia. Note: Applicant holds contract carrier authority under MC 115176 and Subs, therefore dual operations may be involved. Common control may also be involved. Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention of tacking and therefore does not identify the points or territories which can be served through tacking. 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 Nashville, Tenn. or Atlanta, Ga.

No. MC 114211 (Sub-No. 200) filed May 24, 1973 Applicant: WARREN TRANSPORT, INC. 324 Manhard Street

Waterloo, Iowa 50704 Applicant's representative: Daniel Sullivan 327 South La Salle St. Chicago, Ill. 60604 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Self-propelled vehicles*, (b) *equipment, materials and supplies* designed for use in conjunction with self-propelled vehicles (except tank semi-trailers) and (c) *parts and attachments* for the commodities named in (a) and (b) above; from points in Genesee County, N.Y., to points in the United States (except Alaska and Hawaii); and (2) *materials, equipment and supplies* used in the manufacture, sale or distribution of the commodities described in (1) (a) thru (c) above (except commodities in bulk), from points in the United States (except Alaska and Hawaii) to points in Genesee County, N.Y. Note: Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill. or Washington, D.C.

No. MC 114211 (Sub-No. 201) filed May 25, 1973 Applicant: WARREN TRANSPORT, INC. 324 Manhard St. P.O. Box 420 Waterloo, Iowa 50704 Applicant's representative: Daniel Sullivan 327 South La Salle Chicago, Ill. 60604 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cooling towers and fluid coolers, parts for cooling towers and fluid coolers, and lumber*, from points in Sonoma County, Calif., to points in the United States (except Alaska and Hawaii), and (2) *materials, equipment and supplies* used or useful in the manufacture, sale or distribution of the commodities in (1) above (except commodities in bulk), from points in the United States (except Alaska and Hawaii) to points in Sonoma County, Calif. Note: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Applicant further states no duplicating authority sought. If a hearing is deemed necessary, applicant requests it be held at San Francisco, Calif.

No. MC 114552 (Sub-No. 80) filed May 14, 1973 Applicant: SENN TRUCKING COMPANY, a Corporation P.O. Drawer 220 Newberry, S.C. 29108 Applicant's representative: William P. Jackson, Jr. 919 18th Street NW., Washington, D.C. 20006 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials and supplies* useful in the manufacture and distribution of roofing and roofing materials, gypsum and gypsum products, composition boards, urethane and urethane products (except commodities in bulk) from points in North Carolina, South Carolina, Virginia and the District of Columbia to the facilities of The Celotex Corporation located in Wayne County, N.C. Note: Applicant states that the requested authority can be tacked with its existing authority at MC 114552 and Subs thereunder, but indicates that it has no present intention to tack. 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. or Tampa, Fla.

No. MC 115092 (Sub-No. 24) filed May 14, 1973 Applicant: WEISS TRUCKING, INC. P.O. Box "O" Vernal, Utah 84078 Applicant's representative: Mark K. Boyle 345 South State Street Salt Lake City, Utah 84111 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bentonite clay, processed clay, foundry molding sand treating compounds, lignite coal, treated lignite and boards, water impedance*, from the plantsite and warehouse facilities of American Colloid Company at or near Belle Fourche, S. Dak.; Upton and Lovell, Wyo.; and Gascoyne, N. Dak., to points in Washington, Oregon, Idaho, Utah, Nevada, California, Arizona, Colorado, New Mexico, Oklahoma, Louisiana and Texas. Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Salt Lake City, Utah.

No. MC 115092 (Sub-No. 25) filed May 21, 1973 Applicant: WEISS TRUCKING, INC. P.O. Box O Vernal, Utah 84078 Applicant's representative: William S. Richards P.O. Box 2465 Salt Lake City, Utah 84110 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the facilities of Missouri Beef Packers, Inc., at or near Boise, Idaho, to points in Arizona, California, Colorado, Illinois, Indiana, Nevada, Oregon, Texas, Utah, Washington and Wisconsin. Note: Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah or Amarillo, Tex.

No. MC 115162 (Sub-No. 275) filed May 21, 1973 Applicant: POOLE TRUCK LINE, INC. Post Office Drawer 500 Evergreen, Ala. 36401 Applicant's representative: Robert E. Tate (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cable and wire*, from the plantsite of Kaiser Aluminum & Chemical Corp. at or near Bay Minette, Ala., to points in the United States in and east of North Dakota, South Dakota, Nebraska, Oklahoma, and Texas, and (2) *Materials and supplies* used in the manufacture of cable and wire from the destinations in (1) above, to the named plantsite facilities in (1) above. Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Mobile, Ala. or New Orleans, La.

No. MC 115162 (Sub-No. 274) filed May 18, 1973 Applicant: POOLE TRUCK LINE, INC. Post Office Drawer 500 Evergreen, Ala. 36401 Applicant's representative: Robert E. Tate (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic pipe, plastic conduit, plastic or iron fittings and connections, valves, hydrants and gaskets* (except Oil Field Commodities as defined in *Mercer-Extension*—Oil Field Commodities, 74 M.C.C. 459), from the plant site and storage facilities of the Clow Corporation at Columbia, Mo., to points in the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas; and (2) *Commodities* (except in bulk) used in the manufacture of plastic pipe and conduit, from points in the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, to the plant and warehouse facilities of Clow Corporation at Columbia, Mo. Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill. or St. Louis, Mo.

No. MC 115594 (Sub-No. 16) filed June 11, 1973 Applicant: HOLLOWAY MOTOR EXPRESS, INC. P.O. Box 2337 East Gadsden, Ala. 35903 Applicant's representative: W. Randall Tye 1500 Candler Building Atlanta, Ga. 30303 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tire fabric, winding cores, wrapping material and dunnage bags*, between the plant sites, warehouses, and facilities of Goodyear Tire & Rubber Company located at or near Scottsboro, Ala., and Topeka, Kans. Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala., or Montgomery, Ala.

No. MC 116497 (Sub-No. 2) filed May 24, 1973 Applicant: CLANCY BROS TRANSPORTATION CO., INC. 84 Bengal Terrace Rochester, N.Y. 14610 Applicant's representative: S. Michael Richards 44 North Avenue, Webster, N.Y. 14850 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meat and packing house products*, in vehicles equipped with mechanical refrigeration, from points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Virginia and the District of Columbia, to points in Monroe County, N.Y.; and (2) *packing house products*,

from points in Monroe County, N.Y., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Virginia and the District of Columbia, under continuing contracts with Rochester Independent Packer, Inc. and Monroe Packing, Inc. Note: If a hearing is deemed necessary, applicant requests it be held at Buffalo or Syracuse, N.Y.

No. MC 116763 (Sub-No. 255) filed May 23, 1973. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, Ohio 45380. Applicant's representative: H. M. Richters (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clay* (except in bulk), from Quincy, Fla., and points in Thomas County, Ga., to points in Arkansas, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin and the District of Columbia. Note: Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa.

No. MC 116935 (Sub-No. 13) filed June 7, 1973 Applicant: COMMERCIAL FURNITURE DISTRIBUTORS, INC. 222 Middlesex Street Harrison, N.J. 07029 Applicant's representative: George A. Olsen 69 Tonnele Avenue Jersey City, N.J. 07306 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electronic equipment and supplies*, between the facilities of Commercial Furniture Distributors, Inc., at Harrison, N.J., on the one hand, and, on the other, points in New York, New Jersey, Pennsylvania, Connecticut and Delaware. Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Newark, N.J.

No. MC 117765 (Sub-No. 162) filed May 18, 1973 Applicant: HAHN TRUCK LINE, INC. 5315 N.W. Fifth Street Oklahoma City, Okla. 73107 Applicant's representative: R. E. Hagan (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Charcoal, charcoal products, chemicals, wood chips and charcoal starter*, in containers, (1) from Jacksonville, Tex., to points in Alabama, Arkansas, Colorado, Florida, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, and Tennessee; and (2) from Lewisville, Ark., to points in Alabama, Colorado, Florida, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee and Texas. Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Okla.

No. MC 119407 (Sub-No. 6) (CORRECTION) filed May 14, 1973, published in the FEDERAL REGISTER issue of June 21, 1973, and republished as corrected this issue. Applicant: ASHLINE TRUCKING, INC. 14 Beech Street Corinth, N.Y. 12822 Applicant's representative: W. Norman Charles 80 Bay Street Glens Falls, N.Y. 12801 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from South Colton, N.Y., and points in Fulton and Saratoga Counties, N.Y., to points in Connecticut, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Vermont. Note: The purpose of this republication is to indicate applicant's origin point at South Colton, N.Y., in lieu of South Corinth, N.Y. which was inadvertantly previously published in error. Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Albany, N.Y.

No. MC 119864 (Sub-No. 53) filed May 18, 1973 Applicant: HOFER MOTOR TRANSPORTATION CO., a Corporation 26740 Eckel Road Perrysburg, Ohio 43551 Applicant's representative: Dale K. Craig (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, (1) from Bryan, Ohio, to points in Wisconsin; (2) from Bryan and Coldwater, Ohio, to points in Illinois, Indiana, and St. Louis, Mo.; (3) from Wayland, St. Joseph, and Paw Paw, Mich., to points in Indiana, Illinois, and St. Louis, Mo.; and (4) from Greenville, Ill., to Chicago, Ill. and St. Louis, Mo.; and to points in that part of Michigan south of Michigan Highway 21, and that part of Ohio bounded by a line beginning at the Ohio-Indiana State line and extending east along U.S. Highway 36 to Delaware, Ohio, thence northeast along U.S. Highway 42 to Cleveland, Ohio, thence west along the shore of Lake Erie to the Ohio-Michigan State line thence west along the Ohio-Michigan State line to the Ohio-Indiana State line, and thence south along the Ohio-Indiana State line to the point of beginning, including points on the indicated portions of the highways specified, restricted against shipments of bulk and to traffic originating from the plantsite or warehouses of Pet, Inc., located at the above-described origin points and destined to the specified points. Note: If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo.

No. MC 124211 (Sub-No. 228) filed June 4, 1973 Applicant: HILT TRUCK LINE, INC. P.O. Box 988, Downtown Station Omaha, Nebr. 68101 Applicant's representative: Thomas L. Hilt (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cellular products* and *commodities* used in the manufacture, distribution and installation thereof, between points in Fairfield and New Haven Counties, Conn., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). Note: Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no *present* to tack and therefore does not identify the points or territories which can be served through tacking. 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.

No. MC 124511 (Sub-No. 15) filed May 25, 1973 Applicant: JOHN F. OLIVER an Individual E. Highway 54 P.O. Box 223 Mexico, Mo. 65265 Applicant's representative: Ernest A. Brooks, II Suite 1302–411 North 7th Street St. Louis, Mo. 63101 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe, fittings and accessories* (except such article which because of size or weight require special equipment), from the plantsite and storage facilities of Johns-Manville Products Corporation at or near Wilton Jct., Iowa, to points in Illinois, Iowa, Indiana, Missouri, Kansas, Kentucky, Michigan, Minnesota, Nebraska, North Dakota, South Dakota and Wisconsin. Note: Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo. or Denver, Colo.

No. MC 124920 (Sub-No. 12) filed May 24, 1973 Applicant: LaBAR's, INC. 310 Breck Street Scranton, Pa. 18505 Applicant's representative: L. Agnew Myers, Jr. Suite 506–07 Walker Building 734 15th Street, N.W. Washington, D.C. 20005 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Plastic containers* and *materials and supplies* used in the manufacture of plastic containers, between points in Columbia, Luzerne and Lackawanna Counties, Pa.; Savage, Md.; Westbrook, Maine; and Gardner, Mass.; and points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Coshocton and Cleveland, Ohio; Central Falls, R.I.; Marshall, Starlington and Winchester, Va.; and Bridgeport, Morgantown, New Creek and Wheeling, W. Va. Note: Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Scranton, Pa., or Washington, D.C.

No. MC 125010 (Sub-No. 13) filed June 11, 1973 Applicant: GIBCO MOTOR EXPRESS, INC., 3405 North 33rd Street Terre Haute, Ind. 47808 Applicant's representative: Warren C. Moberly 777

Chamber of Commerce Building Indianapolis, Ind. 46204 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Ferro alloys*, from Calvert City, Ky., to Pontiac, Mich. and Defiance, Ohio, under a contract with Airco Alloys, Division of Airco, Inc. Note: If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind. or Washington, D.C.

No. MC 125123 (Sub-No. 5) filed May 24, 1973 Applicant: MARY DICK AND HOLLIS A. DICK doing business as, H. O. DICK TRANSFER CO. Bethany, Ill. 69194 Applicant's representative: Robert T. Lawley 300 Reisch Building Springfield, Ill. 62701 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Custom fabricated metal tanks, vessels, machinery, dryers, condensers, exchangers, rotary processing equipment, rotocels, reactors, towers, columns, process equipment related items and repair parts*, from the plantsite of Superior Welding Company at Decatur, Ill., to points in Alabama, Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Pennsylvania, Tennessee and Wisconsin under a contract with Superior Welding Company. Note: If a hearing is deemed necessary, applicant requests it be held at either Chicago, Ill., St. Louis, Mo., or Springfield, Ill.

No. MC 125952 (Sub-No. 19) filed May 29, 1973 Applicant: INTERSTATE DISTRIBUTOR CO. a Corporation 8311 Durango S.W. Tacoma, Wash. 98499 Applicant's representative: George R. LaBissoniere Suite 101 130 Andover Park East Seattle, Wash. 98188 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale and retail grocery establishments (except frozen foods and commodities requiring temperature control) from points in California, to Salem, Oreg., under a continuing contract with West Coast Grocery Co. Note: Applicant currently holds common carrier authority in its Certificate MC 117201, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 126346 (Sub-No. 12) filed May 24, 1973 Applicant: HAUPT CONTRACT CARRIERS, INC. P.O. Box 842 Wausau, Wis. 54401 Applicant's representative: Charles W. Singer 2440 E. Commercial Blvd. Fort Lauderdale, Fla. 33308 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Compressors and pumps, parts and accessories* for compressor and pumps, and *materials, equipment and supplies* used in the manufacture and distribution of compressors and pumps (except commodities in bulk), between Bristol, Va., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). RESTRICTION: The operations proposed above will be limited to a transportation service to be performed under a continuing contract, or contracts, with Sundstrand Corporation. Note: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 126851 (Sub-No. 3) filed May 21, 1973 Applicant: C. H. HOOKER TRUCKING, CO. a Corporation 1475 Roanoke Avenue Uhrichsville, Ohio 44683 Applicant's representative: James W. Muldoon 50 West Broad Street Columbus, Ohio 43215 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such articles* as are used in the repair, construction, or assembly of railroad cars, between Dennison, Ohio and Imperial, Pa., on the one hand, and, on the other, points in the United States including Alaska (but excluding Hawaii), under contracts with Briggs & Turivas, Inc. and Depeco Corporation. Note: Applicant currently holds common carrier authority in No. MC 87379 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio or Pittsburgh, Pa.

No. MC 127099 (Sub-No. 19) filed May 23, 1973 Applicant: ROBERT NEFF & SONS, INC. 132 Shawnee Avenue Zanesville, Ohio 43701 Applicant's representative: John L. Alden 50 West Broad Street Columbus, Ohio 43215 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Copying and/or duplicating machines*, crated and uncrated, and *materials and supplies* used therewith, from Columbus and Cleveland, Ohio, to points in Indiana, Kentucky, Michigan, Pennsylvania and West Virginia, under a contract with A.B. Dick Company. Note: If a hearing is deemed necessary, applicant requests it be held at either Chicago, Ill., Columbus, Ohio or Washington, D.C.

No. MC 127834 (Sub-No. 90) filed May 29, 1973 Applicant: CHEROKEE HAULING & RIGGING, INC. 540–42 Merritt Avenue Nashville, Tenn. 37203 Applicant's representative: John M. Nader P.O. Box E Bowling Green, Ky. 42101 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Switch gears, circuit breakers, bus bar systems, and rectifiers;* and (2) *parts* for the commodities named in (1) above, from Camden, N.J., and Philadelphia, Pa., to points in the United States including Alaska (but excluding Hawaii), restricted to traffic originating at the plant sites, storage and shipping facilities of General Electric Company at Camden, N.J. and Philadelphia, Pa. Note: Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn.

No. MC 128527 (Sub-No. 40) filed May 21, 1973 Applicant: MAY TRUCKINC COMPANY, a Corporation P.O. Box 398 Payette, Idaho 83661 Applicant's representative: C. Marvin May (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metals, compressed automobile bodies and parts for recycling*, from points in Idaho south of the southern boundary of Idaho County, to McMinnville, Oreg., San Francisco, Calif., and Seattle, Wash. Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Boise, Idaho.

No. MC 128633 (Sub-No. 9) filed June 5, 1973 Applicant: LAUREL HILL TRUCKING COMPANY a Corporation 614 New County Road Secaucus, N.J. 07094 Applicant's representative: George A. Olsen 69 Tonnele Avenue Jersey City, N.J. 07306 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by department stores, and *supplies and equipment* used in the conduct of such business, from points in the New York, N.Y. Commercial Zone as defined by the Commission, on the one hand, and, on the other, Dearborn, Detroit, Lincoln Park, Pontiac and Roseville, Mich.; and Akron, Belford, Cleveland, Cuyahoga Falls, Middleburg Heights, Rocky River, Tallmadge and Wickliffe, Ohio under a contract with Atlantic Department Stores, Inc. Note: Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y. or Washington, D.C.

No. MC 129129 (Sub-No. 5) filed May 18, 1973 Applicant: JACK-LEONARD TRANSPORTATION CO., INC. 67–12 73rd Place Middle Village, N.Y. 11379 Applicant's representative: Robert B. Pepper 168 Woodbridge Avenue Highland Park, N.J. 08904 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *House furnishings* (other than furniture), and *utensils*, from points in the New York Harbor Area as defined in 49 CFR 1070.1(a), to Hauppauge, N.Y. Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New York City, N.Y., or Newark, N.J.

No. MC 129645 (Sub-No. 44) filed May 21, 1973 Applicant: BASIL J. SMEESTER AND JOSEPH G. SMEESTER doing business as, SMEESTER BROTHERS TRUCKING 1330 South Jackson Street Iron Mountain, Mich. 49801 Applicant's representative: John M. Nader P.O. Box E Bowling Green, Ky. 42101 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood panels;* plain or finished with decorative or protective materials; *furniture stock panels*, wooden with or without veneer facings; *moldings; particle board; and hardboard and composition board* (except lumber, rough or dressed), from the plant and warehouse facilities of The Iron Wood Products Corporation at

Bessemer, Mich., to points in the United States in and east of the States of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Texas. Note: Applicant states that the requested authority can be tacked with its existing authority, but indicates that it has no *present* intention to tack and therefore does not indicate the points or territories which can be served through tacking. 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 Chicago, Ill.

No. MC 133114 (Sub.-No. 3) filed April 27, 1973 Applicant: UNITED TOWING SERVICE, INC. 11530 Ryerson Avenue Downey, Calif. 90241 Applicant's representative: Eldon M. Johnson 650 California Street, Suite 2808 San Francisco, Calif. 94108 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked or disabled motor vehicles* (except passenger automobiles or trailers designed to be drawn by passenger vehicles), *and replacement vehicles for wrecked or disabled motor vehicles*, in truckaway service, between points south of the northern-most boundary lines of San Luis Obispo, Kern and San Bernardino, Counties, Calif. (except points in Los Angeles and Orange Counties), and points in Arizona, on the one hand, and, on the other, points in Arizona, Colorado, Nevada, New Mexico, Texas and Utah. Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 133119 (Sub-No. 19) filed May 11, 1973 Applicant: HEYL TRUCK LINES, INC. 235 Mill Street Akron, Iowa 51001 Applicant's representative: A. J. Swanson 521 So. 14th Street P. O. Box 80806 Lincoln, Nebr. 68501 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products and meat byproducts and articles distributed by meat packinghouses* (except hides and commodities in bulk), (a) from Schuyler and Fremont, Nebr., and Spencer, Cherokee, and Hartley, Iowa, to the ports of entry on the International Boundary line between the United States and Canada, located in Montana, North Dakota, Minnesota, Michigan, and New York, restricted to traffic originating at the facilities of or utilized by Spencer Foods, Inc. at or near the above origins and restricted to traffic moving in foreign commerce; (b) from the facilities of Missouri Beef Packers, Inc., at or near Boise, Idaho; Phelps City, Mo.; Friona and Plainview, Tex., to the ports of entry on the International Boundary line between the United States and Canada, located in Montana, North Dakota, Minnesota, Michigan, and New York, restricted to traffic moving in foreign commerce; and (c) from Dakota City, Omaha, and West Point, Nebr.; Wichita and Emporia, Kans.; LeMars, Ft. Dodge, Denison, Mason City, and Cherokee, Iowa; Luverne and Worthington, Minn.; to the ports of entry on the International Boundary line between the United States and Canada, located in Montana, North Dakota, and Minnesota, restricted to traffic originating at the facilities of or utilized by Iowa Beef Processors, Inc., and restricted to traffic moving in foreign commerce; and (2) *Meats, meat products and meat byproducts* (except commodities in bulk), from Fargo and West Fargo, N. Dak.; Sioux City, Iowa; Omaha, Nebr.; and Rock Island County, Ill., to the ports of entry on the International Boundary line between the United States and Canada located in Michigan and New York, restricted to traffic moving in foreign commerce. Note: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or Sioux City, Iowa.

No. MC 133478 (Sub-No. 8) (AMENDMENT) filed April 26, 1973, published in the FEDERAL REGISTER issue June 14, 1973, and republished, as amended, this issue. Applicant: HEARIN TRANSPORTATION, INC. 8565 SW Beaverton-Hillsdale Highway Portland, Oreg. 97225 Applicant's representative: Nick I. Goyak 404 Oregon National Building 610 S.W. Alder Street Portland, Oreg. 97205 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lumber, plywood, particleboard, and wood beams*, between points in Oregon, Washington and California, under a continuing contract with Hearin Forest Industries, Inc.; and (2) *particleboard*, from Albany, Oreg., to Santa Ana, Calif., under a contract with Hearin Products, a division of D. G. Shelter Products, Inc. Note: The purpose of this republication is to extend the scope of authority originally requested to include Part (2). If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg. or Seattle, Wash.

No. MC 133689 (Sub-No. 27) (AMENDMENT) filed May 10, 1973, published in the FEDERAL REGISTER issue of June 21, 1973, and republished as amended this issue. Applicant: OVERLAND EXPRESS, INC. 651 1st Street, S.W. P.O. Box 2667 New Brighton, Minn. 55112 Applicant's representative: Daniel C. Sullivan 327 South La Salle Street Chicago, Ill. 60604 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail, and chain grocery and food business houses, and, in connection therewith, *equipment, materials*, and *supplies* used in the conduct of such businesses (except commodities in bulk), from Johnathon Industrial Park at or near Chaska, Minn., and the plantsites and storage facilities of Super-Valu Stores, Inc. at Minneapolis-St. Paul, Minn. and points in their Commercial Zone, to Bismarck, N. Dak. Note: The purpose of this republication is to clarify applicant's origin point which was originally filed in error. Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no *present* intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Applicant holds a motor contract carrier permit in No. MC–76025 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Minneapolis, Minn.

No. MC 135751 (Sub-No. 5) filed May 13, 1973. Applicant: ATLANTIC CARRIERS, INC., P.O. Box 284, Atlantic, Iowa 50022. Applicant's representative: Thomas E. Leahy, Jr., 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, (1) from Shenandoah, Iowa, to Wooster, Ohio; and (2) from Shenandoah, Iowa to Corsicana, Tex., under contract with Farmaster Division, The Wickes Corporation, Shenandoah, Iowa. Note: If a hearing is deemed necessary, applicant requests it be held at either (1) Kansas City, Mo.; (2) Minneapolis, Minn.; or (3) Chicago, Ill.

No. MC 136343 (Sub-No. 13) filed May 25, 1973 Applicant: MILTON TRANSPORTATION, INC. P.O. Box 207 Milton, Pa. 17847 Applicant's representative: George A. Olsen 69 Tonnele Avenue Jersey City, N.J. 07306 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper, paper products, and paper equipment, materials and supplies* used or useful in the manufacture and sale of paper and plastic products (except commodities in bulk), between the facilities of U.S. Co., at or near Williamsburg, Pa., on the one hand, and, on the other, points in Georgia, New York, New Jersey, Connecticut, Massachusetts, Rhode Island, Maine, New Hampshire, Vermont, Maryland, Virginia, Delaware, Ohio, Indiana, Illinois, Michigan, Kentucky, Tennessee, Iowa, Nebraska, Missouri, West Virginia, North Carolina, South Carolina, Florida, Alabama, Mississippi, and the District of Columbia. Note: Common control may be involved. Applicant holds contract carrier authority under MC 96098 and subs thereunder, therefore dual operations may be involved also. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Washington, D.C.

No. MC 136453 (Sub-No. 2) filed January 18, 1973 Applicant: MARTIN TRANSIT, INC. Rural Route 30 and Walnut Street Rock Falls, Ill. 61071 Applicant's representative: William J. Boyd 29 South LaSalle Street Chicago, Ill. 60603 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products,*

and articles distributed by meat packinghouses, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Sterling, Ill., to Chicago, Ill., restricted to the transportation of traffic having an immediately subsequent movement by rail to destinations outside of Illinois under a continuing contract with Armour Food Company at Phoenix, Ariz. Note: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 136753 (Sub-No. 2) filed May 21, 1973 Applicant: EASTERN WASHINGTON DISTRIBUTING CO., INC. 1208 North First Street Yakima, Wash. 98901 Applicant's representative: Philip G. Skofstad 3076 E. Burnside Portland, Oreg. 97214 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wine*, from points in the Chicago, Ill., Commercial Zone, to points in Washington; and (2) *spoiled or refused shipments of wine*, from points in Washington to points in the Chicago, Ill., Commercial Zone. Note: If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg.

No. MC 136786 (Sub-No. 6) filed May 18, 1973 Applicant: ROBCO TRANSPORTATION INC. 3033 Excelsior Blvd. Minneapolis, Minn. 55416 Applicant's representative: Val M. Higgins 1000 1st National Bank Bldg. Minneapolis, Minn. 55402 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed-by meat packinghouses*, from Albert Lea, Minn., to points in Georgia, Tennessee, North Carolina and South Carolina, restricted to traffic originating at the plantsite and storage facilities of Wilson & Company, Albert Lea, Minn. and destined to the named destination states. Note: Common control was approved in MC-F-11576. Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Okla. or St. Paul, Minn.

No. MC 138106 (Sub-No. 1) filed May 15, 1973 Applicant: TIDWELL MOTOR CARRIERS, INC. Route 5 Haleyville, Ala. 35565 Applicant's representative: E. Stephen Heisley 805 McLachlen Bank Building 666 Eleventh St., N.W. Washington, D.C. 20001 Authority sought to operate as a *contract carrier*, by motor vehicle, over ifregular routes, transporting: (1) *Trailers*, designed to be drawn by passenger automobiles, in initial movements, and *buildings*, in sections, when moving on their own undercarriages, and *modular homes*, when moving on their own or removable undercarriages, from points in Tippah County, Miss., Rowan County, N.C., Midland County, Tex., and Madison County, Ala., to points in the United States, (including Alaska, but excluding Hawaii); and (2) *returned, disabled, wrecked, and repossessed trailers*, designed to be drawn by passenger automobiles, *buildings*, in sections, when moving on their own undercarriages, and *modular homes*, when moving on their own or removable undercarriages, from points in the United States, (including Alaska, but excluding Hawaii), to points in Tippah County, Miss., Rowan County, N.C., Midland County, Tex., and Madison County, Ala. RESTRICTIONS: (a) The operations authorized in (1) above are restricted to the transportation of traffic originating at the facilities and plantsites of Tidwell Industries, Inc., its divisions, and/or subsidiaries located in the named counties; and (b) the operations in (2) above are restricted to the transportation of traffic destined to the plantsites and facilities of Tidwell Industries, Inc., its divisions and/or subsidiaries located in the named counties, and (c) the operations authorized in (1) and (2) above are restricted to the transportation of traffic moving under a continuing contract or contracts with Tidwell Industries, Inc., its divisions and/or subsidiaries. Note: If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala.

No. MC 138229 (Sub-No. 2) (CORRECTION) filed April 13, 1973, published in the FEDERAL REGISTER issue of May 24, 1973, and republished as corrected this issue. Applicant: P & M TRANSPORT, INC. P.O. Box 518 Morrisville, Vt. 05661 Applicant's representative: John P. Monte 61 Summer St. Barre, Vt. 05641 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Talc, talc tailings and asphalt filler*, in bags and in bulk, (1) from Johnson, Vt., to Burlington and St. Johnsbury, Vt., restricted to traffic having prior or subsequent out-of-state movement by rail, under contract with Eastern Magnesia Talc Company; and (2) from Johnson, Vt., to points in the United States (excluding Hawaii and Alaska) west and south of points in the area bounded as described below: Beginning at a point on the Pennsylvania-New York State line where said line intersects Lake Erie; thence southerly and easterly along the border of Pennsylvania and New York to the intersection of the New York-Pennsylvania State line with U.S. Highway 15 at Lawrenceville, Pa.; thence southerly along U.S. Highway 15 to Harrisburg, Pa. (excluding Erie County and Harrisburg, Pa.); thence southerly along Interstate Highway 83 to its intersection with the Pennsylvania-Maryland State line; thence easterly on the Maryland-Pennsylvania State line to its intersection with the Delaware State line; thence southerly and easterly along the Maryland-Delaware State line to its intersection with the shores of the Atlantic Ocean, under contract with Eastern Magnesia Talc Company. Note: The purpose of this republication is to clarify applicant's requested territorial description. If a hearing is deemed necessary, applicant requests it be held at Montpelier, Vt. or Boston, Mass.

No. MC 138398 (Sub-No. 2) filed May 28, 1973 Applicant: CHARTER EXPRESS, INC. 1959 E. Turner Street P.O. Box 3772 Springfield, Mo. 65804 Applicant's representative: Warren H. Sapp Suite 910 Fairfax Building 101 W. 11th Street Kansas City, Mo. 64105 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Earthenware*, from Dundee, Monmouth and Morton, Ill.; East Liverpool and Wellsville, Ohio; York, Pa.; and Clarksburg, W. Va.; to Hannibal, Kansas City, Sedalia and Sweet Springs, Mo.; and (2) *Coil and sheet coil*, from Portage, Ind.; Warren, Yorkville and Youngstown, Ohio; Bakerstown and Pittsburgh, Pa.; Weirton, W. Va.; to Hannibal, Kansas City, Sedalia and Sweet Springs, Mo., under a continuing contract or contracts with Rival Manufacturing Company of Kansas City, Mo. Note: Applicant currently holds common carrier authority in No. MC 134755 and Sub-No. 31, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Kansas City, or Springfield, Mo.

No. MC 138598 (Sub-No. 2) filed May 29, 1973 Applicant: ROBERT D. MOORE doing business as, MOORE TRUCKING 243 N. Hillside Wichita, Kans. 67214 Applicant's representative: Earl C. Moore (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alfalfa pellets, soy bean pellets, soy bean meal*, from points in Sedgwick County, Kans., to points in Jackson, Cass, Bates, Vernon, Barton, Jasper, Newton and McDonald Counties, Mo. Note: If a hearing is deemed necessary, applicant requests it be held at either Wichita or Topeka, Kans. or Kansas City, Mo.

No. MC 138575 (Sub-No. 2) filed June 11, 1973 Applicant: GWINNER OIL CO., INC. Gwinner, N. Dak. 58040 Applicant's representative: James B. Hovland 425 Gate City Building Fargo, N. Dak. 58102 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural implements*, from the plantsite and facilities of Clark Equipment Co.—Melroe Division at Fort Benton, Mont., to the ports of entry on the International Boundary line between the United States and Canada located in Montana, under a continuing contract with Clark Equipment Co.—Melro Division. Note: If a hearing is deemed necessary, applicant requests it be held at Fargo, N. Dak. or St. Paul, Minn.

No. MC 138740 (CORRECTIONS) filed May 8, 1973, published in the FEDERAL REGISTER issue of June 21, 1973 as MC-183740, and republished in part, as corrected, this issue. Applicant: PULL'EMS, INC. Route 3 Russellville, Ala. 35653 Applicant's representative: E. Stephen Heisley 805 McLachlen Bank Building 666 Eleventh Street, N.W. Washington, D.C. 20001. Note: The purpose of this correction is to indicate applicant's correct docket number as MC-138740 in

lieu of MC–183740 which was previously published in error. The rest of the application remains as previously published.

No. MC 138774 filed May 10, 1973 Applicant: AA TRIANGLE TRANSFER AND WAREHOUSE CO., INC. 300 N. E. 67th Street Miami, Fla. 33138 Applicant's representative: Bernard C. Pestcoe 511 Biscayne Building 19 West Flagler Street Miami, Fla. 33130 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, in containers, restricted to traffic having a prior or subsequent movement beyond the points authorized, and further restricted to the performance of a pickup and delivery service in connection with packing, crating or containerization, or unpacking, uncrating or decontainerization of such traffic, between points in Citrus, Hernando, Lake Marion, Sumter, Pasco, Pinellas, Flagler, Volusia, Orange, Osceola, Hardee, Palm Beach, Monroe, Broward, Brevard, Seminole, Indiana River, Martin, Okeechobee, St. Lucie, Charlotte, Collier, Glades, Hendry, and Lee Counties, Fla. Note: If a hearing is deemed necessary, applicant requests it be held at Miami, Fla.

No. MC 138796 filed May 11, 1973 Applicant: NELSON, INC. Box 38 Deerwood, Minn. 56444 Applicant's representative: James E. Knutson 314 Minnesota Building St. Paul, Minn. 55101 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood crating*, from Aitkin, Minn., to Hudson, Wis., under a contract with Woodland Container. Note: If a hearing is deemed necessary, applicant requests it be held at Brainerd or St. Paul, Minn.

No. MC 138797 filed May 11, 1973 Applicant: NORTH STAR TRANSPORT LTD. 1840 Ontario Avenue North Saskatoon, Saskatchewan, S7K 1T4, Canada Applicant's representative: Ray F. Koby 314 Montana Building Great Falls, Mont. 59401 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Asphalt emulsion*, in bulk, in tank vehicle, from the ports of entry on the International Boundary line between the United States and Canada in that part of N. Dak. adjoining the Saskatchewan Province Boundary line, to points in N. Dak., under a continuing contract or contracts with Pounder Emulsion Ltd. of Saskatoon, Saskatchewan, Canada. Note: If a hearing is deemed necessary, applicant requests it be held at any point in Montana or North Dakota.

No. MC 138798 (Sub-No. 1) filed May 10, 1973 Applicant: KEN L. POLLOCK Route 11 Hunlock Creek, Pa. 18621 Applicant's representative: Edward Schmeltzer 1140 Connecticut Avenue, N. W. Suite 1100 Washington, D.C. 20036 Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Automobiles*, limited to automobiles whose passengers are transported by the applicant's buses to the same destinations as the automobiles, and further limited such that the transportation of any automobile on applicant's auto transporters will not be provided unless the passenger (or passengers) arriving at the applicant's terminal in the automobile is carried by the applicant's buses to the same destination as the automobile and the passenger agrees to pick up the automobile upon arrival at the destination: (1) From applicant's terminal located in the Metropolitan Washington, D.C. area to applicant's terminal located at St. Augustine, Fla., over Interstate Highway 95; and return over the same route; (2) From applicant's terminal located in the Boston Metropolitan area to applicant's terminal located at St. Augustine, Fla., commencing over Interstate Highway 95 to the entrance to the New Jersey Turnpike, thence over the New Jersey Turnpike to its Exit No. 1 located near Pennsville, N. J., thence over Interstate Highway 295 to its junction with Interstate Highway 95 near Wilmington, Del., thence over Interstate Highway 95; and return over the same routes; and (3) From Applicant's terminal located in the Chicago Metropolitan area to Applicant's terminal located at St. Augustine, Fla., commencing over Interstate Highway 80 to its junction with Interstate Highway 65 in the vicinity of Gary, Ind., thence over Interstate Highway 65 to its junction with Interstate Highway 24 at or near Nashville, Tenn., thence over Interstate Highway 24 to its junction with Interstate Highway 75 at or near Chattanooga, Tenn., thence over Interstate Highway 75 to its junction with Interstate Highway 10 in the vicinity of Lake City, Fla., thence over Interstate Highway 10 to its junction with Interstate Highway 95 at Jacksonville, Fla., thence over Interstate Highway 95; and return over the same routes. Note: If a hearing is deemed necessary, applicant requests it be held at Wilkes Barre or Harrisburg, Pa.

No. MC 138800 filed May 29, 1973 Applicant: THREE BROTHERS, INC. 40 "B" Street South Boston, Mass. 02127 Applicant's representative: Frederick T. O'Sullivan 622 Lowell Street Peabody, Mass. 01960 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked, disabled, replacement and repossessed motor vehicles and trailers*, between points in Suffolk, Middlesex, Norfolk, Plymouth, Essex and Worcester Counties, Mass., on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, Connecticut, Rhode Island and New York. Note: If a hearing is deemed necessary, applicant requests it be held at Boston, Mass.

No MC 138801 filed May 7, 1973 Applicant: THRU CONCO, INC. 3720 W. Tompkins Avenue Las Vegas, Nev. 89103 Applicant's representative: George R. LaBissoniere Suite 101 130 Andover Park East Seattle, Wash. 98188 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, as defined by the Commission, restricted to traffic having a prior or subsequent movement in containers and further restricted to pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating and decontainerization of such traffic, between points in Clark, Lincoln, Nye Counties, Nev.; Mojave County, Ariz.; and Washington, Iron and Beaver Counties, Utah. Note: If a hearing is deemed necessary, applicant requests it be held at Las Vegas, Nev.

No. MC 138822 filed May 14, 1973. Applicant: ROY GERNER & SONS, INC. R.D. #1 Cabot, Pa. 16023 Applicant's representative: Kenneth R. Davis 999 Union Street Taylor, Pa. 18517 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fresh and frozen meats*, from Denison, Cedar Rapids, Ottumwa, and Estherville, Iowa, points in Kentucky and points in the New York, New York Commercial Zone as defined in the fifth supplemental report in *Commercial Zones and Terminal Areas* 53 M.C.C. 451, within which local operations may be conducted under the exemption provided in Section 203(b)(8) of the Act (the "exempt" zone), to the facilities of Kress-Doblin Co., Inc. at Pittsburgh, Pa. Note: Applicant states that the purpose of this application is to convert its Permit in MC 129970 into a Certificate of Public Convenience and Necessity. If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa.

No. MC 138836 filed May 18, 1973. Applicant: MICHAEL C. NARO, 310 Jones Street, Dunmore, Pa. 18512 Applicant's representative: Kenneth R. Davis, 999 Union Street, Taylor, Pa. 18517 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Petroleum, petroleum products and anti-freeze preparations*, in containers, from the plant site of Texaco Co., at Bayonne, N.J., to Scranton, Wilkes-Barre, Dallas, Nanticoke, and Honesdale, Pa., and (2) *empty containers* for the above-named commodities, from Scranton, Wilkes-Barre, Dallas, Nanticoke, and Honesdale, Pa., to the plantsite of Texaco Co., at Bayonne, N.J. Note: Applicant currently holds contract carrier authority in MC 66832 which duplicates the authority requested herein, and states it will submit that portion for revocation if the instant application is granted. If a hearing is deemed necessary, applicant requests it be held at Newark, N.J.

MOTOR CARRIER OF PASSENGERS

No. MC 138671 filed April 20, 1973 Applicant: PARKINSON COACH LINES LIMITED 10 Kennedy Road North Brampton, Ontario, Canada Applicant's representative: S. Harrison Kahn Suite 733 Investment Building Washington, D.C. 20005 Authority sought to operate as a *common carrier*, by motor vehicle,

over irregular routes, transporting: *Passengers and their baggage* in the same vehicle with passengers, in charter and special operations, in round-trip sightseeing and pleasure tours, beginning and ending at the ports of entry on the International Boundary line between the United States and Canada, and extending to points in the United States including Alaska, (but excluding Hawaii). Note: If a hearing is deemed necessary, applicant requests it be held at Buffalo, New York.

No. MC 138780 filed May 18, 1973 Applicant: KANKAKEE AUTOMOBILE LEASING CO. a Corporation 350 North Schuyler Avenue Kankakee, Ill. 60901 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: *Passengers* and *baggage of passengers*, in charter operations, in round-trip movements, from points in Kankakee, Will, Iroquois, Livingston, Macon, Sangamon, Logan, DeWitt, Pratt, Moultrie, Shelby, Coles, Christian, Woodford, McLean, Ford, Tazewell, Champaign, Grundy, and Douglas Counties, Ill., to points in the United States (except Alaska and Hawaii), and return. Note: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 138799 filed May 21, 1973 Applicant: PENINSULA CHARTER LINES, INC. 1841 Bay Road Palo Alto, Calif. 94303 Applicant's representative: Eldon M. Johnson 650 California Street Suite 2808 San Francisco, Calif. 94108 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers, and their baggage*, in special or charter operations, in round-trip sightseeing or pleasure tours, beginning and ending at points in San Mateo County, Calif., and Palo Alto, Calif. and extending to points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Note: If a hearing is deemed necessary, applicant requests it be held at Redwood City or San Francisco, Calif.

No. MC 138806 filed November 20, 1972 Applicant: JAMES B. CHISOLM an Individual 819 East Henry Street Savannah, Ga. 31401 Applicant's representative: Robert R. Cook 139 Whitaker Street Savannah, Ga. 31401 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers, and their baggage*, in charter operations, beginning and ending at Savannah, Ga., and extending to points in Georgia, Florida, South Carolina and North Carolina. Note: Applicant states that the requested authority cannot or will not be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C. or Jacksonville, Fla.

APPLICATION FOR FILING BROKERAGE LICENSES

No. MC 130201 filed April 2, 1973 Applicant: JOHNSTOWN HOLIDAY TRAVEL AGENCY, INC. 140 Park Place Johnstown, Pa. 15901 Applicant's representative: Gary C. Horner United States National Bank Building Johnstown, Pa. 15907 For a license (BMC-5) to engage in operations as a *broker* at Johnstown, Pa., in arranging for transportation by motor vehicle, in interstate or foreign commerce of *passengers and groups of passengers, together with their baggage*, in special and charter operations, in round-trip tours, beginning and ending at Johnstown, Pa., and extending to points in the United States, including Alaska and Hawaii.

By the Commission.

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

[FR Doc.73-14119 Filed 7-11-73;8:45 am]

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PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

■

Medical Assistance Program

Standards and Provider Certification

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

[45 CFR Parts 205, 249, 250]

MEDICAL ASSISTANCE PROGRAM

Standards and Provider Certification

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 sections 239, 246 and 249A of P.L. 92-603, Social Security Amendments of 1972. These provisions relate to Medicaid State plan requirements concerning standard-setting for participating institutions, use of State licensing agencies for certain functions, uniform standards for skilled nursing facilities under Medicare and Medicaid, and certification of skilled nursing facilities under Medicaid. The regulations also conform the Medicaid certification process for intermediate care facilities with that for skilled nursing facilities.

Until these regulations are issued in final form, the provisions of 45 CFR 249.10(b)(4)(i) and 249.33 will continue to apply with respect to skilled nursing facilities, except that provider agreements may be executed in accordance with the new provisions of § 249.33(a)(5)(iv)(B)(2) of the proposed regulations with respect to skilled nursing facilities completing the second of two successive agreements under certification provisions in effect prior to July 1, 1973. In addition, the provisions of proposed 20 CFR 405.1121(c), Independent Medical Evaluation and (e) Institutional Planning, are effective immediately since these are statutory requirements.

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 August 13, 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).

Dated: June 29, 1973.

JAMES S. DWIGHT, Jr.,
Administrator, Social and Rehabilitation Service.

Approved: July 5, 1973.

CASPAR W. WEINBERGER,
Secretary.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Chapter II, Title 45, Code of Federal Regulations is amended as set forth below.

1. Section 205.190 is amended by revising the introductory words to paragraph (a) to read as set forth below, and by deleting the reference to medical assistance in paragraph (a)(2)(i), and the last sentence of paragraph (a)(2):

§ 205.190 Standard-setting authority for institutions.

(a) *State plan requirements.* If a State plan under title I, X, XIV, or XVI, of the Social Security Act includes aid or assistance to individuals in institutions as defined in § 233.60(b)(1) and (2) of this chapter, the plan must:

(1) Provide for the designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(2) Provide that the State agency will keep on file and make available to the Social and Rehabilitation Service upon request:

(i) A listing of the types or kinds of institutions in which an individual may receive financial assistance;

(ii) A record naming the State authority(ies) responsible for establishing and maintaining standards for such types of institutions;

(iii) The standards to be utilized by such State authority(ies) for approval or licensing of institutions including, to the extent applicable, standards related to the following factors:

(*a*) Health (continuing physician and nursing services, dietary standards, drug controls, and accident prevention);

(*b*) Humane treatment;

(*c*) Sanitation;

(*d*) Types of construction;

(*e*) Physical facilities, including space and accommodations per person;

(*f*) Fire and safety;

(*g*) Staffing, in number and qualifications, related to the purposes and scope of services of the institution;

(*h*) Patient records;

(*i*) Admission procedures;

(*j*) Administrative and fiscal records;

(*k*) The control by the individual, or his guardian or protective payee, of the individual's personal affairs.

* * * * *

PART 249—SERVICES AND PAYMENT IN MEDICAL ASSISTANCE PROGRAMS

2. Section 249.33 is revised to read as follows:

§ 249.33 Standards for payment for skilled nursing facility and intermediate care facility services.

(a) *State plan requirements.* A State plan for medical assistance under title XIX of the Social Security Act must:

(1) Provide that the single State agency will, prior to execution of an agreement with any facility for provision of skilled nursing facility services and making payments under the plan obtain certification from:

(i) The agency designated pursuant to § 250.100(c) of this chapter that the facility meets the standards set forth under section 1861(j) of the Act; or

(ii) The Secretary, pursuant to section 1910 of the Act, that the facility has been determined to qualify as a skilled nursing facility under title XVIII of the Act; or

(iii) The Secretary, pursuant to section 1905 of the Act, in the case of a facility located in the State on an Indian reservation that it meets the requirements of section 1861(j) of the Act.

(2) Provide that the single State agency will, prior to execution of an agreement with any facility (including hospitals and skilled nursing facilities) for provision of intermediate care facility services and making payments under the plan, obtain certification from the agency designated pursuant to § 250.100(c) of this chapter that the facility meets the conditions set forth under § 249.10(b)(15); except that in the case of an intermediate care facility determined to have deficiencies under the requirements for environment and sanitation (§ 249.12(a)(11)[1] or § 249.13(a)(5) and (8)(v)[1] or of the Life Safety Code (§ 249.12(a)(13)[1] or § 249.13(a)(3)[1]) it may be recognized for certification as an itermediate care facility over a period not exceeding 2 years following the date of such determination provided that:

(i) The institution submits a written plan of correction acceptable to the survey agency which contains:

(A) The specific steps that it will take to meet all such requirements; and

(B) A timetable not exceeding 2 years from the date of the initial certification after publication of these regulations detailing the corrective steps to be taken and when correction of deficiencies will be accomplished;

(ii) The survey agency makes a finding that the facility potentially can meet such requirements through the corrective steps and they can be completed during the 2 year allowable period of time;

(iii) During the period allowed for corrections, the institution is in compliance with existing State fire safety and sanitation codes and regulations;

(iv) The institution is surveyed by qualified personnel at least semiannually until corrections are completed and the survey agency finds on the basis of such surveys that the institution has in fact made substantial effort and progress in its plan of correction as evidenced by supporting documentation, signed contracts and/or work orders, and a written justification of such findings is maintained on file; and

(v) At the completion of the period allowed for corrections, the intermediate care facility is in full compliance with the Life Safety Code (NFPA, 21st Edition 1967), and the requirements for environment and sanitation set forth under § 249.12(a)(11) or § 249.13(a)(5) and (8)(v), except for any provisions waived in accordance with § 249.12 or § 249.13.

(3) Provide that any intermediate care facility receiving payments under the plan must supply to the licensing agency

[1] Not published as final rule. Proposal published at 38 FR 5974, March 5, 1973.

of the State full and complete information, and promptly report any changes which would affect the current accuracy of such information, as to the identity.

(i) Of each person having (directly or indirectly) an ownership interest of 10 percent or more in such facility,

(ii) In case a facility is organized as a corporation, of each officer and director of the corporation, and

(iii) In case a facility is organized as a partnership, of each partner;

Certification by the State licensing agency or the Secretary, as provided for in subparagraphs (1) and (2) of this paragraph shall be regarded as final evidence that the facility so certified meets the standards and requirements except that the single State agency may, for good cause based on adequate and documented evidence, elect not to execute a contract or cancel a contract for participation by a facility certified under the State plan.

(4) Provide that the survey agency designated pursuant to § 250.100(c) of this chapter will:

(i) Review information contained in medical review and independent professional review team inspections made pursuant to State plan provisions under section 1902(a)(26) and (31) of the Social Security Act;

(ii) Review statements obtained from each facility setting forth (from payroll records) the average numbers and types of personnel (in full-time equivalents) on each shift during at least 1 week of each quarter, such week to be selected by the survey agency and to occur irregularly in each quarter of the year;

(iii) Evaluate such reports and statements and take appropriate action to achieve compliance or withdraw certification as appropriate; and

(iv) Perform, with qualified personnel, on-site inspections at least once during the term of a provider agreement or more frequently if there is a question of compliance.

(5) Provide that the single State agency agreement with a facility for payments under the plan may not exceed a period of one year and that the effective date of such agreement may not be earlier than the date of certification. Notwithstanding the provisions of the previous sentence, the single State agency may extend such term for a period not exceeding two months where the survey agency has notified the single State agency in writing prior to the expiration of a provider agreement that the health and safety of the patients will not be jeopardized thereby, and that such extension is necessary to prevent irreparable harm to such facility or hardship to the individuals being funrished items or services or that it is impracticable within such provider agreement period to determine whether such facility is complying with the provisions and requirements under the program. Execution of an agremeent shall be contingent upon certification in accordance with the provisions of paragraph (a) (1) and (2) of this section and subject to the following conditions and exclusions:

(i) In the case of skilled nursing facilities not in compliance with all standards set forth under section 1861(j) of the Social Security Act, or in the case of intermediate care facilities not in compliance with all standards set forth under sections 1905(c) and (d) of the Act, the single State agency may enter into a provider agreement if:

(A) The deficiencies noted, individually or in combination, do not jeopardize the health and safety of patients and a written justification of such a finding is maintained on file by the survey agency; and

(B) The facility provides in writing a plan of correction acceptable to the survey agency;

(ii) In the case of a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions, the single State agency will, prior to the execution of an agreement for the provision of intermediate care facility services, obtain a written agreement from the State or political subdivision responsible for the operation of such public institution that the non-Federal expenditures in any calendar quarter prior to January 1, 1975, with respect to services furnished to patients in such institution (or distinct part thereof) in the State will not, because of payments made under the plan, be reduced below the average amount expended for such services in such institution in the four quarters immediately preceding the quarter in which the State in which such institution is located elected to make such services available under its approved plan;

(iii) In the case of a skilled nursing facility not in compliance with all of the standards set forth under section 1861(j) of the Act or in the case of an intermediate care facility not in compliance with all of the standards set forth under sections 1905(c) and (d) of the Act, the term of an agreement shall be for the period of certification recognized by the survey agency; however, based upon such adequate and documented factors as medical review of independent professional review team reports, certification data, the nature of deficiencies and the degree of progress displayed by the facility in correcting prior deficiencies, the single State agency may elect to execute a provider agreement for:

(A) A term related to a facility's plan of correction; or

(B) The full certification period recognized by the survey agency but subject to a provision for automatic cancellation 60 days following the scheduled date for correction(s) unless the survey agency finds and notifies the State agency that all required corrections have been satisfactorily completed, or unless the survey agency finds and notifies the State agency that, on the basis of documented evidence derived from a survey, the facility has made substantial progress in correcting such deficiencies and has resubmitted in writing a new plan of correction acceptable to the survey agency. Such notification is to be made a part of the contract and the facility so notified.

(iv) No second provider agreement under the condition specified in paragraph (a)(5)(i) of this section may be executed if:

(A) The standard found deficient was in compliance during the previous certification period, except where the survey agency has made a determination based upon documented evidence that the facility despite intensive efforts or for reasons beyond its control was unable to maintain compliance and despite the deficiency(ies) the facility is making the best use of its resources to render adequate care; or

(B) The standards found deficient are the same as those which occasioned the prior agreement, except:

(*1*) In a case where a facility can document to the State survey agency's satisfaction that it achieved compliance with a previously unmet standard during the period of certification but for reasons beyond its control and despite, in the judgment of the survey agency, a good faith effort to maintain compliance with the standard, was again out of compliance by the time of the next survey; or

(2) In the case of a skilled nursing facility completing the second of two successive agreements under provisions for certification in effect prior to July 1, 1973 and having the same deficiency(ies) which occasioned the two agreements, the survey agency will review the performance of such facility (which may be limited to a review of the documentation of record) in providing safe and adequate patient care and in progressing toward correction of such deficiency(ies). On the basis of its evaluation, the survey agency will advise the single State agency that:

(*i*) No provider agreement may be executed with such facility,

(*ii*) A new provider agreement may be executed for a period related to the time required to correct such deficiencies, but not to exceed six months; or

(*iii*) A new provider agreement may be executed for a period of twelve months but subject to a provision for automatic cancellation 60 days following the scheduled date for correction unless the survey agency finds and notifies the State agency that all required corrections have been satisfactorily completed. If the facility continues to be out of compliance with the same standard(s) at the end of the term of the agreement, a new agreement may not be executed.

(v) Notwithstanding the foregoing provisions, in the case of skilled nursing facilities certified under the provisions of title XVIII of the Social Security Act, the term of an agreement shall be subject to the same terms and conditions and coterminous with the period of approval of eligibility specified by the Secretary pursuant to that title.

(vi) Upon notification that an agreement with a facility under title XVIII of the Act has been terminated or cancelled, the single State agency will take appropriate action to terminate the facility's participation under the plan. A facility whose agreement has been cancelled or otherwise terminated may not be issued another agreement until the reasons which cause the cancellation or termination have been removed and reasonable assurance provided the survey agency that they will not recur.

For the purposes of this subparagraph (5), waivers granted pursuant to section 1902(a)(28) of the Act or § 249.12 or § 249.13 are not considered deficiencies.

(6) Provide that facilities which do not qualify under this section are not recognized as skilled nursing facilities or intermediate care facilities for purposes of payment under title XIX of the Act.

(b) *Federal financial participation.* (1) Federal financial participation is available at 75 percentum in expenditures of the single State agency for compensation (or training) of its skilled professional medical personnel and staff directly supporting such personnel, which are necessary to carry out these regulations.

(2) Federal financial participation at applicable rates is also available for the single State agency to enter into a written contract (under the supervision of the Medical Assistance Unit) with the survey agency designated pursuant to § 250.100(c) of this chapter as necessary to carry out its responsibilities under these regulations. Such Federal financial participation is available only for those expenditures of the survey agency which are not attributable to the overall cost of meeting responsibilities under State law and regulations for establishing and maintaining standards but which are necessary and proper for carrying out these regulations.

PART 250—ADMINISTRATION OF MEDICAL ASSISTANCE PROGRAMS

3. A new § 250.100 is added to Part 250 as set forth below:

§ 250.100 Establishment and maintenance of State and Federal standards.

State plan requirements. A State plan for medical assistance under title XIX of the Social Security Act must:

(a) Provide for the designation of the State health agency or other appropriate State medical agency (whichever is utilized by the Secretary for purposes of title XVIII of the Act as specified in the first sentence of section 1864(a) of the Act) as the State authority responsible for establishing and maintaining health standards for private or public institutions, excluding Christian Science sanatoria operated or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts, in which recipients of medical assistance under the plan may receive care and services. The State plan must describe these standards and such standards must be kept on file and made available to the Social and Rehabilitation Service upon request;

(b) Provide for the designation of the single State agency or other appropriate State authority or authorities which shall be responsible for establishing and maintaining standards other than those relating to health for public and private institutions in which recipients of medical assistance under the plan may receive care or services. The State plan must describe these standards and such standards must be kept on file and made available to the Social and Rehabilitation Service upon request; and

(c) Provide that the agency referred to in paragraph (a) of this section or such other State agency as is responsible for licensing health institutions in the State will, in accordance with a written agreement (or other written formal arrangement) with the single State agency, determine whether institutions and agencies, excluding Christian Science sanatoria operated or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts, meet the requirements for participation in the program as set forth elsewhere in this chapter; and that the staff of the agency making such determinations is the same staff responsible for such determinations for institutions or agencies participating under title XVIII or, if the State elects to employ different staff, a written justification is submitted for approval by the Secretary that such election is consistent with economy and efficiency of administration. Written agreements (or other written formal arrangements) between the single State agency and the agency in the State responsible for licensing, for purposes of this paragraph, must specify and provide:

(1) The Federal standards and the forms, methods and procedures to be used in determining provider eligibility and certification under the program;

(2) That copies of reports and inspections are completed by inspectors surveying the premises with notations indicating whether each requirement for which inspection is made is or is not satisfied, with documentation of deficiencies; and

(3) That all information and reports used in determining whether Federal requirements for participating are maintained on file access by the Department of Health, Education, and Welfare, and the single State agency as may be necessary to meet other requirements under the plan and for purposes consistent with that agency's effective administration of the program.

[FR Doc.73-14105 Filed 7-11-73;8:45 am]

federal register

THURSDAY, JULY 12, 1973

Volume 38 ■ Number 133

PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

■

Federal Health Insurance for the Aged

Skilled Nursing Facilities

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 405]

FEDERAL HEALTH INSURANCE FOR THE AGED

Skilled Nursing Facilities

The proposed amendments to regulations set forth herein principally:

(1) Provide a common set of standards for skilled nursing facilities under titles XVIII (Medicare) and XIX (Medicaid) of the Social Security Act and a single policy for determining compliance with the standards; and also implement provisions of the Social Security Amendments of 1972 (P.L. 92-603) affecting skilled nursing facilities relating to institutional planning, time limited agreements, and the furnishing of social services;

(2) Set out the basic provisions for implementing the provider agreement provisions of the Social Security Amendments of 1972 and additional guidelines relating to provider agreement responsibilities (20 CFR 405.601 et seq.) under the provisions of section 1866 of the Social Security Act; and

(3) Set forth proposed modifications in the provider appeals procedures (20 CFR 405.1501 et seq.) which relate specifically to skilled nursing facilities.

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 August 13, 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.

During the period from July 1, 1973, to the date the proposed regulations are published in final in the FEDERAL REGISTER, the existing regulations in Subpart K of Social Security Administration regulations No. 5, "Conditions of Participation; Extended Care Facilities" (20 CFR 405.1101-405.1137) will be applicable. In addition, during the same period, conditions of participation set forth in § 405.1121, paragraphs (a), (c), and (e) of this document, required by P.L. 92-603 will also be applicable.

The proposed amendments are to be issued under the authority contained in sections 1102, 1814, 1861, 1863, 1865, 1866, 1871, 49 Stat. 647, as amended, 79 Stat. 294, as amended, 79 Stat. 313-327, as amended, 79 Stat. 331; 42 U.S.C. 1302, 1395 et seq.

(Catalog of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged—Hospital Insurance)

Dated: June 29, 1973.

ARTHUR E. HESS,
Acting Commissioner of Social Security.

Approved: July 5, 1973.

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

Regulations No. 5 of the Social Security Administration, as amended (20 CFR Part 405), are further amended as set forth below:

Subpart F—Agreements, Elections, Contracts, Nominations, and Notices

1. The heading for Subpart F is revised to read as set forth above.

§ 405.601, 405.602 [Amended]

2. In §§ 405.601 and 405.602, the words "extended care facility" are revised to read "skilled nursing facility."

3. A new § 405.604 is added to read as follows:

§ 405.604 Term agreements with skilled nursing facilities.

Effective with respect to provider agreements accepted for filing on or after October 30, 1972, an agreement with a skilled nursing facility shall be for a specified term and such term will be determined by the Secretary in the following manner—

(a) (1) The term of an agreement may be for a period of 12 full calendar months where the facility is found to be in compliance with all standards contained in Subpart K or Regulations No. 5.

(2) Where the facility is not in compliance with all standards contained in Subpart K of Regulations No. 5 the term of an agreement may:

(i) Be restricted to a term corresponding to the full period of time (not to exceed 12 full calendar months) specified in a written plan which the Secretary has approved providing for the correction of deficiencies in its qualification in meeting the requirements for participation; or

(ii) Provide a conditional term of 12 full months, subject to an automatic cancellation clause that the agreement will terminate on a predetermined date which shall be no later than the 60th day following the end of the time period specified for the correction of deficiencies unless the Secretary determines that all required corrections have been satisfactorily completed or that the facility has made substantial effort and progress in correcting such deficiencies and has resubmitted in writing a plan of correction acceptable to the Secretary.

(b) (1) Where the Secretary determines that the health and safety of program beneficiaries will not be jeopardized thereby, the term of an agreement may be extended for a period of 2 full calendar months, if the Secretary finds that such extension is necessary to:

(i) Prevent irreparable harm to such facility, or

(ii) Prevent hardship to the program beneficiaries being furnished items and services by such facility; or

(2) If the Secretary finds it impracticable within such term to determine whether such facility is complying with the provisions of the Act and regulations issued thereunder.

(c) (1) Except as provided in paragraph (b) of this section, the term of an agreement may not be extended and such agreement shall terminate at the end of its specified term and will not be automatically renewable from term to term. In the case of the termination of an agreement which has been automatically cancelled, the "end of its specified term" shall be the end of the calendar date on which such cancellation is effective.

(2) The termination of an agreement under the conditions described in this section shall not be a termination of the agreement by the Secretary pursuant to the provisions discussed in § 405.614. A determination by the Secretary not to accept such facility for participation following the end of such term will be an initial determination relating to the facility's qualifications as a provider of services for the period immediately following such term and the facility shall be entitled to a hearing with respect to such determination. (See Subpart O of this part.)

(3) Where the Secretary determines that he will not accept an agreement with a skilled nursing facility for the period immediately following the end of the term of such facility's existing agreement, the Secretary shall give notice of such determination to the facility and the public at least 30 days before the end of such term. Each notice by the Secretary shall state the reasons for such determination, the effective date for the termination of the existing agreement, and the applicability of such termination as it relates to the services of the facility.

(d) Notwithstanding the preceding provisions of this section, an agreement filed by an extended care facility (now defined as a skilled nursing facility) which was accepted by the Secretary prior to October 30, 1972, and which was in effect on such date, shall be for a specified term ending at the close of December 31, 1973.

4. Section 405.605 is revised to read as follows:

§ 405.605 Provider of services; scope of term.

As used in section 1866 of the Act and this Part 405, the term "provider of services" (or "provider") refers only to a hospital, a skilled nursing facility, or a home health agency (see Subparts J, K, and L of this part) and, for the limited purposes of furnishing outpatient physical therapy services or speech pathology,

a clinic, rehabilitation agency, or public health agency (see Subpart Q of this part).

5. Section 405.606 is amended by revising paragraph (b), and adding a new paragraph (c) to read as follows:

§ 405.606 Acceptance of provider as a participant.

* * * * *

(b) If the provider wishes to participate in the program, both copies of the agreement must be signed by an authorized official of the organization and filed with the Secretary and, upon acceptance for filing by the Secretary, a copy of such agreement shall be returned to the provider with the Secretary's written notice of acceptance. Such notice shall indicate the date on which the agreement was signed by the authorized official of the provider and the date on which the agreement was accepted by the Secretary; specify the effective date of the agreement; and, in the case of an agreement filed by a skilled nursing facility, the term of such agreement as determined in accordance with the provisions of § 405.604.

(c) The participation of a hospital, skilled nursing facility, or home health agency which voluntarily files an agreement to participate in the health insurance program contemplates that such hospital, facility, or agency will accept program beneficiaries for care and treatment. If a participating hospital, facility, or agency has any restrictions on the types of services it will make available and/or the type of health conditions that it will accept, or has any other criteria relating to the acceptance of persons for care and treatment, it is expected that such restrictions or criteria, if made applicable to program beneficiaries, will be applied in the same manner in which they are applied to all other persons seeking care and treatment by such hospital, facility, or agency. A provider's admission policies and practices that are inconsistent with the provider agreement objectives set forth in this paragraph (c) may be the basis for termination of participation by the Secretary pursuant to § 405.614(a)(1).

6. Paragraph (a) of § 405.613 is revised to read as follows:

§ 405.613 Termination by provider of services.

(a) A provider may terminate a section 1866 agreement (and in the case of a skilled nursing facility, prior to the end of the specified term of such agreement—see § 405.604) by filing with the Secretary a written notice of its intention to terminate such agreement. The notice of intent to terminate should state the date for the termination of the agreement (the date must be the first day of a month). The Secretary may accept the termination date stated in the notice or he may set a different date. If the notice of termination does not specify the date for the termination of the agreement, the date is to be set by the Secretary. However, if the termination date is set by the Secretary, such date shall not be more than 6 months from the date the notice is filed. In addition to giving notice to the Secretary, the provider should also give at least 15 days notice to the public by publishing in one or more local newspapers a statement of the date of termination of the provider agreement with the Secretary. The notice also should inform the public of the applicability of termination (see § 405.615) as it relates to services of the provider.

* * * * *

7. Paragraph (a) of § 405.614 is revised to read as follows:

§ 405.614 Termination by the Secretary.

(a) *Cause for termination.* The Secretary may terminate an agreement (and in the case of a skilled nursing facility, prior to the end of the specified term of such agreement—see § 405.604) if the Secretary determines that the provider of services:

(1) Is not complying substantially with the provisions of title XVIII and this Part 405, or with the provisions of the agreement entered into pursuant to § 405.606; or

(2) No longer meets the appropriate conditions of participation necessary to qualify as a hospital (see Subpart J of this part), skilled nursing facility (see Subpart K of this part), or home health agency (see Subpart L of this part), as the case may be; or

(3) Fails to furnish information as the Secretary finds to be necessary for a determination as to whether payments are due or were due under this Part 405 and the amounts thereof; or

(4) Refuses to permit examination of its fiscal or other records by, or on behalf of, the Secretary as may be necessary for verification of information furnished as a basis for payment under the health insurance benefits program.

* * * * *

8. Paragraph (a) of § 405.615 is revised to read as follows:

§ 405.615 Applicability of termination.

A termination of an agreement under the conditions described in § 405.613 or § 405.614 shall be applicable:

(a) In the case of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services), or posthospital extended care services furnished to any individual after the effective date of such termination, except that, payment may be made for up to 30 days with respect to such services furnished to any individual who was admitted to the hospital or skilled nursing facility prior to the effective date of the termination.

* * * * *

9. Section 405.616 is amended to read as follows:

§ 405.616 Reinstatement of provider as participant after termination.

(a) Subject to the provisions of paragraph (b) of this section, where an agreement between a provider of services and the Secretary is terminated by the Secretary under the conditions described in § 405.614, such institution or agency may not file another agreement to participate in the health insurance benefits program unless the Secretary finds that the reason for the termination of the prior agreement has been removed and that there is reasonable assurance that it will not recur.

(b) Where an agreement between a provider of services and the Secretary is terminated under conditions described in § 405.604, § 405.613, or § 405.614, such institution or agency may not file another agreement to participate in the health insurance benefits program unless the Secretary finds that such institution or agency has fulfilled (or has made arrangements satisfactory to the Secretary to fulfill) all of the contractual and statutory responsibilities of its prior agreement with the Secretary.

Subpart K—Conditions of Participation; Skilled Nursing Facilities

10. Subpart K is amended by revising the heading as set forth above and §§ 405.1101 and 405.1120 through 405.1137 to read as follows:

Sec.

§ 405.1101 Definitions.

As used in this subpart, the following definitions apply:

(a) *Administrator of skilled nursing facility.* A person who:

(1) Is licensed as required by State law; or

(2) If the State does not have a Medicaid program, and has no licensure requirement, is a high school graduate (or equivalent), has completed courses in administration or management approved by the appropriate State agency, and has 1 year of supervisory management experience in a skilled nursing facility or related health program; or

(3) If the administrator of a hospital-based distinct part skilled nursing facility, meets the requirements of § 405.1021(f), Subpart J of this Part 405.

(b) *Approved drugs and biologicals.* Only such drugs and biologicals as are:

(1) In the case of Medicare:

(i) Included (or approved for inclusion) in the United States Pharmacopoeia, National Formulary, or United States Homeopathic Pharmacopoeia; or

(ii) Included (or approved for inclusion) in AMA Drug Evaluations or Accepted Dental Therapeutics, except for any drugs and biologicals unfavorably evaluated therein; or

(iii) Not included (nor approved for inclusion) in the compendia listed in partgraphs (a) and (b) of this section, may be considered approved if such drugs:

(*a*) Were furnished to the patient during his prior hospitalization, and

(*b*) Were approved for use during a prior hospitalization by the hospital's pharmacy and drug therapeutics committee (or equivalent), and

(*c*) Are required for the continuing treatment of the patient in the facility.

(2) In the case of Medicaid, included in a listing approved by the State Title XIX agency.

Drugs and biologicals (including identical, similar, or related drugs and biologicals) for both the Medicare and Medicaid programs are not considered approved if the Food and Drug Administration has made an initial determination published in the Federal Register that there is a lack of substantial evidence of effectiveness for all indications, except that drugs and biologicals may be considered approved and their administration found reasonable and necessary where they are contained on the list filed by the Food and Drug Administration with the United States District Court for the District of Columbia and which therefore may remain on the market pending completion of scientific studies to determine effectiveness because there is a compelling justification of the medical need for the drug; or Lack substantial evidence of efficacy but are used in the pursuit of approved clinical research projects.

(c) *Charge nurse.* A person who is licensed by the State in which practicing as a:

(1) Registered nurse; or

(2) Practical (vocational) nurse who:

(i) Is a graduate of a State-approved school of practical (vocational) nursing; or

(ii) Has 2 years of appropriate experience following licensure by waiver as a practical (vocational) nurse, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency will not apply with respect to persons initially licensed by a State or seeking initial qualifications as a practical (vocational) nurse after December 31, 1977, and

(3) Is experienced in nursing service administration and supervision and in areas such as rehabilitative or geriatric nursing, or acquires such preparation through formal staff development programs.

In the case of skilled nursing facility services in an institution for the mentally retarded or in an institution for those with mental diseases, or a distinct part thereof, a person licensed in another category of health care discipline who has special training in the care of such patients may serve as charge nurse provided that such person is licensed in such category by the State following completion of a course of training which included at least the number of classroom and practice hours in all the nursing subjects included in the program of a State-approved school of practical (vocational) nursing, as evidenced by a report on comparison of the courses in the respective curricula to the State agency by the agency(ies) of the State responsible for the licensure of such personnel. (An institution primarily engaged in the care of the mentally retarded or an institution primarily engaged in the treatment of mental diseases, cannot qualify as a participating skilled nursing facility under Medicare.)

(d) *Controlled drugs.* Drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91–513).

(e) *Dietetic service supervisor.* A qualified dietitian; or a graduate of a dietetic technician or dietetic assistant training program approved by the American Dietetic Association; or a graduate of another course that provided 90 or more hours of classroom instruction in food service supervision and has experience as a supervisor in a health care institution with consultation from a dietitian.

(f) *Dietician.* A person who:

(1) Meets the requirements for registration by the American Dietetic Association; or

(2) Has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management, has 1 year of supervisory experience in the dietetic service of a health care institution, and participates annually in continuing dietetic education.

(g) *Director of nursing services.* A registered nurse who is licensed by the State in which practicing, and has 1 year of additional education or experience in nursing service administration, as well as additional education or experience in such areas as rehabilitation or geriatric nursing.

(h) *Drug administration.* An act in which a single dose of a prescribed drug or biological is given to a patient by an authorized person in accordance with all laws and regulations governing such acts. The complete act of administration entails removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container) verifying it with the physician's orders, giving the individual dose to the proper patient, and recording the time and dose given.

(i) *Drug dispensing.* An act entailing the interpretation of an order for a drug or biological and, pursuant to that order, the proper selection, measuring, labeling, packaging, and issuance of the drug or biological for a patient or for a service unit of the facility.

(j) *Licensed nursing personnel.* Registered nurses or practical (vocational) nurses licensed by the State in which practicing.

(k) *Medical record administrator.* A person who:

(1) Is a registered record administrator (RRA), or an accredited record technician (ART), designations obtained by satisfactory completion of a qualifying examination given by the American Medical Record Association; or

(2) Is a graduate of a school of medical record science that is accredited jointly by the Council on Medical Education of the American Medical Association and the American Medical Record Association.

(l) *Occupational therapist.* A person who:

(1) Is a graduate of an occupational therapy curriculum accredited jointly by the Council on Medical Education of the American Medical Association and the American Occupational Therapy Association; or

(2) Is eligible for the National Registration Examination of the American Occupational Therapy Association; or

(3) Has 2 years of appropriate experience as an occupational therapist, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency will not apply with respect to persons initially licensed by a State or seeking initial qualifications as an occupational therapist after December 31, 1977.

(m) *Occupational therapy assistant.* A person who:

(1) Meets the requirements for certification as an occupational therapy assistant established by the American Occupational Therapy Association; or

(2) Has 2 years of appropriate experience as an occupational therapy assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency will not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapy assistant after December 31, 1977.

(n) *Patient activities coordinator.* A person who:

(1) Is a therapeutic recreation specialist qualified at least by way of definitions in paragraph (v)(4) or (5) of this section; or

(2) Has completed 36 hours (within a 3-month period) of a curriculum designed specifically to train patient activities coordinators; or

(3) Has 2 years of experience in a social or recreational program, within the last 5 years, 1 year of which was full-time in a patient activities program in a health care setting; or

(4) Is a qualified occupational therapist or occupational therapy assistant.

(o) *Pharmacist.* A person who:

(1) Is licensed as a pharmacist by the State in which practicing, and

(2) Has training or experience in the specalized functions of institutional

pharmacy, such as residencies in hospital pharmacy, seminars on hospital pharmacy, and related training programs.

(p) *Physical therapist.* A person who is licensed as a physical therapist by the State in which practicing, and

(1) Has graduated from a physical therapy curriculum approved by the American Physical Therapy Association, or by the Council on Medical Education and Hospitals of the American Medical Association, or jointly by the Council on Medical Education of the American Medical Association and the American Physical Therapy Association; or

(2) Prior to January 1, 1966, was admitted to membership by the American Physical Therapy Association, or was admitted to registration by the American Registry of Physical Therapists, or has graduated from a physical therapy curriculum in a 4-year college or university approved by a State department of education; or

(3) Has 2 years of appropriate experience as a physical therapist, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service except that such determinations of proficiency will not apply with respect to persons initially licensed by a State or seeking qualification as a physical therapist after December 31, 1977; or

(4) Has licensed or registered prior to January 1, 1966, and prior to January 1, 1970, had 15 years of full-time experience in the treatment of illness or injury through the practice of physical therapy in which services were rendered under the order and direction of attending and referring physicians; or

(5) If trained outside the United States, was graduated since 1928 from a physical therapy curriculum approved in the country in which the curriculum was located and in which there is a member organization of the World Confederation for Physical Therapy, meets the requirements for membership in a member organization of the World Confederation for Physical Therapy, has 1 year of experience under the supervision of an active member of the American Physical Therapy Association, and has successfully completed a qualifying examination as prescribed by the American Physical Therapy Association.

(q) *Physical therapist assistant.* A person who is licensed as a physical therapist assistant, if applicable, by the State in which practicing, and

(1) Has graduated from a 2-year college-level program approved by the American Physical Therapy Association; or

(2) Has 2 years of appropirate experience as a physical thrapist assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency will not apply with respect to persons initially licensed by a State or seeking initial qualification as a physical therapist assistant after December 31, 1977.

(r) *Social worker.* A person who is a graduate of a school of social work accredited by the Council on Social Work Education, and has 1 year of social work experience in a health care setting.

(s) *Speech pathologist or audiologist.* A person who:

(1) Meets the education and experience requirements for a Certificate of Clinical Competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or

(2) Meets the educational requirements for certification, and is in the process of accumulating the supervised experience required for certification.

(t) *Supervision.* Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Unless otherwise stated in regulations, the supervisor must be on the premises if the person does not meet assistant-level qualifications specified in these conditions.

(u) *Therapeutic recreation specialist.* A person who is licensed or registered, if applicable, by the State in which practicing, and

(1) Meets the requirements for registration or certification of competency in therapeutic recreation from a national or State professional recreation society; or

(2) Possesses a masters degree, with a major in therapeutic recreation or in a general recreation or allied field (music, drama, physical education, psychology), and has 6 months of full-time experience in a therapeutic recreation program; or

(3) Possesses a baccalaureate degree, with a major in therapeutic recreation including a supervised internship, a general recreation major and has 1 year of full-time experience in a therapeutic recreation program, or an allied field major and has 2 years of full-time experience in a therapeutic recreation program; or

(4) Possesses an associate of arts degree, with a major in recreation and has 3 years of supervised full-time experience in a therapeutic recreation program, or an allied field major and has 4 years of supervised full-time experience in a therapeutic recreation program; or

(5) Has 2 years of supervised full-time experience in a therapeutic recreation program in a health care setting, and has 60 hours of specialized training in therapeutic recreation techniques.

§ 405.1120 Condition of participation—compliance with Federal State, and local laws.

The skilled nursing facility is in compliance with applicable Federal, State, and local laws and regulations.

(a) *Standard: Licensure.* The facility, in any State in which State or applicable local law provides for licensing of facilities of this nature:

(1) Is licensed pursuant to such law; or

(2) If not subject to licensure, is approved by the agency of the State or locality responsible for licensing skilled nursing facilities as meeting the standards established for such licensing, and

(3) Except that a facility which formerly met fully such licensure requirements, but is currently determined not to meet fully all such requirements, may be recognized for a period specified by the State standard-setting authority.

(b) *Standard: Licensure or registration of personnel.* Staff of the facility are licensed or registered in accordance with applicable laws.

(c) *Standard: Conformity with other Federal, State, and local laws.* The facility is in conformity with all Federal, State, and local laws relating to fire and safety, sanitation, communicable and reportable diseases, post-mortem procedures, and other relevant health and safety requirements.

Italicized sections of conditions of participation and standards are statutory, and the facility must be in full compliance with them.

§ 405.1121 Condition of participation—governing body and management.

The skilled nursing facility has an effective governing body, or designated persons so functioning, with full legal authority and responsibility for the operation of the facility. The governing body adopts and enforces rules and regulations relative to health care and safety of patients, to the protection of their personal and property rights, and to the general operation of the facility. The governing body develops a written institutional plan that reflects the operating budget and capital expenditures plan.

(a) *Standard: Disclosure of ownership.* The facility supplies full and complete information to the survey agency as to the identity (1) of each person who has any direct or indirect ownership interest of 10 per centum or more in such skilled nursing facility or who is the owner (in whole or in part) of any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by such skilled nursing facility or any of the property or assets of such skilled nursing facility, (2) in case a skilled nursing facility is organized as a corporation, of each officer and director of the corporation, and (3) in case a skilled nursing facility is organized as a partnership, of each partner; and promptly reports any changes which would affect the current accuracy of the information so required to be supplied.

(b) *Standard: Bylaws.* The governing body adopts effective administrative and patient care policies and bylaws governing the operation of the facility, in accordance with legal requirements. Such bylaws are in writing, dated, and made available to all members of the governing body which ensures that they are operational, and reviews and revises them as necessary.

(c) *Standard: Independent medical evaluation.* The governing body cooperates in an effective program which provides for a regular program of independ-

ent medical evaluation and audit of the patients in the facility to the extent required by the programs in which the facility participates (including medical evaluation of each patient's need for skilled nursing facility care at least annually).

(d) *Standard: Administrator.* The governing body appoints a full-time qualified administrator who is responsible for the overall management of the facility, enforces the rules and regulations relative to the level of health care and safety of patients, and to the protection of their personal and property rights, and plans, organizes, and directs those responsibilities delegated to him by the governing body. Through meetings and periodic reports, the administrator maintains ongoing liaison among the governing body, medical and nursing staffs, and other professional and supervisory staff of the facility, and studies and acts upon recommendations made by the utilization review and other committees.

(e) *Standard: Institutional planning.* The institutional plan:

(1) Provides for an annual operating budget which includes all anticipated income and expenses related to items which would, under generally accepted accounting principles, be considered income and expense items (except that nothing in this paragraph shall require that there be prepared, in connection with any budget, an item-by-item identification of the components of each type of anticipated expenditure or income);

(2) Provides for a capital expenditures plan for at least a 3-year period (including the year to which the operating budget described in paragraph (1) of this section is applicable) which includes and identifies in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure in excess of $100,000 related to the acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization, and expansion of the buildings and equipment which would, under generally accepted accounting principles, be considered capital items;

(3) Provides for review and updating at least annually; and

(4) Is prepared, under the direction of the governing body of the institution, by a committee consisting of representatives of the governing body, the administrative staff, and the organized medical staff (if any) of the institution.

(f) *Standard: Personnel policies and procedures.* The governing body, through the administrator, is responsible for implementing and maintaining written personnel policies and procedures that support sound patient care and personnel practices. Personnel records are current and available for each employee and contain sufficient information to support placement in the position to which assigned. Written policies for control of communicable disease are in effect to ensure that employees with symptoms or signs of communicable disease or infected skin lesions are not permitted to work, and that a safe and sanitary environment for patients and personnel exists and incidents and accidents to patients and personnel are reviewed to identify health and safety hazards. Employees are provided, or referred for, periodic health examinations, and treated, or referred for treatment, as necessary.

(g) *Standard: Staff development.* An ongoing educational program is planned and conducted for the development and improvement of skills of all the facility's personnel, including training related to problems and needs of the aged and disabled. Each employee receives appropriate orientation to the facility and its policies, and to his position and duties. Inservice training includes at least prevention and control of infections, fire prevention and safety, accident prevention, confidentiality of patient information, and preservation of patient dignity, including protection of his privacy and personal property rights. Records are maintained which indicate the content of, and attendance at, such staff development programs.

(h) *Standard: Use of outside resources.* If the facility does not employ a qualified professional person to render a specific service to be provided by the facility, there are arrangements for such a service through a written agreement with an outside resource—a person or agency that will render direct service to patients or act as a consultant. The responsibilities, functions, and objectives, and the terms of agreement, including financial arrangements and charges, of each such outside resource are delineated in writing and signed by an authorized representative of the facility and the person or the agency providing the service. The financial arrangements provide that the outside resource bill the facility for covered services (either Part A or B for Medicare beneficiaries) rendered directly to the patient, and that receipt of payment from the program(s) to the facility for the services discharges the liability of beneficiary or any other person to pay for the services. The outside resource, when acting as a consultant, apprises the administrator of recommendations, plans for implementation, and continuing assessment through dated, signed reports, which are retained by the administrator for follow-up action and evaluation of performance. (See requirement under each service—§§ 405.1125 through 405.1132.)

(i) *Standard: Notification of changes in patient status.* The facility has appropriate written policies and procedures relating to notification of the patient's attending physician and other responsible persons in the event of significant change in the patient's physical, mental, or emotional status, or patient charges, billings, and related administrative matters. Except in a medical emergency, a patient is not transferred or discharged, nor is treatment altered radically without consultation with the patient or, if he is incompetent, without prior notification of next of kin or sponsor.

§ 405.1122 Condition of participation—patient care policies.

The skilled nursing facility has written policies to govern the continuing skilled nursing care and related medical or other services provided.

(a) *Standard: Development and review of patient care policies.* The facility has policies, which are developed with the advice of (and with provision for review of such policies from time to time, but at least annually, by) a group of professional personnel including one or more physicians and one or more registered nurses, to govern the skilled nursing care and related medical or other services it provides. The policies, which are available to admitting physicians and sponsoring agencies, reflect awareness of, and provision for, meeting the total medical and psychosocial needs of patients, including discharge planning and the protection of their personal and property rights. Medical records and minutes of staff and committee meetings reflect that patient care is being rendered in accordance with the written patient care policies, and that utilization review committee recommendations regarding the policies are reviewed and necessary steps taken to ensure compliance.

(b) *Standard: Execution of patient care policies.* The facility has a physician, a registered nurse, or a medical staff responsible for the execution of such policies. If the responsibility for day-to-day execution of patient care policies has been delegated to a registered nurse, the facility makes available an advisory physician from whom she or he receives medical guidance.

§ 405.1123 Conditions of participation—physician services.

Patients in need of skilled nursing or rehabilitative care are admitted to the facility only upon the recommendation of a physician, and they remain under the care of a physician.

(a) *Standard: Medical findings and physicians' orders at time of admission.* There is made available to the facility, prior to or at the time of admission, patient information which includes current medical findings, diagnoses, rehabilitation potential, a summary of the course of prior treatment, and orders from a physician for immediate care of the patient.

(b) *Standard: Patient supervision by physician.* The facility has a requirement that the health care of every patient must be under the supervision of a physician who, based on a medical evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of total patient care. The patient's total program of care (including medications and treatments) is reviewed and revised by the attending physician at least once every 30 days, or more often as needed by the patient, and a progress note is written and signed by the physician at the time of each visit. All of the physician's orders are signed by the physician.

(c) *Standard: physician visits.* Each patient is seen by a physician at least every 30 days, or more often as needed, except that, after 90 days following admission, this requirement may be deemed to be met in those specific instances where the attending physician has furnished adequate medical justification in the patient's medical record for an alternative schedule of visits, and provided that (1) the facility notifies the State Medicaid agency, when appropriate, and (2) the utilization review committee or medical review team has promptly reevaluated such patient's need for monthly physician visits as well as his continued need for skilled nursing facility services.

(d) *Standard. Availability of physicians for emergency patient care.* The facility has written procedures, available at each nurses station, that provide for having a physician available to furnish necessary medical care in case of emergency.

§ 405.1124 Condition of participation—nursing services.

The skilled nursing facility provides 24-hour service by licensed nurses, including the services of a registered nurse at least during the day tour of duty 5 days a week. There is an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing needs of all patients.

(a) *Standard: Director of nursing services.* The director of nursing services is a qualified registered nurse employed full-time who has administrative authority, responsibility, and accountability for the functions and activities of the nursing services staff, and serves only one facility in this capacity. If the director of nursing services has other institutional responsibilities, a qualified registered nurse serves as her assistant so that there is the equivalent of a full-time director of nursing services on duty each day. The director of nursing services is responsible for the development and maintenance of nursing service objectives, standards of nursing practice, nursing policy and procedure manuals, written job descriptions for each level of nursing personnel, methods for coordination of nursing services with other patient services, and for recommending the number and levels of nursing personnel to be employed.

(b) *Standard: Charge nurse.* A registered nurse, or a qualified licensed practical nurse, is designated as charge nurse by the director of nursing services for each tour of duty, and is responsible for each tour of duty. The director of nursing services does not serve as charge nurse in a facility with an average daily occupancy of 50 or more patients. The charge nurse delegates responsibility to nursing personnel for the direct nursing care of specific patients during each tour of duty, on the basis of staff qualifications, size and physical layout of the facility, characteristics of the patient load, and the emotional, social, and nursing care needs of patients.

(c) *Standard: Twenty-four-hour nursing service.* The facility provides 24-hour nursing service which is sufficient to meet nursing needs in accordance with the policies developed as provided in § 405.1122(a) on patient care policies. The policies ensure that each patient receives treatments, medications, and diet as prescribed, and restorative nursing care as needed; receives proper care to prevent decubitus ulcers and deformities, and is kept comfortable, clean, well-groomed, and protected from accident and injury; and encouraged, assisted, and trained in self-care and group activities. Nursing personnel, including at least one registered nurse on the day tour of duty 5 days a week, licensed practical nurses, nurse aides, orderlies, and ward clerks, are assigned duties consistent with their education and experience, and based on the characteristics of the patient load and the kinds of nursing skills needed to provide care to the patients. Weekly time schedules are maintained and indicate the number and classification of nursing personnel, including relief personnel, who worked on each unit for each tour of duty.

(d) *Standard: Patient care plan.* In coordination with the other patient care services to be provided, a written patient care plan for each patient is developed and maintained by the nursing service consonant with the attending physician's plan of medical care, and is implemented upon admission. The plan indicates care to be given and goals to be accomplished and who is to give each element of care. The patient care plan is reviewed, evaluated, and updated as necessary by all professional personnel involved in the care of the patient.

(e) *Standard: Restorative nursing care.* The facility has an active program of restorative nursing care which is an integral part of nursing service and is directed toward assisting each patient to achieve and maintain an optimal level of self care and independence. Restorative nursing care services are performed and recorded daily.

(f) *Standard: Supervision of patient nutrition.* Nursing personnel are aware of the nutritional needs and food and fluid intake of patients and assist promptly where necessary in the feeding of patients. A procedure is established to inform the dietetic service of physicians' diet orders and of patients' dietetic problems. Food and fluid intake of patients is observed, and deviations from normal are recorded and reported to the charge nurse and the physician.

(g) *Standard: Administration of drugs.* Drugs are administered in compliance with State and local laws. Procedures are established to ensure that drugs are checked against physicians' orders, that the patient is identified prior to administration of a drug, and that each patient has an individual medication record and that the dose of drug administered to that patient is properly recorded therein by the person who administers the drug. Drugs and biologicals are administered as soon as possible after doses are prepared, and are administered by the same licensed person who prepared the doses for administration.

(h) *Standard: Conformance with physicians' drug orders.* Drugs are administered in accordance with written orders of the attending physician. Drugs, not specifically limited as to time or number of doses when ordered, are controlled by automatic stop orders or other methods in accordance with written policies. Physicians' oral orders for drugs are given only to a licensed nurse, pharmacist, or physician and are immediately recorded and signed. (Oral orders for Schedule II drugs are permitted only in the case of a bona fide emergency situation.) Such orders are countersigned by the attending physician within 48 hours. The attending physician is notified of an automatic stop order prior to the last dose so that he may decide if the prescription is to be renewed.

(i) *Standard: Storage of drugs and biologicals.* Drugs and biologicals in all areas of the facility are securely stored and maintained. Procedures for storing and disposing of drugs and biologicals are established by the pharmaceutical services committee. All drugs and biologicals, including those that require refrigeration, are stored in locked compartments, and only authorized personnel have access to the keys. Separately locked, permanently affixed compartments are provided for storage of controlled drugs listed in Schedule II in the Comprehensive Drug Abuse Prevention & Control Act of 1970, and other drugs subject to abuse, except under single unit package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected. An emergency medication kit approved by the pharmaceutical services committee is kept readily available.

§ 405.1125 Condition of participation—dietetic services.

The skilled nursing facility provides a hygienic dietetic service that meets the daily nutritional needs of patients, ensures that special dietary needs are met, and provides palatable and attractive meals. A facility that has a contract with an outside food management company may be found to be in compliance with this condition provided the facility and/or company meets all the standards listed herein.

(a) *Standard: Staffing.* Overall supervisory responsibility for the dietetic service is assigned to a full-time qualified dietetic service supervisor. If the dietetic service supervisor is not a qualified dietitian he functions with frequent, regularly scheduled consultation from a person so qualified. (See § 405.1121(h).) In addition, the facility employs sufficient supportive personnel competent to carry out the functions of the dietetic service. Food service personnel are on duty daily over a period of 12 or more hours. If consultant dietetic services are used, the consultant's visits are at appropriate times, and of sufficient duration and frequency to provide continuing liaison with medical and nursing staffs, advice to the administrator, patient counseling, guidance to the supervisor and staff of the dietetic service, approval of all menus, and participation in development or revision of

dietetic policies and procedures and in planning and conducting inservice education programs.

(b) *Standard: Menus and nutritional adequacy.* Menus are planned and followed to meet nutritional needs of patients in accordance with physicians' orders and, to the extent medically possible, in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.

(c) *Standard: Therapeutic diets.* Therapeutic diets are prescribed by the attending physician. Therapeutic menus are planned in writing, and prepared and served as ordered, with supervision or consultation from the dietitian and advice from the physician whenever necessary. A current therapeutic diet manual, approved jointly by the dietitian and medical staff, is readily available to attending physicians and nursing and dietetic service personnel.

(d) *Standard: Frequency of meals.* At least three meals or their equivalent are served daily, at regular times, with not more than a 14-hour span between substantial evening meal and breakfast. To the extent medically possible, bedtime nourishments are offered routinely to all patients.

(e) *Standard: Preparation and service of food.* Foods are prepared by methods that conserve nutritive value, flavor, and appearance, and are attractively served at the proper temperatures and in a form to meet individual needs. If a patient refuses food served, appropriate substitutes of similar nutritive value are offered.

(f) *Standard: Hygiene of staff.* Dietetic service personnel are free of communicable diseases and practice hygienic food-handling techniques. (See § 405.1121 (f).)

(g) *Standard: Sanitary conditions.* Food is procured from sources approved or considered satisfactory by Federal, State or local authorities, and stored, prepared, distributed, and served under sanitary conditions. Waste is disposed of properly. Written reports of inspections by State and local health authorities are on file at the facility, with notation made of action taken by the facility to comply with any recommendations.

§ 405.1126 Condition of participation—specialized restorative services.

In addition to restorative nursing (§ 405.1124(e)), the skilled nursing facility provides, or arranges for, under written agreement, specialized restorative services by qualified personnel (i.e., physical therapy, speech pathology and audiology, and occupational therapy) as needed by patients to improve and maintain functioning. These services are provided upon the written order of the patient's attending physician. Safe and adequate space and equipment are available, commensurate with the services offered. If the facility does not offer such services directly, it does not admit nor retain patients in need of this care unless provision is made for such services under arrangement with qualified outside resources under which the facility assumes professional and financial responsibilities for the services rendered. (See § 405.1121(k).)

(a) *Standard: Organization and staffing.* Specialized restorative services are provided, in accordance with accepted professional practices, by qualified therapists or by qualified assistants or other supportive personnel under the supervision of qualified therapists. Written administrative and patient care policies and procedures are developed for restorative services by appropriate therapists and representatives of the medical, administrative, and nursing staffs.

(b) *Standard: Plan of care.* Restorative services are provided under a written plan of care, initiated by the attending physician and developed in consultation with appropriate therapist(s) and the nursing service. Therapy is provided only upon written orders of the attending physician. A report of the patient's progress is communicated to the attending physician within 2 weeks of the initiation of specialized restorative services. The patient's progress is thereafter reviewed regularly, and the plan of restorative care is reevaluated as necessary, but at least every 30 days, by the physician and the therapist(s).

(c) *Standard: Documentation of services.* The physician's orders, the plan of restorative care, services rendered, evaluations of progress, and other pertinent information are recorded in the patient's medical record, and are dated and signed by the physician ordering the service and the person who provided the service.

(d) *Standard: Qualifying to provide outpatient physical therapy services.* If the facility provides outpatient physical therapy services, it meets the applicable health and safety regulations pertaining to such services as are included in Sub-Part Q of this Part.

§ 405.1127 Condition of participation—pharmaceutical services.

The skilled nursing facility provides appropriate methods and procedures for the dispensing and administering of drugs and biologicals. Whether drugs and biologicals are obtained from community or institutional pharmacists or stocked by the facility, the facility is responsible for providing such drugs and biologicals for its patients, insofar as they are covered under the programs, and for ensuring that pharmaceutical services are provided in accordance with accepted professional principles and appropriate Federal, State, and local laws.

(a) *Standard: Supervision of services.* The pharmaceutical services are under the general supervision of a professionally competent staff for developing, coordinating, and supervising all pharmaceutical services. The pharmacist (if not a full-time employee) devotes a sufficient number of hours during a regularly scheduled visit to carry out these responsibilities. The pharmacist reviews the drug regimen of each patient at least monthly, and reports any irregularities to the attending physician. The pharmacist submits a written report on the status of the facility's pharmaceutical service and staff performance at least quarterly.

(b) *Standard: Control and accountability.* The pharmaceutical service has procedures for control and accountability of all drugs and biologicals throughout the facility. Only approved drugs and biologicals are used in the facility, and are dispensed in compliance with Federal and State laws. Records of receipt and disposition of all controlled drugs are maintained in sufficient detail to enable an accurate reconciliation. The pharmacist determines that drug records are in order and that an account of all controlled drugs is maintained and reconciled.

(c) *Standard: Labeling of drugs and biologicals.* The labeling of drugs and biologicals is based on currently accepted professional principles, and includes the appropriate accessory and cautionary instructions, as well as the expiration date when applicable.

(d) *Standard: Pharmaceutical services committee.* A pharmaceutical services committee (or its equivalent) develops written policies and procedures for safe and effective drug therapy, distribution, control, and use. The committee is comprised of at least the pharmacist and one physician. The committee oversees pharmaceutical service in the facility, makes recommendations for improvement, and monitors the service to ensure its accuracy and adequacy.

§ 405.1128 Condition of participation—laboratory and radiologic services.

The skilled nursing facility has provision for promptly obtaining required laboratory, X-ray, and other diagnostic services.

(a) *Standard: Provision for services.* If the facility provides its own laboratory and X-ray services, these meet the applicable conditions established for certification of hospitals that are contained in §§ 405.1028 and 405.1029. If the facility itself does not provide such services, arrangements are made for obtaining these services from a physician's office, a participating hospital or skilled nursing facility, or a portable X-ray supplier or independent laboratory which is approved to provide these services under the program. All such services are provided only on the orders of the attending physician, who is notified promptly of the findings. Signed and dated reports of a clinical laboratory, X-ray, and other diagnostic services are filed with the patient's medical record.

(b) *Standard: Blood and blood products.* Blood handling and storage facilities are safe, adequate, and properly supervised. If the facility itself provides for maintaining and transfusing blood and blood products, they meet the conditions established for certification of hospitals that are contained in § 405.1028(j). If the facility does not provide its own facilities but does provide transfusion services alone, it meets at least the requirements of § 405.1028(j)(1), (3), (4), (6) and (9).

§ 405.1129 Condition of participation—dental services.

The skilled nursing facility has satisfactory arrangements to assist patients to obtain routine and emergency dental care (See § 405.1121(h).) (The basic Hospital Insurance Program does not cover the services of a dentist in a skilled nursing facility in connection with the care, treatment, filling, removal, or replacement of teeth or structures supporting the teeth; and only certain oral surgery is included in the Supplemental Medical Insurance Program.)

(a) *Standard: Advisory dentist.* An advisory dentist participates in the staff development program for nursing and other appropriate personnel and recommends oral hygiene policies and practices for the care of patients.

(b) *Standard: Arrangements for outside services.* The facility has a cooperative agreement with a dental service, and maintains a list of dentists in the community for patients who do not have a private dentist. The facility assists the patient, if neecssary, in arranging for transportation to and from the dentist's office.

§ 405.1130 Condition of participation—social services.

The skilled nursing facility has satisfactory arrangements for identifying the medically related social and emotional needs of the patient. It is not mandatory that the skilled nursing facility itself provide social services in order to participate in the program. If the facility does not provide social services, it has procedures for referring patients in need of social services to appropriate social agencies. If social services are offered by the facility, they are provided under a clearly defined plan, by qualified persons, to assist each patient to adjust to the social and emotional aspects of his illness, treatment, and stay in the facility.

(a) *Standard: Social service functions.* The medically related social and emotional needs of the patient are identified and services provided to meet them, either by qualified staff of the facility, or by referral, based on established procedures, to appropriate social agencies. If financial assistance is indicated, arrangements are made promptly for referral to an appropriate agency. The patient and his family or responsible person are fully informed of the patent's personal and property rights.

(b) *Standard: Staffing.* If the facility offers social services, a member of the staff of the facility is designated as responsible for social services. If the designated person is not qualified social worker, the facility has a written agreement with a qualified social worker or recognized social agency for consultation and assistance on a regularly scheduled basis. (See § 405.1121(h).) The social service also has sufficient supportive personnel to meet patient needs. Facilities are adequate for social service personnel, easily accessible to patients and medical and other staff, and ensure privacy for interviews.

(c) *Standard: Records and confidentiality of social data.* Records of pertinent social data about personal and family problems medically related to the patient's illness and care, and of action taken to meet his needs, are maintained in the patient's medical record. If social services are provided by an outside resource, a record is maintained of each referral to such resource. Policies and procedures are established for ensuring the confidentiality of all patients' social information.

§ 405.1131 Condition of participation—patient activities.

The skilled nursing facility provides for an activities program, appropriate to the needs and interests of each patient, to encourage self care, resumption of normal activities, and maintenance of an optimal level of psychosocial functioning.

(a) *Standard: Provision for patient activity.* A member of the facility's staff is designated as responsible for the patient activities program. If he is not a qualified patient activities coordinator, he functions with frequent, regularly scheduled consultation from a person so qualified. (See § 405.1121(h).)

(b) *Standard: Patient activities program.* Provision is made for an ongoing program of meaningful activities appropriate to the needs and interests of patients, designed to promote opportunities for engaging in normal pursuits, and approved by the patient's attending physician as not in conflict with the treatment plan. The activities are designed to promote the physical, social, and mental well-being of the patients.

§ 405.1132 Condition of participation—Medical records.

The facility maintains clinical (medical) records on all patients in accordance with accepted professional standards and practices. The medical record service has sufficient staff, facilities, and equipment to provide medical records that are completely and accurately documented, readily accessible, and systematically organized to facilitate retrieving and compiling information.

(a) *Standard: Staffing.* Overall supervisory responsibility for the medical record service is assigned to a full-time employee of the facility. The facility also employs sufficient supportive personnel competent to carry out the functions of the medical record service. If the medical record supervisor is not a qualified medical record administrator, this person functions with consultation from a person so qualified. (See § 405.1121(h).)

(b) *Standard: Protection of medical record information.* The facility safeguards medical record information against loss, destruction, or unauthorized use.

(c) *Standard: Content.* The medical record contains sufficient information to identify the patient clearly, to justify the diagnosis and treatment, and to document the results accurately. All medical records contain the following general categories of data: Documented evidence of assessment of the needs of the patient, of establishment of an appropriate plan of treatment, and of the care and services provided; authentication of hospital diagnoses (discharge summary, report from patient's attending physician, or transfer form), identification data and consent forms, medical and nursing history of patient, report of physical examination(s), diagnostic and therapeutic orders, observations and progress notes, reports of treatments and clinical findings, and discharge summary including final diagnosis and prognosis.

(d) *Standard: Physician documentation.* Only physicians enter or authenticate in medical records opinions that require medical judgment (in accordance with medical staff bylaws, rules, and regulations, if applicable). Each physician signs his entries into the medical record.

(e) *Standard: Completion of records and centralization of reports.* Current medical records and those of discharged patients are completed promptly. All clinical information pertaining to a patient's stay is centralized in the patient's medical record.

(f) *Standard: Retention and preservation.* Medical records are retained for a period of time not less than that determined by the respective State statute, the statute of limitations in the State, or 5 years in the absence of a State statute.

(g) *Standard: Indexes.* Patients' medical records are indexed according to name of patient and final diagnoses to facilitate acquisition of statistical medical information and retrieval of records for research or administrative action.

(h) *Standard: Location and facilities.* The facility maintains adequate facilities and equipment, conveniently located, to provide efficient processing of medical records (reviewing, indexing, filing, and prompt retrieval).

§ 405.1133 Condition of participation—Transfer agreement.

The skilled nursing facility has in effect a transfer agreement with one or more hospitals approved for participation under the programs, which provides the basis for effective working arrangements under which inpatient hospital care or other hospital services are available promptly to the facility's patients when needed. (A facility that has been unable to establish a transfer agreement with the hospital(s) in the community or service area after documented attempts to do so is considered to have such an agreement in effect.)

(a) *Standard: Patient transfer.* A hospital and a skilled nursing facility shall be considered to have a transfer agreement in effect if, by reason of a written agreement between them or (in case the two institutions are under common control) by reason of a written undertaking by the person or body which controls them, there is reasonable assurance that:

(1) Transfer of patients will be effected between the hospital and the skilled nursing facility, ensuring timely admission, whenever such transfer is medically appropriate as determined by the attending physician; and

(2) There will be interchange of medical and other information necessary or useful in the care and treatment of individuals transferred between the institutions, or in determining whether such individuals can be adequately cared for otherwise than in either of such institutions.

Any skilled nursing facility which does not have such agreement in effect, but which is found by a State agency (of the State in which such facility is situated) with which an agreement under section 1864 is in effect (or, in the case of a State in which no such agency has an agreement under 1864, by the Secretary) to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer between them of patients and the information referred to in paragraph (a)(2) of this section, shall be considered to have such an agreement in effect if and for so long as such agency (or the Secretary, as the case may be) finds that to do so is in the public interest and essential to assuring skilled nursing facility services for persons in the community who are eligible for payments with respect to such services under the programs.

§ 405.1134 Condition of participation—Physical environment.

The skilled nursing facility is constructed, equipped, and maintained to protect the health and safety of patients, personnel, and the public.

(a) *Standard: Life safety from fire.* The skilled nursing facility meets such provisions of the Life Safety Code of the National Fire Protection Association (21st Edition, 1967) as are applicable to nursing homes; except that, in consideration of a recommendation by the State survey agency, the Secretary may waive, for such periods as deemed appropriate, specific provisions of such Code which, if rigidly applied, would result in unreasonable hardship upon a skilled nursing facility, but only if such waiver will not adversely affect the health and safety of the patients; and except that the provisions of such Code shall not apply in any State if the Secretary finds, in accordance with applicable provisions of section 1861 of the Social Security Act, that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in skilled nursing facilities. Where the State agency has permitted by waiver the participation of an existing facility of two or more stories which is not of at least 2-hour fire resistive construction, blind, nonambulatory, or physically handicapped patients are not housed above the street level floor unless the facility is of 1-hour protected noncombustible construction (as defined in National Fire Protection Association Standard No. 220), fully sprinklered 1-hour protected ordinary construction, or fully sprinklered 1-hour protected woodframe construction. Nonflammable medical gas systems, such as oxygen and nitrous oxide, installed in the facility comply with applicable provisions of National Fire Protection Association Standard No. 56B (Standard for the Use of Inhalation Therapy) 1968 and National Fire Protection Association Standard No. 56F (Nonflammable Medical Gas Systems) 1970.

(b) *Standard: Emergency power.* The facility provides an emergency source of electricity necessary to protect the health and safety of patients in the event the normal electrical supply is interrupted. The emergency electrical power system must supply power adequate at least for lighting in all means of egress; equipment to maintain fire detection, alarm, and extinguishing systems; and life support systems. Where life support systems are used, emergency electrical service is provided by an emergency generator located on the premises.

(c) *Standard: Facilities for physically handicapped.* The facility is accessible to, and functional for, patients, personnel, and the public. All necessary accommodations are made to meet the needs of persons with semiambulatory disabilities, sight and hearing disabilities, disabilities of coordination, as well as other disabilities, in accordance with the American National Standards Institute (ANSI) Standard No. A117.1, American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped.

(d) *Standard: Nursing unit.* Each nursing unit has at least the following basic service areas: Nurses station, storage and preparation area(s) for drugs and biologicals, and utility and storage rooms that are adequate in size, conveniently located, and well lighted to facilitate staff functioning. The nurses station is equipped to register patients' calls through a communication system.

(e) *Standard: Patient rooms and toilet facilities.* Patient rooms are designed and equipped for adequate nursing care and the comfort and privacy of patients, and have no more than four beds. Single patient rooms measure at least 100 square feet, and multipatient rooms provide a minimum of 80 square feet per bed. Each room is equipped with, or is conveniently located near, adequate toilet and bathing facilities. Each room has direct access to a corridor and outside exposure, with the floor at or above grade level.

(f) *Standard: Facilities for special care.* Provision is made for isolating patients as necessary in single rooms ventilated to the outside, with private toilet and handwashing facilities. Procedures in aseptic and isolation techniques are established in writing and followed by all personnel. Such areas are identified by appropriate precautionary signs.

(g) *Standard: Dining and patient activities rooms.* The facility provides one or more attractively furnished rooms of adequate size designated for patient dining and for patient activities. These areas are well-lighted and well-ventilated. If a multipurpose room is used for dining and patient activities, there is sufficient space to accommodate all activities and prevent their interference with each other.

(h) *Standard: Kitchen and dietetic service areas.* The facility has kitchen and dietetic service areas adequate to meet food service needs. These areas are properly ventilated, and arranged and equipped for sanitary refrigeration, storage, preparation, and serving of food as well as for dish and utensil cleaning and refuse storage and removal.

(i) *Standard: Other environmental considerations.* The facility provides a functional, sanitary, and comfortable environment for patients, personnel, and the public. Provision is made for adequate and comfortable lighting levels in all areas, limitation of sounds at comfort levels, maintaining a temperature of at least 75° F., procedures to ensure water to all essential areas in the event of loss of normal water supply, and adequate ventilation through windows or mechanical means or a combination of both.

§ 405.1135 Condition of participation—Environmental services.

The skilled nursing facility establishes an infection control committee of representative professional staff with responsibility for overall infection control in the facility. All necessary housekeeping and maintenance services are provided to maintain a sanitary and comfortable environment and to help prevent the development and transmission of infection.

(a) *Standard: Infection control committee.* The infection control committee, composed of members of the medical and nursing staffs, administration, and other services, establishes policies and procedures for investigating, controlling, and preventing infections in the facility, and monitors staff performance to ensure that the policies and procedures are executed.

(b) *Standard: Aseptic and isolation techniques.* Written effective procedures in aseptic and isolation techniques are followed by all personnel.

(c) *Standard: Housekeeping.* The facility employs sufficient housekeeping personnel and provides all necessary equipment to maintain a safe, clean, orderly, and attractive interior. Nursing personnel are not assigned housekeeping duties.

(d) *Standard: Linen.* The facility has available at all times a quantity of linen essential for proper care and comfort of patients. Linens are handled, stored, processed, and transported in such a manner as to prevent the spread of infection.

(e) *Standard: Pest control.* The facility is maintained free from insects and rodents through operation of a pest control program.

(f) *Standard: Maintenance of equipment, building, and grounds.* The facility establishes a written preventive maintenance program to ensure that equipment is operative and that the interior and exterior of the building are clean,

orderly, and attractive. All essential mechanical, electrical, and patient care equipment is maintained in safe operating condition.

§ 405.1136 Condition of participation—disaster preparedness.

The skilled nursing facility has a written plan, periodically rehearsed, with procedures to be followed in the event of an internal or external disaster and for the care of casualties (patients and personnel) arising from such disasters.

(a) *Standard: Disaster plan.* The facility has an acceptable written plan in operation, with procedures to be followed in the event of fire, explosion, or other disaster. The plan is developed and maintained with the assistance of qualified fire, safety, and other appropriate experts, and includes procedures for prompt transfer of casualties and records, instructions regarding the location and use of alarm systems and signals and of fire-fighting equipment, information regarding methods of containing fire, procedures for notification of appropriate persons, specifications of evacuation routes and procedures, and frequency of fire drills.

(b) *Standard: Staff training and drills.* All employees are trained, as part of their employment orientation, in all aspects of preparedness for any disaster. The disaster program includes orientation and ongoing training and drills for all personnel in all procedures so that each employee promptly and correctly carries out his specific role in case of a disaster. (See § 405.1121(g).)

§ 405.1137 Condition of participation—utilization review.

The skilled nursing facility carries out utilization review of the services provided in the facility at least to inpatients who are entitled to benefits under the program(s). Utilization review has as its overall objectives both the maintenance of high quality patient care and assurance of appropriate and efficient utilization of facility services. The Secretary may waive the requirements of this section upon demonstration by the Medicaid single State agency that it has in operation utilization review procedures that are more effective than those required by this section.

(a) *Standard: Written plan of utilization review activity.* The facility has a written, currently applicable utilization review plan, approved by the governing body and the medical director or organized medical staff (if applicable), which includes at least the following: (1) procedures for medical care evaluation studies, and for dissemination and followup of study findings and committee recommendations; (2) definition of the period(s) of extended duration and procedures for review of individual cases of extended duration; (3) a method for identifying patients other than by name (e.g., medical record number); and (4) provision for maintaining written records of committee activities.

(b) *Standard: Composition and organization of utilization review committee.* The committee or group responsible for utilization review is composed of two or more physicians and, optionally, other professional personnel. All medical determinations are made by the physician members of the committee. The committee may be one or more staff committees within the facility, a group outside the facility which is established by the local medical or osteopathic society and some or all of the hospitals and skilled nursing facilities in the locality, or a group established in a manner approved by the Secretary; or, if required by the Secretary, a utilization review mechanism carried out by the State Medicaid agency as provided in section 1903(i)(4) of the Social Security Act. No physician committee member has a financial interest, direct or indirect, in the facility unless the Secretary finds that the financial interest held by such physician is not significant and presents no conflict of interest, or, for an interim period of time, utilization review cannot be made in any alternative manner because of the nonavailability of other physicians to serve as members of the committee. No physician reviews any case in which he was professionally involved.

(c) *Standard: Medical care evaluation studies.* Medical care evaluation studies are performed to insure the medical necessity of services, and to promote the most effective and efficient use of available health facilities and services consistent with patient needs. Studies, which could include assessment of findings resulting from periodic medical review, emphasize identification and analysis of patterns of patient care and changes indicated to maintain consistent high quality of services. Each medical care evaluation study (whether medical or administrative in emphasis) identifies and analyzes factors related to the patient care rendered in the facility, and serves as the basis for recommendations for change beneficial to patients, staff, the facility, and the community. Studies, on a sample or other basis, include but need not be limited to, admissions, durations of stay, and professional services (including drugs and biologicals) furnished. At least one study is in progress at any given time.

(d) *Standard: Review of cases of extended duration.* Periodic review is made of each current inpatient skilled nursing facility beneficiary case of continuous extended duration, the length of which is defined in the utilization review plan, to determine whether further inpatient stay is necessary. Reviews may also be applied to patients not covered by the program, and/or to cases where duration of stay has not yet reached the definition(s) of extended duration. The plan may specify a different number of days for different diagnostic classes of cases, or may use the same number of days for all cases. In any event, the period(s) specified bears a reasonable relationship to current average length-of-stay statistics, and in no event exceeds 21 days from admission. In cases for which advance approval of payment has been made, the period(s) of extended duration may be defined as that period for which payment has been approved. If the initial review of a case indicates that the patient needs further inpatient stay, subsequent reviews for medical necessity are made no more than 30 days later and every 30 days thereafter. A review is made and a final determination regarding the patient's further care is reached no later than 7 days following the time period specified as the period of extended duration in the utilization review plan.

(e) *Standard: Admission or further stay not medically necessary.* Final determination regarding the necessity for admission or for further stay, including stay beyond the period of extended duration, is limited to physician members of the committee, and may be made by the full physician complement, a subcommittee, or a single committee physician. When a single committee physician has decided that admission is not medically necessary or is inappropriate, or that further stay is no longer medically necessary, further concurrence is obtained as specified in the plan (to include at least a second committee physician when possible) within the 7-day period. If committee members determine, from an extended duration review or a medical care evaluation study, that further stay is not medically necessary, the attending physician is consulted or given the opportunity for consultation, and notification is made in writing within 48 hours by the committee to the administration, the attending physician, and the patient or his representative.

(f) *Standard: Administrative responsibilities.* The administrative staff of the facility is kept directly and fully informed of committee activities to facilitate support and assistance. The administrator studies and acts upon recommendations made by the committee, coordinating such functions with appropriate staff members.

(g) *Standard: Utilization review records.* Written records of committee activities are maintained. Appropriate reports, signed by the committee chairman, are made regularly to the medical staff, administrative staff, governing body, and sponsors (if any). Minutes of each committee meeting are maintained and include at least:

(1) Name of committee;

(2) Date and duration of meeting;

(3) Names of committee members present and absent;

(4) Description of activities presently in progress to satisfy the requirements for medical care evaluation studies, including the subject and reason for study, dates of commencement and expected completion, summary of studies completed since the last meeting, conclusions, and followup on implementation of recommendations made from previous studies; and

(5) Summary of extended duration cases reviewed, including the number of cases, case identification numbers, admission and review dates, and decisions reached, including the basis for each determination and action taken for each case not approved for extended care.

Subpart O—Providers of Services, Independent Laboratories, and Suppliers of Portable X-ray Services; Determinations and Appeals Procedures

11. Section 405.1501 is revised to read as follows:

§ 405.1501 Providers of services, emergency service hospitals, independent laboratories, and suppliers of portable X-ray services; determinations and appeals procedures.

(a) The provisions contained in this Subpart O shall govern the procedure for making and reviewing determinations with respect to whether an institution, facility, agency, or clinic is a provider of services (i.e., a hospital, skilled nursing facility, home health agency, or for purposes of furnishing outpatient physical therapy services, a clinic, rehabilitation agency, or public health agency) within the meaning of title XVIII of the Social Security Act and Subparts J, K, L, or Q of this Part, as appropriate; whether an institution is a hospital, as such term is included in section 1861(e) for purposes of sections 1814(d) and 1835(b) of the Act (see § 405.152(a)(1)), qualified to elect to claim payment for all emergency hospital services furnished in a calendar year (see § 405.658); the termination of the Secretary's agreement with a provider of services for cause (see § 405.614); whether an institution continues to remain in compliance with the qualifications for claiming emergency service reimbursement for a calendar year under the provisions of sections 1814(d) and 1835(b) of the Act; and whether an independent laboratory or supplier of portable X-ray services meets the appropriate conditions for coverage of its services (see Subparts M and N of this Part).

(b) Any institution, facility, agency, or clinic dissatisfied with an initial determination (see § 405.1502) that it does not qualify as a provider of services may request a reconsideration of that determination (see § 405.1510). If dissatisfied with the reconsidered determination, or with an initial determination terminating the Secretary's agreement with it for cause, an institution, facility, agency, or clinic is entitled to a hearing thereon and, if dissatisfied with the Secretary's final decision after such hearing, to Appeals Council review and then judicial review of such decision (see § 405.1530 et seq.).

(c) Any independent laboratory or supplier of portable X-ray services which is dissatisfied with an initial determination (see § 405.1502) that its services do not meet the condition for coverage (see Subparts M and N of this Part 405) may request a reconsideration of that determination (§ 405.1510). If dissatisfied with the reconsidered determination or where a determination had been made that an independent laboratory's or portable X-ray supplier's services met the respective conditions for coverage, with an initial determination thereafter that its services no longer meet the respective conditions for coverage, a laboratory or portable X-ray supplier may request a hearing thereon (see § 405.1530), and if dissatisfied with the decision of the hearing examiner may request Appeals Council review. A laboratory or portable X-ray supplier is not entitled to judicial review of the Secretary's final decision after such hearing and review.

(d) To be a participating provider of services, eligible for payment, a provider must be in compliance with Title VI of the Civil Rights Act of 1964 and must enter into an agreement with the Secretary under section 1866 of the Social Security Act (see Subpart F of this Part 405). The provisions of this Subpart O do not govern in any respect the adjudication of issues related to the compliance of an institution or agency with Title VI of the Civil Rights Act of 1964, or the implementing regulation (45 CFR Part 80) issued by the Secretary of Health, Education, and Welfare.

(e) Any institution which is dissatisfied with an initial determination (see § 405.1502) that it does not qualify to elect to claim payment for all emergency hospital services furnished in a calendar year, may request a reconsideration of that determination (see § 405.1510). If dissatisfied with the reconsidered determination, or where the institution's election to claim payment for all such services furnished in a calendar year has been accepted for filing, with an initial determination thereafter of its failure to remain in compliance with the qualifications for claiming such payments for such calendar year, the institution is entitled to a hearing thereon and, if dissatisfied with the Secretary's final decision after such hearing, to Appeals Council review and then judicial review of such decision (see § 405.1530 et seq.).

§§ 405.1502, 405.1510, 405.1513, 405.1514, 405.1515, 405.1518, 405.1542 [Amended]

12. In §§ 405.1502, 405.1510, 405.1513, 405.1514, 405.1515, 405.1518, and 405.1542 (a), the word "Administration" is changed to "Secretary."

13. Paragraph (b) of § 405.1502 is amended by revising subparagraph (2) to read as follows:

§ 405.1502 Initial determinations.

The Secretary will make findings, setting forth the pertinent facts and conclusions, and an initial determination with respect to:

* * * * *

(b) * * *

(2) Whether an independent laboratory or supplier of portable X-ray services continues to meet the appropriate conditions for coverage of its services; and

* * * * *

14. Section 405.1503 is revised to read as follows:

§ 405.1503 Notice of initial determination.

Written notice of an initial determination (see § 405.1502) with respect to whether an institution, facility, agency, or clinic is or is not a provider; or with respect to whether an institution is or is not a hospital for purposes of the emergency service reimbursement provisions of sections 1814(d) and 1835(b) of the Act; or with respect to the termination of an agreement for cause; or with respect to whether an institution continues to remain in compliance with the qualifications for claiming emergency services reimbursement for a calendar year under the provisions of sections 1814(d) and 1835(b) of the Act; or with respect to whether an independent laboratory or supplier of portable X-ray services meets the appropriate conditions for coverage of its services (see Subparts M and N of this Part 405) will be mailed to the institution, facility, agency, clinic, laboratory, or portable X-ray supplier (see §§ 405.1510 and 405.1530).

15. Section 405.1505 is revised to read as follows:

§ 405.1505 Administrative actions which are not initial determinations.

(a) The finding that an institution, facility, agency or clinic determined to be a provider has deficiencies with respect to one or more conditions of participation, or that an independent laboratory or supplier of portable X-ray services, determined to be in substantial compliance with the conditions, has deficiencies with respect to one or more conditions for coverage of services of independent laboratories or suppliers of portable X-ray services.

(b) The finding that an institution, facility, or agency does not meet the conditions for participation as set out in Subparts J, K, or L of this Part, as appropriate, but only where such institution, facility, or agency is nevertheless approved as a provider of services on the basis of a special access certification.

(c) The finding that the services of a laboratory are covered under the health insurance program because the laboratory is not independent of a hospital for purposes of section 1861(s) (10) and (11) of the Act and the laboratory meets the health and safety standards prescribed for such laboratories.

(d) The finding that laboratory services are physician's services for the reason that the laboratory is being maintained primarily for the physician's patients, and such physician's services are covered under the supplementary medical insurance program.

(e) The refusal by the Secretary to accept for filing an agreement submitted by an institution, facility, agency, or clinic under the terms of section 1866 of the Social Security Act where such institution, facility, agency, or clinic:

(1) Is not in compliance with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); or

(2) Has been adjudged insolvent or bankrupt under appropriate State or Federal law or with respect to which a court proceeding to make such a judgment is pending under such law.

(f) The finding that, pursuant to § 405.616, a provider may not file another

agreement, where such provider's agreement has been terminated under the conditions described in §§ 405.604, 405.613, or 405.614.

(g) The finding that an institution is not a hospital for purposes of the emergency service reimbursement provisions of sections 1814(d) and 1835(b) of the Act, if such findings are not made in accordance with the provisions of §§ 405.1502(d) (1) or (2) and 405.1503.

(h) The refusal to accept for filing an election submitted by an institution to claim payment for all emergency hospital services furnished in a calendar year (see § 405.658), where such institution has previously charged an individual or other person for emergency hospital services furnished to the individual in such calendar year.

(i) The refusal to accept for filing an election submitted by an institution to claim payment for all emergency hospital services furnished in a calendar year.

(j) The finding that, pursuant to § 405.659, an institution is not eligible to file an election to claim emergency services reimbursement after its failure to continue to comply.

16. Paragraph (b) of § 405.1511 is revised to read as follows:

§ 405.1511 Time and place of filing request for reconsideration.

* * * * *

(b) The request for consideration must be filed within 6 months after the date of the mailing of the notice of the initial determination unless the time for filing is extended as provided in § 405.1518. The request is to be filed with the Secretary or with an employee of the Department of Health, Education, and Welfare authorized to accept such requests at a place other than such office. A request for reconsideration which has been timely filed with the State agency that performed the survey and certification function will be considered to have been filed with the Secretary.

17. Section 405.1519 is revised to read as follows:

§ 405.1519 Revision of initial or reconsidered determination.

Except in the case of a determination that an institution, facility, agency, or clinic qualifies as a provider of services, or that an institution qualifies to elect to claim payment for all emergency hospital services furnished in a calendar year, an initial or reconsidered determination which is otherwise final under § 405.1504 or § 405.1517 may be reopened by the Secretary upon his own motion within 12 months after the date of the notice of the initial determination (see § 405.1503). Notice of the reopening of a determination and any revision thereof shall be given to the institution, facility, agency, clinic, laboratory, or portable X-ray supplier which was a party to the determination (see § 405.1520).

18. Section 405.1531 is revised to read as follows:

§ 405.1531 Filing a request for a hearing; time and manner of filing.

The request for a hearing shall be made in writing, signed by a proper official of the institution, facility, agency, clinic, laboratory, or portable X-ray supplier concerned and filed at an office of the Department of Health, Education, and Welfare or with an Administrative Law Judge (formerly called "hearing examiner") or the Appeals Council of the Bureau of Hearings and Appeals. The request must be filed within 6 months after the date on which written notice of an initial determination provided for in § 405.1502(b)(2), (c), or (d)(2), or a reconsidered or revised determination is mailed to the institution, facility, agency, clinic, laboratory, or portable X-ray supplier (see §§ 405.1503, 405.1516, and 405.1520), except where the time is extended for "good cause" (see § 405.1569).

19. Section 405.1532 is revised to read as follows:

§ 405.1532 Parties to the hearing.

The parties to the hearing shall be the institution, facility, agency, clinic, laboratory, or portable X-ray supplier which was a party to the prior determination (see §§ 405.1502(b)(2), (c), and (d)(2), 405.1514, and 405.1519) and the Bureau of Health Insurance as representing the Secretary. The Bureau of Health Insurance shall be represented at the hearing (see § 405.1543).

§§ 405.1537, 405.1545 [Amended]

20. In §§ 405.1537 and 405.1545, the words "Bureau of Health Insurance" are changed to "Secretary."

21. Paragraph (b) of § 405.1542 is revised to read as follows:

§ 405.1542 Hearing on new issues.

* * * * *

(b) On the application of either party, or on his own motion, in lieu of considering any new issue to the manner described in the preceding paragraph, the Administrative Law Judge may remand the case for consideration of the new issue and, where appropriate, a determination. Where necessary the Administrative Law Judge may direct that the case be returned to him for further proceedings. See also § 405.1560.

22. Section 405.1544 is revised to read as follows:

§ 405.1544 Subpoenas.

When reasonably necessary for the full presentation of a case, the Administrative Law Judge may upon his own motion, or upon the request of a party to the hearing, issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents which are relevant and material to any matter in issue at the hearing. A party which desires the issuance of a subpoena shall, not less than 5 days prior to the time fixed for a hearing, file with the Administrative Law Judge a written request therefor, designating the witnesses or documents to be produced, and describing the address and location thereof with sufficient particularity to permit such witnesses or documents to be found. The request for a subpoena shall state the pertinent facts which the party expects to establish by such witnesses or documents and whether such facts could be established by other evidence without the use of a subpoena. A subpoena issued under the provisions of this section shall be issued in the name of the Secretary who shall pay the cost of the issuance and the fees and the mileage of any witnesses so subpoenaed, as provided in section 205(d) of the Act.

23. Section 405.1550 is revised to read as follows:

§ 405.1550 Waiver of right to appear and present evidence.

If the institution, facility, agency, clinic, laboratory, or portable X-ray supplier waives its right to appear before the Administrative Law Judge and present testimony, it shall not be necessary for the Administrative Law Judge to give notice of and conduct an oral hearing. A waiver of this right shall be made in writing and filed with the Administrative Law Judge. A waiver may be withdrawn by an institution, facility, agency, clinic, laboratory, or portable X-ray supplier, for good cause shown, at any time prior to the mailing of notice of the decision in the case. Even though an institution, facility, agency, clinic, laboratory, or portable X-ray supplier has filed a waiver of a hearing before an Administrative Law Judge, the Administrative Law Judge may nevertheless give notice of a time and place and conduct a hearing if he believes that testimony of the representatives of the institution, facility, agency, clinic, laboratory, or portable X-ray supplier or other persons is needed to clarify the facts in issue, or on a showing of good cause by the Bureau of Health Insurance as representing the Secretary of the need to present oral evidence. When such a waiver has been filed and no testimony received, 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 initial, reconsidered, or revised determination (see §§ 405.1502, 405.1514, and 405.1519), and whatever additional relevant and material evidence was submitted by the parties for consideration by the Administrative Law Judge. Any additional evidence submitted by either party shall be furnished to the other party and that party shall be given a reasonable opportunity to submit further evidence in rebuttal. The parties may submit briefs or other written statements of evidence and/or proposed findings of fact or conclusions of law, copies of which shall be sent in accordance with § 405.1595. After the Administrative Law Judge sets the case for oral hearing and gives notice of the time and place set for the hearing, the request for hearing shall be dismissed in accordance with § 405.1552 where the institution, facility, agency, clinic, laboratory, or portable X-ray supplier fails to appear without good cause.

24. Section 405.1560 is revised to read as follows:

§ 405.1560 Remand by the Administrative Law Judge.

At the request of the Bureau of Health Insurance representing the Secretary and with the written or on-the-record concurrence of the other party to the hear-

ing, the Administrative Law Judge may remand any case properly before him for a determination satisfactory to such other party. Such remand may be made at any time after the request for hearing and before mailing of the notice of decision.

25. Section 405.1563 is revised to read as follows:

§ 405.1563 Action by the Appeals Council on request for review.

The review or denial of the Administrative Law Judge's decision shall be conducted by a panel of at least two members of the Appeals Council designated by the Chairman or Deputy Chairman and one person from the U.S. Public Health Service designated by the Surgeon General, Public Health Service, Department of Health, Education, and Welfare, or his delegate. Except as provided in § 405.1568, the Appeals Council shall review the Administrative Law Judge's decision or dismissal where an institution, facility, agency, clinic, laboratory, or portable X-ray supplier, files a request for review. The Appeals Council may dismiss, deny or grant a request for review filed by the Bureau of Health Insurance as representing the Secretary. If the review is granted, the Appeals Council may either modify, affirm, or reverse the Administrative Law Judge's decision. Notice of the action by the Appeals Council shall be mailed to the institution, facility, agency, clinic, laboratory, or portable X-ray supplier and the Bureau of Health Insurance.

§§ 405.1590, 405.1591 [Amended]

26. In §§ 405.1590 and 405.1591, the words "Social Security Administration" are changed to "Secretary."

Subpart T—Certification Procedure for Providers and Suppliers of Services

27. Subpart T is added to read as follows:

Sec.
405.1901 The certification process.
405.1902 Certification by State Agency.
405.1903 Documentation of findings.
405.1904 Periodic certification of compliance and approval.
405.1905 Certification of noncompliance.
405.1906 Determining compliance.
405.1907 Providers or suppliers with deficiencies.
405.1908 Special requirements applicable to skilled nursing facilities with deficiencies.
405.1909 Special requirements applicable to independent laboratories.
405.1910 Special hospital certification.

AUTHORITY: Secs. 1102, 1814, 1861, 1865, 1866, 1871, 49 Stat. 647, as amended, 79 Stat. 249, as amended, 79 Stat. 313–327, as amended, 79 Stat. 331; 42 U.S.C. 1302, 1395 et seq.

§ 405.1901 The certification process.

(a) A prospective provider or supplier of services which meets the applicable statutory definitions contained in section 1861 (e), (f), (g), (j), (o), (p) (4), (s) (3) or (s) (10) of the Social Security Act and which is found to be in compliance with each of the conditions where applicable prescribed by the Secretary may agree to become a provider or supplier of services upon acceptance by the Secretary. Health and safety requirement prescribed by the Secretary are set forth in the conditions of participation for hospitals, skilled nursing facilities, home health agencies, rehabilitation agencies, clinics, and public health agencies (see Subparts J, K, L, and (Q), and in the conditions for coverage of independent laboratories and portable X-ray suppliers (see Subparts M and N).

(b) Hospitals currently accredited by the Joint Commission on Accreditation of Hospitals or by the American Osteopathic Association are deemed to meet all of the conditions of participation, except the requirements for utilization review as described in section 1861(e)(6) of the Act and any standard promulgated by the Secretary which is higher than the requirements for accreditation as specified in section 1861(e)(9) of the Act, and, in the case of tuberculosis and psychiatric hospitals, the additional staffing and medical records requirements considered necessary for the provision of intensive care. Notwithstanding that a hospital is accredited by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association, it may be subject to a survey by State and/or Federal survey personnel. In such cases a copy of the latest JCAH or AOA survey report will be released to the Secretary (on a confidential basis) with the hospital's concurrence. If the hospital declines to authorize such release, it will lose its deemed status and will be subject to the regular State agency survey procedure. Such surveys will be conducted on a sample basis to validate the JCAH and AOA accreditation process or in response to substantial allegations or evidence of a condition adverse to the health and safety of patients in an accredited hospital. If such a survey reveals noncompliance with one or more statutory or regulatory requirements, the hospital must come into compliance with the Health Insurance for the Aged and Disability Program requirements.

(c) The Secretary may, at the request of a State, approve higher health and safety requirements for that State. Also, where a State or political subdivision imposes higher requirements as a condition for the purchase of health services under a State plan approved under titles I, XVI, or XIX of the Social Security Act, the Secretary is required to impose like requirements as a condition to the payment for services under title XVIII in such institutions or agencies in the State or subdivision.

(d) Attention is invited to the requirements of title VI of the Civil Rights Act of 1964 (78 Stat. 252; P.L. 88–352) which provides that no person in the United States shall, on the ground 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 (section 601), and to the implementing regulations issued by the Secretary of Health, Education, and Welfare with the approval of the President (45 CFR Part 80).

§ 405.1902 Certification by State agency.

(a) Section 1864(a) of the Social Security Act provides that the services of State agencies, operating under agreements with the Secretary, will be used by the Secretary in determining whether providers or prospective providers meet the conditions of participation or suppliers meet the conditions for coverage. Pursuant to these agreements, State agencies will survey each provider and supplier and certify to the Secretary as to whether they are found to be in compliance with the conditions of participation and/or coverage.

(b) In the case of skilled nursing facilities completing the second of two successive agreements of provisions for certification in effect under title XIX prior to July 1, 1973, and having the same deficiencies which occasioned the two agreements, the State survey agency will review the performance of such facility (which may be limited to a review of the documentation of record) in providing safe and adequate patient care and in completing correction of deficiencies. On the basis of such evaluation, the State survey agency will recommend to the Secretary that:

(1) Termination proceedings under title XVIII should be initiated; or

(2) Recertification issued by the Secretary should be continued for a period of up to 6 months from the date of the expiration of the second 6-month agreement under title XIX, by which time the facility must have corrected the standards that have been out of compliance through two such successive agreements; or

(3) Recertification issued by the Secretary should be continued for a period of no longer than 12 months from the date of the last title XVIII recertification subject to a cancellation clause that the certification will expire on a predetermined date which is no later than the 60th day following the end of the time period specified for the correction of deficiencies, unless the Secretary has determined all standards out of compliance though two such successive agreements have been corrected.

(c) The certifications by the State agency represent recommendations to the Secretary. The Secretary, on the basis of such certifications by the State agency will determine whether a provider or supplier is eligible to participate in the Health Insurance for the Aged Program. Notice of determination of eligibility or noneligibility will be sent to the provider or supplier.

§ 405.1903 Documentation of findings.

(a) The findings of the State agency with respect to each of the conditions of participation or conditions for coverage shall be adequately documented. Where the State agency certifies to the Secretary that a provider or supplier is not in compliance with the conditions, such

documentation includes, in addition to the description of the specific deficiencies which resulted in the agency's recommendation, a report of all consultation which has been undertaken in an effort to assist the provider or supplier to comply with the conditions, a report of the provider's or supplier's responses with respect to the consultation, and the State agency's assessment of the prospects for such improvements as to enable the provider or supplier to achieve compliance with the conditions within a reasonable period of time. (See § 405.1907.)

(b) If a provider or supplier is certified by the State agency as in compliance with the conditions or as meeting the requirements for special certification (see § 405.1910), with deficiencies not adversely affecting the health and safety of patients, the following information will be incorporated into the finding:

(1) A statement of the deficiencies which were found, and

(2) A description of further action which is required to remove the deficiencies, and

(3) A time-phased plan of correction developed by the provider and supplier and concurred with by the State agency, and

(4) A scheduled time for a resurvey of the institution or agency to be conducted by the State agency within 90 days following the completion of the survey.

(c) If, on the basis of the State certification, the Secretary determines that the provider or supplier is eligible to participate, the information described in paragraph (b) of this section will be incorporated into a notice of eligibility to the provider or supplier.

§ 405.1904 Periodic certification of compliance and approval.

(a) Initial certifications and recertifications by the State agency to the effect that a provider or supplier is in compliance with all the conditions of participation will be for a period of 12 months. (See paragraph (b) of this section for periods of certification applicable to skilled nursing facilities.) State agencies. State agencies may visit or resurvey providers or suppliers more frequently where necessary to evaluate correction of deficiencies, ascertain continued compliance, or to accommodate to periodic or cyclical survey programs. A State finding and certification to the Secretary that a provider or supplier is no longer in compliance will supersede the State's previous certification.

(b) Periods of certification and approval applicable to skilled nursing facilities. A certification of a skilled nursing facility shall be for a period of up to 12 months, subject to the provision that any agreement filed by a skilled nursing facility with the Secretary under section 1866 of the Social Security Act and accepted by him prior to October 30, 1972, shall be deemed to be for a specified period ending December 31, 1973. A certification for less than 12 months may be issued in appropriate situations, based on such factors as the nature of deficiencies which may exist and the degree of progress achieved in correcting prior deficiencies. An agreement with a skilled nursing facility may, at the option of the Secretary, also be subject to automatic cancellation based upon a failure to correct deficiencies. (See § 405.604.) (See § 405.1908 where a standard is not met during the period of a certification.)

§ 405.1905 Certification of noncompliance.

(a) The State agency will certify that a provider or supplier is not or is no longer in compliance with the conditions of participation or conditions for coverage where the deficencies are of such character as to substantially limit the provider's or supplier's capacity to render adequate care or which adversely affect the health and safety of patients, or

(b) If it is determined by the Secretary that an institution or agency is not in compliance with the conditions of participation or that an institution or agency is no longer in compliance and the participation agreement is terminated under the conditions described in § 405.614, the institution or agency has the right to request that the determination be reviewed.

§ 405.1906 Determining compliance.

The decision as to whether there is compliance with a particular condition of participation or condition for coverage will depend upon the manner and degree to which the provider or supplier satisfies the various requirements contained in the standards applicable to such condition. Evaluation of a provider's performance against these standards will enable the State survey agency to document the nature and extent of deficiencies, if any, with respect to a particular function, and to assess the need for improvement in relation to the prescribed conditions.

§ 405.1907 Providers or suppliers with deficiencies.

(a) If a provider or supplier is found to be deficient with respect to one or more of the standards in the conditions of participation or conditions for coverage, it may participate in or be covered under the Health Insurance for the Aged Program only if the facility has submitted an acceptable plan of correction for achieving compliance within a reasonable period of time acceptable to the Secretary. The existing deficiencies must not be of such character as to seriously limit the capacity of the provider to render adequate care or to adversely affect the health and safety of patients. (See § 405.1908 for special requirements applicable to skilled nursing facilities.)

(b) If it is determined during a survey that a provider or supplier is not in compliance with one or more of the standards, it will be granted a reasonable time to achieve compliance. The amount of time will depend upon the nature of the deficiency and the State survey agency's judgment as to the capabilities of the facility to provide adequate and safe care. Ordinarily a provider or supplier will be expected to take the steps needed to achieve compliance within 60 days of being notified of the deficiencies but the State survey agency may recommend that additional time be granted by the Secretary in individual situations, if in its judgment it is not reasonable to expect compliance within 60 days, e.g., a facility must obtain the approval of its governing body, or engage in competitive bidding.

§ 405.1908 Special requirements applicable to skilled nursing facilities with deficiencies.

(a) Where the facility is not in compliance with all standards contained in Subpart K of Regulations 5, the period of certification shall:

(1) Be restricted to a period corresponding to the full period of time (not to exceed 12 full calendar months) specified in a written plan which the Secretary has approved providing for the correction of deficiencies in its qualifications in meeting the requirements for participation; or

(2) Provide a conditional period of 12 full months, subject to an automatic cancellation clause, the certification will expire on a predetermined date which is no later than the 60th day following the end of the time period specified for the correction of deficiencies unless the Secretary determines that all required corrections have been satisfactorily completed or that the facility has made substantial effort and progress in correcting such deficiencies and has resubmitted in writing a plan of correction acceptable to the Secretary.

(b) If the facility continues to be out of compliance with the same standard(s) at the end of the term of the agreement, a new agreement may not be executed.

(c) When an agreement with a skilled nursing facility is terminated at the end of its specified term (including the automatic cancellation of agreement), see § 405.604(c) for public notice and the right to request review.

(d) If the latest survey discloses that a skilled nursing facility that had standards out of compliance during the last survey is no longer in compliance with a standard that was previously met, a new period of certification may be approved only if, in the judgment of the Secretary, the new deficiency(ies) has occurred:

(1) Despite adequately documented intensive efforts or for reasons beyond its control, the skilled nursing facility was unable to maintain compliance and

(2) Despite the deficiency the facility is making the best use of its resources to render adequate care.

(e) If a skilled nursing facility can document to the State's satisfaction that it achieved compliance with a previously unmet standard during the period of certification but for reasons beyond its control, e.g., loss of key staff member, was found out of compliance by the time of the next survey, this may be treated as a

new deficiency instead of a carry-over deficiency unless in the judgment of the Secretary the facility did not make a good faith effort to maintain compliance with the standard.

§ 405.1909 Special requirements applicable to independent laboratories.

(a) The services of a qualified independent laboratory for which reimbursement may be made under the supplementary medical insurance program relate only to diagnostic tests performed in an independent laboratory as defined in § 405.1311(a). Diagnostic laboratory tests for purposes of section 1861(s) (10) and (11) of the Act and for purposes of this Subpart T shall include only those clinical and anatomical pathology diagnostic tests and procedures defined in § 405.1311(b). Diagnostic tests furnished by out-of-hospital physicians whose primary practice is directly attending patients and/or consultation as defined in § 405.1311(f), even though conducted partly through diagnostic procedures, are considered physicians' services rather than clinical laboratory services.

(b) A laboratory that requests an initial certification, or recertification by reason of a change in a director, but which meets all other requirements of Subpart M, except whose directory qualifies solely under the provisions of § 405.1312(b)(4) can be certified provided such laboratory requests approval based on such director's qualifications no later than 1 year following the date of publication of these regulations.

(c) Independent laboratories previously found in compliance, but which have had their approval revoked in total or in a specialty or subspecialty because of unsatisfactory performance in proficiency testing, may subsequently be certified by the State agency and determined by the Secretary to be in compliance with the conditions where:

(1) After a 6-month period, an appraisal of the laboratory's performance in a proficiency testing program as defined in § 405.1311(c) reflects satisfactory test results on at least two sets of specimens, or

(2) After a 3-month period, the State agency's assessment of the laboratory's performance in examining proficiency test samples, analyzed during at least two State agency onsite visits, establishes the laboratory's competency.

(d) A laboratory which meets the requirements of § 405.1907 or paragraph (c) of this section may continue to be certified by the State agency and determined by the Secretary to be in compliance with these conditions where it (1) timely reports a change in ownership, location, directors or supervisors, or (2) it permits a State agency to conduct an onsite visit or survey at any time during the laboratory's regular hours of operations.

§ 405.1910 Special hospital certification.

(a) *General.* Where, by reason of factors such as isolated location or absence of sufficient facilities in an area, the failure to approve a hospital would seriously limit the access of beneficiaries to needed inpatient care, a hospital may under special conditions and upon recommendation by the State agency, be approved by the Secretary as a provider of services. Such approvals will be granted only when there are no deficiencies of such character and seriousness as to place health and safety of individuals in jeopardy. A hospital receiving this special approval shall furnish information showing the extent to which it is making the best use of its resources to improve its quality of care.

(b) *Minimum compliance requirements.* Each case will have to be decided on its individual merits, and while the degree and extent of compliance will vary, the institution must, as a minimum, meet all of the statutory conditions in section 1861(e)(1)–(8), in addition to meeting such other requirements as the Secretary finds necessary under section 1861(e)(9) except for emergency services by a nonparticipating hospital (see Subpart D of these regulations). (For further information relating to the exception in section 1861(e)(5) of the Act, see paragraph (b) of this section.)

(c) *Waiver of 24-hour registered nurse requirement.* For a period ending January 1, 1976, the Secretary is authorized to waive the requirement contained in section 1861(e)(5) that a hospital must provide 24-hour nursing service rendered or supervised by a registered nurse. Such a waiver may be granted for any 1-year period upon acceptance by the Secretary of findings adequately documented and certified by the State agency, that the following criteria are met:

(1) The hospital complies with all other requirements for special certification outlined above.

(2) At least one registered nurse is employed full-time and sufficient other registered nurses are employed to assure that the day tour of duty is covered by a registered nurse 7 days a week.

(3) The hospital has in charge, on all tours of duty not covered by a registered nurse, a licensed practical (vocational) nurse who is a graduate of a State-approved school of practical (vocational) nursing or one who has passed a proficiency examination when such examinations are available and approved by the Secretary. Until such time as this examination is available, waivered licensed practical (vocational) nurses may serve as charge nurses.

(4) The hospital is located in a rural area and the supply of hospital services in such area is not sufficient to meet the needs of individuals residing therein and the failure to qualify as a participating hospital would seriously reduce the availability of such services to such individuals.

(5) The hospital has made and continues to make a good faith effort to comply with section 1861(e)(5), but such compliance is impeded by the lack of qualified nursing personnel in such area.

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