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

Rules and Regulations

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

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

Title 6—Economic Stabilization
CHAPTER I—COST OF LIVING COUNCIL
PART 102—PUBLIC ACCESS TO RECORDS

Miscellaneous Amendments

The purpose of this revision of Part 102 of Title 6 of the Code of Federal Regulations is to set out the regulations of the Cost of Living Council governing access to records during Phase IV.

These regulations are basically a continuation of the regulations in effect during Phase III. There are two major changes. First, this part now contains, in Subpart G, regulations governing inspection of Internal Revenue Economic Stabilization records. Subpart G sets out unchanged the provisions which were adopted during Phase II and set out in Chapter IV, Part 4, Subpart K.

The second major change is the adoption of regulations defining which parts of Form CLC-22 are subject to disclosure under § 205 of the Economic Stabilization Act of 1970, as amended.

Section 6 of the Economic Stabilization Act Amendments of 1973 (Public Law 93-28), enacted on April 30, 1973, required firms which met certain criteria to make public parts of their quarterly reports to the Cost of Living Council. Although section 6 required businesses, and not the Council, to disclose the reports, the Freedom of Information Act, 5 U.S.C. 552, in turn required the Council to make these reports public. Section 6 also directed the President or his delegate to issue regulations specifying what parts of those reports did not need to be made public.

In accordance with this last requirement, the Council issued proposed regulations on May 11, 1973 (38 FR 12413), held public hearings on June 6, 1973, and issued final regulations on June 20, 1973 (38 FR 16023), which appear as Subpart F of Part 102 of Title 6 of the Code of Federal Regulations.

On July 18, 1973, the President directed the Council in Executive Order 11730 to publish proposed plans for Phase IV. On July 19, 1973 the Council issued in proposed form some of the regulations for Phase IV, on which it invited public comment. These regulations were published in final form on August 7, 1973. The Council today is publishing public disclosure regulations for Phase IV, in accordance with the requirements imposed on the Council by section 6 of the Economic Stabilization Act Amendments of 1973.

Section 6 amended section 205 of the Economic Stabilization Act of 1970, which as amended reads:

Section 205 *Confidentiality of information.*

"(a) Except as provided in subsection (b), all information reported to or otherwise obtained by any person exercising authority under this title which contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, shall be considered confidential for the purposes of that section, except that such information may be disclosed to other persons empowered to carry out this title solely for the purpose of carrying out this title or when relevant in any proceeding under this title.

(b)(1) Any business enterprise subject to the reporting requirements under § 130.21(b) of the regulations of the Cost of Living Council in effect on January 11, 1973, shall make public any report (except for matter excluded in accordance with paragraph (2)) so required which covers a period during which that business enterprise charges a price for a substantial product which exceeds by more than 1.5 per centum the price lawfully in effect for such product on January 10, 1973, or on the date twelve months preceding the end of such period, whichever is later. As used in this subsection, the term 'substantial product' means any single product or service which accounted for 5 per centum or more of the gross sales or revenues of a business enterprise in its most recent full fiscal year.

(2) A business enterprise may exclude from any report made public pursuant to paragraph 1 any information or data reported to the Cost of Living Council, proprietary in nature, which concerns or relates to the amount or sources of its income, profits, losses, costs, or expenditures but may not exclude from such report, data, or information, so reported, which concerns or relates to its prices for goods and services.

(3) Immediately upon enactment of this subsection, the President or his delegate shall issue regulations defining for the purpose of this subsection what information or data are proprietary in nature and therefore excludable under paragraph (2), except that such regulations may not define as excludable any information or data which cannot currently be excluded from public annual reports to the Securities and Exchange Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 by a business enterprise exclusively engaged in the manufacture or sale of a substantial product as defined in paragraph (1). Such regulations shall define as excludable any information or data which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus of the business enterprise."

The application of section 215(b) is limited by its terms to any report required "under § 130.21(b) of the regulations of the Cost of Living Council in effect on January 11, 1973." Section 130.21(b) of the Council's regulations, to which section 205(b) of the Act refers, has been superseded for most sectors of the economy effective August 12, 1973, when Phase IV begins. The issue, therefore, is whether the amendment to section 205, which specifically incorporates a Phase III regulation, has any effect when Phase III is superseded by Phase IV.

In Phase III, firms over $250 million had to file quarterly reports, while in Phase IV firms over $50 million must file. Consequently, a subsidiary issue is whether or not section 205, assuming it remains in effect in Phase IV, applies only to firms over $250 million, or to all firms subject to the Council's Phase IV reporting requirements, i.e., all firms over $50 million in annual sales or revenues.

The reporting requirements of Phase III defined a price reporting firm as a firm with annual sales or revenues of $250 million or more, and § 130.21(b) required each price reporting firm to submit quarterly reports to the Council.

Phase IV regulations contain provisions which are analogous in their function of requiring quarterly reports, but which are far broader in their coverage. Sections 150.41 and 150.42 define Price Category I and II firms as, respectively, those firms with $100 million or more and with $50 to $100 million in annual sales or revenues. Section 150.161 requires Price Category I and II firms, with certain exceptions, to submit quarterly reports. So Phase IV's quarterly reporting requirements are far more extensive than those of Phase III. Phase III required fewer than 700 firms to report quarterly, while Phase IV will demand quarterly reports of more than four times that number.

Since section 205 is tied so specifically to a section of the Phase III regulations, and since that section is due to terminate on August 12, 1973, the strictest reading of the Act would leave section 205(b) without effect after August 11, 1973.

It is a general rule of statutory interpretation that one looks to Congressional intention only when the words of a statute are unclear. But the Council is required in Phase IV to go behind the wording of the amendments in order to determine the extent to which the amendments modify the application of 18 U.S.C. 1905, which makes disclosure of certain information by Federal Officers a criminal offense, and which, absent the applicability of section 205, requires that the Council keep the quarterly reports confidential.

The legislative history does not speak directly to the question of whether section 205(b) was intended to survive the passing of Phase III. The discussions dealt with problems which were specific to Phase III, and it was in these terms that the amendment's sponsors presented the need for the amendments.

The report of the Senate Committee on Banking, Housing and Urban Affairs on the amendments (Report No. 93-63) stated that:

"Phase III already places the burden of combating inflationary price increases on the public. By removing from the Federal Government the initiative for enforcing price controls, and by declaring that such controls as remain be self-administered by the companies, * * * Phase III in effect determines that no action will be taken on excessive price increases unless there is a public outcry of some magnitude * * *.

Public disclosure . . . should provide some counterweight to the power the self-administering aspects of Phase III give the large companies."

Senator Hathaway, who authored the amendment, said that "a disclosure provision of the sort proposed here is essential to maintain public confidence in the administration's anti-inflationary program, especially in view of the voluntary nature of the controls under Phase III" (119 Daily Cong. Rec. S 5118).

Not only was the need for public disclosure described as stemming particularly from Phase III's voluntary nature, but the remedy went into effect when a firm exceeded a standard related to the Phase III standard—the alternative price standard of a 1.5 percent weighted annual average price increase set out in § 130.13. The Senate Committee on Banking, Housing and Urban Affairs report, referred to above, stated that:

"The figure of 1.5 percent comes from the general standard for price adjustments set out in § 130.13 of the Cost of Living Council regulations * * *.

* * * * *

The purpose of this amendment is to give the public a means of fighting price increases which exceed Phase III guidelines."

The standard set out in the Act is not the same as that found in § 130.13 of the Council regulations, in that section 205(b)(1) of the amended Act speaks of a price "which exceeds by more than 1.5 per centum the price lawfully in effect . . . on January 10, 1973 . . . ," while § 130.13 of the Council regulations speaks of "a weighted annual average of 1.5 percent over prices authorized or lawfully in effect on January 10, 1973 . . .". Thus a firm could trigger section 205(b)(2) without violating the Phase III guideline. There were several other differences, but this was the most apparent.

It appears from the debates, however, that the Senators thought the amendment's 1.5 percent trigger and the Council's Phase III guidelines were the same. Senator Hathaway explained the amendment, which he sponsored, as requiring:

"public disclosure . . . by certain very large companies [when] * * * such a company raises the price of a substantial product by more than 1.5 percent a year—the phase III guidelines on price increases" (119 Daily Cong. Rec. S 5118).

Senator Hathaway consistently explained his amendment in terms of the "1.5 percent guidelines" or the "phase III guidelines."

My amendment, without interfering with the looser and self-administering aspects of phase III, just gives these companies the impetus to keep price increases in line with phase III guidelines * * * " (119 Daily Cong. Rec. S 5119).

The amendment was also tied to the specific coverage of the Council's reporting requirements—to firms with $250 million or more in annual sales or revenues. This number was cited so repeatedly that the very clear inference is that the Congress was thinking of disclosure by firms of that size or larger, rather than of requiring disclosure by any firm from which the Council might eventually require quarterly reports. Senator Hathaway said that:

"The impact of public disclosure requirement falls only in areas of great significance to the economy. The restriction to substantial products of firms with $250 [million] or more in sales or revenues means that in the case of the smallest reporting company, sales of a single product up to $12.5 million are exempt from disclosure * * *" (119 Daily Cong. Rec. S 5119).

As to the effect of a change in what the Council might require, the Senators recognized that the amendment was tied to a report of uncertain and changing content. Early in the debates Senator Hathaway put a copy of the proposed Council Form CLC–2, in the Record, and asserted that the form was currently in use (119 Daily Cong. Rec. S 5120–5121), but this misapprehension was cleared up later that day when Senator Saxbe, speaking in opposition to the public disclosure provision, said that:

The amendment requires that information filed under § 130.21B of the regulations of the Cost of Living Council in effect January 11, 1973 shall be made public. This is an interesting requirement in that the final determination as to what cost information shall be filed and in what detail is not in existence. The Cost of Living Council is still working on the problem as to what information should be filed.(119 Daily Cong. Rec. S 5123).

The Council concludes from the legislative history that the Congress intended the public disclosure provision to apply to firms of $250 million or more, and that the disclosure provisions apply to the CLC–2's successors, and do not restrict the Council's freedom to determine what information shall be required in its quarterly reports.

The record is simply not conclusive either way in resolving the central issue of whether or not section 205(b), which incorporates a Phase III regulation, survives Phase III and has continued applicability in Phase IV.

The choice must therefore be made between the competing policy alternatives embodied in the statutory language of section 205(a), which restates a long standing Congressional policy of protecting the confidentiality of private commercial information, and that embodied in section 205(b) which articulates the desirability of greater public access to information. The Council has concluded that in this context, a policy of continuing the degree of public disclosure which pertained in Phase III must prevail.

The Council is therefore issuing, in Subpart F, regulations for Phase IV which will effectuate section 205 of the Act. These regulations require disclosure of parts of Form CLC–22 (the Phase IV successor to Form CLC–2), but apply only to firms with annual sales or revenues of $250 million or more.

These regulations are similar to those issued during Phase III in Subpart F of Part 102, except that references to § 130.21(b) are replaced by references to § 150.1(c) and § 150.161. Section 150.1 (c) provides that reports due under Phase III regulations for reporting periods ending before Phase IV, must still be filed, and § 150.161 sets out the Phase IV quarterly reporting requirements. The regulations also specify those parts of Forms CLC–2 and CLC–22 which the Council has determined contain information which is non-proprietary and therefore subject to disclosure in accordance with the procedures of this part. There is no change in the determination of what information on a Form CLC–2 is subject to disclosure.

In consideration of the foregoing, Part 102 of Title 6 of the Code of Federal Regulations is reissued as set fort below, effective August 13, 1973.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92–210, 85 Stat. 743; Pub. L. 93–28, 87 Stat. 27; E.O. 11695, 38 FR 1473, E.O. 11730, 38 FR 19345, Cost of Living Council Order No. 14, 38 FR 1489)

Issued in Washington, D.C. on August 13, 1973.

JOHN T. DUNLOP,
Director,
Cost of Living Council.

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Subpart G—Inspection of Internal Revenue Economic Stabilization Records

102.71 Inspection of Internal Revenue Service stabilization records by Department of the Treasury and Department of Justice.

Authority: Economic Stabilization Act of 1970, as amended, Pub. L. 92–210, 85 Stat. 743; Pub. L. 93–28, 87 Stat. 27; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14, 38 FR 1489

Subpart A—General

§ 102.1 Purpose and scope.

This part (a) grants authority to the Assistant Director for Public Affairs of the Cost of Living Council to make records available for public inspection in accordance with the provisions of this part; (b) establishes procedures pursuant to the Freedom of Information Act, 81 Stat. 54, 5 U.S.C. 552 for the public inspection of identifiable records in the custody and control of the Cost of Living Council, except those excluded by the Act; (c) prescribes the time and place at which such records will be made available; and (d) sets the fees to be paid for copies of such records.

§ 102.2 Definitions.

In construing the terms used in this part, words and phrases shall be given the meaning ascribed to them in the Administrative Procedure Act, 5 U.S.C. 551, et seq.

§ 102.3 Authority.

(a) The Assistant Director for Public Affairs of the Cost of Living Council (hereinafter referred to as the Assistant Director) is hereby delegated the authority to receive, review, identify, determine the availability of, and approve or disapprove requests for records in the custody and control of the Cost of Living Council in accordance with the provisions of this part.

(b) The Assistant Director, in his discretion, is specifically authorized to divulge or disclose to a complainant, or to an individual with specific knowledge of a complaint, the nature and result of the investigation of said complaint in circumstances where no violation has been found.

(c) The Chairman of the Council, or his delegate, is authorized at his discretion to make any record enumerated in § 102.4 available for inspection when he deems disclosure to be in the public interest and disclosure is not otherwise prohibited by law.

§ 102.4 Records not subject to disclosure.

This part does not apply to records which are:

(a) Specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy;

(b) Related solely to the internal personnel rules and practices of an agency;

(c) Specifically exempted from disclosure by statute including information which contains or relates to trade secrets or other matters referred to in section 1905 of Title 18 of the United States Code;

(d) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(e) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(f) Investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency, and except as authorized in § 102.3(b);

(g) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(h) Geological and geophysical information and data, including maps, concerning wells.

§ 102.5 Authentication of records.

(a) The Assistant Director will designate an official custodian who will have authority to attest or otherwise authenticate copies of records made available under the provisions of this part.

(b) The Assistant Director and the official custodian may issue such statements, certificates, or other documents as may be required to show that after a diligent search, no record or entry of the tenor specified in a request has been found to exist. (See Rule 44, Federal Rules of Civil Procedure.)

§ 102.6 Records of other agencies.

(a) A person who requests a record originating in another agency but currently in the custody of the Cost of Living Council shall submit his request to the other agency.

(b) Where the originating agency consents, in writing, to make the record available, it will be made available in accordance with the provisions of this part.

Subpart B—Request for Records

§ 102.11 Who may file.

Any person may file a request for records.

§ 102.12 Where to file.

A request for a record may be filed by mail or in person with the Assistant Director for Public Affairs, Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508.

§ 102.13 Form of request; When to file.

A request for records must be in writing and filed, except on Federal Government holidays, between the hours of 9 a.m. and 5:30 p.m., Monday through Friday.

Subpart C—Processing Requests

§ 102.21 Review by the Assistant Director.

Each request submitted in accordance with §§ 102.10 through 102.12 will be reviewed by the Assistant Director to determine whether the record requested is an identifiable record within the meaning of 5 U.S.C. 552(a)(3).

(a) If the Assistant Director determines that the record is not identifiable, he will advise the person filing the request and give him a reasonable opportunity to provide additional information to facilitate the identification of the record.

(b) If the Assistant Director determines that the record is identifiable but should be withheld from inspection in the public interest, he will inform the person filing the request, in writing, of his decision to deny it. The denial shall inform the applicant of:

(1) The specific subsection of § 102.4 relied on for denying the request; and

(2) The right to request a review of an adverse determination as provided in § 102.40.

§ 102.22 Availability of records.

(a) An identifiable record which has been determined by the Assistant Director to be available for inspection, will be made available for examination in the Office of the Assistant Director.

(b) Manual, typewritten, or other copies may be made freely by the person filing the request subject to appropriate supervision.

Subpart D—Fees

§ 102.31 Fees.

(a) Except as provided in paragraph (b) of this section, there will be no charge for making an identifiable record available pursuant to § 102.21.

(b) If the Assistant Director determines that a record cannot be made available without significant disruption of normal business activities, he may secure an estimate of the cost of making the record available and require the person filing the request to deposit that amount prior to commencing a search for the record. However, if the actual cost of making the record available is significantly more or less than the amount deposited, an adjustment in the form of a supplemental charge or refund, as appropriate, will be made by the Assistant Director.

(c) In determining whether the search for a record will disrupt normal business activities, the Assistant Director may take into account the cumulative effect upon business activities of all other pending requests for records under this part, whether made by the same person or by other persons.

(d) An available record, upon advance payment of the fee prescribed in any reproduction fee schedule established by the Assistant Director, may be reproduced through any available means; however, the Assistant Director may waive such fees if he determines the reproduction cost to be inconsequential.

Subpart E—Appeals

§ 102.41 Appeals.

(a) Any person aggrieved by any determination made or action taken by the Assistant Director pursuant to the provisions of this part may request a review.

(b) An appeal must be filed with the Director of the Cost of Living Council within 30 days of the determination or action to be reviewed.

(c) An appeal may be filed in any form and a letter or other written statement setting forth the pertinent facts will be considered sufficient for this purpose.

(d) The Director of the Cost of Living Council may require the person filing the appeal to present additional evidence or information in support of his request for review.

(e) The Director of the Cost of Living Council will promptly review each appeal and notify the appellant in writing, of his decision.

Subpart F—Public Disclosure of CLC Reports

§ 102.51 Purpose and scope.

(a) The purpose of this subpart is to define, pursuant to section 205(b)(3) of the Economic Stabilization Act of 1970, as amended, what information or data contained in quarterly reports submitted to the Cost of Living Council pursuant to § 150.1(c) or § 150.161 of this title is proprietary in nature and therefore excludable from public disclosure and, conversely, what information or data contained in those quarterly reports is nonproprietary in nature and therefore available to the public.

(b) This subpart applies to:

(1) A business enterprise which

(i) Has annual sales or revenues of $250 million or more;

(ii) Is subject to the quarterly reporting requirements of § 150.1(c) or § 150.161 of this title; and

(iii) Charges a price for a substantial product which exceeds by more than 1.5 percent the price lawfully in effect for that product on January 10, 1973, or on the date 12 months preceding the end

of the quarterly reporting period, whichever is later; and

(2) A Council form submitted pursuant to the quarterly reporting requirement of § 150.1(c) or § 150.161 of this title, and any schedule or supporting information or document attached thereto in accordance with the instructions to the form.

§ 102.52 General Rule.

All CLC data determined by this subpart to be proprietary data is excludable from public disclosure. All CLC data determined by this subpart to be nonproprietary data is available to the public.

§ 102.53 Definitions.

For the purpose of this subpart—

"Business enterprise" means an "entity" as defined in the Instructions to the Form CLC–2, and to the Form CLC–22.

"CLC data" means any information or data provided on or with a quarterly report submitted to the Cost of Living Council pursuant to § 150.1(c) or § 150.161 of this title when that report is subject to public disclosure pursuant to section 205(b)(1) of the Economic Stabilization Act of 1970, as amended.

"General financial data" means any CLC data, other than trade data, which concerns or relates to the amount or sources of a firm's income, profits, losses, costs or expenditures.

"Price data" means any CLC data which concerns or relates to a firm's prices for goods and services.

"SEC data" means any general financial data which cannot currently be excluded from public annual reports to the Securities and Exchange Commission pursuant to section 13 or 15(d) of the Securities and Exchange Act of 1934 by a firm exclusively engaged in the manufacture or sale of a substantial product as defined in section 205(b)(1) of the Economic Stabilization Act of 1970, as amended.

"Substantial product" means a product, product line, service, or service line, as called for in lines 1–19 of Part VI of the Form CLC–2, and in item 24 of Part VI of the Form CLC–22, or any continuation schedule, in accordance with the instructions to the Form CLC–2, and to the Form CLC–22, which accounted for 5 percent or more of the business enterprise's annual sales or revenues as defined for purposes of the CLC–2 in Part 130 and for purposes of the CLC–22 in Part 150 of this title.

"Trade data" means any CLC data which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus of a firm.

§ 102.54 Disclosure Procedure.

(a) Each business enterprise submitting to the Cost of Living Council a Form CLC–2 or Form CLC–22 which is subject to public disclosure pursuant to section 205(b)(1) of the Economic Stabilization Act of 1970, as amended, shall:

(1) In addition to checking the box provided on the front page of the Form CLC–2 or Form CLC–22 under the heading "Type of Submission" to indicate the submission of a quarterly report, check the box provided for "Other" purpose and, in the adjacent space provided, enter the words "Public Disclosure Required";

(2) Attach to the Form CLC–2 or Form CLC–22 a supporting schedule which identifies the substantial product or products which gave rise to the requirement of public disclosure and the weighted average percentage price increase or increases above the weighted average price or prices lawfully in effect on January 10, 1973, charged for those substantial products; and

(3) Attach three copies of the entire CLC–2 or CLC–22 submission which omit all proprietary information or data in accordance with the definitions and rules provided in § 102.55 or § 102.56.

(b) The instructions provided in paragraph (a), above, are in addition to the Instructions to the Form CLC–2 and the Instructions to the Form CLC–22.

(c) Interested persons may examine nonproprietary information or data which a firm furnishes on or with Form CLC–2 or Form CLC–22 reports subject to public disclosure at the key IRS District Office which serves the district in which the firm's corporate headquarters are domiciled.

§ 102.55 Form CLC–2 data.

(a) Form CLC–2 Proper.

(1) Part I (Identification Information).

The information called for in Part I (and in the spaces provided above Part I) serves to identify or describe the firm, the type of filing, the reporting or fiscal periods in question, and the total sales or revenues of the firm for the last fiscal year. All of the information required, other than the annual sales or revenues of the firm, is nonproprietary data because it does not include either trade data or general financial data other than SEC data, and is generally available to the public elsewhere. The annual sales or revenues of the firm (line 5) is proprietary because the Council's special definition of annual sales or revenues results in a figure not disclosed in the SEC Form 10–K.

(2) Parts II and III (Profit Margin Calculations).

Except for the calendar entries in lines 6 and 7 (nonproprietary data), all general financial data furnished in Parts II and III is based on base period and current period "net sales" and "operating income" as defined by the Cost of Living Council for purposes of Parts II and III. These definitions are not the same as those used for SEC purposes because they exclude revenues from foreign operations, public utilities, farming activities and insurance activities. Since such general financial data, thus more narrowly defined, is not required for SEC purposes, it can be excluded from the public annual reports to the SEC and is, therefore, defined as proprietary data with the exception of the information in line 17. In order to fulfill the general purposes of Section 205 of the Economic Stabilization Act of 1970, as amended, and in exercise of the authority granted thereunder, the Council defines the information required in line 17 as nonproprietary CLC data.

(3) Parts IV and V (Other Information).

Parts IV and V call for names, titles, addresses and similar non-financial information, including signature and date. Everything required in these parts is nonproprietary data because it does not include either trade data or general financial data other than SEC data, and is generally available to the public elsewhere.

(4) Part VI (Price/Cost Information). The information required at the top of the page—the name of the firm, the reporting period dates and the cumulative period dates—is nonproprietary data because it does not include either trade data or general financial data other than SEC data, and is generally available to the public elsewhere.

All of the information required in Columns (a) and (b) on lines 1 through 19 and on any continuation schedule is nonproprietary data because only the names of product lines or service lines and related Standard Industrial Classification Codes is required, which is neither trade data nor general financial data other than SEC data and is generally available to the public elsewhere.

The general financial data required in Columns (c) and (h), lines 1 through 19 (and any continuation schedule) concerns sales by product or service line. Because the CLC definition of "sales' for these columns exclude sales from public utilities activities, foreign operations, insurance activities, farming, exempt items, health service activities, custom products and food operations, the

Column (c) or (h) sales entry does not coincide with the equivalent information on the SEC Form 10–K prepared as though the firm were a single-product-line firm. Therefore, the general financial data in Column (c) and (h) is defined as proprietary data.

The general financial data required in Columns (c) and (h), lines 20 and 21, are sub-totals and totals of the individual sales entries on lines 1–19 and in any continuation schedule. This information has no counterpart on a SEC Form 10–K prepared as though the firm were a single-product-line firm and thus it is defined as proprietary data.

The general financial data required in Columns (c) and (h), lines 23–25, is a breakdown of total sales into sales of or from foreign operations, food sales, and "other nonapplicable sales." These entries have no counterparts on any SEC Form and are, therefore, defined as proprietary data.

The "net sales" information required in Columns (c) and (h), line 26 coincide in scope with the data shown in Part III, line 13 ("net sales"). As explained in the discussion for Parts II and III, this information is proprietary data.

Columns (d), (e), (g) and (i) all call for price data. All information required is, therefore, nonproprietary data.

The data required in Column (f) is a percentage figure representing "cost justification" for each product or service line entered in lines 1–19 and on any continuation schedule for which a price increase is indicated in Column (e). The general financial data required in Column (f), line 22, is the cost justification supporting the weighted average price increase for the combined product or service lines. These are calculations unique to the Form CLC–2 and find no counterpart on the SEC Form 10–K. However, in order to fulfill the general purpose of section 205 of the Economic Stabilization Act of 1970, as amended, and in exercise of the authority granted thereunder, the Council defines the data required in Column (f), lines 1–19, inclusive, line 22, and on any continuation schedule, as nonproprietary of CLC data.

(b) Schedule C (Cost Justification).

(1) Part I (Identification Information).

All of the information called for in Part I (and in the spaces provided above Part I) serves to identify or describe the firm, the reporting period, and the product line or SIC Code. All of the information is already defined as nonproprietary in Part I of the Form CLC–2. However, as an administrative convenience, to avoid unnecessary handling and cost of duplication of this portion of the Schedule C which otherwise contains no financial data which is to be available to the public, information required by Part I of Schedule C is defined as proprietary.

(2) Part II (Calculation of Cost Justification).

All of the general financial data called for in Part II, lines 3 through 7, is calculated and entered on the basis of cost per unit of input or output. There are no counterparts for these figures on the SEC 10–K. None of the information required in lines 3 through 7 is SEC data and all of it, therefore, is defined as proprietary data.

The general financial data required in lines 8 through 12 are special CLC calculations which have no counterpart in the SEC 10–K. Therefore, none of the information required is SEC data and all of it is defined as proprietary data.

The same figure that appears on line 11 of Schedule C also appears in Column (f) of Part VI of the Form CLC–2. As explained above, Column (f) information is defined as nonproprietary even though it is general financial data which is not SEC data. Consistency would normally require that information required by line 11 of Schedule C also be defined as nonproprietary. However, as an administrative convenience, to avoid unnecessary handling and cost of duplication of this portion of the Schedule C which otherwise contains no financial data which is to be available to the public, information required by line 11 of Schedule C is defined as proprietary.

(c) Supporting Information.

Parts of the CLC–2 are required to be submitted as attachments to the CLC–2 proper. Determination of the proprietary nature of information or data shown on these attached Parts is to be made on the same basis as the determination for the equivalent Part on the CLC–2 proper.

Supporting information prepared by the firm in textual or other form other than on a Form provided by the Council must be reviewed on an ad hoc basis to determine whether or not it contains proprietary data. The rules contained in this Subpart shall be used as guidelines for this purpose.

§ 102.56 Form CLC–22 data.

(a) Form CLC–22 Proper.

(1) Part I (Identification data).

The information called for in Part I serves to identify or describe the firm, the type of filing, the reporting or fiscal periods in question, and the total sales or revenues of the firm for the last fiscal year. All of the information required, other than the annual sales or revenues of the firm, is nonproprietary data because it does not include either trade data or general financial data other than SEC data, and is generally available to the public elsewhere. The annual sales or revenues of the firm (item 7) is proprietary because the Council's special definition of annual sales or revenues results in a figure not disclosed in the SEC Form 10–K.

(2) Parts II and III (Profit Margin Calculations).

Except for the calendar entries in items 8 and 9 (nonproprietary data), all general financial data furnished in Parts II and III is based on base period and current period "net sales" and "operating income" as defined by the Cost of Living Council for purposes of Parts II and III. These definitions are not the same as those used for SEC purposes because they exclude revenues from foreign operations, public utility operations, insurance operations, agricultural products, and, where required, construction operations. Since such general financial data, thus more narrowly defined, is not required for SEC purposes, it can be excluded from the public annual reports to the SEC and is, therefore, defined as proprietary data with the exception of the information in item 19. In order to fulfill the general purposes of § 205 of the Economic Stabilization Act of 1970, as amended, and in exercise of the authority granted thereunder, the Council defines the information required in item 19 as nonproprietary CLC data.

(3) Parts IV and V (Additional Information).

Parts IV and V call for names, titles, addresses, and similar non-financial information, including signature and date. Everything required in these parts is nonproprietary data because it does not include either trade data or general financial data other than SEC data, and is generally available to the public elsewhere.

(4) Part VI (Price/Cost Information). The information required in items 22 and 23—the name of the firm, and the reporting period dates—is nonproprietary data because it does not include either trade data or general financial data other than SEC data, and is generally available to the public elsewhere.

All of the information required in Columns (a) and (b) for item 24 and on any continuation schedule is nonproprietary data because only the names of product lines or service lines and related Standard Industrial Classification Codes is required, which is neither trade data nor general financial data other than SEC data and is generally available to the public elsewhere.

The general financial data required in Column (c), item 24 (and any continuation schedule) concerns sales by product line or service line. Because the CLC definition of "sales" for this column excludes sales from public utility operations, foreign operations, insurance operations, agricultural products, and, where required, construction operations, the Column (c) sales entry does not coincide with the equivalent information on the SEC Form 10–K prepared as though the firm were a single-product-line firm. Therefore, the general financial data in Column (c) is defined as proprietary data.

The general financial data required in Column (c), items 25 and 26, are subtotals and totals of the individual sales entries in item 24 and in any continuation schedule. This information has no counterpart on a SEC Form 10–K prepared as though the firm were a single-product-line firm and thus it is defined as proprietary data.

The general financial data required in Column (c), items 27–38, is a breakdown of total sales into sales of or from various categories such as public utilities, foreign operations, and custom products. These entries have no counterparts on any SEC Form and are, therefore, defined as proprietary data.

The "Total" sales figure required in Column (c), item 39, coincides in scope with the data shown in Part III, line 15 ("net sales"). As explained in the discussion for Parts II and III, this information is proprietary data.

Column (d) is used only for prenotification purposes and is not filled out when the CLC–22 is used as a quarterly report. Columns (e) and (g) both call for price data. All information required is, therefore, nonproprietary data.

The data required in Column (f) is a percentage figure representing "cost justification" for each product line or service line entered in item 24 and on any continuation schedule for which a price increase is indicated in Column (e). These are calculations unique to the Form CLC–22 and find no counterpart on the SEC Form 10–K. However, in order to fulfill the general purpose of section 205 of the Economic Stabilization Act of 1970, as amended, and in exercise of the authority granted thereunder, the Council defines the data required in Column (f), item 24, and on any continuation schedule, as nonproprietary CLC data.

(b) Schedule C (Cost Justification).

(1) Part I (Identification Data).

All of the information called for in Part I serves to identify or describe the firm, the reporting period, the product line, and the SIC Code. All of the information is already defined as nonproprietary in Part I of the Form CLC–22.

(2) Part II (Calculation of Cost Justification).

All of the general financial data called for in Part II, items 4 through 8, is calculated and entered on the basis of cost per unit of input or output. There are no counterparts for these figures on the SEC 10–K. None of the information required in items 4 through 8 is SEC data and all of it, therefore, is defined as proprietary data.

The general financial data required in items 9 through 11 are special CLC calculations which have no counterpart in the SEC 10–K. Therefore, none of the information required is SEC data and all of it is defined as proprietary data.

The same figure that appears on item 12 of Schedule C also appears in Column (f) of Part VI of the Form CLC–22. As explained above, Column (f) information is defined as nonproprietary even though it is general financial data which is not SEC data.

The base cost period and the current cost period are provided in items 13 and 14. This information is nonproprietary.

(c) Supporting Information.

Parts of the CLC–22 are required to be submitted as attachments to the CLC–22 proper. Determination of the proprietary nature of information or data shown on these attached Parts is to be made on the same basis as the determination for the equivalent Part on the CLC–22 proper.

Supporting information prepared by the firm in textual or other form other than on a Form provided by the Council must be reviewed on an ad hoc basis to determine whether or not it contains proprietary data. The rules contained in this Subpart shall be used as guidelines for this purpose.

Subpart G—Inspection of Internal Revenue Economic Stabilization Records

§ 102.71 Inspection of Internal Revenue Service stabilization records by Department of the Treasury and Department of Justice.

(a) *General.*—Pursuant to the provisions of section 205 of the Economic Stabilization Act of 1970 (Public Law 91–379, 84 Stat. 799), as last amended by the Economic Stabilization Act Amendments of 1972 (Public Law 93–28), officers and employees of the Department of the Treasury (including the Internal Revenue Service and the Office of the Chief Counsel for the Internal Revenue Service) and the Department of Justice whose official duties require inspection of returns made in respect of any tax described in paragraph (a)(2) of § 301.6103(a)–1 of 26 CFR Part 301, or include the administration or enforcement of the provisions of the Economic Stabilization Act of 1970, as amended, may inspect the stabilization records of the Internal Revenue Service without making written application therefore. If the head of a bureau or office in the Department of the Treasury (not a part of the Internal Revenue Service or the Office of Chief Counsel for the Internal Revenue Service), or the Department of Justice, desires to inspect, or to have an employee of his bureau or office inspect, any such records in connection with some matter officially before him for reasons other than tax administration purposes or the administration or enforcement of the provisions of the Economic Stabilization Act of 1970, as amended, the inspection may, in the discretion of the Secretary of the Treasury or the Commissioner of Internal Revenue or the delegate of either, be permitted upon written application by the head of the bureau or office desiring the inspection. The application shall be made to the Commissioner of Internal Revenue, Washington, D.C. 20224, and shall show the name and address of the person about whom records are to be inspected and the reason why inspection is desired. The information obtained from inspection pursuant to this paragraph may be used as evidence in any proceeding, conducted by or before any department or establishment of the United States, or to which the United States is a party.

(b) *Definitions.* (1) *Stabilization records.*—For purposes of this section, the term "stabilization records" includes—

(i) All schedules, lists, written statements, or other written documents filed by or on behalf of any person with the Internal Revenue Service, and

(ii) All other reports, information received orally or in writing, factual data, documents, papers, abstracts, memoranda, or evidence taken, or any portion thereof, relating to any person and held by the Internal Revenue Service, to the extent any such item is with respect to the administration or enforcement of any provision of the Economic Stabilization Act of 1970, as amended, and is not part of a return (as defined in § 301.6103(a)–1(a)(3)(i) of 26 CFR 301.)

(2) *Person.* For purposes of this section, the term "person" has the meaning given to such term under section 7701(a)(1) of the Internal Revenue Code of 1954 (68A Stat. 911; 26 U.S.C. 7701(a)(1)).

[FR Doc.73–17084 Filed 8–13–73;3:25 pm]

PART 150—COST OF LIVING COUNCIL PHASE IV PRICE REGULATIONS

Final Phase IV Regulations, Subparts M and O

The purpose of this amendment to Part 150 of the Cost of Living Council Regulations is to add Subpart M—Insurance, and Subpart O—Providers of Health Services.

On July 19, 1973, the Cost of Living Council established Part 150 and issued Subpart N in final form, 38 FR 19462 (July 20, 1973). On the same day the Council issued a notice of proposed rulemaking, 38 FR 19464 (July 20, 1973) setting out proposed Phase IV regulations, and inviting interested persons to submit written data, views or arguments. On August 6, 1973, the Council issued Subparts A through K and P in final form, 38 FR 21592, (August 9, 1973).

The Council stated in the July 19 Notice of Proposed Rulemaking that all comments received before July 31, 1973, would be considered by the Council before taking action on the proposed regulations.

As in the case of comments on the subparts already issued in final form, copies of each comment on proposed Subparts M and O went to the attorney and the operations specialist or economic analyst who was responsible for the particular subpart. Staff officials of the Council conducted an intensive reexamination of the regulations, independently as well as in light of the comments, in order to assure the maximum degree of clarity and consistency of the policy decisions that were made and of the regulations written to reflect these decisions. As a result of these efforts Subpart M in its final form contains numerous changes from the proposals that were published in proposed form on July 19, 1973. Most of the changes are editorial in nature. A few of them are substantive.

Subpart M—Insurance

Subpart M sets forth the rules applicable to rate increases by insurers.

A paragraph (b) has been added to § 150.401 to clarify that this subpart is paramount to all other subpart with respect to insurance matters.

Section 150.402 has been changed by amending the definitions of "covered earned premium", "prenotifier" and "rate" to clarify the intent and the definition of a "State" has been added to include the District of Columbia.

Section 150.403 has been revised in several respects. Section 150.403(a) has been changed to refer to actual incurred costs rather than experience incurred on all actual costs to make it clear that insurers are permitted to reflect accurately all actual incurred costs. Section 150.403 (b) has been amended to include a second sentence permitting factors used in established rating plans to continue to be used if they reflect physical conditions. Section 150.403(c) reflects one of the few substantive changes from the proposed version of Subpart M. The introductory paragraph has been expanded to include the definition of period of projection which is slightly changed from that proposed as § 150.403(b) and § 150.403 (b) has been deleted. Additionally the final phrase of items (3), (4) and (5) has been rewritten to make it clear that the trend factors must be based upon the latest available data. The substantive change is found in item (6) which was changed to establish a base, below which, the restrictions in (3), (4) and (5) need not be applied.

Section 150.404 has been changed in two respects, first, § 150.404(a) has been reworded to specify a change which "will not result in an overall rate increase" while the proposed regulations referred to a change which "will result in an overall premium level reduction". Second, § 150.404(b) has been reworded to delete the specification of "no fault" legislation and to consider all legislation or regulation promulgated in a particular jurisdiction as apply to this paragraph.

Section 150.405(a) has been reworded for clarity; the portion regulating subsequent rate increases has been reworded to apply to a 12 month period instead of the same calendar year and addresses itself to subsequent rate increases affecting $1 million or more of aggregate annualized premium as opposed to any subsequent rate increase. Clarification of § 150.405(a) eliminated the need for § 150.405(c) which was deleted.

Section 150.408 has been modified to include in the 30 day period for taking action those prenotifications filed directly with the Cost of Living Council under § 150.407.

Section 150.410 has been expanded to apply to a rating formula as well as a rate increase.

Section 150.411 has been revised to delete the requirement that the determination be made by the head of the State regulatory Agency and now requires only agency approval. The determination to be made by the agency has been reworded to apply to a determination that a "rule, rating formula, formula use or application, data base, ratemaking procedure or technique or other element in the ratemaking process should be consistently applied so that warranted rate decreases as well as increases occur," and the agency shall so inform the Cost of Living Council.

Section 150.412 has been expanded to allow rating bureaus to furnish reports or parts of reports on behalf of individual insurers who have based their rates and filings on the aggregate statistics as compiled by such rating bureaus.

Sections 150.412 (a) and (b) have been substantially revised and paragraph (c) has been added to expand the reporting requirements. The requirement for monthly reporting by certain health insurers has been replaced by a quarterly report.

In a related amendment to § 150.53 (b), enrollment fees, deductibles, coinsurance and other cost sharing required by State Medicaid agencies under section 208 of Public Law 92-603 are being added to the list of insurance premiums exempt from price controls.

Subpart O—Providers of Health Services

Subpart O continues the Phase II and Phase III rules applicable to institutional and noninstitutional providers of health services. This subpart merely serves to remove the price rules for providers of health from Part 130 and restate them in Part 150 without substantive change. New regulations governing providers of health services will be issued later this year in this subpart after completion of extensive consultation with the Health Industry Advisory Committee of the Cost of Living Council and other interested health care providers and consumers.

No other provisions of Part 150 apply to institutional and noninstitutional providers of health services except § 150.1, § 150.2, § 150.3, and the definition of base period in § 150.31.

Pursuant to § 150.1, requests for exceptions or exemptions from the requirements of this part shall be submitted by providers of health services in accordance with the new procedures established in Part 155 of this chapter.

Section 150.2 provides that the procedures and remedies under Part 130 will remain in effect with respect to matters subject to that part before August 13, 1973 and that the procedures and remedies under Part 140 will remain in effect with respect to matters subject to that part before August 13, 1973.

Section 150.3 further provides that any firm which has been authorized to adjust its base period profit margin pursuant to an exception granted prior to August 13, 1973 may continue to calculate its base period profit margin pursuant to that exception.

The use of the base period definition in § 150.31 continues the same definition of base period that was in effect during Phase III for providers of health services. Finally, § 150.502 explicitly adopts Form S-52 (Revised July 1973) and Schedule A (July, 1973) which replaced certain Price Commission forms during Phase III.

In consideration of the foregoing, Part 150 of Title 6 of the Code of Federal Regulations is amended as set forth below, effective August 13, 1973.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11695, 38 FR 1473, E.O. 11730, 38 FR 19345, Cost of Living Council Order No. 14, 38 FR 1489)

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

JOHN T. DUNLOP,
Director,
Cost of Living Council.

1. The table of sections is amended by adding the following items regarding Subpart M and Subpart O:

PART 150—COST OF LIVING COUNCIL PHASE IV PRICE REGULATIONS

* * * * *

Subpart M—Insurance

Sec.
150.401 Applicability.
150.402 Definitions.
150.403 Criteria.
150.404 Change in ratemaking formula.

2. Section 150.53(b) is amended by adding a new item (3) at the end thereof to read as follows:

§ 150.53 Real estate and insurance premiums.

* * * * *

(b) *Insurance premiums.* (1) * * *

(2) * * *

(3) Enrollment fees, deductibles, coinsurance, and other cost sharing required by State Medicaid agencies under provisions of § 208 of Public Law 92-603 (86 Stat. 1329, 42 U.S.C. 1396a(a)(14)).

3. The part is amended by adding a new Subpart M to read as follows:

Subpart M—Insurance

§ 150.401 Applicability.

(a) This subpart applies to each insurance rate increase to be placed into effect after August 12, 1973, which would increase the rate above the level in effect on that date, whether or not the increase is approved by a regulatory agency.

(b) To the extent this subpart may be inconsistent with other provisions in this part, the provisions in this subpart govern.

§ 150.402 Definitions.

As used in this subpart—

"Covered earned premium" means the total premium earned for all lines of insurance that are not exempt by § 150.53(b).

"Firm" is limited to a firm's consolidated or unconsolidated entities which are insurers.

"Insurer" means a firm which by contract or for a stipulated consideration undertakes to compensate another for loss on a specified subject and is (1) subject to the regulatory jurisdiction of a State (including a person engaged in providing non-profit medical or hospital services under such a regulatory jurisdiction) or (2) undertaking to provide medical or hospital services for a capitation fee.

"Prenotifier" means a health insurer that had $50 million or more of covered earned premium or a property-liability insurer that had $150 million or more of covered earned premium during the calendar year preceding the effective date of the rate increase it is proposing.

"Rate" means a unit charge which produces a premium amount to be charged, charged or paid for insurance, calculated in accordance with a ratemaking practice or formula, or developed under a classification system.

"Rate increase" includes a restriction in coverage, an increase in a deductible level, or any similar diminution of insurance coverage without a corresponding reduction in the rate.

"Rating bureau" means a firm who makes, files, or submits insurance rates applicable to, on behalf of, or advisory for more than one insurer.

"State" means a State or the District of Columbia.

"State regulatory agency" means any commission, board or other legal body that has jurisdiction over rates or practices of insurers in a State or the District of Columbia.

§ 150.403 Criteria.

Each insurance rate increase put into effect by any insurer or rating bureau (regardless of its covered earned premium) after August 12, 1973, which would increase the rate above the level in effect on that date must be consistent with the following criteria:

(a) Factors that reflect actual incurred costs may be used in the customary manner in the ratemaking process.

(b) Factors in the ratemaking process or in the actual determination of the final premium that relate to or reflect changes in claim frequency, occurrence or utilization, changes in the classification of risks under class plans already in use or territory relativities, or similar changed conditions of risk may be used in accordance with customary practice provided such factors are supported statistically. Factors included in rating plans and procedures already in use which reflect physical conditions affecting exposure to loss may be applied in accordance with customary practice.

(c) Factors in the ratemaking process anticipating cost or price increases (i.e., trend factors to the extent they project inflation) may be used subject to the following restrictions. The period of projection covers the entire length of time from the underlying experience base to the future date to which loss or cost levels are being adjusted.

(1) For any portion of the period of projection through August 14, 1971, the normal, full factors may be used, provided they are statistically supported by the latest available data in accordance with the insurer's customary practice.

(2) For any portion of the period of projection after August 14, 1971, through November 13, 1971, a zero rate of inflation must be used.

(3) For any portion of the period of projection after November 13, 1971, through January 11, 1973, the inflationary trend factor may not exceed five-eighths (5/8) of the factor based upon the latest available data in accordance with the insurer's customary practice.

(4) For any portion of the period of projection after January 11, 1973, through August 12, 1973, the inflationary trend factor may not exceed six-eighths (6/8) of the factor based upon the latest available data in accordance with the insurer's customary practice.

(5) For any portion of the period of projection after August 12, 1973, through the end of the projection period, the inflationary trend factor may not exceed seven-eighths (7/8) of the factor based upon the latest available data in accordance with the insurer's customary practice.

(6) The provisions of items (3), (4) and (5) shall not be applied to require an insurer or rating bureau to reduce the annualized inflationary trend below five-eighths (5/8) of the annualized inflationary trend based on experience and customary practice before August 15, 1971.

(d) Factors for claim settlement or loss adjustment expenses, or contingencies which are separate, distinct and in addition to a profit factor, state taxes, licenses and fees, and commissions payable to licensed agents and brokers may be loaded on a percentage of premium or any other customary basis of actual incurred costs in accordance with customary practice. Any increases in the percentage loading for these expense items must be justified.

(e) Factors for administrative expenses other than those specified in paragraph (d) when loaded as a percentage of premium must be limited to a maximum of a 5 percent increase in the dollar amount represented by the loading that was used in the prior rate. If administrative expenses are loaded on an actual cost basis, no increases will be permitted unless statistically supported.

(f) Any profit portion of premium, whether loaded as a percentage of premium or a dollar amount per contract, must be limited to a 2½ percent increase in the dollar amount represented by the loading that was used in the prior rate. For purposes of this section, any portion of premium which is classified as a contribution to reserve, contingency reserve or similar element where a profit, as such, is not a part of the ratemaking process, shall be treated as the profit provision.

§ 150.404 Change in ratemaking formula.

No insurer or rating bureau may change a rule, rating formula, formula use or application, data base, ratemaking procedure or technique, or other element in the ratemaking process unless:

(a) The change will not result in an overall rate increase;

(b) The change is necessitated by legislation or regulation promulgated in a particular jurisdiction; or

(c) Written approval has been granted by the Cost of Living Council.

§ 150.405 Prenotification.

(a) Each prenotifier, or rating bureau acting for a prenotifier, shall file a written notice with the Cost of Living Council and the appropriate State regulatory agency of the State to which the rate increase is applicable, or the State regulatory agency of the insurer's State of domicile when a rate increase is proposed for use in more than one State, or the State of domicile or delivery of the master policy for experience rated or

group contracts applicable to a multi-State risk, of each proposed rate increase in excess of 5.0 percent which affects $1 million or more of aggregate annualized premium under the existing rate. Any second or subsequent rate increase proposed for the same class of purchaser within 12 consecutive months must be prenotified if that increase affects $1 million or more of aggregate annualized premium regardless of whether any prior increase within that 12-month period was required to be prenotified. Each insurer submitting a notice under this section shall certify to the Cost of Living Council and the State regulatory agency that the proposed increase confirms to §§ 150.403 and 150.404. The certification must be signed by the chief executive officer of the prenotifier or by an individual to whom he has delegated that authority. A copy of the delegation must be filed with the Cost of Living Council.

(b) In any State in which rates are established by a State regulatory agency, that agency may submit a prenotification and certify to the Cost of Living Council that the rate increases are in compliance with §§ 150.403 and 150.404. An insurer using those State rates needs only to report quarterly that it is using those rates without submitting all of the supporting data.

§ 150.406 Certification by State regulatory agency.

A State regulatory agency may agree, in writing, with the Cost of Living Council to certify that the rate increases of which it has received prenotification under § 150.405 are or are not in compliance with §§ 150.403 and 150.404. Each agency entering into such agreement with the Cost of Living Council shall furnish its certification to the Council (with a copy to the insurer) within 20 days after it receives the prenotification. A certification by an agency under this section is prima facie evidence that the proposed rate increase is or is not in compliance with §§ 150.403 and 150.404.

§ 150.407 Self-certification.

Whenever a prenotifier, or a rating bureau acting for a prenotifier, cannot obtain a certification of a rate increase from a State regulatory agency in accordance with § 150.406 because:

(a) The State regulatory agency concerned has not agreed to furnish certifications under that section; or

(b) The State regulatory agency did not act upon the filing within the period required under that section.

The prenotifier or rating bureau shall immediately notify the Cost of Living Council that it cannot obtain the certification and may request the Council to act upon the certification filed with it under § 150.405.

§ 150.408 Cost of Living Council actions.

(a) With respect to any rate increase certified by a State regulatory agency under §§ 150.405(b) or 150.406, or self-certified by a prenotifier or a rating bureau acting for a prenotifier under § 150.407, the Cost of Living Council may, within 30 days after the State regulatory agency receives the prenotification, or within 30 days after the Cost of Living Council receives the prenotification under § 150.407, take one or more of the following actions:

(1) Require the insurer to furnish additional information regarding the increase.

(2) Delay the effective date of the increase pending further Council action.

(3) Suspend all or part of the effect of the increase, pending further action by the Cost of Living Council or by the State regulatory agency.

(4) Limit, refuse, rescind, reduce, or modify the increase.

(b) If the Cost of Living Council does not act upon a request under this section before the end of the thirtieth day as described above, the increase may go into effect. However, in any case in which that period would otherwise end on a Saturday, Sunday, or Federal holiday, it will end at the close of the next succeeding workday. However, if after implementation of the rate increase the Council finds that the increase is inconsistent with the rules of this subpart or unnecessarily inconsistent with the goals of the Economic Stabilization Program it may issue an order modifying, deferring, suspending or disapproving the rate increase. A prenotification to a State regulatory agency which has been certified by that agency as being not in compliance with §§ 150.403 and 150.404 may not be placed into effect unless the written approval of the Cost of Living Council has been granted.

§ 150.409 Rates for replacement or revised insurance coverages.

The rate for a form of insurance coverage replacing or revising another form of insurance coverage previously written by the same insurer is subject to the same requirements as an increase in the rate to which the previous insurance coverage would have been subject.

§ 150.410 Insurance rates subject to State laws.

Approval of an insurance rate increase or rating formula under this subpart does not authorize the use of an insurance rate or formula in contravention of any applicable State law.

§ 150.411 Investigation and review of rates.

The Cost of Living Council acting with and through the appropriate State regulatory agency may require an insurer or rating bureau, acting for an insurer, to file with the appropriate State regulatory agency the latest available rate review for a particular class of business for which rates have not been revised in the last four quarters. The State regulatory agency shall determine whether a rule, rating formula, formula use or application, data base, ratemaking procedure or technique, or other element in the ratemaking process has been consistently applied so that warranted rate decreases as well as increases occur and shall so inform the Cost of Living Council.

§ 150.412 Reporting.

Each health insurer that had $25 million or more of covered earned premium and each property-liability insurer that had $50 million or more of covered earned premium during the calendar year preceding any rate increase shall file a quarterly report with the Cost of Living Council with a copy to the appropriate State regulatory agency at the time it normally releases its quarterly reports, but in any event not later than 45 days after the end of the quarter. Rating bureaus may furnish such reports or parts of such reports on behalf of individual insurers that have based their rates and filings on the aggregate statistics as compiled by the rating bureau. These reports shall include the following information:

(a) The data required by the quarterly reporting form prescribed by the Cost of Living Council and by § 150.414 for each rate increase effected during the preceding quarter that affected $250,000 or more of aggregate annualized premium under the pre-existing rate. However, with respect to a rate increase that has been prenotified the report need not include the supporting data required by § 150.414 but must list the rate increase, the name of the prenotifier or rating bureau, date of prenotification, line of insurance, State or States affected, and aggregate annualized premium affected.

(b) The latest available premium and claims or loss experience for those lines described below for which rates were not revised or reports not filed with the Cost of Living Council during the last four quarters as follows:

(1) For property-liability insurers the experience must be reported for private passenger, homeowners and workmen's compensation insurance coverages for each State with an annualized premium volume of $1 million or more;

(2) For health insurers the experience must be reported for all class or manual rated business and pool rated risks with an aggregate annualized premium of $1 million or more.

(c) A summary by line of business and type of coverage of all rate decreases effected during the preceding quarter that affected $250,000 or more of aggregate annualized premium under the pre-existing rate. This part of the report need not contain the data required under § 150.414 but should include a specification of the coverages affected for each line, the premium volume affected, average percentage decrease and dollar effect.

§ 150.413 Federal employees health benefits law.

The Cost of Living Council designates the U. S. Civil Service Commission to act as certifying agent for contracts of insurers under the Federal Employees Health Benefits Law. Each prenotifier with $1 million or more of aggregate annualized premium from the Federal Employees Health Benefits contract that proposes to increase rates under such a contract by more than 5 percent shall

file notice thereof with the Cost of Living Council and the Civil Service Commission. The Civil Service Commission shall, with respect to each such proposed increase, certify to the Cost of Living Council that the increase is or is not in compliance with § 150.403 and that certification is prima facie evidence of compliance or noncompliance. A rate certified by the Civil Service Commission as being in compliance may go into effect on any date, specified by that Commission, that is at least 10 days after the date of certification, and at least 30 days after the date of prenotification.

§ 150.414 Data requirements.

Each prenotification filed under § 150.405 and each quarterly report made under § 150.412 shall include:

(a) The specifications of the coverages to which the rate increase is applicable and of the person or persons by which the rate is to be used;

(b) The average percentage increase by line, by coverage and by State;

(c) The annualized inflationary trend factor or factors used with specification of the applicability of the factors if more than one are involved, including pre-Phase I, Phase I, Phase II, Phase III and Phase IV applicability separately; and

(d) Any other data specified by the Cost of Living Council on a form to be prescribe by the Council.

§ 150.415 Monitoring by health insurers.

Each health insurer is authorized and encouraged to monitor and report to health care providers (both institutional and noninstitutional) any price increases by those providers that involved significant deviation from the provisions that apply to those providers and any increases in use of services or benefits that significantly exceeds its experience with that provider. Upon the receipt of such a report, the provider and the insurer shall make a good faith effort to determine whether any violation of this part has occurred and to take any steps to remedy such violation.

4. The part is amended by adding a new Subpart O to read as follows:

Subpart O—Providers of Health Services

§ 150.501 Scope.

This subpart applies to all institutional and noninstitutional providers of health services. No other provisions of Part 150 apply to institutional and noninstitutional providers of health services except § 150.1, § 150.2, §150.3, and the definition of base period in § 150.31.

§ 150.502 General.

Price adjustments by institutional and noninstitutional providers of health services remain subject to the classification, prenotification, and reporting requirements of the Council and the rules and regulations of the Price Commission in effect on January 10, 1973, except that § 300.18(g) and § 300.19(d) of this title are hereby revoked. The Cost of Living Council shall succeed to and assume all applicable rights, duties, and obligations of the Price Commission contained therein. Whenever under those rules and regulations authorizations from or reports to the Price Commission are required, such authorizations and written reports shall be obtained from or made to the Council in the form and within the time required under regulations of the Price Commission in effect on January 10, 1973, except to the extent that these reports have been superseded by Form S-52 (Revised July, 1973) and Schedule A (July, 1973).

[FR Doc.73-16877 Filed 8-10-73;12:00 pm]

PART 155—PHASE IV PRICE PROCEDURES

Part 155 establishes price procedures to be utilized in proceedings involving price matters before the Cost of Living Council and the Internal Revenue Service in Phase IV of the Economic Stabilization Program. In general, Part 155 embodies procedures previously utilized in earlier phases of the program and combines them into one part. The use of the term "Council" throughout the part encompasses actions by and appearances before both the Cost of Living Council and the Internal Revenue Service.

In general, this part provides that firms should file their submissions in duplicate with the key IRS District Office which serves the district in which their corporate headquarters are domiciled. Exceptions to this rule are insurers who file with the National Office of Internal Revenue Service, and institutional and noninstitutional providers of health services who file with the Cost of Living Council. Initial actions and reconsideration of such actions will be made by the Council or IRS in accordance with Cost of Living Council Order No. 37, 38 FR 21836 (August 13, 1973).

Subpart A of Part 155 contains general provisions which parallel with only minor technical changes, Subpart A of Part 305 of the Price Commission regulations, § 155.11, Instructions to applicants, was previously included in Part 401 of the Internal Revenue Service regulations in this Title.

Subpart B, Prenotifications, reports, interpretations and other matters, is new. It establishes procedures governing initial actions of the Council with respect to all filings required or permitted under Part 150 of this chapter except for requests for exceptions, exemptions and reclassifications. Subparts C, D and E deal with exceptions, exemptions and reclassifications, notices of probable violation and remedial orders, and generally parallel Phase II Price Commission and Cost of Living Council Procedures. Subpart F is a new subpart combining all requests for reconsideration of decisions issued under Subparts B, C, D and E under a single procedure. Subpart G, which concerns compromise of civil penalties, sets forth procedures which are the same as those employed by the Price Commission during Phase II. Subparts H and I, which relate to petition and comment on rulemaking and published rulings, respectively, are again similar to Phase II rules.

Subpart J sets out the range of Council responses to a violation of the profit margin limitations established for Phase IV in Part 150. The provisions are essentially those provided in Phase II, with the exception of § 155.181 dealing with custom products. That section provides relief for a firm which exceeds its base period margin in a fiscal year during which it sells a custom product or service, and which does not qualify for the Special Rule of § 150.11(d)(iii). That Special Rule provides that charging a price for a custom product or service does not subject a firm to a profit margin limitation during its first fiscal year ending in Phase IV when the firm derives less than $10 million or less than 1 percent of its sales or revenues for that fiscal year, whichever is greater, from the sale of custom products and custom services. When a firm does not qualify for this de minimis provision, and therefore is required to take remedial action under this subpart, Subpart J provides the following rules. Where no prices have been charged above base levels for noncustom products and noncustom services, only an amount that bears the same ratio to the total profit margin overage as sales of custom products and services bears to total sales must be disgorged. Where prices in excess of base levels have been charged with respect to noncustom products and services, and the profit margin overage exceeds the revenues derived from the price increases above base levels for noncustom products and services, a firm must disgorge the revenue derived from charging prices above base levels with respect to noncustom products and services plus a portion of the remaining profit margin overage equal to the ratio that custom products and services sales bear to total sales; and if the profit margin overage is less than the revenues derived from price increases above base levels, the firm is required to disgorge the full amount of the profit margin overage.

The purpose of Subpart K is to add to the Phase IV regulations the "repurification" procedures that were available under Special Regulation No. 1 issued during Phase II. Under the "repurification" procedure, a firm which becomes subject to the profit margin limitation by virtue of having raised a price above the base level may elect to eliminate those price increases and the revenues derived therefrom and thus return to the position of a firm which has not raised prices to the level which triggers the profit margin limitation. The remission of revenues must be made in the following manner:

(1) If the ultimate consumers who purchased the goods and services prices above the "base level" are reasonably identifiable, refunds must first be made to them.

(2) To the extent that these ultimate consumers are not reasonably identifiable, revenues must be remitted in the form of future sales at prices below the base level of the same goods and services previously sold at prices above the base level.

However, in order to avoid a profit margin violation a firm which wishes to repurify must complete all action to remit revenues before the end of the fiscal year. This procedure is available to a firm which increases prices above the base level and completes action within the same fiscal year. It also is available to a firm which raises a price or prices above the base level in a previous fiscal year (without exceeding its base period profit margin for that fiscal year) and which continues to charge the increased price or prices in an ensuing fiscal year. To avoid the profit margin limitation in the ensuing year, the firm must return prices at least to the base levels and take appropriate steps to remit revenues derived in that ensuing fiscal year from the price increases which were previously put into effect. In any event, a firm which completes the steps listed above becomes subject to the profit margin limitation once again if it subsequently charges a price in excess of the "base level."

Since Executive Order No. 11730 provides that Phase IV of the Economic Stabilization Program will begin on 11:59 p.m., e.s.t., August 12, 1973 and since the Phase IV substantive regulations, Part 150, will be effective on that date, it is essential that the procedures governing appearances before and proceedings by the Cost of Living Council also be effective on 11:59 p.m., e.s.t., August 12, 1973. Consequently, in order to give immediate guidance and information to the public with respect to Phase IV price procedures, the Council finds that publication in accordance with usual rulemaking procedures is impracticable and that good cause exists for making these regulations effective in less than 30 days. Interested persons may submit written comments regarding these regulations. Communications should be addressed to the Office of General Counsel, Cost of Living Council, 2000 M Street NW., Washington, D.C. 20508.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14, 38 FR 1489).

In consideration of the foregoing, Part 155 is added to Chapter I of Title 6 of the Code of Federal Regulations, effective 11:59 p.m., e.s.t., August 12, 1973.

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

JOHN T. DUNLAP,
Director,
Cost of Living Council.

PART 155—PHASE IV PRICE PROCEDURES

Subpart A—General Provisions

Subpart B—Prenotifications, Reports, Interpretations and Other Matters

Subpart C—Exceptions

Subpart D—Exemptions and Reclassifications

Subpart E—Notices of Probable Violation; Remedial Orders

Subpart F—Requests for Reconsideration

Subpart G—Compromise of Civil Penalties

Subpart H—Petition and Comment on Rulemaking

Subpart I—Published Rulings

Subpart J—Profit Margin Limitations: Council Actions

Subpart K—Profit Margin Repurification

[Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14, 38 FR 1489]

Subpart A—General Provisions

§ 155.1 Purpose and scope.

(a) This part establishes procedures to be utilized in proceedings before the Cost of Living Council and the Internal Revenue Service relating to price stabilization matters under Part 150 of this chapter. The word "Council" used throughout this part encompasses actions by and appearances before both agencies in economic stabilization matters. Cost of Living Council Order No. 37, 38 FR 21836 (August 13, 1973) contains information relating to the division of stabilization functions between the Council and IRS. More specifically, this part contains procedures for:

(1) Initial actions with respect to prenotifications, reports, interpretations and other matters;

(2) Initial action on requests for exceptions;

(3) Initial actions with respect to requests for exemption and reclassification;

(4) Issuance of notices of probable violation and remedial orders;

(5) Requests for reconsideration;

(6) Compromise of civil penalties;

(7) Petition and comment on rulemaking;

(8) Published rulings;

(9) Profit margin limitations: Council actions; and

(10) Profit margin repurification.

(b) Procedural rules contained in Parts 105, 130, 140, 305 and 401 of this title continue in effect for the purpose of disposing of matters subject to those parts.

(c) Nothing in this part extinguishes or otherwise modifies present [August 13, 1973] procedures utilized by the Council in pay matters.

(d) When any small business enterprise within the meaning of section 214(a) of the Economic Stabilization Act of 1970, as amended, files a request, application or appeal under the provisions of this part it will be accorded expedited handling by affording it priority on the dockets maintained by the Council for the orderly conduct of its business.

§ 155.2 Definitions.

As used in this part, except where the context indicates otherwise, the term:

"Act" means the Economic Stabilization Act of 1970, as amended.

"Act or transaction" shall include a series or combination of such acts or transactions.

"Adverse action" means an action issued by the Council which is contrary to the position asserted by the applicant.

"Council" means the Chairman of the Cost of Living Council established by Executive Order 11615 (3 CFR, 1971 Comp., p. 199) and continued under the provisions of Executive Order 11695, or his delegate (including IRS).

"District conferee" means a person designated by a district director to process and decide any request for reconsideration referred to in this part.

"District director" means a district director of the Internal Revenue Service or his delegate.

"District office" means a district director's office and such local offices within his district as a director may designate. "Key District office" means a district office specially designated by the Assistant Commissioner of Internal Revenue (Stabilization) to handle particular stabilization matters.

"Exception" means a waiver in a particular case of the requirements of any rule, regulation, or order, issued pursuant to the Act.

"Exemption" means a general waiver of the requirements of all rules, regulations, and orders issued pursuant to the Act.

"Firm" has the same meaning as in § 150.31 of this chapter.

"Hearing Officer" means a person appointed by the Director of the Cost of Living Council or his delegate to conduct a hearing.

"Information letter" means a statement issued by a district director which calls attention to a well-established interpretation or principle of the regulations or guidelines of the Cost of Living Council without applying it to a specific set of facts. An information letter may be issued when the nature of the request from the individual or the organization suggests that it is seeking general information or where the request does not meet all the requirements of § 155.11, and it is believed that such general information will assist the individual or organization.

"Interpretation" means a written statement issued by a district director in response to an inquiry by an individual or an organization, which applies to the particular facts involved the principles and precedents previously announced by the Cost of Living Council. Interpretations are issued only where a determination can be made on the basis of established rules as set forth in the regulations and guidelines of the Cost of Living Council or by rulings or court decisions.

"IRS" means the Internal Revenue Service.

"National Office" means the Office of the assistant Commissioner of Internal Revenue (Stabilization).

"Notice of probable violation" means a written statement issued to a person by the Cost of Living Council or the Internal Revenue Service setting forth one or more charges of alleged violation of the Economic Stabilization Program.

"Person" means any firm, individual, estate, trust, sole proprietorship, partnership, association, company, joint-venture, corporation, governmental unit or instrumentality thereof, or a charitable, educational or other institution; however, the term does not include a foreign government or instrumentality thereof or international organizations established by treaty or by agreement among participating governments.

"Person aggrieved" means a person with a substantial pecuniary interest which is adversely affected by an order or interpretation issued by the Council.

"Person with a substantial pecuniary interest" means a person who increased or seeks to increase a price.

"Practice before the Cost of Living Council or IRS" comprehends all matters connected with presentation to the Council or IRS or any of its officers or employees relating to a client's rights, privileges, or liabilities under laws or regulations administered by the Council or IRS relating to economic stabilization matters. Such presentations include the preparation and filing of necessary documents, correspondence with and communications to the Council or IRS, and the representation of a client at conferences, hearings, and meetings. Neither the appearance of an individual as a witness, nor the furnishing of information at the request of the Council or IRS or any of its officers or employees is considered practice before the Council or IRS.

"Price increase" has the same meaning as in § 150.31 of this chapter.

"Regulation" means a regulation promulgated by the Director of the Cost of Living Council, or his delegate, which appears in Title 6, Code of Federal Regulations.

"Request for a determination" means a written inquiry by a person as to the application to him of the regulations and guidelines promulgated by the Cost of Living Council in respect of a completed or proposed act or transaction. Thus, such a request may be a request for an interpretation or an application for an exception.

"Ruling" means an official interpretation by General Counsel of the Cost of Living Council, published in the FEDERAL REGISTER, which applies the regulations and guidelines of the Cost of Living Council to a specific set of facts.

§ 155.3 Appearances before the Council or IRS.

(a) A person may take any action or make any appearance which is required or permitted by this title on his own behalf, or he may be represented by any natural person, age 21 years or older, whom he has designated to represent him. Such designation shall be in writing and signed by the person legally authorized to so designate and shall be filed with the Council or appropriate IRS office, as the case may be.

(b) Persons appearing before the Cost of Living Council or the Internal Revenue Service in economic stabilization matters may be barred therefrom for disreputable conduct which includes, but is not limited to the following:

(1) Filing false or altered documents, affidavits, and other papers;

(2) Making false or misleading representations either orally or in writing; or

(3) Using intemperate or abusive language or engaging in disruptive conduct before the Council or IRS.

§ 155.4 Filing of documents.

(a) Unless otherwise expressly provided, a document required to be filed directly with the Council or directly with a key IRS District office or National IRS office under this title is considered filed when it has been received at the appropriate office. Documents received after regular business hours are deemed filed on the next regular business day.

(b) All documents filed with the Council or IRS must be filed in duplicate.

§ 155.5 Computation of time.

(a) In computing any period of time prescribed or allowed by this title for the performance of any act, the day of the act, event, or default on which the designated period of time begins to run will not be counted.

(b) If the last day of the period falls on a Saturday, Sunday, or a Federal legal holiday, the period will be extended to the next day which is not a Saturday, Sunday, or a Federal legal holiday.

(c) If the period prescribed or allowed is 7 days or less, an intervening Saturday, Sunday, or Federal legal holiday will not be counted.

§ 155.6 Service.

(a) All documents required to be served under this title are to be served personally, by registered or certified mail, or by regular U.S. mail (this option available only for service by the Council or IRS) on the person specified in the regulations in this title.

(b) If a person is represented by a duly authorized representative, service on the representative shall constitute service on the person.

(c) A certificate of service shall be filed with the Council for each document served.

(d) Service by mail is complete upon mailing.

§ 155.7 Extension of time.

If an action is required to be taken within a prescribed time under this title, an extension of time will be granted only upon a showing of good cause.

§ 155.8 Subpenas; witness fees.

(a) The Director of the Council, his duly authorized agent, the General Counsel, or an IRS District director of a key IRS District Office may sign and issue subpenas.

(b) A subpena may require the attendance of witnesses and the production of relevant papers, books, and documents in the possession or under the control of the person served.

(c) A subpena may be served by any person who is not a party and not less than 18 years of age.

(d) The original subpena bearing a certificate of service shall be filed with the issuing officer.

(e) A witness to whom a subpena has been issued pursuant to this section shall be paid the same fees and mileage as are paid witnesses in district courts of the United States. The witness fees and mileage shall be paid by the party at whose instance the subpena was issued.

§ 155.9 Consolidations.

Upon the initiative of the Council, the Director of the Council or his delegate, a Hearing Officer, a District director or his delegate, or a District conferee, or in response to a party's motion, two or more requests for exception, exemption, reclassification, or other cases which involve substantially the same parties or issues which are closely related, may be

consolidated if it is found that such consolidation will expedite the proceedings or otherwise assist the Council or IRS in carrying out their economic stabilization functions.

§ 155.10 Effective date of orders.

Any order issued by the Council under this title is effective, in accordance with its terms, unless and until it is stayed, modified, suspended, or revoked.

§ 155.11 Instructions to applicants.

(a) Each request for a determination must be submitted in writing to the appropriate district director and contain a complete statement of all relevant facts relating to the act or transactions. Such facts include names, addresses, and identifying numbers of all affected parties (if reasonably ascertainable); a full and precise statement of the business reasons for the act or transaction (where appropriate); and a carefully detailed description of the act or transaction. In addition, true copies of all contracts, agreements, leases, instruments, and other documents involved must be submitted with the request. However, relevant facts reflected in documents submitted must be included in the statement and not merely incorporated by reference, and must be accompanied by an analysis of their bearing on the issue or issues, specifying the pertinent provisions. The request must contain a statement whether, to the best of the knowledge of the applicant or his representative, the identical issue is being considered by any field office of the IRS (or other governmental agency) in connection with a possible violation of economic stabilization regulations or guidelines by the person who is the subject of the requested determination. The request must also contain a statement as to whether the applicant or his representative has previously requested a determination with respect to the subject matter of the requested determination from any office of the IRS or any other governmental agency, detailing the disposition of any such previous request, or has filed an application for an exception or an exemption. Where the request pertains to only one step of a larger integrated transaction, the facts, circumstances, etc., must be submitted with respect to the entire transaction. As documents and exhibits become a part of the file and cannot be returned, the original documents should not be submitted.

(b) If the applicant is contending for a particular determination, he must furnish an explanation of the grounds for his contentions, together with a statement of relevant authorities in support of his views. Even though the applicant is urging no particular determination with regard to an act or transaction, he must state his views as to the effect of economic stabilization regulations and guidelines upon the action and furnish a statement of relevant authorities to support such views.

(c) A request by or for an applicant must be signed by the applicant or his authorized representative. If the request is signed by a representative of the applicant, or if the representative is to appear before the Council or IRS in connection with the request he must be a person who complies with the appearance requirements of this part. Such representative must not be under disbarment or suspension to practice before the Internal Revenue Service or the Cost of Living Council. Form S-68, Power of Attorney, must be used with regard to determinations requested pursuant to this section.

(d) Any request for a determination which does not comply with all the provisions of this section will be acknowledged and the requirements which have not been met will be pointed out.

(e) An applicant or his representative who desires an oral discussion of the issue or issues involved should indicate such desire in writing when filing the request or soon thereafter in order that a conference or hearing, if granted, may be arranged at that stage of consideration when it will be most helpful.

(f) It is the practice of the IRS to process requests for determinations in regular order and as expeditiously as possible. Compliance with a request for consideration of a particular matter ahead of its regular order, or by a specified time, tends to delay the disposition of other matters. Requests for processing ahead of the regular order, made in writing in a separate letter submitted with the request or subsequent thereto and showing clear need for such treatment will be given consideration as the particular circumstances warrant. However, no assurance can be given that any request for determination will be processed by the time requested. For example, the scheduling of a closing date for transaction or a meeting of the board of directors or shareholders of a corporation without due regard to the time it may take to obtain such a determination will not be deemed sufficient reason for handling a request ahead of its regular order. Neither will the possible effect of fluctuation in the market price of goods or commodities on a transaction be deemed sufficient reason for handling a request out of order. Requests by telegram will be treated in the same manner as requests by letter. Determinations ordinarily will not be issued by telegram.

(g) A request for an interpretation which includes, or could be construed to include, an application for an exception or exemption will nonetheless be treated solely as a request for an interpretation, as appropriate, and processed as such.

Subpart B—Prenotifications, Reports, Interpretations and Other Matters

§ 155.21 Purpose and scope.

(a) This subpart establishes the procedures of the Council governing initial actions with respect to all filings required or permitted under the provisions of Part 150 of this chapter except for requests for exceptions which are governed by subpart C of this part and requests for exemption or reclassification which are governed by Subpart D of this part. All papers filed must conform to the requirements set forth in Part 150 and any filing instructions which accompany the prescribed forms.

(b) Except as provided in paragraphs (c) and (d) of this section, all firms making initial filings with respect to the following matters shall file their papers with the key IRS District Office which serves the district in which their corporate headquarters are domiciled:

(1) Prenotifications and reports filed pursuant to subparts H, K, L, N, or P of Part 150;

(2) Applications for modification of prenotification requirements pursuant to § 150.151(b)(2)(iv);

(3) Applications for volatile pricing authorizations pursuant to § 150.156;

(4) Reports supporting loss or low profit firm pricing pursuant to § 150.201.

(5) Reports supporting minimum profit margin treatment pursuant to § 150.202;

(6) Merchandise pricing plans pursuant to § 150.306; and

(7) Requests for interpretation

(c) Insurers subject to subpart M of Part 150 of this chapter shall make all filings pursuant to that subpart and shall file requests for interpretation with the Internal Revenue Service, Insurance Group (Stabilization), P.O. Box 995, Washington, D.C. 20044.

(d) Institutional and noninstitutional providers of health services subject to Subpart O of Part 150 of this chapter shall make all filings pursuant to that subpart and shall file requests for interpretation with the Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508.

(e) Initial actions on filings made pursuant to this subpart may be made by the Council or IRS, as appropriate, in accordance with Cost of Living Council Order No. 37, 38 FR 21836 (August 13, 1973).

§ 155.22 Initial actions by the Council.

(a) In those cases in which a document is filed with the Council and the applicable provision of Part 150 provides that a proposed action may be taken unless the Council takes affirmative action to suspend, modify, defer, or disapprove the proposed action, the Council may make a decision and issue an order together with a statement of the grounds therefor to suspend, modify, defer, or disapprove the proposed action pursuant to the applicable provision of Part 150.

(b) In those cases in which a document is filed with the Council and the applicable provision of Part 150 provides that a proposed action may be taken unless the Council approves, the Council will make a decision and issue an order together with a statement of the grounds therefor.

(c) Within 60 days after it receives a firm's merchandise pricing plan pursuant to § 150.306, the Council will review the plan and (1) approve it or (2) take the action provided for in § 150.308.

(d) The Council will issue interpretations in response to requests for interpretation filed pursuant to § 155.21 of this subpart.

(e) The Council will advise the recipient of an order or interpretation issued under this section which is adverse to the recipient that he may seek reconsideration under subpart F.

§ 155.23 Requests for Reconsideration.

Any person aggrieved by an initial action of the Council under this subpart may request reconsideration pursuant to Subpart F. The Council will not consider that a person appearing before the Council has exhausted his administrative remedies until he has filed a request for reconsideration under subpart F and final action has been taken by the Council under §§ 155.106 through 155.108.

Subpart C—Exceptions

§ 155.41 Purpose and scope.

Exceptions from the provisions of Part 150 of this title may be granted for the purpose of preventing or correcting a serious hardship or gross inequity.

(a) All persons requesting exceptions shall file their applications with the key IRS District Office which serves the district in which their corporate headquarters are domiciled, except that persons who are: (1) Insurers subject to Subpart M of Part 150 of this chapter, shall file with the Internal Revenue Service, Insurance Group (Stabilization), P.O. Box 995, Washington, D.C. 20044 and (2) Institutional and noninstitutional providers of health services subject to subpart O of Part 150 of this chapter, shall file with the Cost of Living Council, 2000 "M" Street, NW., Washington, D.C. 20508. All requests for exception, wherever filed, must conform to the requirements set out in § 155.11 of this part.

(b) Initial actions on requests for exception may be made by the Council or IRS, as appropriate, in accordance with Cost of Living Council Number 37, 38 FR 21836 (August 13, 1973).

(c) This subpart establishes the rules of the Council governing the disposition of requests for exceptions.

§ 155.42 Initial action on request for exception.

After considering the record, the Council will make a decision and issue an appropriate order:

(a) When the Council grants an exception it will serve upon the applicant a copy of its order.

(b) When the Council denies an exception in whole or in part, it will serve upon the appellant a copy of its order, which will contain a statement of the grounds for denial, and advise the applicant that he may request reconsideration pursuant to Subpart F of this part.

§ 155.43 Requests for reconsideration.

Any person aggrieved by an initial action of the Council under this subpart may request reconsideration pursuant to Subpart F of this part. The Council will not consider that a person appearing before the Council has exhausted his administrative remedies until he has filed a request for reconsideration under Subpart F and final action has been taken by the Council under §§ 155.106 through 155.108.

Subpart D—Exemptions and Reclassifications

§ 155.61 Purpose and scope.

(a) All requests for exemption, or reclassification with respect to prenotification or reporting requirements must be filed with the Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508.

(b) This subpart establishes the rules of practice of the Council governing initial action on requests for exemption or reclassification.

§ 155.62 Initial action by Council.

After considering the record, the Council will make a decision and issue an order:

(a) When the Council grants an exemption or reclassification, it will serve upon the appellant a copy of its order.

(b) When the Council denies an exemption or reclassification, in whole or in part, it will serve upon the appellant a copy of its order, which will contain a statement of the grounds for denial, and advise the applicant that he may request reconsideration pursuant to Subpart F of this part.

§ 155.63 Requests for reconsideration.

Any person aggrieved by an initial action of the Council under this subpart may request reconsideration pursuant to Subpart F of this part. The Council will not consider that a person appearing before the Council has exhausted his administrative remedies until he has filed a request for reconsideration under Subpart F and final action has been taken by the Council under §§ 155.106 through 155.108.

Subpart E—Notices of Probable Violation; Remedial Orders

§ 155.81 Purpose and scope.

(a) This subpart establishes the procedures for determining the nature and extent of violations and the procedures for the issuance of remedial orders.

(b) A "remedial order" is an order requiring a person to cease a violation or to take action to eliminate or to compensate for the effects of a violation, or both, or which imposes other sanctions.

§ 155.82 General.

When any report required by the Council or any audit or investigation discloses, or the Council otherwise discovers, that a person appears to be in violation of the Act or any regulation in this title, the Council may conduct proceedings to determine the nature and extent of the violations and issue remedial orders. The Council may commence proceedings by serving a notice of probable violation or by issuing a remedial order.

§ 155.83 Issuance of notice of probable violation to begin proceedings.

The Council may begin proceedings under this subpart by issuing a notice of probable violation if the Council has reason to believe that a violation has occurred or is about to occur.

§ 155.84 Issuance of remedial orders to begin proceedings in unusual circumstances.

Remedial orders may be issued to begin proceedings under this subpart if the Council finds on preliminary examination that the violations are patent or repetitive, that their immedate cessation is required to avoid irreparable injury to others or unjust enrichment to the person to whom the order is issued, or for any other unusual circumstance the Council deems sufficient.

§ 155.85 Reply.

(a) Within 10 days of receipt of a notice of probable violation issued under § 155.83 or a remedial order issued under § 155.84, the person to whom the notice or order is issued may file a reply. The reply must be in writing. He may also request an appointment for a personal appearance, which must be held within the 10-day period provided for reply. He may be represented or accompanied by counsel at the personal appearance. The Council will extend the 10-day reply period for good cause shown.

(b) If a person does not reply within the time allowed by a notice of probable violation, the violation will be considered admitted as alleged and the Council may issue whatever remedial order would be appropriate.

(c) If a person has not replied to the Council within the 10-day period provided and a remedial order issued to begin proceedings, the order will go into effect or remain in effect, in accordance with its terms as the case may be.

(d) An order which goes into effect or is permitted to remain in effect under paragraph (c) of this section or an order issued under paragraph (b) of this section is not subject to judicial or any other review with respect to any finding of fact or conclusion of law which could have been raised in the proceedings before the Council by the filing of a reply.

§ 155.86 Order.

(a) If the Council finds, after the person has filed a reply under § 155.85, that no violation has occurred or is about to occur or that for any other reason the issuance of a remedial order would not be appropriate, it will issue an order so stating and, if necessary, revoke or modify any remedial order which already may be outstanding.

(b) If the Council finds that a violation has occurred or is about to occur and that a remedial order is appropriate, it will issue an order so stating and, if necessary, direct remedial action, vacate the suspension of any outstanding remedial order, or modify as appropriate, any outstanding remedial order. The order will state the grounds upon which it is based.

(c) Remedial orders issued hereunder may include any of the provisions stated in § 150.163 of this chapter or Subpart J of this part for the kind of violation con-

cerned or any other requirement which is reasonable and appropriate.

§ 155.87 Requests for reconsideration.

Any person aggrieved by an initial action of the Council under this subpart may request reconsideration pursuant to subpart F of this part. Requests for reconsideration of an order under this subpart will be accorded expedited treatment by the Council. The Council will not consider that a person appearing before the Council has exhausted his administrative remedies until he has filed a request for reconsideration under Subpart F and final action has been taken by the Council under §§ 155.106 through 155.108.

Subpart F—Requests for Reconsideration

§ 155.101 Purpose and scope.

(a) This subpart establishes the procedures governing reconsideration of initial actions taken under Subparts B, C, D, or E of this part.

(b) The Council will not consider that a person who has appeared before the Council in connection with a matter arising under Subparts B, C, D, or E has exhausted his administrative remedies until he has filed a request for reconsideration under this subpart and final action thereon has been taken by the Council under §§ 155.106 through 155.108.

§ 155.102 Who may request reconsideration.

Any person aggrieved by an initial action of the Council under Subparts B, C, D, or E of this part may request reconsideration.

§ 155.103 Where to file.

A request for reconsideration shall be filed with the IRS or Council official who issued the initial action or decision from which reconsideration is sought.

§ 155.104 When to file.

A request for reconsideration must be filed within 30 days of service of the initial action or decision from which reconsideration is sought.

§ 155.105 Contents of request.

(a) A request for reconsideration shall—

(1) Be in writing and signed by the 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."

(b) If the request for reconsideration is from an order issued under § 155.86 and involves an outstanding remedial order, the envelope should be marked "Reconsideration—Outstanding Remedial Order."

§ 155.106 Reconsideration.

(a) The Council will reconsider its initial action taken under Subparts B, C, D or E of this part if a request for reconsideration:

(1) Is made by a person aggrieved by the initial action;

(2) Is timely; and

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

(b) The Council may summarily reject a request for reconsideration which is not timely or which was filed by a person other than the one against whom the initial action was taken.

(c) The Council may summarily reject 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 applicant of its action. Such appellant may seek judicial review under the Act.

(d) When a request for reconsideration meets the requirements set forth in paragraph (a) of this section, the Council will proceed in accordance with § 155.107 through § 155.108.

(e) 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.

§ 155.107 Hearing.

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

(b) When a hearing or conference has been directed in accordance with paragraph (a) of this section, it will be conducted promptly 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 or District conferee allows.

(d) When administratively feasible, within 30 days after the close of the hearing, the Hearing Officer or District conferee will submit to the Council a report and any recommendation he deems appropriate with respect to the appellant's request for reconsideration.

§ 155.108 Decision by Council.

(a) When administratively feasible, within 10 days of receipt of a request for reconsideration, or within 30 days of a Hearing Officer's or District conferee's report, when a hearing or conference has been held, the Council will make a decision and issue an order. However, if a remedial order is outstanding and reconsideration is sought from an order under § 155.86, the Council will make every effort to expedite the issuance of an order under this section. It is expected that such orders will ordinarily issue within 10 days of receipt of the request for reconsideration.

(b) When an order grants the requested relief, a copy of the order will be served upon the party to the proceedings.

(c) When the order denies the requested relief in whole or in part, the Council will set forth the grounds therefor, and advise appellant that he has exhausted his administrative remedies.

§ 155.109 Stays pending reconsideration.

As part of a request for reconsideration, any person may request a stay of the initial action for which reconsideration is sought pending final disposition of the request for reconsideration. The Council may grant a request for stay for good cause shown.

Subpart G—Compromise of Civil Penalties

§ 155.121 Purpose and scope.

(a) Under section 208(b) of the Economic Stabilization Act of 1970, as amended, whoever violates an order or regulation issued by the Council (or an order or regulation by the Price Commission during the time that such order or regulation was or is in effect) under that Act is subject to a civil penalty of not more than $2,500 for each violation. This subpart prescribes procedures governing the compromise and collection of those civil penalties which the Council considers appropriate or advisable to settle through compromise.

(b) Except as provided in paragraph (c) of this section, in the case of violations of price stabilization regulations and orders by price category III firms and for late filings of reports by all firms, the District Director of a key IRS district office may settle civil penalty cases through compromise.

(c) In the case of violations of price stabilization regulations and orders by institutional and noninstitutional providers of health services subject to Subpart O of Part 150 of this chapter, and all other violations, the General Counsel of the Cost of Living Council may settle civil penalty cases through compromise.

§ 155.122 Notice of possible compromise of civil penalties.

If the Council considers it appropriate or advisable under the circumstances of a particular civil penalty case to settle it through compromise, the General Counsel of the Cost of Living Council, or his delegate, or district director of a key IRS district office, as appropriate, sends a letter to the person charged with the violation advising him of the charges against him, the order or regulation that he is charged with violating, and the total amount of penalty involved, and that the Council is willing to consider an offer in compromise of the amount of the penalty.

§ 155.123 Response to notice.

(a) A person who receives a notice pursuant to § 155.122 may present to the General Counsel or district director, as appropriate, any information or material bearing on the charges that denies, explains, or mitigates the violation. The person charged with the violation

may present the information or materials in writing or he may request an informal conference for the purpose of presenting them. Information or materials so presented will be considered in making a final determination as to the amount for which a civil penalty is to be compromised.

(b) A person who receives such a notice may offer to compromise the civil penalty for a specific amount by delivering to the General Counsel or district director, as appropriate, a certified check for that amount payable to the Treasurer of the United States. An offer to compromise does not admit or deny the violation.

§ 155.124 Acceptance of offer to compromise.

(a) The General Counsel or district director, as appropriate, may accept or reject an offer to compromise a civil penalty. If he accepts it, he sends a letter to the person charged with the violation advising him of the acceptance.

(b) If the General Counsel or district director, as appropriate, accepts an offer to compromise, that acceptance is in full settlement on behalf of the United States of the civil penalty for the violation. It is not a determination as to the merits of the charges. A compromise settlement does not constitute an admission of violation by the person concerned.

§ 155.125 No compromise.

If a compromise settlement of a civil penalty cannot be reached, the General Counsel may refer the matter to the Attorney General for the initiation of proceedings in a U.S. district court to collect the full amount of the penalty, or take such other action as is necessary.

Subpart H—Petition and Comment on Rulemaking

§ 155.141 Purpose and scope.

(a) The provisions of 5 U.S.C. 553 will be followed for the issuance of all regulations or amendments to regulations by the Council, to the extent such provisions apply.

(b) In addition, the Council will accept from interested persons written comments on or written objections to its regulations or its published rulings at any time. If in the opinion of the Council such comments or objections warrant a proceeding similar to a rule making proceeding as provided by 5 U.S.C. 553, the Council will conduct such a proceeding pursuant to notice published in the FEDERAL REGISTER.

§ 155.142 Who may file.

Any interested person may file a comment on or objection to a regulation or published ruling at any time.

§ 155.143 Where to file.

A written comment or objection to a regulation or published ruling shall be filed with the Cost of Living Council, 2000 M Street, NW., Washington, D.C. 20508.

Subpart I—Published Rulings

§ 155.161 Rulings for publication.

From time to time, the General Counsel of the Cost of Living Council will issue rulings for publication in the FEDERAL REGISTER which are:

(a) Of general applicability,

(b) Illustrative of a general principle, or

(c) Of assistance to the public in applying the Act, regulations and guidelines to a specific situation.

Subpart J—Profit Margin Limitations: Council Actions

§ 155.171 Applicability.

This subpart applies to all activities of a firm subject to a profit margin limitation under Part 150.

§ 155.172 Definitions.

For the purposes of this subpart:

"Base level" of an item means the greater of the base price of that item as determined in accordance with Subpart F of Part 150 of this chapter or the adjusted freeze price of that item as defined in Subparts E or K of Part 150 of this chapter.

§ 155.173 General.

The Council may make the determination of whether a firm is in violation of a profit margin limitation prescribed in this chapter—

(a) In the case of any firm, on the basis of whether that firm's profit margin, for the fiscal year in which it made a charge above a base level, exceeded its base period profit margin; and

(b) In the case of a price category I or II firm, on the basis of whether that firm's profit margin for any quarter of that fiscal year, after such a charge is made, is at the rate that would, when projected for the entire fiscal year, exceed its base period profit margin and the firm fails to demonstrate, to the satisfaction of the Council, that its base period profit margin will not be exceeded for that fiscal year, for reasons such as seasonal patterns.

§ 155.174 Council actions.

The Council may take any action specified in § 155.175, § 155.176, § 155.177 or § 155.179, as applicable with respect to a violation of a profit margin limitation prescribed in this chapter.

§ 155.175 Violations during first, second, or third quarter of firm's fiscal year.

Whenever, pursuant to paragraph (b)(2) of this section, the Council determines that a firm is illegally exceeding its base period profit margin for the first quarter, or for the second or third quarter (on a cumulative basis), the Council may, at the option of the violator, order the action specified in paragraph (a) or (b) of this section.

(a)(1) Order the firm immediately to lower the price of any or all of its products or services to base levels; and

(2) Order either—

(i) A refund, within a period prescribed by the Council of the revenues derived from the prices charged in violation of this section to the extent that they exceeded the revenues from the prices which otherwise would have been chargeable, to the persons who paid those prices, if they are reasonably identifiable; or

(ii) If those persons are not reasonably identifiable, a reduction of the prices below base levels, as appropriate, by an amount that will equal the amount by which the revenues from the prices in violation of this section exceeded the prices which otherwise would have been chargeable, by the end of the fiscal quarter following the fiscal quarter in which the order of the Council is issued.

(b)(1) With respect to a violation occurring during the first quarter of the firm's fiscal year, order price reductions sufficient to ensure that the profit margin on the firm's quarterly report for the fiscal quarter following the fiscal quarter in which the order of the Council is issued, will not exceed the firm's base period profit margin.

(2) With respect to a violation occurring during the second quarter of the firm's fiscal year, order price reductions sufficient to ensure that the profit margin on the firm's quarterly report for the last quarter of its fiscal year will not exceed the firm's base period profit margin.

(3) With respect to a violation occurring during the third quarter of the firm's fiscal year, order price reductions sufficient to ensure that the profit margin on the firm's quarterly report for the first quarter of the fiscal year following the fiscal year in which the violation occurred will not exceed the firm's base period profit margin.

§ 155.176 Violation for fiscal year, if persons who paid the illegal charges are reasonably identifiable.

Whenever, pursuant to § 155.173 of this part, the Council determines that a firm has illegally exceeded its base period profit margin for the fiscal year, and the persons who paid the illegal prices are reasonably identifiable, the Council may order—

(a) The refund of revenues derived from the prices in violation to the extent that they exceed the revenues from prices which otherwise would have been chargeable, or the dollar value of the excess profit margin, whichever is less; and

(b) The reduction of prices to the extent necessary to lower the firm's revenues by an amount equal to two times the amount that the revenues derived from the prices in violation exceeded the revenues which otherwise would have been realized; or equal to two times the dollar value of the excess profit margin, whichever is less, by the end of the third quarter of the fiscal year following the fiscal year in which the violation occurred.

§ 155.177 Violation for fiscal year, if persons who paid the illegal charges are not reasonably identifiable.

Whenever, pursuant to § 155.173 the Council determines that a firm has illegally exceeded its base period profit margin for the fiscal year, and the persons

who paid the illegal prices are not reasonably identifiable, the Council may order the reduction of prices to the extent necessary to lower the firm's revenues by an amount equal to three times the amount that the revenues derived from the prices in violation exceeded the revenues which would otherwise have been realized, or equal to three times the dollar value of the excess profit margin, whichever is less, by the end of the third quarter of the fiscal year following the fiscal year in which the violation occurred.

§ 155.178 Deduction of refunds.

For the purpose of computing a firm's profit margin in any quarter or fiscal year following a quarter in which it made refunds or reductions pursuant to an order issued under this section, that firm may not be allowed to deduct from its revenues the amount of those refunds or reductions that it made.

§ 155.179 Violation of order.

If a firm violates any provision of an order issued under this section, the Council may order it to reduce prices still further to the extent necessary to lower its revenues by an amount equal to two times the amount ordered to be refunded or reduced under this section, reduced to the extent that the firm has partially complied with the previous order.

§ 155.180 Prohibition of further price increases.

In any case in which the Council considers a firm to be in violation of its profit margin limitations, the Council may order that firm to make no further price increases without the specific approval of the Council.

§ 155.181 Custom products or services.

(a) Notwithstanding any other provisions of this subpart, a firm which exceeds its base period profit margin limitation in the same fiscal year in which it sells a custom product or service subject to Subpart F of Part 150, and which does not qualify for the Special Rule in § 150.11(d)(iii), shall be required to disgorge, through refunds or price reductions, an amount as follows:

(1) In the case of a firm which did not, in that fiscal year, charge a price for any item which exceeds the base level: an amount which bears the same ratio to the dollar value of the profit margin excess that its sales of custom products and custom services bears to total sales;

(2) In the case of a firm which in that fiscal year charged a price for an item in excess of the base level

(i) Where the dollar value of the profit margin excess is equal to or less than the revenues derived from the prices in violation to the extent that they exceed the revenues which otherwise would have been chargeable: the dollar value of the profit margin excess; and

(ii) Where the revenues derived from the prices in violation to the extent that they exceed the revenues which otherwise would have been chargeable, are less than the dollar value of the profit margin excess: Those revenues, plus an amount which bears the same ratio to the difference between those revenues and the dollar value of the profit margin excess that the firm's sales of custom products and custom services bears to total sales.

(b) For purposes of computing the ratio which sales of custom products or services bear to total sales pursuant to paragraph (a) of this section, a firm shall exclude from sales of custom products or services, for its first fiscal year ending after August 12, 1973, and before January 1, 1974, any sales of a custom product or service, after August 12, 1973, under a contract entered into before August 13, 1973.

Subpart K—Profit Margin Repurification

§ 155.191 Scope.

The subpart applies to any firm subject to a profit margin limitation imposed by Part 150 of this chapter.

§ 155.192 Definitions.

For the purposes of this subpart:

"Base level" of an item means the greater of the base price of that item as determined in accordance with Subpart F of Part 150 of this chapter or the adjusted freeze price of that item as defined in Subparts E or K of Part 150 of this chapter.

"Internal Revenue Service" means the District Director of the key IRS District Office which serves the district in which the corporate headquarters of the firm concerned are domiciled.

"Price Category I or II firm" means a price category I firm or a price category II firm as defined in Subpart C of Part 150 of this chapter.

"Price Category III firm" means a price category III firm as defined in Subpart C of Part 150 of this chapter.

§ 155.193 General rule.

Any firm subject to a profit margin limitation under Part 150 of this chapter is not subject to that limitation if, before the end of the fiscal year in which it charged a price above the base level, the firm (a) rescinds all price increases above base levels, and (b) in conformity with §§ 155.194, 155.195 and 155.196 of this subpart, remits to customers in the form of refunds, or future sales at prices below base levels of the same goods and services previously sold at prices above base levels, or both, an amount equal to or greater than the revenues derived in that fiscal year from charging a price or prices in excess of base price levels.

§ 155.194 Price Category I and II Firms.

(a) A price category I or II firm may take action to reduce prices to base levels at any time.

(b) Before remitting revenues derived from charging prices above base levels, each firm shall submit, for the approval of the Internal Revenue Service, a letter of intent to remit revenues under this regulation. If the firm receives no written response to its letter of intent within 20 days after the date it was received by the Internal Revenue Service, the firm may assume approval and proceed to remit revenues in accordance with § 155.196 of this part.

(c) To be eligible for Internal Revenue Service approval under this subpart, a letter of intent must be received at such a time before the end of the firm's fiscal year as will allow Internal Revenue Service review thereof in accordance with paragraph (b) of this section and as will allow the firm to fully execute the plan for remission of revenues before the end of that fiscal year. In any event, a letter of intent must be received at least 30 days before the end of that fiscal year.

(d) Each letter of intent to remit revenues shall include a revenue remission plan presenting the following information:

(1) The amount of revenue the firm has received as a result of having increased the price of property or services, or both, above base levels, indicated by product, product line, service, or service line;

(2) The above-base-level selling price, the base level, and the proposed below-base-level selling price of each product, product line, service or service line;

(3) The sales figures and other information which demonstrates that the proposed prices below base level will result in remission of revenues derived from charging prices above the base level;

(4) The period of time during which the remission of revenues will take place;

(5) The anticipated effect of the firm's price reductions on competition and the manner in which the firm's revenue remission plan will minimize disruption of competitive pricing patterns; and

(6) The amount of revenues which can be refunded to customers.

§ 155.195 Price Category III Firms.

A price category III firm which intends to make price reductions and refunds pursuant to this subpart shall, before remitting revenues derived from charging prices above base levels, record its intent in a notarized statement.

§ 155.196 Remission of Revenues.

(a) Remission of revenues derived from charging prices above base levels shall be made first in the form of refunds to individual customers who purchased goods and services at prices in excess of base levels, to the extent that those customers are reasonably identifiable. For the purpose of making refunds pursuant to this subpart, "customer" means, so far as possible, the ultimate consumer. To the extent that customers are not reasonably identifiable, remission of the balance of revenues derived from charging prices above base levels shall be made to customers of the same class as those charged the increased prices through the reduction of the price of those items which were raised above base levels to below base levels, so that the difference between the revenues realized at the reduced prices and the revenues which would have been realized if the sales had been made at base levels is equal to or greater than the revenues (net of any re-

funds) derived from charging prices above base levels.

(b) Each firm that remits revenues shall make such arrangements with its immediate customers, purchasers, dealers, employees or agents as are necessary to obtain and maintain records of the names and addresses of ultimate consumers who are reasonably identifiable in accordance with normal business practices and to assure that refunds are in fact made to such ultimate consumers.

§ 155.197 Reporting requirements.

No firm is considered to be restored to the position of a firm which has not raised any prices above base levels until it has carried out its revenue remission plan and complied with all of the applicable requirements of §§ 155.193 through 155.196 of this part. Upon meeting these requirements, a price category I or II firm may submit the certification of no price increase which, pursuant to the instructions to the Form CLC–22, certain firms which have not charged any price above the base level may use in lieu of reporting on price increases. However, the first certification of no price increase submitted after remission of revenues pursuant to this regulation shall be accompanied by a report which includes:

(a) A statement signed by that firm's chief executive officer (or other authorized officer) certifying that all selling prices of those items which were previously raised above base levels have been reduced to base levels; and

(b) The following information, set forth in detail, showing that all other curative actions have been completed:

(1) The dollar amount of the revenues which the firm received as a result of having charged a price for items above base levels during the current fiscal year;

(2) The names and addresses of all customers, if any, to whom the firm has made refunds pursuant to this subpart, together with the amounts refunded in each case and the date of each refund;

(3) The nature, type, and extent of price reductions below base levels which the firm did, in fact, institute pursuant to this subpart including the dollar amount of the revenues realized from sales at below base levels compared with the dollar amount of the revenues which would have been received if those sales had been made at base levels.

§ 155.198 Effect of Price Reductions.

This subpart does not relieve any firm of its obligations under the Clayton Act, the Federal Trade Commission Act, or any law with a similar purpose; nor does it permit or obligate any firm to do any act or engage in any practice which would violate any of those laws.

APPENDIX

Example 1. Firm A, a price category I firm which operates on a calendar-year basis, raised a few prices above base levels early in Phase IV. The firm finds it is exceeding its base period profit margin on the basis of its third quarter's performance and believes it will be unable to demonstrate that it will not exceed its base period profit margin for its full fiscal year. Consequently, before December 31, 1973, Firm A returns all prices to base levels and either makes refunds or reduces the prices on the same items to below base levels to the extent necessary to remit all revenues derived from charging prices above base levels as provided in this subpart. Firm A is no longer subject to a profit margin limitation and will remain free therefrom until it again raises a price above the base level.

Example 2. A remedial order was issued to Firm B because it raised prices above base levels in Phase IV and exceeded its base period profit margin for the third quarter of its fiscal year. The order, among other things, directed Firm B to (1) reduce all prices to base levels and (2) at the firm's option, to either (a) remit revenues derived from charging prices in excess of base levels or (b) further reduce prices by an amount sufficient to assure that by the end of the firm's fourth quarter the firm's profit margin will not exceed its base period profit margin.

Firm B wishes to conform to the requirements of this subpart. It therefore reduces all prices to base price levels and selects option 2(a) in the order. In carrying out option 2(a) it follows all applicable requirements of this subpart, including the submission of a letter of intent (§ 155.195) and the making of refunds to identifiable customers (§ 155.196). The decision of Firm B to meet the requirements of this subpart does not, however, relieve it of any additional requirements placed upon it by the remedial order.

Example 3. Firm C raised the price of its one product above the base level during its 1973 fiscal year but did not exceed its base period profit margin for fiscal year 1973. During the first month of its 1974 fiscal year, Firm D's profit margin appears to be rising substantially due in large measure to greatly increased demand for its product and related decreases in cost per unit. Firm C continues to charge the same increased price for its product in FY 1974 as it did last year.

Anticipating a profit margin excess for fiscal year 1974, Firm C elects to return to base levels and to remit all revenues derived in fiscal year 1974 from the price increase above base levels which was instituted in 1973. Having no identifiable customers, the firm determines that it would have to reduce the price of its product to a level below the base level for a period of three months in order to remit revenues (in the form of reduced prices) equal to or greater than the revenues derived in FY 1974 from the price charged in excess of the base price. With a price per unit at $2.00 above the base level and 20,000 units sold to date in FY 1974, Firm C determines that a total price decrease of $2.50 (50 cents below base level) with projected sales of at least 80,000 units over the next 3 months will result in remission of the $40,000 in revenues derived in FY 1974 from the price charged in excess of the base level.

After five months of sales as anticipated at prices below the base level, Firm C finds that it has met the requirements of this subpart with respect to remission of revenues and thereupon increases the price of the product to the base level. There are no price increases above base levels during the 1974 fiscal year, and Firm C exceeds its base period profit margin for FY 1974. Under the facts presented, there is no profit margin violation.

Example 4. Firm C, under the same facts as example 3 except that some customers are identifiable, works through its dealers (independent contractors) to identify and to refund directly to consumers who purchased its product in FY 1974 a total of $20,000. This leaves a balance of $20,000 which must be remitted in the form of sales at prices below the base level. Firm C lowers its price to 25 cents below base level and sells 80,000 units at that price over a three month period. This results in a remission of an additional $20,000, and Firm C has met the requirements of this subpart with respect to remission of revenues.

[FR Doc.73-16876 Filed 8-10-73;12:00 pm]

Title 49—Transportation

CHAPTER I—DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A—HAZARDOUS MATERIALS REGULATIONS BOARD

[Docket No. HM-99; Amdts. Nos. 171-21, 173-75, 178-27]

SPECIFICATIONS 3AX, 3AAX, AND 3T CYLINDERS

The purpose of this amendment to the Hazardous Materials Regulations is to amend §§ 171.7, 173.34, 173.301, 173.302 and 173.304, and to add a new section 178.45, DOT specification 3T, to provide for the shipment of certain gases in large cylinders or tubes mounted on a motor vehicle.

On April 4, 1972, the Hazardous Materials Regulations Board published a notice of proposed rulemaking, Docket No. HM-99; Notice No. 72-3 (37 FR 6747), which proposed this amendment. Interested persons were invited to give their views and several comments were received by the Board.

1. *Hydrogen chloride.* A commenter stated that the proposed regulations omitted the authorization for hydrogen chloride to be shipped in DOT-3T cylinders. This authorization was purposely omitted because the Board has not completed its evaluation of DOT-3T cylinders in hydrogen chloride service.

2. *Nonliquefied natural gas.* Another commenter requested that the regulations be amended to permit nonliquefied natural gas to be shipped in DOT-3AX, 3AAX, and 3T cylinders. The Board has not authorized nonliquefied natural gas to be shipped in these cylinders because it has not been demonstrated that impurities which may be present in the gas would not affect the structure of the particular steel used in the manufacture of these cylinders.

3. *Design criteria for cylinders.* The proposed regulations provide design criteria for cylinders of 1000 pounds or more water capacity. A commenter has stated that this same design criteria should be applicable for cylinders of less than 1000 pounds water capacity and has requested that, wherever appropriate, the proposed regulations be amended to include the design criteria for the smaller water capacity cylinders. As this request is not within the scope of the present rule making, the Board did not address itself to the comment in this amendment.

4. *Cylinder attachment to vehicle.* Another commenter objected to the proposal which would require the rear end of the cylinders to be affixed to the vehicle. This commenter stated that adequate expansion provisions can be in-

corporated in the cylinders when they are affixed to the vehicle at the front end of the cylinders. The Board agrees that it need not specify rear end rigid attachment and has authorized the cylinders to be affixed at either end with thermal expansion provisions required at the opposite end.

5. *Editorial.* Section 178.45–11(d) is reworded to more clearly state the intent of the regulation. As previously worded, the words "the test may be repeated" did not clearly indicate the other option of reheat treatment and subsequent compliance with all the prescribed tests. Consequently, the objective of the use of the word "may" could be misunderstood.

Accordingly, 49 CFR Parts 171, 173, and 178 are amended to read as follows:

PART 171—GENERAL INFORMATION AND REGULATIONS

In § 171.7, paragraphs (c)(17), and (d)(12) are added to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(c) * * *

(17) Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(d) * * *

(12) U.S. Department of Commerce, National Bureau of Standards Handbook H28 (1957)—Part II is titled "Screw-Thread Standards for Federal Services 1957," December 1966 edition.

PART 173—SHIPPERS

§ 173.34 [Amended]

(A) In § 173.34 paragraph (e) table, the following is added as the ninth entry: "3T ____5/3 times service pressure____ 5."

(B) In § 173.301, paragraph (h) table is amended by adding as the fifth entry "DOT–3AX" and by adding the entry "DOT–3AAX" after 3AA in the first column; by adding the entry "DOT–3T" as the third entry in the second column; paragraph (d)(1) is amended and paragraph (l) is added to read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders.[1]

* * * * *

(d) * * *

(1) Manifolding is authorized for containers of the following gases: argon, air, carbon dioxide, helium, neon, nitrogen, nitrous oxide or oxygen provided that each container is individually equipped with safety relief devices as required by § 173.34 (d) or § 173.315(l).

* * * * *

(l) Specifications 3AX, 3AAX, and 3T cylinders are authorized for transportation only when horizontally mounted on a motor vehicle and when valves and safety devices are protected, as follows:

(1) Each cylinder must be fixed at one end of the vehicle with provision for thermal expansion at the opposite end attachment.

(2) The valve and safety relief device protective structure must be sufficiently strong to withstand a force equal to twice the weight involved with a safety factor of four, based on the ultimate strength of the material used; and

(3) Each discharge for a safety relief device on a cylinder containing a flammable gas must be upward and unobstructed.

(C) In § 173.302, paragraph (a)(3), the introductory text of paragraph (c), (c)(3) Table, and paragraph (f) are amended to read as follows:

§ 173.302 Charging of cylinders with non-liquefied compressed gases.

(a) * * *

(3) Specification 3AX, 3AAX, or 3T (§§ 178.36, 178.37, 178.45 of this subchapter) cylinders are authorized only for the following nonliquified gases: air, argon, carbon monoxide, ethane, ethyene, helium, hydrogen, methane, neon, nitrogen, or oxygen, except that specification 3T is not authorized for hydrogen.

* * * * *

(c) *Special filling limits for Specifications 3A, 3AX, 3AA, 3AAX, and 3T cylinders.* Specifications 3A, 3AX, 3AA, 3AAX, and 3T (§§ 178.36, 178.37, 178.45 of this subchapter) cylinders may be charged with compresed gases, other than liquefied, dissolved, poisonous, or flammable gases to a pressure 10 percent in excess of their marked service pressure, provided:

* * * * *

(3) * * *

Type of steel	Average wall stress limitation	Maximum wall stress limitation
(add)		
Steel of analysis and heat treatment specified in Spec. DOT-3T	87,000	94,000

* * * * *

(f) *Carbon monoxide.* Carbon monoxide must be shipped in a specification 3A, 3AX, 3AA, 3AAX, 3, 3E, or 3T (§§ 178.36, 178.37, 178.42, 178.45 of this subchapter) cylinder having a minimum service pressure of 1,800 p.s.i.g. The pressure in the cylinder must not exceed 1,000 p.s.i. at 70°F. except that if the gas is dry and sulfur free, a cylinder may be charged to five-sixths the cylinder service pressure or 2,000 p.s.i.g., whichever is the lesser.

(D) In § 173.304, paragraph (a)(2) Table is amended to read as follows:

§ 173.304 Charging of cylinders with liquefied compressed gas.

(a) * * *

(2) * * *

Kind of gas	Maximum permitted filling density (see Note 1)	Containers marked as shown in this column or of the same type with higher service pressure must be used except as provided in § 173.34(a), (b), § 173.301(j) (see notes following table)
(change)	*Percent*	
Carbon dioxide, liquefied (see Notes 4, 7, and 8).	68	DOT-3A1800; DOT-3AX1800; DOT-3AA1800; DOT-3AAX1800; DOT-3; DOT-3E1800; DOT-3T1800; DOT-3HT2000; DOT-39.
Carbon dioxide-nitrous oxide mixture (see Notes 7 and 8).	68	DOT-3A1800; DOT-3AX1800; DOT-3AA1800; DOT-3AAX1800; DOT-3; DOT-3E1800; DOT-3T1800; DOT-3ET2000; DOT-39.
Ethane (see Notes 8 and 9)	35.8	DOT-3A1800; DOT-3AX1800; DOT-3AA1800; DOT-3AAX1800; DOT-3; DOT-3E1800; DOT-3T1800; DOT-39.
Ethane (see Notes 8 and 9)	36.8	DOT-3A2000; DOT-3AX2000; DOT-3AA2000; DOT-3AAX2000; DOT-3T2000; DOT-39.
Ethylene (see Notes 8 and 9)	31.0	DOT-3A1800; DOT-3AX1800; DOT-3AA1800; DOT-3AAX1800; DOT-3; DOT-3E1800; DOT-3T1800; DOT-39.
Ethylene (see Notes 8 and 9)	32.5	DOT-3A2000; DOT-3AX2000; DOT-3AA2000; DOT-3AAX2000; DOT-3T2000; DOT-39.
Ethylene (see Notes 8 and 9)	35.5	DOT-3A2400; DOT-3AX2400; DOT-3AA2400; DOT-3AAX2400; DOT-3T2400; DOT-39.
Nitrous oxide (see Notes 7 and 8)	68	DOT-3A1800; DOT-3AX1800; DOT-3AA1800; DOT-3AAX1800; DOT-3; DOT-3E1800; DOT-3T1800; DOT-3HT2000; DOT-39.

* * * * * * *

PART 178—SHIPPING CONTAINER SPECIFICATIONS

(A) In the Table of Contents for Part 178, § 178.45 is added to read as follows:

Sec.

178.45 Specification 3T; seamless steel cylinder.
178.45–1 Compliance.
178.45–2 Type, size, and service pressure.
178.45–3 Inspection by whom and where.
178.45–4 Duties of the inspector.
178.45–5 Material, steel.
178.45–6 Manufacture.
178.45–7 Wall thickness.
178.45–8 Heat treatment.
178.45–9 Openings.
178.45–10 Safety devices and protection for valves, safety devices, and other connections.
178.45–11 Hydrostatic test.
178.45–12 Ultrasonic examination.
178.45–13 Basic requirements for tension and Charpy impact tests.
178.45–14 Basic conditions for acceptable physical testing.
178.45–15 Acceptable physical test results.
178.45–16 Rejected cylinders.
178.45–17 Markings.
178.45–18 Inspector's report.

(B) Section 178.45 is added to read as follows:

§ 178.45 Specification 3T; seamless steel cylinder.

§ 178.45–1 Compliance.

Each cylinder must meet the applicable requirements of § 173.24 of this subchapter.

[1] Requirements covering cylinders are also applicable to spherical pressure vessels.

§ 178.45–2 Type, size, and service pressure.

(a) *Type.* Each cylinder must be of seamless construction with integrally formed heads concave to pressure at both ends. The inside head shape must be hemispherical, ellipsoidal in which the major axis is two times the minor axis, or a dished shape falling within these two limits. Permanent closures formed by spinning are prohibited.

(b) *Size.* The minimum water capacity is 1,000 pounds.

(c) *Service pressure.* The minimum service pressure is 1,800 p.s.i.

§ 178.45–3 Inspection by whom and where.

Inspection of each cylinder must be performed by a competent and disinterested inspector, acceptable to the Bureau of Explosives. Chemical analyses and tests must be performed within the limits of the United States.

§ 178.45–4 Duties of the inspector.

(a) The inspector must determine that all materials are in compliance with the requirements of this specification.

(b) The inspector must verify compliance with the requirements of § 178.45–5 by making a chemical analysis or obtaining a certified chemical analysis from the material manufacturer for each heat of material. If an analysis is not provided by the material manufacturer, a sample from each heat must be analyzed.

(c) The inspector must determine that each cylinder is made and marked in compliance with this specification by:

(1) Complete internal and external inspection;

(2) Verification of proper heat treatment;

(3) Selection of samples to be tested;

(4) Witnessing all tests;

(5) Verification of threads by gage; and

(6) Preparation of required report.

§ 178.45–5 Material, steel.

(a) Only open hearth, basic oxygen, or electric furnace process steel of uniform quality is authorized. The steel analysis must conform to the following:

ANALYSES TOLERANCES

Element (percent)	Ladle analysis	Check analysis	
		Under	Over
Carbon	0.35 to 0.50	0.03	0.04
Manganese	0.75 to 1.05	0.04	0.04
Phosphorus (max)	0.035		0.01
Sulfur (max)	0.04		0.01
Silicon	0.15 to 0.35	0.02	0.03
Chromium	0.80 to 1.15	0.05	0.05
Molybdenum	0.15 to 0.25	0.02	0.02

(b) A heat of steel made under these specifications, the ladle analysis of which is slightly out of the specified range, is acceptable if satisfactory in all other aspects. However, the check analysis tolerances shown in the above table may not be exceeded except as approved by the Department.

(c) Material with seams, cracks, laminations, or other injurious defects is not permitted.

(d) Material used must be identified by any suitable method.

§ 178.45–6 Manufacture.

(a) General manufacturing requirements are as follows:

(1) Dirt and scale must be removed prior to inspection and processing.

(2) Surface finish must be uniform and reasonably smooth.

(3) Inside surfaces must be clean, dry, and free of loose particles.

(4) No defect of any kind is permitted if it is likely to weaken a finished cylinder.

(b) If the cylinder surface is not originally free from the defects described in paragraph (a) of this section, the surface may be machined or otherwise treated to eliminate these defects provided the minimum wall thickness is maintained.

(c) Welding or brazing on a cylinder is not permitted.

§ 178.45–7 Wall thickness.

(a) The minimum wall thickness must be such that the wall stress at the minimum specified test pressure does not exceed 67 percent of the minimum tensile strength of the steel as determined by the physical tests required in §§ 178.45–14 and 178.45–15. A wall stress of more than 90,500 p.s.i. is not permitted. The minimum wall thickness for any cylinder may not be less than 0.225 inch.

(b) Calculation of the stress for cylinders must be made by the following formula:

$$S=\frac{P(1.3D^2+0.4d^2)}{D^2-d^2}$$

where:

S=Wall stress in pounds per square inch;
P=Minimum test pressure, at least 5/3 service pressure;
D=Outside diameter in inches;
d=Inside diameter in inches.

(c) Each cylinder must meet the following additional requirements which assumes a cylinder horizontally supported at its two ends and uniformally loaded over its entire length. This load consists of the weight per inch of length of the straight cylindrical portion filled with water compressed to the specified test pressure. The wall thickness must be increased when necessary to meet this additional requirement.

(1) The sum of two times the maximum tensile stress in the bottom fibers due to bending (see paragraph (c) (1) (i) of this section), plus the maximum tensile stress in the same fibers due to hydrostatic testing (see paragraph (c) (1) (ii) of this section) may not exceed 80 percent of the minimum yield strength of the steel at this maximum stress.

(i) The following formula must be used to calculate the maximum tensile stress due to bending:

$$S=\frac{Mc}{I}$$

where:

S=Tensile stress in pounds per square inch;
M=Bending moment in inch-pounds $\left(\frac{wl^2}{8}\right)$;
I=Moment of inertia=0.04909 (D^4-d^4) in inches fourth;
c=Radius $\left(\frac{D}{2}\right)$ of cylinder in inches;
w=Weight per inch of cylinder filled with water;
l=Length of cylinder in inches;
D=Outside diameter in inches;
d=Inside diameter in inches.

(ii) The following formula must be used to calculate the maximum longitudinal tensile stress due to hydrostatic test pressure:

$$S=\frac{A_1P}{A_2}$$

where:

S=Tensile stress in pounds per square inch;
A_1=Internal area in cross section of cylinder in square inches;
P=Hydrostatic test pressure in pounds per square inch;
A_2=Area of metal in cross section of cylinder in square inches.

§ 178.45–8 Heat treatment.

(a) Each completed cylinder must be uniformly and properly heat treated prior to testing, as follows:

(1) Each cylinder must be heated and held at the proper temperature for at least one hour per inch of thickness based on the maximum thickness of the cylinder and then quenched in a suitable liquid medium having a cooling rate not in excess of 80 per cent of water. The steel temperature on quenching must be that recommended for the steel analysis, but it must never exceed 1750°F.

(2) After quenching, each cylinder must be reheated to a temperature below the transformation range but not less than 1050°F., and must be held at this temperature for at least one hour per inch of thickness based on the maximum thickness of the cylinder. Each cylinder must then be cooled under conditions recommended for the steel.

§ 178.45–9 Openings.

(a) Openings are permitted on heads only.

(b) The size of any centered opening in a head may not exceed one half the outside diameter of the cylinder.

(c) Openings in a head must have ligaments between openings of at least three times the average of their hole diameter. No off-center opening may exceed 2.625 inches in diameter.

(d) All openings must be circular.

(e) All openings must be threaded. Threads must be in compliance with the following:

(1) Each thread must be clean cut, even, without any checks, and to gage.

(2) Taper threads, when used, must be the American Standard Pipe thread (NPT) type and must be in compliance with the requirements of NBS Handbook H–28, Part II, Section VII.

(3) Taper threads conforming to National Gas Taper thread (NGT) standards must be in compliance with the requirements of NBS Handbook H–28, Part II, Sections VII and IX.

(4) Straight threads conforming with National Gas Straight thread (NGS) standards are authorized. These threads must be in compliance with the requirements of NBS Handbook H–28, Part II, Sections VII and IX.

§ 178.45–10 Safety devices and protection for valves, safety devices, and other connections.

Safety devices and protection arrangements for valves, safety devices, and other connections must be in compliance with § 173.34(d) of this subchapter. See also § 173.301(L) of this subchapter.

§ 178.45–11 Hydrostatic test.

(a) Each cylinder must be tested at an internal pressure by the water jacket method or other suitable method. The testing apparatus must be operated in a manner that will obtain accurate data. Any pressure gage used must permit reading to an accuracy of one percent. Any expansion gage used must permit reading of the total expansion to an accuracy of one percent.

(b) Any internal pressure applied to the cylinder after heat treatment and before the official test may not exceed 90 percent of the test pressure.

(c) The pressure must be maintained sufficiently long to assure complete expansion of the cylinder. In no case may the pressure be held less than 30 seconds.

(d) If, due to failure of the test apparatus, the required test pressure cannot be maintained, the test must be repeated at a pressure increased by 10 percent or 100 p.s.i., whichever is lower or, the cylinder must be reheat treated.

(e) Permanent volumetric expansion of the cylinder may not exceed 10 percent of its total volumetric expansion at the required test pressure.

(f) Each cylinder must be tested to at least 5/3 times its service pressure.

§ 178.45–12 Ultrasonic examination.

After the hydrostatic test, the cylindrical section of each vessel must be examined in accordance with ASTM Standard A–388–67 using the angle beam technique. The equipment used must be calibrated to detect a notch equal to five percent of the design minimum wall thickness. Any discontinuity indication greater than that produced by the five percent notch shall be cause for rejection of the cylinder unless the discontinuity is repaired within the requirements of this specification.

§ 178.45–13 Basic requirements for tension and Charpy impact tests.

(a) When the cylinders are heat treated in a batch furnace, two tension specimens and three Charpy impact specimens must be tested from one of the cylinders or a test ring from each batch. The lot size represented by these tests may not exceed 200 cylinders.

(b) When the cylinders are heat treated in a continuous furnace, two tension specimens and three Charpy impact specimens must be tested from one of the cylinders or a test ring from each four hours or less of production. However, in no case may a test lot based on this production period exceed 200 cylinders.

(c) Each specimen for the tension and Charpy impact tests must be taken from the side wall of a cylinder or from a ring which has been heat treated with the finished cylinders of which the specimens must be representative. The axis of the specimens must be parallel to the axis of the cylinder. Each cylinder or ring specimen for test must be of the same diameter, thickness, and metal as the finished cylinders they represent. A test ring must be at least 24 inches long with ends covered during the heat treatment process so as to simulate the heat treatment process of the finished cylinders it represents.

(d) A test cylinder or test ring need represent only one of the heats in a furnace batch provided the other heats in the batch have previously been tested and have passed the tests and that such tests do not represent more than 200 cylinders from any one heat.

(e) The test results must conform to the requirements specified in §§ 178.45–14 and 178.45–15.

(f) When the test results do not conform to the requirements specified, the cylinders represented by the tests may be reheat treated and the tests repeated. Paragraph (e) of this section applies to any retesting.

§ 178.45–14 Basic conditions for acceptable physical testing.

(a) The following criteria must be followed to obtain acceptable physical test results:

(1) Each tension specimen must have a gage length of two inches with a width not exceeding one and one-half inches. Except for the grip ends, the specimen may not be flattened. The grip ends may be flattened to within one inch of each end of the reduced section.

(2) A specimen may not be heated after heat treatment specified in § 178.45–8.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gage length.

(i) This yield strength must be determined by the "offset" method or the "extension under load" method described in ASTM Standard E8–69.

(ii) For the "extension under load" method, the total strain (or extension under load) corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gage length under appropriate load and adding thereto 0.2 percent of the gage length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. However, when the degree of accuracy of this method is questionable the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set with the specimen under a stress of 12,000 p.s.i. and the strain indicator reading set at the calculated corresponding strain.

(iv) The cross-head speed of the testing machine may not exceed ⅛ inch per minute during the determination of yield strength.

(4) Each impact specimen must be Charpy V-notch type size 10 mm x 10 mm taken in accordance with paragraph 11 of ASTM Standard A–333–67. When a reduced size specimen is used, it must be the largest size obtainable.

§ 178.45–15 Acceptable physical test results.

(a) Results of physical tests must conform to the following:

(1) The tensile strength may not exceed 155,000 p.s.i.

(2) The elongation must be at least 16 percent for a two-inch gage length.

(3) The Charpy V-notch impact properties for the three impact specimens which must be tested at 0° F. may not be less than the values shown below:

Size of specimen (mm)	Average value for acceptance 3 specimens	Minimum value 1 specimen only of the three
10.0 x 10.0	25.0 ft. lbs.	20.0 ft. lbs.
10.0 x 7.5	21.0 ft. lbs.	17.0 ft. lbs.
10.0 x 5.0	17.0 ft. lbs.	14.0 ft. lbs.

(4) After the final heat treatment, each vessel must be hardness tested on the cylindrical section. The tensile strength equivalent of the hardness number obtained may not be more than 165,000 p.s.i. (R° 36). When the result of a hardness test exceeds the maximum permitted, two or more retests may be made; however, the hardness number obtained in each retest may not exceed the maximum permitted.

§ 178.45–16 Rejected cylinders.

(a) Reheat treatment is authorized. However, each reheat treated cylinder must subsequently pass all the prescribed tests.

(b) Repair by welding is not authorized.

§ 178.45–17 Markings.

(a) Marking must be done by stamping into the metal of the cylinder. All markings must be legible and located on a shoulder.

(b) Required markings are as follows:

(1) "DOT–3T," followed by the service pressure (for example: "DOT–3T1800");

(2) The appropriate serial number;

(3) The registration number of the manufacturer ("M ****");

(4) The inspector's official mark near the serial number;

(5) The tare weight in pounds; and

(6) The date of the test (for example "5–72" for May 1972), so placed that dates of subsequent tests may be easily added.

(c) Markings must be at least ½ inch high.

(d) The markings prescribed by paragraphs (b) (1), (2), and (3) of this section must be displayed one immediately below the previous one as follows:

DOT-3T1800
1234
M 6789

(e) No person may mark any cylinder with the specification identification "DOT-3T" unless (1) it was manufactured in compliance with the requirements of this section and (2) its manufacturer has a registration number (M ****) from the Office of Hazardous Materials, Department of Transportation, Washington, D.C. 20590.

§ 178.45-18 Inspector's report.

(a) The inspector's report must be retained indefinitely by the manufacturer as long as DOT-3T cylinders are authorized for use by these regulations and a copy must be supplied the purchaser and owner of each cylinder. Upon sale by the original purchaser or owner, the seller must furnish the buyer a copy of the report. The manufacturer and owner must keep all reports available for examination upon request by representatives of the Department.

(b) Each report must be legible, and contain at least the following information:

INSPECTION REPORT COVERING THE MANUFACTURE OF SPECIFICATION DOT-3T CYLINDERS

The cylinders covered by this report were manufactured for _____ located at _____. They were manufactured by _____ located at _____. The cylinders are _____ inches in diameter (OD), _____ inches in length, and have a minimum wall thickness of _____ inches. The calculated stress is _____ p.s.i. under a test pressure of _____ p.s.i. The marks stamped into the shoulder of the cylinder are:

Specification DOT-_____;
Serial numbers _____ to _____ inclusive;
Inspector's mark _____;
DOT registration number M_____;
Tare weight _____;
Test date _____;
Other marks (if any) _____.

These cylinders were made by process of _____. The cylinders were heat treated by the process of _____. The metal used was identified by the following _____ numbers _____.
(heat-purchase order)

The metal used was verified as to chemical analysis as shown in the "Record of Chemical Analysis of Metal" attached hereto. The heat numbers _____ marked on the metal
(were—were not)

All material was inspected visually and by ultrasonic means and all that was accepted was found free of injurious defects which might significantly affect the strength of the cylinder. The processes of manufacture and heat treatment of cylinders were observed and found satisfactory.

The cylinder walls and outside diameter were measured and the calculated stress for the cylinder design covered herein was verified.

Hydrostatic test, physical tests of the material, and other tests as prescribed in specification DOT-3T were made in the presence, of the inspector. All materials, tests results, and cylinders accepted were found to be in compliance with the requirements of that specification and records therefor are attached hereto.

I hereby certify that all these cylinders proved satisfactory in every way and are in compliance with the requirements of Department of Transportation Specification 3T.

Inspector's name _____ (Print)
Signed _____ (Inspector)
Inspector's Employer _____ Name & address
Place _____
Date _____
(Place) _____
(Date) _____

RECORD OF CHEMICAL ANALYSIS OF MATERIALS FOR CYLINDERS

Numbered _____ to _____ inclusive.
Size _____ inches outside diameter by _____ inches long
Made by _____ Company
For _____ Company

NOTE. Any omission of analyses by heats, if authorized, must be accounted for by notation hereon reading "The prescribed certificate of the manufacturer of material has been secured, found satisfactory, and placed on file." or by attaching a copy of the certificate.

Test No.	Heat No.	Check analysis No.	Cylinders represented (serial Nos.)	Chemical analysis						
				C	P	S	Si	Mn	Cr	Mo

The analyses were made by _____
(Signed) _____
Inspector's Name _____ (Print)
Inspector's employer _____ (Name & address)
_____
(Place) _____
(Date) _____

RECORD OF PHYSICAL TESTS OF MATERIAL FOR CYLINDERS

Numbered _____ to _____ inclusive.
Size _____ inches outside diameter by _____ inches long
Made by _____ Company
For _____ Company

Test No.	Cylinders represented by test (serial nos.)	Yield strength at 0.2 percent offset (pounds per square inch)	Tensile strength (pounds per square inch)	Elongation (percent in 2 inches)	Reduction of area (percent)	Charpy V-notch	
						Average value for 3 specimens	Minimum value for one specimen

(Signed) _____
Inspector's name _____ (Print)
Inspector's employer _____ (Name & address)
_____
(Place) _____
(Date) _____

RECORD OF HYDROSTATIC TESTS ON CYLINDERS

Numbered _____ to _____ inclusive.
Size _____ inches outside diameter by _____ inches long
Made by _____ Company
For _____ Company

Serial Nos. of cylinders tested arranged numerically	Actual test pressure (pounds per square inch)	Total expansion (cubic centimeters) [1]	Permanent expansion (cubic centimeters) [1]	Percent ratio of permanent expansion to total expansion [1]	Tare weight (pounds) [2]	Volumetric capacity

[1] If the tests are made by a method involving the measurement of the amount of liquid forced into the cylinder by the test pressure, then the basic date, on which the calculations are made, such as the pump factors, temperature of liquid, coefficient of compressibility of liquid, etc., must also be given.
[2] State whether with or without valve. These weights must be accurate to a tolerance of 1 percent.

(Signed) _____

Inspector's name _____
(Print)

Inspector's employer _____
(Name & address)

This amendment is effective September 30, 1973. However, compliance with the regulations, as amended herein, is authorized immediately.

(Sections 831–835 of Title 18, U.S.C.; sec. 9, Department of Transportation Act, 49 U.S.C. 1657)

Issued in Washington, D.C. on August 6, 1973.

KENNETH L. PIERSON,
Alternate Board Member for the Federal Highway Administration.

MAC E. ROGERS,
Board Member for the Federal Railroad Administration.

D. H. CLIFTON,
Captain; Alternate Board Member for the United States Coast Guard.

[FR Doc.73–16737 Filed 8–14–73;8:45 am]

Title 7—Agriculture

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

[Amendment No. 7]

PART 409—ARIZONA-DESERT VALLEY CITRUS CROP INSURANCE

Subpart—Regulations for the 1967 and Succeeding Crop Years

ARIZONA-DESERT VALLEY CITRUS

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended, the above-identified regulations are amended effective beginning with the 1973 crop year in the following respects:

Section 409.25 of this chapter is amended by adding the following new paragraph 23, which shall apply only to new contracts entered into to be effective beginning with the 1973 or a succeeding crop year:

§ 409.25 The application and the policy.

* * * * *

23. *New Contracts for the 1973 Crop Year.* (a) This section applies only to applications for insurance submitted beginning with the 1973 or a succeeding crop year and to contracts entered into pursuant thereto. The insurance provided under this section shall be designated as "Plan B".

(b) Notwithstanding the provisions of sections 1 and 3 above, applications for insurance shall be with respect to all insurable types of citrus, as defined in section 22 hereof, produced by the applicant.

(c) In lieu of subsection 7(c) above, the following shall apply: The amount of insurance for any crop year for any insured type on the unit shall be determined by multiplying the estimated production in boxes for the insured type for that crop year as reported by the insured or as determined by the Corporation by the applicable amount of insurance per box and multiplying the product thereof by the insured's interest: *Provided, however,* That for any insured type the amount of insurance for any crop year shall not exceed the product of the insured acreage for that type, and the maximum amount of insurance per acre shown on the actuarial table for such crop year and the insured's interest. The total of the amounts of insurance for all insured types on the unit shall be the total amount of insurance for the unit.

(d) In lieu of subsection 13(a) above, the following shall apply: It shall be a condition precedent to payment of any indemnity on any unit hereunder that the insured report each damage to the insured crop from freeze to the office for the county within 30 days after the date of such freeze.

(e) In lieu of subsection 14(a), the following shall apply: Any claim for loss on any unit must be submitted to the Corporation on a form prescribed by the Corporation by the earlier of 60 days after harvesting of the insured crop is completed on the unit or September 30 of the calendar year following the calendar year in which insurance attached. The Corporation reserves the right to provide additional time if it determines that circumstances beyond the control of either party prevent compliance with this provision.

(f) In lieu of subsection 14(b) above, the following shall apply: Losses shall be adjusted separately for each unit. The amount of loss with respect to any unit shall be determined in the following manner: (1) For each insured type of citrus in the unit multiply the amount of insurance (determined in accordance with subsection (c) of this section) by the percent of damage for that type (determined in accordance with subsection (g) of this section), (2) add the dollar amounts obtained for each of the respective types of citrus in (1) above, (3) add the dollar amounts of insurance for each type of insured citrus on the unit, (4) from the amount obtained in (2) above subtract 30 percent of the amount obtained in (3) above.

(g) In lieu of subsection 14(c) above, the following shall apply: The average percent of damage for each insured type on the unit shall be the ratio of the number of boxes of the crop lost as a result of freeze to the total number of boxes which would have been produced (herein called the "potential"). The potential shall include: (1) Citrus picked before the freeze damage occurred, (2) citrus remaining on the trees after the freeze damage occurred, (3) citrus lost from freeze, and (4) any other citrus not included in items (1) through (3), including citrus lost from causes not insured against other than normal dropping, "rots," and "splits." Citrus lost as a result of freeze shall be citrus to which damage from freeze is serious as defined in the laws of the state in which the county is geographically located and shall be determined by the Corporation on the basis of the cuts made in the grove by the Corporation, except that the Corporation shall consider: (1) Any fruit on the ground as a result of freeze which is not marketed as being 90 percent damaged, (2) any fruit which is or could be packed as fresh fruit as being undamaged, and (3) any portion of the insured crop which is harvested prior to inspection by the Corporation as fruit not damaged.

The Corporation reserves the right to delay the determination of the extent of damage from freeze and the settlement of any loss until the insured makes available to its complete records of the marketing of the insured crop for the crop year. It shall be a condition precedent to payment of any claim that the insured furnished any production records and any other information required by the Corporation regarding the manner and extent of damage or loss.

(h) In lieu of subsection 14(d) above, the following shall apply: If the Corporation determines that frost protection equipment was not properly utilized or was improperly reported, the indemnity otherwise computed for the unit shall be reduced by the percentage of premium reduction given for frost protection equipment. It shall be a condition precedent to establishing that frost equipment was properly utilized that the insured provide proof satisfactory to the Corporation when each operation of such equipment was started and the period of use.

(i) In lieu of subsection 22(f), the following shall apply: "Insurance unit" means all insurable acreage in the county of the six types of citrus (see subsection 22(h)): (1) In which the insured has 100 percent interest on the date insurance attaches for the crop year, or (2) in which the same two or more persons have 100 percent interest on the date insurance attaches for the crop year. Land rented for cash or for a fixed commodity payment shall be considered as owned by the lessee.

(j) Notwithstanding any other provision of the contract, for the purpose of applications submitted and contracts entered into pursuant to this section where the same person owns, or the same two or more persons own, 50 percent or more of the stock in each of two or more corporations, all such corporations shall be considered as one person. In such case an application submitted by any such corporation must be joined by all such corporations having an interest in any insurable type of citrus. Insurance units shall be constituted and losses shall be adjusted as though only one insured person were involved. Failure of any such corporation to

join in the application shall void such application or contract entered into pursuant thereto.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

Since the foregoing amendment provides the only practical basis on which the Board of Directors believed insurance could be provided in the unclassified areas of Yuma County, Arizona, and Imperial County, California, for the 1973 crop year, and since producers in these areas should be given sufficient time to determine whether or not they desire to apply for insurance under the provisions of the proposed amendment, the Board of Directors found that it would be impracticable and contrary to the public interest to follow the procedure for notice and public participation prescribed by 5 U.S.C. 553(b) and (c), as directed by the Secretary of Agriculture in a Statement of Policy, executed July 20, 1971 (36 FR 13804), prior to its adoption. Accordingly, said amendment was adopted by the Board of Directors on July 12, 1973.

[SEAL] LLOYD E. JONES,
Federal Crop Insurance Corporation.

Approved on August 10, 1973.

EARL L. BUTZ,
Secretary.

[FR Doc.73-16949 Filed 8-14-73;8:45 am]

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

[Amdt. 1]

PART 948—IRISH POTATOES GROWN IN COLORADO AREA NO. 3

Handling Regulation

This amendment reduces the size requirement to 1⅞ inches minimum diameter or 4 ounces minimum weight on all potatoes shipped to fresh market from Colorado Area No. 3.

With less than normal U.S. potato supplies and with Area No. 3's crop composed of a greater proportion of smaller sized potatoes than the committee anticipated in June, this amendment should tend to increase their returns and make a larger quantity of good potatoes available to the consumers.

Findings. (a) Pursuant to Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR Part 948), regulating the handling of Irish potatoes grown in Colorado, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and upon the basis of recommendations and information submitted by the Area No. 3 Committee, established under the marketing order, and other available information, it is hereby found that this amendment will tend to effectuate the declared policy of the act.

(b) It is hereby found that it is impracticable and contrary to the public interest to give preliminary notice or engage in public rule making procedure, and that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of 1973 crop potatoes grown in Area No. 3 are now being made, (2) to maximize benefits to producers, this amendment should apply to as many shipments as possible during the effective period, (3) issuance of this amendment will not require any special preparation by handlers, (4) information regarding the committee's recommendation has been made available to producers and handlers in the production area, and (5) this amendment relieves restrictions on the handling of potatoes grown in the production area.

Regulation, as amended. In § 948.369 (38 FR 20235) paragraph (a) is amended to read as follows:

§ 948.369 Handling regulation.

* * * * *

(a) *Grade and size requirements—All varieties.* U.S. No. 2, or better grade, 1⅞ inches minimum diameter or 4 ounces minimum weight, except Size B may be handled if U.S. No. 1, or better grade.

* * * * *

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

Effective date. August 15, 1973.

Dated: August 9, 1973.

D. S. KURYLOSKI,
Acting Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc.73-16867 Filed 8-14-73;8:45 am]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1427—COTTON

Subpart—1973-Crop Supplement to Cotton Loan Program Regulations

Correction

In FR Doc. 73-14845 appearing at page 19381 in the issue of Friday, July 30, 1973, make the following changes:

1. In the table to § 1427.101 the final entry in the right hand column under Arkansas reading "20.99", should read "20.90". In the table for South Carolina, the 23d entry from the bottom reading "41.55", should read "21.55".

2. In the table to § 1427.102, the fourth code number from the left, reading "15/15", should read "15/16". The fourteenth code number reading "1¼ long", should read "1¼ longer". In the 6th column from the left, the 12th entry reading "-765", should read "-785".

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 299—IMMIGRATION FORMS

Reproduction of Form I-94

To accommodate the establishment of an automated system to facilitate the processing of nonimmigrant documents, on or after January 1, 1974 all Forms I-94 must bear a preprinted seven-digit sequential number. Accordingly, in Part 299, § 299.3 is amended, effective January 1, 1974, to require that Forms I-94 printed or reproduced by private parties shall bear a seven-digit sequential number as specified therein, which number shall appear identically on both the original and the carbon copy of the form. The prenumbering of Forms I-94 in the manner specified in the amendment may begin immediately. While such prenumbering of Forms I-94 prior to January 1, 1974 is optional, all Forms I-94 must bear such preprinted sequential number on and after January 1, 1974.

In the light of the foregoing, pursuant to 5 U.S.C. 552 (80 Stat. 383) and the authority contained in 8 U.S.C. 1103 and 8 CFR 2.1, the following amendment to Part 299 of Chapter I of Title 8, Code of Federal Regulations, is hereby prescribed:

In Part 299, § 299.3 is amended by adding two new sentences at the end thereof. As amended, § 299.3 reads as follows:

§ 299.3 Reproduction of forms by private parties.

The following forms required for compliance with the provisions of subchapter B of this chapter may be printed or otherwise reproduced by an appropriate duplicating process by private parties at their own expense: I-20, I-92, I-94, I-95, I-408, and I-418. Forms printed or reproduced by private parties shall conform to the officially printed forms currently in use with respect to size, wording and language, arrangement, style and size of type, and paper specifications. Such forms shall be printed or otherwise duplicated in black ink or dye that will not fade or "feather" within 20 years. Printed or reproduced Forms I-94 must each bear a seven-digit sequential number which shall appear on both the original and the carbon copy of the form. Beginning with the number 000 00 00 and continuing through 999 99 00, printed or reproduced Forms I-94 shall repeat this series of numbers each time all the numbers have been used.

Compliance with the provisions of 553 of Title 5 of the United States Code (80 Stat. 383) as to notice of proposed rulemaking is unnecessary in this instance because the amendment to § 299.3 relates to agency management.

Effective date. This order shall become effective on January 1, 1974.

Dated: August 10, 1973.

JAMES F. GREENE,
Acting Commissioner.

[FR Doc.73-16885 Filed 8-14-73;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

SCABIES IN CATTLE AND SHEEP

Treatment of Vehicles, Premises and Facilities Which Have Contained Infested or Exposed Animals

The purpose of the following amendments to the regulations contained in Parts 72, 73, and 74 of Title 9, Code of Federal Regulations, is to require the use of permitted dips rather than permitted disinfectants in treating vehicles, premises, and facilities which have contained cattle or sheep infested with or exposed to scabies or ticks.

Pursuant to the provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, and the Act of July 2, 1962 (21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, 134f), Parts 72, 73, and 74 of Subchapter C, Chapter I, Title 9, Code of Federal Regulations, are hereby amended in the following respects:

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

1. Section 72.22 is amended to read:

§ 72.22 Cars, vehicles, and premises; cleaning and treatment after containing infested or exposed animals.

Cars and other vehicles, and yards, pens, chutes, or other premises or facilities, which have contained interstate shipments of animals infested with or exposed to ticks, shall be cleaned and treated within 72 hours of use and prior to further use in the required concentration with a permitted dip listed in § 72.13 under supervision of a State or Federal inspector or an accredited veterinarian.

2. Section 72.23 is amended to read:

§ 72.23 Cars or other vehicles having carried infested or exposed cattle in quarantined area shall be cleaned and treated.

Cars or others vehicles which have carried cattle exposed to or infested with ticks within the quarantined area of any State shall be cleaned and treated in the required concentration with a permitted dip listed in § 72.13 before being moved interstate under supervision of a State or Federal inspector or an accredited veterinarian.

3. Section 72.24 is amended to read:

§ 72.24 Litter and manure from carriers and premises of tick-infested animals; destruction or treating required.

The litter and manure removed from cars, boats, or other vehicles and from pens, chutes, alleys, or other premises or inclosures which have contained interstate shipments of tick-infested animals, shall be destroyed or treated by the transportation or yard company, or other owner thereof, under Veterinary Services supervision, by saturating it in the required concentration with a permitted dip listed in § 72.13, or shall be otherwise disposed of under prior permission received from the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

PART 73—SCABIES IN CATTLE

4. Section 73.11 is amended to read:

§ 73.11 Treatment of cars, vehicles and premises having contained scabby cattle.

Cars and other vehicles, yards, pens, sheds, chutes, or other premises or facilities which have contained cattle of a consignment in which scabies is found shall be treated within 72 hours of use and prior to further use in the required concentration with a permitted dip listed in § 73.10 under supervision of a State or Federal inspector or an accredited veterinarian.

PART 74—SCABIES IN SHEEP

5. In the table of headings of Part 74 the Subpart heading preceding the heading of § 74.25; and in Part 74 the Subpart heading preceding § 74.25 are both amended to read:

Subpart—Treatment of Cars, Vehicles, and Premises

6. Section 74.25 is amended to read:

§ 74.25 Required if contained diseased sheep.

Cars, and other vehicles, yards, pens, sheds, and chutes which have contained diseased sheep shall be cleaned and treated within 72 hours of use and prior to further use in the required concentration with a permitted dip listed in § 74.24 under supervision of a State or Federal inspector or an accredited veterinarian.

(Secs. 4–7, 23 Stat. 31–33, as amended; secs. 1–3, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130 and 132; 21 U.S.C. 111–113, 115, 117, 120–126, 134b, 134f; 37 FR 28464, 28477, 38 FR 19141.)

Effective date. The foregoing amendments shall become effective on August 15, 1973.

The amendments alter and clarify the requirements for treatment of vehicles, premises, and facilities infested with or exposed to cattle fever ticks and scabies and should be made effective immediately to accomplish their 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 of 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable, unnecessary and contrary to the public interest and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 10th day of August, 1973.

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

[FR Doc.73-16953 Filed 8-14-73;8:45 am]

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

Areas Released From Quarantine

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

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

In § 82.3, in subparagraph (a)(1) relating to the State of California, subdivision (i) relating to Riverside County and subdivisions (ii), (vii), and (viii) relating to San Bernardino County are deleted.

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

Effective date. The foregoing amendment shall become effective August 10, 1973.

The amendment relieves certain restrictions presently imposed but no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this 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 and

unnecessary, 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 10th day or August, 1973.

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

[FR Doc.73-16952 Filed 8-14-73;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

SUBPART D—FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

FOOD STARCH-MODIFIED

The Commissioner of Food and Drugs, having evaluated data in a petition (FAP 1A2678) filed by A. E. Staley Manufacturing Co., 2200 Eldorado St., Decatur, IL 62525, concludes that § 121.1031 (21 CFR 121.1031) of the food additive regulations should be amended, as set forth below, to provide for the safe use of food starch modified by etherification with epichlorohydrin, not to exceed 0.1 percent, followed by propylene oxide, not to exceed 25 percent.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.1031(e) is amended by adding a new item as follows:

§ 121.1031. Food starch-modified.

* * * * * *

(e) * * *

Limitation
* * *
Epichlorohydrin, not to exceed 0.1 percent, followed by propylene oxide, not to exceed 25 percent
* * *
Residual propylene chlorohydrin not more than 5 parts per million in food starch-modified.
* * *

* * * * * *

Any person who will be adversely affected by the foregoing order may at any time on or before September 14, 1973 file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, MD 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Objections may be accompanied by a memorandum or brief in support thereof. Six copies of all documents shall be filed. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective August 15, 1973.

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

Dated: August 7, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-16873 Filed 8-14-73;8:45 am]

SUBCHAPTER C—DRUGS

PART 135a—NEW ANIMAL DRUGS FOR OPHTHALMIC AND TOPICAL USE

Neomycin Sulfate and Polymyxin B Sulfate Ophthalmic Solution, Veterinary

The Commissioner of Food and Drugs has evaluated a new animal drug application (49-726V) filed by Syntex Laboratories, Inc., Palo Alto, CA 94304, proposing the safe and effective use of neomycin sulfate and polymyxin B sulfate ophthalmic solution, veterinary for the treatment of certain ophthalmic conditions in dogs. The application is approved.

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

§ 135a.39 Neomycin sulfate and polymyxin B sulfate ophthalmic solution, veterinary.

(a) *Specifications.* Each milliliter of the opthalmic preparation contains 5.0 milligrams neomycin sulfate (3.5 milligrams neomycin base), and 10,000 Units of polymyxin B sulfate.

(b) *Sponsor.* See code No. 036 in § 135.501(c) of this chapter.

(c) *Conditions of use.* (1) The drug is recommended for the treatment of bacterial infections associated with topical ophthalmological conditions such as corneal injuries, superficial keratitis, conjunctivitis, keratoconjunctivitis, and blepharitis in the dog.

(2) The recommended dosage is 1 to 2 drops per eye every 6 hours.

(3) In treating ophthalmological conditions associated with bacterial infections the drug is contraindicated in those cases in which microorganisms are nonsusceptible to the antibiotics incorporated in the drug.

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

Effective date. This order shall be effective August 15, 1973.

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

Dated: August 7, 1973.

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

[FR Doc.73-16872 Filed 8-14-73;8:45 am]

Title 24—Housing and Urban Development

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-192]

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 appear for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 Status of participating communities.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
* * *	* * *	* * *	* * *	* * *	* * *	* * *
California	Los Angeles	Unincorporated areas.	I 06 037 0000 07 through I 06 037 0000 12	Department of Water Resources, P.O. Box 388, Sacramento, Calif. 95802.	Los Angeles County Engineer, 108 West Second St., Room 708, Los Angeles, Calif. 90012.	July 10, 1970. Emergency. Aug. 24, 1973. Regular.
				California Insurance Department, 107 South Broadway, Los Angeles, Calif. 90012, and 1407 Market St., San Francisco, Calif. 94103.		
Colorado	Pueblo	Pueblo, City of	I 08 101 2050 01 through I 08 101 2050 09	Colorado Water Conservation Board, Room 102, 1845 Sherman St., Denver, Colo. 80203.	Office of the City Manager, City of Pueblo, 1 City Hall Place, Pueblo, Colo. 81003.	June 18, 1971. Emergency. Aug. 24, 1973. Regular.
				Colorado Division of Insurance, 106 State Office Bldg., Denver, Colo. 80203.		
Florida	Indian River	Indian River Shores, Town of.	----------	----------	----------	Aug. 15, 1973. Emergency.
Ohio	Franklin	Reynoldsburg, City of.	----------	----------	----------	Do.
Rhode Island	Newport	Portsmouth, Town of.	I 44 005 0185 01 through I 44 005 0185 09	Rhode Island Statewide Planning Program, 265 Melrose St., Providence, R.I. 02907.	Office of the Town Clerk, Town of Portsmouth, Portsmouth, Va. 02871.	July 30, 1971. Emergency. Aug. 24, 1973. Regular.
				Rhode Island Insurance Division, 169 Weybosset St., Providence, R.I. 02903.		
Texas	Bexar	San Antonio, City of.	----------	----------	----------	Aug. 15, 1973. Emergency.
Virginia		Norfolk, City of.	----------	----------	----------	Do.
Do.	Prince William	Dumfries, Town 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: August 8, 1973.

CHARLES W. WIECKING,
Acting Federal Insurance Administrator.

[FR Doc.73-16779 Filed 8-14-73;8:45 am]

[Docket No. FI-193]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

The Federal Insurance Administrator finds that comment and public procedure and the use of delayed effective dates in identifying the areas of communities which have special flood or mudslide hazards, in accordance with 24 CFR Part 1915, would be contrary to the public interest. The purpose of such identifications is to guide new development away from areas threatened by flooding, a purpose which is accomplished pursuant to statute by denying subsidized flood insurance to structures thereafter built within such areas. The practice of issuing proposed identifications for comment or of delaying effective dates would tend to frustrate this purpose by permitting imprudent or unscrupulous builders to start construction within such hazardous areas before the official identification became final, thus increasing the communities' aggregate exposure to loss of life and property and the agency's financial exposure to flood losses, both of which are contrary to the statutory purposes of the program. Accordingly, the Department is not providing for public comment in issuing this amendment and it will become effective on August 14, 1973. Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1915.3 List of communities with special hazard areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
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California	Los Angeles	Unincorporated areas.	H 06 037 0000 07 through H 06 037 0000 12	Department of Water Resources, P.O. Box 388, Sacramento, Calif. 95802. California Insurance Department, 107 South Broadway, Los Angeles, Calif. 90012, and 1407 Market St., San Francisco, Calif. 94103.	Los Angeles County Engineer, 108 West Second St., Room 708, Los Angeles, Calif. 90012.	Aug. 24, 1973.
Colorado	Pueblo	Pueblo, City of	H 08 101 2650 01 through H 08 101 2650 09	Colorado Water Conservation Board, Room 102, 1845 Sherman St., Denver, Colo. 80203. Colorado Division of Insurance, 106 State Office Bldg., Denver, Colo. 80203.	Office of the City Manager, City of Pueblo, 1 City Hall Pl., Pueblo, Col. 81003.	Do.
New Jersey	Mercer	Pennington, Borough of.	H 34 021 2550 01	Bureau of Water Control, Department of Environmental Protection, P.O. Box 1390, Trenton, N.J. 08625. New Jersey Department of Insurance, State House Annex, Trenton, N.J. 08625.	Borough Clerk, Borough of Pennington, Borough Hall, Pennington, N.J. 08534.	Do.
Do.	Monmouth	Allenhurst, Borough of.	H 34 025 0003 01	do	Borough Clerk, Borough of Allenhurst, Borough Hall, Allenhurst, N.J. 07711.	Do.
Do.	do	West Long Branch, Borough of.	H 34 025 3580 01	do	Borough Clerk, Borough of West Long Branch, Borough Hall, West Long Branch, N.J. 07764.	Do.
New York	Steuben	Corning, City of	H 36 101 1360 01 H 36 101 1360 02	New York State Department of Environmental Conservation, Division of Resources, Management Services, Bureau of Water Management, Albany, N.Y. 12201. New York State Insurance Department, 123 William St., New York, N.Y. 10038, and 324 State St., Albany, N.Y. 12210.	City Hall, City of Corning, Cedar St., Corning, N.Y. 14830.	Do.
Pennsylvania	Bucks	Plumstead, Township of.	H 42 017 5583 01 through H 42 017 5583 03	Department of Community Affairs, Commonwealth of Pennsylvania, Harrisburg, Pa. 17120. Pennsylvania Insurance Department, 108 Finance Bldg., Harrisburg, Pa. 17120.	Plumstead Township Bldg., Stump Rd., Plumsteadville, Pa. 18949.	Do.
Do.	Cumberland	New Cumberland, Borough of.	H 42 041 5810 01	do	Borough Bldg., Borough of New Cumberland, Seventh and Reno St., New Cumberland, Pa. 17070.	Do.
Do.	do	West Fairview, Borough of.	H 42 041 9050 01	do	West Fairview Borough Municipal Bldg., 410 Cherry St., West Fairview, Pa. 17025.	Do.
Do.	Huntingdon	Mount Union, Borough of.	H 42 061 5600 01 H 42 061 5600 02	do	Mount Union Borough Office, Municipal Bldg., 9-11 West Market St., Mount Union, Pa. 17066.	Do.
Do.	Luzerne	Nanticoke, City of.	H 42 079 5670 01	do	Nanticoke City Hall, West Main St., Nanticoke, Pa. 18634.	Do.
Do.	Lycoming	Muncy, Borough of.	H 42 081 5630 01	do	Borough Bldg., Borough of Muncy, Five Main St., Muncy, Pa. 17756.	Do.
Rhode Island	Newport	Portsmouth, Town of.	H 44 005 0185 01 through H 44 005 0185 09	Rhode Island Statewide Planning Program, 265 Melrose St., Providence, R.I. 02907. Rhode Island Insurance Division, 169 Weybosset St., Providence, R.I. 02903.	Office of the Town Clerk, Town of Portsmouth, Portsmouth, Va. 02871.	Do.
Wisconsin	Marathon	Rothschild, Village of.	H 55 073 4230 02 (Revised 8-24-73)	Department of Natural Resources, P.O. Box 450, Madison, Wis. 53701. Wisconsin Insurance Department, 212 North Bassett St., Madison, Wis. 53703.	Rothschild Village Hall, Rothschild, Wis. 54474.	May 11, 1973.

(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: August 8, 1973.

CHARLES W. WIECKING,
Acting Federal Insurance Administrator.

[FR Doc.73-16778 Filed 8-14-73;8:45 am]

Title 36—Parks, Forests and Memorials

CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE

PART 231—GRAZING

Protection, Management, and Control of Wild Free-Roaming Horses and Burros

On December 20, 1972, a notice of proposed rulemaking was published in the FEDERAL REGISTER (37 FR 28077). The proposal would amend 36 CFR Part 231 for the purpose of providing authority and direction to the Chief, Forest Service, for protection, managing, and controlling those wild free-roaming horses and burros that are associated all or part time with National Forest System lands. In addition to the above publication the proposal was discussed in a draft environmental statement filed with the Council on Environmental Quality on December 21, 1972, and in a final environmental statement filed on July 6, 1973. The proposed rule making and the environmental statements were reviewed in detail with the National Advisory Board on Wild Free-Roaming Horses and Burros. National Forest Grazing Advisory Boards were also called upon to review the proposal as provided by the Requirements of the Granger-Thye Act (sec. 18, 64 Stat. 87, 16 U.S.C. 580k). All comments received from Advisory Boards and comments received from the public at large were considered in preparation of a final regulation. Revisions made as a result of the comments received and further analysis by USDA and the Forest Service are summarized below:

1. Section 231.11(a) *Definitions*, "Agent of the Secretary" has been added to the list of definitions.

2. Section 231.11(a) *Definitions*, the term "excess animals" has been substituted for "surplus animals."

3. Section 231.11(a) *Definitions*, the term "1971 Horse and Burro Territory" has been defined and adopted as a means of more clearly identifying the areas where Wild Horses and Burros were found at the time of the Act.

4. Direction has been established in § 231.11(b)(3) to identify the 1971 Horse and Burro Territory as rapidly as possible.

5. Section 231.11(c) *Ownership Claims*, has been revised to provide more specific information on the procedures to be followed and to make specific reference to the use of Cooperative Agreements with State agencies administering the State estray laws. The phrase "evidence of ownership" has been substituted for "probable ownership."

6. Section 231.11(e) *Other Lands, Protection Upon*, has been slightly revised to show more clearly that Wild Free-Roaming Horses and Burros associated with the National Forest System lands are protected whenever they move to lands of any other ownership or jurisdiction.

7. Section 231.11(h) *Cooperative Agreements*, has been simplified to eliminate any implied restriction in the use of cooperative agreements.

8. Section 231.11(j) *Disposal of Animals*, has been slightly revised for clarity concerning Acts of Mercy.

As so revised the proposal is hereby adopted to read as set forth below. It becomes effective immediately.

§ 231.11 Wild free-roaming horses and burros.

The Chief, Forest Service, shall protect, manage, and control wild free-roaming horses and burros on lands of the National Forest System and shall maintain vigilance for the welfare of wild free-roaming horses and burros that wander or migrate from National Forest System lands. If these animals also use lands administered by the Bureau of Land Management as a part of their habitat, the Chief, Forest Service, shall cooperate to the fullest extent with the Department of the Interior through the Bureau of Land Management in administering the animals.

(a) *Definitions.* As used in this section,

(1) "Agent of the Secretary" means any employee of the Forest Service or other individual who either individually or by virtue of the position he holds is delegated authority by the Chief, Forest Service, to take actions under the Regulations of this Section.

(2) "Wild Free-Roaming Horses and Burros" shall mean all unbranded and unclaimed horses and burros and their progeny that have used lands of the National Forest System on or after December 15, 1971, or do hereafter use these lands as all or part of their habitat. Unbranded, claimed horses and burros where the claim is found to be erroneous are also considered as wild and free-roaming if they meet the criteria above. However, this definition shall not include any horse or burro introduced onto National Forest System lands on or after December 15, 1971, by accident, negligence, or willful disregard of private ownership.

(3) "Herd" means one or more stallions and their mares, or jacks and their jennies.

(4) "Excess animals" means wild free-roaming horses or burros determined to be in excess of populations proper to maintain a thriving natural ecological balance and harmonious multiple use relationship on National Forest System lands.

(5) "Problem animal" means a wild free-roaming horse or burro whose demonstrated individual habits or traits pose an undue threat to the safety or welfare of persons, wildlife, livestock, or property.

(6) "National Forest System lands" are the National Forests, National Grasslands and other Federal lands for which the Forest Service has administrative jurisdiction.

(7) "1971 Horse and Burro Territory" means the National Forest System areas to be identified by the Chief, Forest Service, as the areas which were the territorial habitat of wild free-roaming horses and/or burros at the time of the passage of the Act.

(8) "Wild Horse and Burro Range" means an area of National Forest System land specifically so designated by the Chief, Forest Service, from 1971 Horse and Burro Territory, for the purpose of sustaining an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the National Forest System lands.

(9) "Act" means the Act of December 15, 1971 (85 Stat. 649, 16 U.S.C. 1331-1340), Public Law 92-195.

(10) "National Advisory Board" means the Advisory Board as established jointly by the Secretary of Agriculture and the Secretary of the Interior under the provisions of the Act.

(b) *Administration of Wild Free-Roaming Horses and Burros and their Environment.* The Chief, Forest Service, shall:

(1) Administer wild free-roaming horses and burros and their progeny on the National Forest System land in the areas where they now occur (1971 Horse and Burro Territory) to maintain a thriving ecological balance, considering them an integral component of the multiple use resources, and regulating their population and accompanying need for forage and habitat in correlation with that of uses recognized under the Multiple Use-Sustained Yield Act of June 12, 1960 (74 Stat. 215; 16 U.S.C. 528-531). He may designate areas of National Forest System land as specific Wild Horse and Buro Ranges in those unique and singularly important situations where he determines such designation as especially fitting to meet the purposes of the Act and the Multiple Use-Sustained Yield Act and after consultation with the appropriate agencies of the State where such Range is proposed and with the National Advisory Board.

(2) Provide direct administration for the welfare of wild free-roaming horses and burros that are located on National Forest System land by use of the Forest Service organization rather than by the granting of leases and permits for maintenance of these animals to individuals and organizations.

(3) Direct that an identification of all areas meeting the definition of 1971 Horse and Burro Territory be completed as rapidly as possible.

(c) *Ownership claims.* Individuals wishing to assert a claim of ownership under the estray laws of a State to any unbranded, unauthorized horse or burro on National Forest System lands must present a written claim and evidence of ownership to the Forest Supervisor before permission will be granted to attempt a capture of the animal(s) involved. A claimant must support his claim in accordance with whatever criteria are cooperatively agreed to between the Forest Service and the State Agency administering the State estray laws. In the absence of a cooperative agreement a claim will be substantiated in accordance with State law, will be reviewed by

the Forest Service for compliance with such law, and will require Forest Service approval. All ownership claims to unauthorized, unbranded horses and burros located on National Forest System land on or after December 15, 1971, must be filed with the Forest Supervisor by November 15, 1973. Capture attempts must be authorized by written permission of the Forest Supervisor. He shall establish in the authorization a specific, reasonable period of time to allow capture of claimed animals and shall stipulate other conditions, including visual observation by Forest Service personnel, that he deems necessary to minimize stress on associated wild free-roaming horses and burros and to protect other resources involved. Prior to authorizing the capture of a claimed animal, the Forest Supervisor shall provide whatever public notice is appropriate in order that all interested parties may take notice and furnish him with any pertinent information relative to the claimed animals.

Prior to removal of claimed, captured animals from National Forest System lands, the claimant shall substantiate his claim of ownership in accordance with whatever criteria are cooperatively agreed to between the Forest Service and the State agency administering the State estray laws. In the absence of a cooperative agreement, ownership claims shall be substantiated in accordance with State law and subject to approval of the Forest Service.

(d) *Removal of other horses and burros.* In the event branded horses or burros or horses or burros which do not come within the definition in paragraph (a) of this section are intermingled at any time with herds of wild free-roaming horses or burros, the Forest Supervisor shall require and allow their removal only by methods which do not subject the wild ones to physical damage or undue stress. Horses or burros introduced onto National Forest System lands after December 15, 1971, by accident, negligence, or wilful disregard of private ownership shall be considered in trespass and treated in accordance with 36 CFR 261.7 and 261.13.

(e) *Other lands, protection upon.* Individual animals and herds of wild free-roaming horses and burros, as components of the National Forest System lands, will be under the protection of the Chief, Forest Service, even though they may thereafter move to lands of other ownership or jurisdiction as a part of their annual territorial habitat pattern or for other reasons. The Chief will exercise surveillance of these animals through the use of cooperative agreements and as otherwise authorized by law, and act immediately through appropriate administrative or criminal and civil judicial procedures to provide them the protective measures of the Act at any time he has cause to believe its provisions are being violated.

(f) *Private lands, removal from.* Owners of land upon which wild free-roaming horses and burros have strayed from National Forest System lands may request their removal by calling the nearest office of either the Forest Service or Federal Marshal.

(g) *Private lands, maintenance.* Owners of land who wish to maintain wild free-roaming horses and burros which have strayed onto their lands from National Forest System lands may do so by notifying the nearest office of the Forest Service in timely fashion and providing such information on a continuing basis as the Chief, Forest Service, may require. Such owners shall protect the wild free-roaming horses and burros on their lands. They may not, in so maintaining these animals, impede their return to National Forest System lands unless authorized by cooperative agreement with the Forest Service.

(h) *Cooperative agreements.* The Chief, Forest Service, may enter into cooperative agreements as he deems necessary to further the protection, management, and control of wild free-roaming horses and burros.

(i) *Relocation of animals.* The Chief, Forest Service, may cause wild free-roaming horses and burros to be captured under the supervision of Forest Service personnel and relocated if they are found to be "excess" animals, "problem" animals, or if it is necessary to prevent their repetitive return to private land from which their removal has been requested.

(1) Relocation upon National Forest System land may be made only to areas identified as 1971 Horse or Burro Territory, and if suitable habitat capacity is available.

(2) Animals may be placed in the custody of private persons, organizations, and other Governmental agencies through the use of a cooperative agreement. Such custodial care arrangements must require that the animals be maintained and protected in accordance with the Act, and not used for commercial exploitation.

(j) *Disposal of animals.* No person except a duly designated Agent of the Secretary shall destroy any wild free-roaming horse or burro. Such Agents may destroy wild free-roaming horses or burros under the following circumstances:

(1) Severely injured or seriously sick animals may be destroyed immediately in the most humane manner possible as an Act of Mercy.

(2) Old, sick, and lame animals may be destroyed in the most humane manner possible after appropriate consultation with the National Advisory Board.

(3) When the Chief, Forest Service, finds it necessary to remove wild free-roaming horses or burros for the reasons identified in Section (i) and he determines there is no practical way to effect either their capture or their relocation, the animal(s) shall be destroyed in the most humane manner possible. To the extent possible, such problems will be anticipated and reviewed with the National Advisory Board before action is taken.

(k) *Disposal of carcasses.* The remains of deceased wild free-roaming horses and burros including those in the custody of private parties may be disposed of in any customary manner under State sanitary codes but in no event will they be processed into a commercial product.

(l) *Agents of the Secretary.* The Chief, Forest Service, is authorized to designate Forest Service personnel to serve as "agents of the Secretary" in accomplishing the purposes of the Act and these regulations. The Chief, Forest Service, may also appoint other individuals to serve as "agents of the Secretary" to assist Forest Service personnel in specific situations of short duration.

(m) *Management coordination.* All management activities by the Chief, Forest Service, shall be carried out in consultation with the appropriate agencies of the State involved. The expert advice of qualified scientists in the fields of biology and ecology shall also be sought in administering wild free-roaming horses and burros. The advice and suggestions of agencies, qualified scientists, and other qualified interest groups shall be made available to the National Advisory Board for their use and consideration. Actions taken in connection with private ownership claims shall be coordinated to the fullest extent possible with the State agency responsible for livestock estray law administration.

(n) *National Advisory Board.* The Chief, Forest Service, shall appoint a representative to attend all meetings of the National Advisory Board for Wild Free-Roaming Horses and Burros and to function as prescribed by the Memorandum of Agreement between the Department of the Interior and the Department of Agriculture and the Joint Charter issued by the Secretary of the Interior and the Secretary of Agriculture. Policies and guidelines relative to proposals for the establishment of ranges, adjustments in number, relocation and disposal of animals, and other matters relating generally to the protection, management, and control of wild free-roaming horses and burros shall be presented to the National Advisory Board for recommendations.

(o) *Studies.* The Chief, Forest Service, is authorized and directed to undertake those studies of the habits and habitat of wild free-roaming horses and burros that he may deem necessary. In doing so, he shall consult with the appropriate agencies of the State(s) involved.

(p) *Arrest.* Any employee designated by the Chief, Forest Service, shall have the power to arrest without warrant, any person committing in the presence of the employee a violation of the Act or of the regulations in this section and to take such person immediately for examination or trial before an officer or court of competent jurisdiction. Any employee so designated shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of the Act or of the regulations in this section.

(q) *Penalties.* In accordance with Section 8 of the Act, any person who:

(1) Willfully removes or attempts to remove a wild free-roaming horse or burro from the National Forest System lands, without authority from the Chief, Forest Service, or;

(2) Converts a wild free-roaming horse or burro to private use, without authority from the Chief, Forst Service, or;

(3) Maliciously causes the death or harassment of any wild free-roaming horse or burro, or;

(4) Processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro, or;

(5) Sells, directly or indirectly, a wild horse or burro allowed on private or leased land pursuant to Section 4 of the Act, or;

(6) Willfully violates a regulation issued pursuant to the Act shall be subject to a fine of not more than $2,000 or imprisonment for not more than 1 year, or both. Any person so charged with such violation by the authorized officer may be tried and sentenced by a United States commissioner or magistrate, designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided in section 3401, Title 18, U.S.C.

(85 Stat. 649 (16 U.S.C. 1331–1340); Sec. 1, 30 Stat. 35, as amended (16 U.S.C. §51); Sec. 32, 50 Stat. 525, as amended (7 U.S.C. 1011); 74 Stat. 215 (16 U.S.C. 528–531))

ROBERT W. LONG,
Assistant Secretary for Conservation, Research and Education.

AUGUST 6, 1973.

[FR Doc.73-16912 Filed 8-14-73;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5354]

[Arizona 7131]

ARIZONA

Withdrawal for National Forest Recreation Area and Administrative Site

Correction

In FR Doc. 73-15433 appearing on page 20081 in the issue of Friday, July 27, 1973, in the second line of the description of the Chevelon Ranger Station Administrative Site a comma should be inserted immediately after "NE¼, N½ SE¼".

[Public Land Order 5355]

[Colorado 17285]

COLORADO

Partial Revocation of Powersite Reserve No. 133

Correction

In FR Doc. 73-15434 appearing on page 20081 in the issue of Friday, July 27, 1973, in the second line of the land description, insert "29" between "Sec." and "N½NE¼".

[Public Land Order 5362]

[Oregon 7878]

OREGON

Withdrawal for National Forest Reservoir and Recreation Area

Correction

In FR Doc. 73-15650 appearing at page 20327 in the issue of Tuesday, July 31, 1973, in the description of the Balm Creek Dam, Reservoir, and Recreation Area, in the fifth line, the coordinates "NW¼SE¼, SW¼" should read "NW¼ SE¼SW¼"; and in the penultimate line the coordinates "SW¼ NW¼" should read "SW¼NW¼".

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular No. 2347]

WILD FREE-ROAMING HORSE AND BURRO MANAGEMENT

Protection, Management, Control and Reservation of Forage

On page 28073 of the FEDERAL REGISTER of December 20, 1972, there was published a notice and text of a proposed amendment to Parts 4110, 4120 and 4710 of Title 43, Code of Federal Regulations. The purpose of the amendment was to provide regulations to implement the Act of December 15, 1971 (16 U.S.C. 1331–1340), which requires the Secretary of the Interior to protect, manage, and control wild free-roaming horses and burros on public lands managed by the Bureau of Land Management.

The proposal would add a new Group 4700, Wild Free-Roaming Horse and Burro Management, to the regulations. It would also amend 43 CFR Subparts 4115 and 4121 to provide specifically for a reservation of forage required by wild free-roaming horses and burros on public lands.

Interested persons were given until February 5, 1973, to submit comments, suggestions or objections to the proposed amendment. Thirty-four comments were received.

The written comments and suggestions were all evaluated. The proposed rulemaking and the matters raised were considered by the National Advisory Board on Wild Free-Roaming Horses and Burros in open meetings with public participation. Grazing district advisory boards also submitted views on the proposed rulemaking. Based upon the comments and suggestions received, numerous editorial changes and changes in wording have been made in Group 4700 for clarification and for strengthening the regulations in terms of protection of wild horses and burros. Principal differences between the rules as proposed and as adopted include the following:

1. Section 4710.0–5 is amended by inserting a definition of "excess animals" and "problem animal" following paragraph (c) and redesignating the remaining paragraphs consecutively. The definition of "wild free-roaming horses and burros," paragraph (b), is amended to clarify that their progeny are included.

2. Section 4711.3 is amended to include "private citizens" as a proper party for cooperative agreements in furtherance of the purpose of the regulations.

3. Section 4712.1–2 is revised to clarify that herds may be managed either on a specifically designated range or as a component of public land use.

4. Section 4712.2–3 is amended to recognize herd management plans.

5. Section 4712.3 is revised to refer to "excess animals" rather than "surplus animals," with appropriate changes throughout Subpart 4712 to effectuate that change.

6. Section 4712.3–1 is revised to specify appropriate supervision during the capture of excess or problem animals.

7. Section 4712.3–2 is amended to recognize the existence of "problem animals."

8. Section 4712.3–4 is amended to delete language not pertaining to acts of mercy.

9. Section 4712.4–3 is amended to clarify requirements for the removal of animals from private lands in areas where the private landowner is not required by State statute to fence the private lands.

10. Subpart 4713 is revised to provide more specific guidelines concerning claims.

11. Subpart 4714 is amended to delete proposed sections on related prohibitions and penalties. These are extraneous to the regulations in Part 4700.

A notice of the availability of a final environmental statement on the proposed regulations for the management of wild free-roaming horses and burros on public lands administered by the Bureau of Land Management was published on page 18474 of the FEDERAL REGISTER of July 11, 1973.

Full consideration has been given to all relevant matters presented by interested parties. Accordingly, the proposed amendment is hereby adopted, as revised, and is set forth below in its entirety. This amendment shall become effective August 15, 1973.

The immediate effectiveness of these regulations will enable action to begin for removal of the claimed horses and burros from public lands without undue delay and under suitable weather conditions.

W. R. WILSON,
Acting Deputy Assistant Secretary of the Interior.

AUGUST 13, 1973.

Subchapter D, Chapter II, of Title 43 of the Code of Federal Regulations is amended as follows:

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

1. The first sentence of paragraph (d) of § 4115.2–1 of Subpart 4115 is revised to read as follows:

§ 4115.2–1 License and permit procedures; requirements and conditions.

* * * * *

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of §§ 4111.1, 4115.2–1(e), 4115.1–1(k)(4), 4114.4–4, 4115.2–5(a)(6), 4712.12–3, or 4712.1–4 of this chapter.

* * * * *

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS AND EXCLUSIVE OF ALASKA); GENERAL

2. Paragraph (a) of § 4121.2–1 of Subpart 4121 is revised to read as follows:

§ 4121.2–1 Minimum requirements, rating and classification of lease land.

(a) *Land Resource Consideration.* The authorized officer will determine the availability of public land for grazing leases and the amount of forage available for use by livestock in conjunction with considerations of forage reservations for watershed protection, wildlife, wild free-roaming horses and burros, and other multiple uses.

* * * * *

3. A new Group 4700 is added to Subchapter D to read as follows:

Group 4700—Wild Free-Roaming Horse and Burro Management

PART 4710—WILD FREE-ROAMING HORSE AND BURRO MANAGEMENT; GENERAL

Subpart 4710—Purpose; Objectives; Authority; Definitions; Policy

Sec.
- 4710.0–1 Purpose.
- 4710.0–2 Objectives.
- 4710.0–3 Authority.
- 4710.0–5 Definitions.
- 4710.0–6 Policy.

Subpart 4711—Management Coordination

- 4711.1 Recommendations from the joint national advisory board on wild free-roaming horses and burros.
- 4711.2 State agencies.
- 4711.3 Cooperative agreements.

Subpart 4712—Management Considerations

- 4712.1 Management; General.
- 4712.1–1 Planning.
- 4712.1–2 Intensity of management.
- 4712.1–3 Habitat reservation and allocation.
- 4712.1–4 Closures to livestock grazing.
- 4712.2 Establishment of specifically designated ranges or herd management areas.
- 4712.2–1 Designation.
- 4712.2–2 Criteria for designation.
- 4712.2–3 Management plan.
- 4712.3 Removal and relocation or disposal of excess animals.
- 4712.3–1 Method of capture.
- 4712.3–2 Relocation of animals.
- 4712.3–3 Disposal.
- 4712.3–4 Acts of mercy.
- 4712.3–5 Disposal of carcasses.
- 4712.4 Animals on private lands.
- 4712.4–1 Allowing animals on private lands.
- 4712.4–2 Active maintenance of animals on private lands.
- 4712.4–3 Removal of animals from private lands.

Subpart 4713—Protection of Wild Free-Roaming Horses and Burros in the Identification and Removal of Claimed and Trespass Horses and Burros

- 4713.1 General.
- 4713.2 Action on claims.

Subpart 4714—Enforcement Provisions

- 4714.1 Arrest.
- 4714.2 Penalties.

Subpart 4710—Purpose; Objectives; Authority; Definitions; Policy

§ 4710.0–1 Purpose.

To implement the laws relating to wild free-roaming horses and burros on public lands.

§ 4710.0–2 Objectives.

The objective of these regulations is to provide criteria and procedures for protecting, managing, and controlling wild free-roaming horses and burros as a recognized component of the public land environment.

§ 4710.0–3 Authority.

The Act of December 15, 1971 (16 U.S.C. 1331–1340), and the Act of June 28, 1934 (43 U.S.C. 315–315r).

§ 4710.0–5 Definitions.

(a) "Authorized Officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described herein.

(b) "Wild free-roaming horses and burros" means all unbranded and unclaimed horses and burros and their progeny that have used public lands on or after December 15, 1971, or that do use these lands as all or part of their habitat, including those animals given an identifying mark upon capture for live disposal by the authorized officer. Unbranded, claimed horses and burros where the claim is found to be erroneous are also considered as wild and free-roaming if they meet the criteria above. However, this definition shall not include any horse or burro which entered or was introduced onto public lands after December 15, 1971, by accident, negligence, or willful disregard of ownership.

(c) "Herd" means one or more stallions and their mares or jacks and their jennies.

(d) "Excess animals" means wild free-roaming horses or burros determined to be in excess of populations proper to maintain a thriving natural ecological balance and harmonious multiple-use relationship in an area of the public lands.

(e) "Problem animal" means a wild free-roaming horse or burro whose demonstrated individual habits or traits pose an undue threat to the safety or welfare of persons, wildlife, livestock, or property; or a wild free-roaming horse or burro infected by a contagious disease or suspected of being diseased or seriously ill.

(f) "Public lands" means any lands administered by the Secretary of the Interior through the Bureau of Land Management.

(g) "Wild horse or burro range" means a specifically designated area of land needed to sustain a herd or herds of wild free-roaming horses or burros, and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple use management of the public lands.

(h) "Management plan" means a written program of action designed to protect, manage, and control wild free-roaming horses and burros and maintain a natural ecological balance on the public lands.

(i) "Act" means the Act of December 15, 1971 (16 U.S.C. 1331–1340).

(j) "Advisory Board" means the joint advisory board established by the Secretary of the Interior and the Secretary of Agriculture pursuant to section 7 of the Act.

§ 4710.0–6 Policy.

(a) Wild free-roaming horses and burros are under the jurisdiction of the Secretary of the Interior and will be managed as an integral part of the natural systems of the public lands. They will be protected from unauthorized capture, branding, undue disturbance, and destruction. They and their habitat will be managed and controlled in a manner designed to achieve and maintain a thriving ecological balance on the public lands and a thriving population of sound, healthy individuals, all in accordance with the basic program policies for public land management set forth in Subpart 1725 of this chapter.

(b) Wild free-roaming horses and burros on the public lands will be managed by the authorized officer, with full public participation and such cooperative arangements as he may find helpful. Management on public lands will not be assigned to any private individual or association through a grazing license, lease, or permit.

Subpart 4711—Management Coordination

§ 4711.1 Recommendations from the joint national advisory board on wild free-roaming horses and burros.

Policies and guidelines relative to proposals for establishment of ranges, proposed management plans, adjustments in number, relocation and disposal of animals, and other matters relating generally to the protection, management, and control of wild free-roaming horses and burros shall be presented to the Advisory Board for recommendations.

§ 4711.2 State agencies.

(a) All management activities including, but not limited to, establishment of ranges and adjustments in forage allocation shall be planned and executed in consultation with the appropriate State agency to further consider the needs of all wildlife, particularly endangered species.

(b) All actions taken in connection with private ownership claims to unbranded horses and burros shall be coordinated to the fullest extent possible with the appropriate State agency.

§ 4711.3 Cooperative agreements.

The authorized officer may enter into cooperative agreements with other landowners, private citizens, nonprofit organizations, and with Federal, State, and local governmental agencies as he deems necessary for purposes of protecting, managing and controlling wild free-roaming horses and burros. Where the grazing patterns of the animals require utilization of lands in other ownerships or administration, the authorized officer shall seek cooperative agreements to insure continuance of such use.

Subpart 4712—Management Considerations

§ 4712.1 Management; general.

§ 4712.1–1 Planning.

In planning for management, protection, and control of wild free-roaming horses and burros, including the establishment of specifically designated ranges, determination of desirable numbers and other management provisions of these regulations, the authorized officer will utilize the Bureau's multiple-use planning system with its requirements for public participation by and coordination with others.

§ 4712.1–2 Intensity of management.

Wild free-roaming horse or burro herds may be managed either as one of the components of public land use on a specifically designated wild horse or burro range. Management practices shall be at the minimal feasible level and shall be consistent to the extent possible and practical with the maintenance of their free-roaming behavior. Management facilities should be designed and constructed to the extent possible to maintain the free-roaming behavior of the herds.

§ 4712.1–3 Habitat reservation and allocation.

The biological requirements of wild free-roaming horses and burros will be determined based upon appropriate studies or other available information. The needs for soil and watershed protection, domestic livestock, maintenance of environmental quality, wildlife, and other factors will be considered along with wild free-roaming horse and burro requirements. After determining the optimum number of such horses and burros to be maintained on an area, the authorized officer shall reserve adequate forage and satisfy other biological requirements of such horses and burros and, when necessary, adjust or exclude domestic livestock use accordingly. See §§ 4115.2–1(d) and 4121.2–1(a) of this chapter.

§ 4712.1–4 Closures to livestock grazing.

The authorized officer may close public lands to use by all or a particular class of domestic livestock where he finds it necessary to allocate all available forage to, or to satisfy other biological requirements of, wild free-roaming horses or burros. Such closures may be made only after appropriate public notice and in accordance with the procedures for reduction or cancellation of grazing privileges provided for under the provisions of this subchapter. See §§ 4115.2–1(d) and 4121.2–1(a) of this chapter.

§ 4712.2 Establishment of specifically designated ranges or herd management areas.

§ 4712.2–1 Designation.

The authorized officer may designate and maintain specifically designated ranges principally for the protection and preservation of wild free-roaming horses and burros.

§ 4712.2–2 Criteria for designation.

In designating specific ranges and herd management areas, the authorized officer, in addition to any other provisions of these regulations, shall:

(a) Consider only those areas utilized by wild free-roaming horses or burros as all or part of their habitat on December 15, 1971.

(b) Consider only those areas where self-sustaining herds can maintain themselves within their established utilization and migratory patterns.

(c) Consider only those areas which are capable of being managed as a unit to ensure a sustained yield of forage without jeopardy to the resources.

(d) Develop a wild free-roaming horse or burro management plan in accordance with § 4712.2–3.

§ 4712.2–3 Management plan.

The authorized officer shall, in connection with the designation of a specific range, develop a proposed wild free-roaming horse or burro management plan designed to protect, manage, and control wild free-roaming horses and burros on the area on a continuing basis. The authorized officer may also develop herd management plans as part of the multiple use management on areas outside of specifically designated wild horse or burro ranges. All management plans shall be developed in accordance with the Bureau's planning system and shall govern management of the area.

§ 4712.3 Removal and relocation or disposal of excess or problem animals.

§ 4712.3–1 Method of capture.

Under the supervision of the authorized officer, wild free-roaming horses and burros may be captured, corralled and held under humane conditions pending disposal of excess or problem animals under the provisions of this Subpart.

§ 4712.3–2 Relocation of animals.

(a) The authorized officer may relocate wild free-roaming horses and burros on public lands when he determines such action is necessary to: (1) Relieve overgrazed areas, (2) locate animals removed from private lands in accordance with § 4712.4–3, (3) remove problem animals, or (4) achieve other purposes deemed to be in the interest of proper resource and herd management. Such animals relocated on public lands shall not be introduced onto areas of the public lands which were not used by wild free-roaming horses or burros as all or part of their habitat on December 15, 1971.

(b) The authorized officer may also place animals in the custody of private persons, organizations or other governmental agencies. Custodial arrangements shall be made through cooperative agreement which shall include provisions to maintain and protect the animals and ensure that the animals will not be used for commercial exploitation. The authorized officer may, in his discretion, mark animals placed in private custody for identification purpose.

§ 4712.3–3 Disposal.

Where the authorized officer finds it necessary to remove excess animals from areas of the public lands, and he determines that it is not practical to relocate them on public lands or capture and remove them for private maintenance under § 4712.3–2, he may destroy such animals in the most humane manner possible. No person, except the authorized officer or his authorized representative, shall destroy wild free-roaming horses and burros.

§ 4712.3–4 Acts of mercy.

Any severely injured or seriously sick animals will be destroyed in the most humane manner possible as an act of mercy.

§ 4712.3–5 Disposal of carcasses.

Carcasses shall be disposed of in any customary manner under State sanitary statutes. In no event shall carcasses, or any part thereof, including those in the authorized possession of private parties, be sold or processed into a commercial product.

§ 4712.4 Animals on private lands.

§ 4712.4–1 Allowing animals on private lands.

Nothing in these regulations shall preclude a private landowner from allowing wild free-roaming horses and burros to remain on his private lands so long as the animals were not willfully removed, enticed, or retained by him or his agent from the public lands.

§ 4712.4–2 Active maintenance of animals on private lands.

Any individual who actively maintains wild free-roaming horses and burros on his private lands shall notify the authorized officer and supply him with a reasonable approximation of their number and location and, when required by the authorized officer, a description of the ani-

mals. Thereafter, he shall furnish an annual report updating the information during the month of January. An individual will be considered to be actively maintaining wild free-roaming horses or burros if he takes measures of any kind designed to protect or enhance the welfare of the animals. No person shall maintain such animals except under cooperative agreement between the private landowner and the authorized officer setting forth the management and maintenance requirements including provisions for regulating disposal of excess animals.

§ 4712.4–3 Removal of animals from private lands.

The authorized officer shall remove, as soon as he can make the necessary arrangements, wild free-roaming horses and burros, from private land at the request of the landowner where the private land is enclosed in a "legal fence." A "legal fence" for this purpose is one which complies with State standards and specifications. In "no fence districts" or other areas where the private landowner is not required by State statute to fence the private land to protect it from trespass by domestic livestock, the authorized officer shall, as soon as he can make the necessary arrangements, remove wild free-roaming horses or burros from such private land at the request of the landowner.

Subpart 4713 is revised. The full text of revised subpart 4713 follows:

Subpart 4713—Protection of Wild Free-Roaming Horses and Burros in the Identification and Removal of Claimed and Trespass Horses and Burros

§ 4713.1 General.

(a) All unauthorized and unbranded horses and burros on the public lands, except those which entered or were introduced onto the public lands after December 15, 1971, by accident, negligence, or willful disregard of ownership are presumed for the purpose of management to be wild free-roaming horses or burros.

(b) The gathering or rounding up of unbranded horses or burros on the public lands where any of such animals are not in fact authorized to be on the public lands pursuant to a grazing license, permit, lease, or other authorization, is prohibited without written authorization from the authorized officer. Also prohibited without written authorization from the authorized officer is the gathering or rounding up of unauthorized branded horses or burros where the branded animals are, or may become, intermingled with wild free-roaming horses or burros, or where the gathering or round up is likely to involve or affect wild free-roaming horses or burros.

§ 4713.2 Action on claims.

(a) Any person claiming ownership under state branding and estray laws of unbranded or branded horses or burros on public land where such animals are not authorized must present evidence of ownership to justify a roundup before permission will be granted to gather such animals. Claims of ownership, with supporting evidence, shall be submitted within 90 days of the effective date of these regulations. All written authorizations to gather claimed animals shall be on a form approved by the Director. After such public notice as the authorized officer deems appropriate to inform interested parties, he may authorize the gathering or roundup. The authorized officer shall provide in the authorization that the gathering or roundup shall be consistent with the legislation which prohibits the use of aircraft or motor vehicles to capture unbranded horses or burros; shall establish in the authorization a reasonable period of time to allow the gathering of the claimed animals; and shall provide such other conditions in the authorization which he deems necessary to minimize stress on any associated wild free-roaming horses or burros and to protect other resources.

(b) After the animals have been gathered the authorized officer and the appropriate state or local official shall inspect each claimed animal in relation to the evidence of ownership previously presented by the claimant. The state or local official shall then make a written determination of ownership concerning each claimed animal pursuant to the state branding and estray laws and any agreement between the Bureau and the appropriate state or local authority. A copy of the written determination shall be provided to the authorized officer. No animal may be removed from the gathering place until the claim of ownership has been proven to the satisfaction of the authorized officer.

(c) Unauthorized horses or burros which have been claimed and have been determined to be privately owned in accordance with the provisions of this Section will be considered to have been in trespass and may not be released until a proper trespass charge has been determined by the authorized officer in accordance with the provisions of 43 CFR 9239.3.

Subpart 4714—Enforcement Provisions

§ 4714.1 Arrest.

The Director of the Bureau of Land Management may authorize such employees as he deems necessary to arrest without warrant, any person committing in the presence of the employee a violation of the Act or of these regulations and to take such person immediately for examination or trial before an officer or court of competent jurisdiction. Any employee so designated shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of the Act or these regulations.

§ 4714.2 Penalties.

In accordance with section 8 of the Act (16 U.S.C. 1338), any person who:

(a) Willfully removes or attempts to remove a wild free-roaming horse or burro from the public lands, without authority from the authorized officer, or

(b) Converts a wild free-roaming horse or burro to private use, without authority from the authorized officer, or

(c) Maliciously causes the death or harassment of any wild free-roaming horse or burro, or

(d) Processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro, or

(e) Sells, directly or indirectly, a wild free-roamng horse or burro maintained on private or leased land pursuant to section 4 of the Act, or the remains thereof, or

(f) Willfully violates any provisions of the regulations under Group 4700, shall be subject to a fine of not more than $2,000 or imprisonment for not more than 1 year, or both. Any person so charged with such violation by the authorized officer may be tried and sentenced by a U.S. commissioner or magistrate, designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided in section 3401, Title 18, U.S.C.

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Title 45—Public Welfare

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

FURNISHING OF ASSISTANCE; NEED AND AMOUNT OF ASSISTANCE

Methods for Determination of Eligibility

Notice of proposed regulations for the programs administered under titles I, IV–A, X, XIV, XVI, and XIX of the Social Security Act, relating to fair hearings, methods of determining eligibility for financial and medical assistance, and recoupment of overpayments was published in the FEDERAL REGISTER on April 20, 1973 (38 FR ~~7623~~ 9820).

A total of 696 letters was received from State and local welfare agencies, members of Congress and State legislatures, other State officials, legal aid groups, recipients and recipient groups and other organizations and individuals.

Specific comments reflected the following substantive concerns:

1. *Local hearings.* Section 205.10(a)(1) and (6). This provision implements (and extends to title IV–A) section 407 of P.L. 92–603, under which local agencies "may put into effect immediately upon issuance its decision upon the matter considered at such hearing".

Opposition to the change was based on the belief that it may be impossible for hearing officers at the local level to issue unbiased decisions and that local agencies would use the procedure to reduce and terminate assistance wrongfully. State and local welfare agencies favoring local hearings believe such hearings will serve to discover errors in agency actions as quickly as possible, while eliminating unnecessary payments of assistance to ineligibles. They also recommended that the due process requirements be spelled out.

The final regulation contains the provision specified in P.L. 92-603 which permits States to utilize local evidentiary hearings in all programs, but changes have been made to provide that evidentiary hearings may be used for questions of initial eligibility; to provide definitive due process procedural requirements regarding the conduct of the local hearing; to make sure the individual's rights are protected; to assure an objective hearing officer who was not involved in the decision at issue; to provide a complete record in case of appeal; and for the claimant to be fully informed of his appeal rights.

2. *Ten-day advance notice.* Section 205.10(a)(4)(i)(A). Opponents of the reduction of the advance notice period from 15 to 10 days expressed concern that a 10-day period was too short for a recipient to decide whether to appeal and to make adjustments to reduced assistance. Many stressed slow mail delivery. Proponents favored the change because it reduced the disproportionate number of overpayments to ineligible individuals, and 10 days is sufficient time for the recipient to assess the correctness of the agency action and request a hearing if he believes the action is erroneous. In the final regulation, the 10-day period is retained. If a State determines that a longer period is advisable, it may provide an extra ten days after the timely notice period during which a hearing may be requested and, where appropriate, assistance paid pending a hearing decision.

3. *Exemptions from advance notice.* Section 205.10(a)(4)(ii). Many commentators opposed these provisions as violating due process; not providing recipients time to adjust to changes in payment; providing no protection against agency error; and generally permitting abuse by local agencies. Recipient groups and other individuals were particularly opposed to the exemption in "likelihood of fraud" situations.

Those in favor spoke to reduction in unnecessary administrative cost and recommended that provision be made for the agency to confirm in writing the oral statements made by recipients.

All exemptions, except the one relating to "likelihood of fraud," are for situations where, as a matter of law, the change in payment results necessarily from the ascertained circumstances in the particular case. The chances of there being a factual dispute are minimal. States are required to mail adequate notice to the recipient not later than the date of action, so that in those unlikely instances of factual dispute, he can request a hearing and obtain reinstatement of aid pending such hearing. Because of questions raised regarding the exception where there is a likelihood of fraud, that provision has been rewritten and will be published as a proposed rule. The States will be requested to monitor their programs to determine the necessity for such a provision and to submit their comments to the Administrator, SRS. If such a provision appears to be necessary, the matter will be reconsidered.

4. *Extension from 60 to 90 days for hearing decisions.* Section 205.10(a)(16). Opponents stated that this extension would result in hardship for applicants and recipients who do not receive aid pending the decision, and enable States to further delay paying assistance to eligible individuals.

Those in favor considered 90 days a more realistic time frame.

In view of the difficult position facing States with substantially increased hearing caseloads, the 60-day period is considered insufficient for the orderly processing of cases. Ninety days for processing hearings is consistent (and in some aspect more stringent than) the period prescribed by Congress for the Federally-administered supplemental security income program enacted by P.L. 92-603.

5. *Grievance procedures in lieu of hearings on questions of law or policy.* Section 205.10(a)(5). Most of the comments in this area argued against this provision on the basis that the hearing procedure provides a viable mechanism for effecting changes in policy. Many legal aid groups pointed out that a recent court case cast doubt on the viability of distinguishing between fact or judgment and policy or law. Those in favor stressed reduction of administrative cost.

In response to these comments and the court case, the regulations have been modified. The States may provide for group hearings on questions of policy or law. They need not provide a hearing where either State or Federal law requires automatic grant adjustments for classes of recipients. On individual requests not resulting from such a change in State or Federal law, assistance must be continued pending a hearing decision unless the hearing officer determines at the hearing that the sole issue is one of State or Federal law or policy or a change in State or Federal law. The provision regarding a grievance system has been deleted since "expression of views" on program policy is part of legislative and rulemaking procedures.

6. *Recoupment of continued assistance when the hearing decision supports agency action.* Section 205.10(a)(6)(i).

Legal aid groups argue that not to continue eligibility until a decision is rendered after a hearing, and advising recipients that assistance paid pending a decision is subject to recoupment, discourages claimants requesting hearings.

Present practices in some States include notifying the recipient on the notice that any aid paid pending the decision may be subject to recoupment. Experience fails to indicate that such practice causes any reluctance on the part of a recipient who desires a hearing because he believes the agency made an error. To provide otherwise invites abuse of the hearing process by these utilizing it as a method of continuing aid for which they are not eligible.

State and local welfare agencies favored the provision as discouraging requests for hearings made without belief that the action is erroneous but solely to secure temporary continuation of assistance. Accordingly, the provision is retained.

7. *Signed application on agency form,* § 206.10(a)(1)(ii); *Revocation of simplified method,* § 205.20; *45 days vs. 30 days for action on applications,* § 206.10(a)(3). A number of comments opposed the requirement for a signed application on an agency form on the grounds it creates hardship on applicants with physical, language, and transportation barriers; discourages eligible persons from applying; adds to administrative costs; and results in denial of or delay in providing assistance.

Signed applications on agency forms are necessary to provide a legal document that clearly signifies the intent of the individual to apply, and the date; that advises the applicant of his rights and responsibilities; that puts him on notice that he may be liable for the truthfulness of the information he includes on the application; that provides a document that may be introduced as evidence in court where fraud has been committed; and that provides the agency with sufficient information to make an accurate determination of eligibility. The final regulations have been modified to permit a responsible person to apply on behalf of a person who is incapacitated or incompetent.

Because of the increased emphasis on verification to reduce the numbers of ineligibles, unacceptable error rates at least partially attributable to the simplified method of determining eligibility, and the careful redeterminations of eligibility necessary in the forthcoming transfer of cases to the SSI program, a more complete method for determining eligibility is both appropriate and necessary.

Objections to the granting of 45 days for action on applications stressed that it would cause undue hardship and delay the granting of assistance; increase agency expenses and inefficiency and increase expenditures for general assistance and emergency assistance. State and local welfare agencies considered it a more realistic time frame.

The time extension is necessary in view of the quality control requirement that eligibility be verified. While it is expected that most applications can be completed in a much shorter time, it is recognized that some cases will require a longer period. Where hardship may result to an apparently eligible individual, many States provide for federally matched emergency assistance for up to 30 days, while the application for assistance is being processed. Moreover, there is no fiscal incentive to delay, since cases found eligible must be paid back to the 30th day after application.

8. *Deletion of constraints on verification.* Sections 205.20 and 206.10. Opponents to change considered that the deletions would lead to abusive State practices in violation of constitutional and legal rights, especially violations of dignity, right to privacy, and freedom from harassment. They also believe the deletions are an authorization by the Secretary to reestablish practices pro-

hibited in the past. Proponents commented that the changes are necessary to maintain accuracy and integrity in the welfare system and are long overdue.

State agencies are aware that individuals on welfare share equal rights with all other residents. We agree that it is important that the regulations specifically prohibit the States from violating constitutional and legal rights; we have therefore included a section which restates that constitutional rights are to be observed and protected. Courts have, of course, spelled out the constitutional and legal rights of individuals.

In order to perform a proper job of eligibility determination, and to avoid penalties for inaccuracy, agencies need to develop, within constitutional constraints, new methods of eligibility determination. Verifications are for the protection of the truly needy, and to restore faith in the welfare system. More funds may then be available to assist eligible individuals after eliminating inaccurate payments to those who are not eligible.

9. *Recoupment of overpayments.* Section 233.20(a)(12). Adverse comments in this area were that the provisions are a disincentive to good administration, and would result in undue hardship on recipients; that it is unfair to hold recipients responsible for agency error; and that the provision of "reasonable limits" on recovery is too vague. Many complained that there was no provision for correction of underpayments. Several State agencies requested that the provisions be made mandatory rather than discretionary.

In response to the comments several changes were made. Recovery of overpayments remains optional with the States. States also retain the option of recouping from available resources, from the assistance grant, or from both sources. An added provision limits to one year prior to the date of discovery, the recoupment of overpayments not resulting from the willful withholding of information. A provision has also been added to require the prompt correction of underpayments. Such payments are limited to one year prior to the date of discovery of the underpayment.

A number of other revisions have been made in the regulation in response to comments, and for technical, editorial and conforming purposes.

Chapter II, Title 45 of the Code of Federal Regulations is amended as set forth below.

PART 205 GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. Section 205.10 is revised to read as follows:

§ 205.10 Hearings.

(a) *State plan requirements.* A State plan under title I, IV–A, X, XIV, XVI or XIX of the Social Security Act shall provide for a system of hearings under which:

(1) The single State agency responsible for the program shall be responsible for fulfillment of hearing provisions which shall provide for:

(i) A hearing before the State agency, or

(ii) An evidentiary hearing at the local level with a right of appeal to a State agency hearing. Where a State agency adopts a system of evidentiary hearings with an appeal to a State agency hearing, it may, in some political subdivisions, permit local evidentiary hearings, and in others, provide for a single hearing before the State agency. Under this requirement hearings shall meet the due process standards set forth in the U.S. Supreme Court decision in Goldberg v. Kelly, 397 U.S. 254 (1970) and the standards set forth in this section.

(2) Hearing procedures shall be issued and publicized by the State agency.

(3) Every applicant or recipient shall be informed in writing at the time of application and at the time of any action affecting his claim:

(i) Of his right to a hearing, as provided in paragraph (a)(5) of this section;

(ii) Of the method by which he may obtain a hearing;

(iii) That he may be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or he may represent himself.

(4) In cases of intended action to discontinue, terminate, suspend or reduce assistance:

(i) The State or local agency shall give timely and adequate notice, except as provided for in paragraphs (a)(4)(ii) or (iii) of this section. Under this requirement:

(A) "Timely" means that the notice is mailed at least 10 days before the date of action, that is, the date upon which the recipient would normally receive his assistance check or, in the case of a medicaid recipient, 10 days before the intended change would be effective.

(B) "Adequate" means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing (if provided) and a State agency hearing, and the circumstances under which assistance is continued if a hearing is requested;

(ii) The agency may dispense with timely notice but shall send adequate notice not later than the date of action when:

(A) The agency has factual information confirming the death of a recipient or of the AFDC payee when there is no relative available to serve as new payee;

(B) The agency receives a clear written statement signed by a recipient that he no longer wishes assistance, or that gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, that he understands that this must be the consequence of supplying such information;

(C) The recipient has been admitted or committed to an institution, and further payments to that individual do not qualify for Federal financial participation under the State plan;

(D) The recipient has been placed in skilled nursing care, intermediate care or long-term hospitalization;

(E) The claimant's whereabouts are unknown and agency mail directed to him has been returned by the post office indicating no known forwarding address. The claimant's check must, however, be made available to him if his whereabouts become known during the payment period covered by a returned check;

(F) A recipient has been accepted for assistance in a new jurisdiction and that fact has been established by the jurisdiction previously providing assistance;

(G) An AFDC child is removed from the home as a result of a judicial determination, or voluntarily placed in foster care by his legal guardian;

(H) A change in level of medical care is prescribed by the recipient patient's physician;

(I) A special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period;

(iii) When changes in either State or Federal law require automatic grant adjustments for classes of recipients, timely notice of such grant adjustments shall be given which shall be "adequate" if it includes a statement of the intended action, the reasons for such intended action, a statement of the specific change in law requiring such action and a statement of the circumstances under which a hearing may be obtained and assistance continued.

(5) An opportunity for a hearing shall be granted to any applicant who requests a hearing because his claim for financial or medical assistance is denied, or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by any agency action resulting in suspension, reduction, discontinuance or termination of assistance. A hearing need not be granted when either State or Federal law require automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation.

(i) A request for a hearing is defined as a clear expression by the claimant (or his authorized representative acting for him), to the effect that he wants the opportunity to present his case to higher authority. The State may require that such request be in written form in order to be effective;

(ii) The freedom to make such a request shall not be limited or interfered with in any way. The agency may assist the claimant to submit and process his request;

(iii) The claimant shall be provided reasonable time, not to exceed 90 days, in which to appeal an agency action;

(iv) Agencies may respond to a series of individual requests for hearing by

conducting a single group hearing. Agencies may consolidate only cases in which the sole issue involved is one of State of Federal law or policy or changes in State or Federal law. In all group hearings, the policies governing hearings must be followed. Thus, each individual claimant shall be permitted to present his own case or be represented by his authorized representative;

(v) The agency may deny or dismiss a request for a hearing where it has been withdrawn by the claimant in writing, where the sole issue is one of State or Federal law requiring automatic grant adjustments for classes of recipients or where it is abandoned. Abandonment may be deemed to have occurred if the claimant, without good cause therefor, fails to appear by himself or by authorized representative at the hearing scheduled for such claimant.

(6) If the recipient requests a hearing within the timely notice period:

(i) Assistance shall not be suspended, reduced, discontinued or terminated, (but is subject to recovery by the agency if its action is sustained), until a decision is rendered after a hearing, unless:

(A) A determination is made at the hearing that the sole issue is one of State or Federal law or policy, or change in State or Federal law and not one of incorrect grant computation, or

(B) a change affecting the recipient's grant occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change;

(ii) The agency shall promptly inform the claimant in writing if assistance is to be discontinued pending the hearing decision; and

(iii) In any case where the decision of an evidentiary hearing is adverse to the claimant, he shall be informed of and afforded the right to make a written request, within 15 days of the mailing of the notification of such adverse decision, for a State agency hearing and of his right to request a de novo hearing. Unless a de novo hearing is specifically requested by the appellant, the State agency hearing may consist of a review by the State agency hearing officer of the record of the evidentiary hearing to determine whether the decision of the evidentiary hearing officer was supported by substantial evidence in the record. Assistance shall not be continued after an adverse decision to the claimant at the evidentiary hearing.

(7) A State may provide that a hearing request made after the date of action (but during a period not in excess of 10 days following such date) shall result in reinstatement of assistance to be continued until the hearing decision, unless at the hearing it is determined that the sole issue is one of State or Federal law or policy. In any case where action was taken without timely notice, if the recipient requests a hearing within 10 days of the mailing of the notice of the action, and the agency determines that the action resulted from other than the application of State or Federal law or policy or a change in State or Federal law, assistance shall be reinstated and continued until a decision is rendered after the hearing.

(8) The hearing shall be conducted at a reasonable time, date, and place, and adequate preliminary written notice shall be given.

(9) Hearings shall be conducted by an impartial official (officials) or designee of the agency. Under this requirement, the hearing official (officials) or designee shall not have been directly involved in the initial determination of the action in question.

(10) When the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report, or a medical review team's decision, a medical assessment other than that of the person or persons involved in making the original decision shall be obtained at agency expense and made part of the record if the hearing officer considers it necessary.

(11) In respect to title XIX, when the appeal has been taken on the basis of eligibility determination, the agency responsible for the determination of eligibility for medical assistance, if different from the single State agency administering the medical assistance plan, shall participate in the conduct of the hearing.

(12) The hearing shall include consideration of:

(i) An agency action, or failure to act with reasonable promptness, on a claim for financial or medical assistance, which includes undue delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination or reduction of such assistance;

(ii) Agency decision regarding:

(A) Eligibility for financial or medical assistance in both initial and subsequent determinations,

(B) Amount of financial or medical assistance or change in payments,

(C) The manner or form of payment, including restricted or protective payments, even though no Federal financial participation is claimed.

(13) The claimant, or his representative, shall have adequate opportunity:

(i) To examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing;

(ii) At his option, to present his case himself or with the aid of an authorized representative;

(iii) To bring witnesses;

(iv) To establish all pertinent facts and circumstances;

(v) To advance any arguments without undue interference;

(vi) To question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

(14) Recommendations or decisions of the hearing officer or panel shall be based exclusively on evidence and other material introduced at the hearing. The transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the recommendation or decision of the hearing officer or panel shall constitute the exclusive record and shall be available to the claimant at a place accessible to him or his representative at a reasonable time.

(15) Decisions by the hearing authority shall:

(i) In the event of an evidentiary hearing, consist of a memorandum decision summarizing the facts and identifying the regulations supporting the decision;

(ii) In the event of a State agency de novo hearing, specify the reasons for the decision and identify the supporting evidence and regulations.

Under this requirement no persons who participated in the local decision being appealed shall participate in a final administrative decision on such a case.

(16) Prompt, definitive, and final administrative action shall be taken within 90 days from the date of the request for a hearing.

(17) The claimant shall be notified of the decision in writing and, to the extent it is available to him, of his right to appeal to State agency hearing or judicial review.

(18) When the hearing decision is favorable to the claimant, or when the agency decides in favor of the claimant prior to the hearing, the agency shall promptly make corrective payments retroactively to the date the incorrect action was taken.

(19) All State agency hearing decisions shall be accessible to the public (subject to provisions of safeguarding public assistance information).

(b) *Federal financial participation.* Federal financial participation is available for the following items:

(1) Payments of assistance continued pending a hearing decision;

(2) Payments of assistance made to carry out hearing decisions, or to take corrective action after an appeal but prior to hearing, or to extend the benefit of a hearing decision or court order to others in the same situation as those directly affected by the decision or order. Such payments may be retroactive in accordance with applicable Federal policies on corrective payments.

(3) Payments of assistance within the scope of Federally aided public assistance programs made in accordance with a court order.

(4) Administrative costs incurred by the agency for:

(i) Providing transportation for the claimant, his representative and witnesses to and from the place of the hearing;

(ii) Meeting other expenditures incurred by the claimant in connection with the hearing;

(iii) Carrying out the hearing procedures, including expenses of obtaining an additional medical assessment.

§ 205.20 [Revoked]

2. Section 205.20 is revoked.

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE, PUBLIC ASSISTANCE PROGRAM

3. Section 206.10 is revised to read as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* A State plan under title I, IV–A, X, XIV XVI, or XIX of the Social Security Act shall provide that:

(1) Each individual wishing to do so shall have the opportunity to apply for assistance under the plan without delay. Under this requirement:

(i) Each individual may apply under whichever of the State plans he chooses;

(ii) The agency shall require a written application, signed under penalty of perjury, on a form prescribed by the State agency, from the applicant himself, or his authorized representative, or, where the applicant is incompetent or incapacitated, someone acting responsibly for him;

(iii) An applicant may be assisted, if he so desires, by an individual(s) of his choice (who need not be a lawyer) in the various aspects of the application process and the redetermination of eligibility and may be accompanied by such individual(s) in contacts with the agency and when so accompanied may also be represented by them; and

(iv) Individuals eligible for financial assistance are eligible for medical assistance without a separate application.

(2) Applicants will be informed about the eligibility requirements and their rights and obligations under the program. Under this requirement individuals are given information in written form, and orally as appropriate, about coverage, conditions of eligibility, scope of the program, and related services available, and the rights and responsibilities of applicants for and recipients of assistance. Specifically developed bulletins or pamphlets explaining the rules regarding eligibility and appeals in simple, understandable terms, are publicized and available in quantity.

(3) A decision shall be made promptly on applications, pursuant to reasonable State-established time standards not in excess of:

(i) 45 days for OAA, AFDC, AB, AABD (for aged and blind), and MA (for aged, blind, and families with children); and

(ii) 60 days for APTD, AABD (for disabled) and MA (for disabled). Under this requirement, the applicant is informed of the agency's time standard in acting on applications, which covers the time from date of application under the State plan to the date that the assistance check, or notification of denial of assistance or change of award, or the eligibility decision with respect to medical assistance, is mailed to the applicant or recipient. The State's time standards apply except in unusual circumstances (e.g., where the agency cannot reach a decision because of failure or delay on the part of the applicant or an examining physician, or because of some administrative or other emergency that could not be controlled by the agency), in which instances the case record shows the cause for the delay. The agency's standards of promptness for acting on applications or redetermining eligibility shall not be used as a waiting period before granting aid, or as a basis for denial of an application or for terminating assistance.

(4) Adequate notice shall be sent to applicants and recipients to indicate that assistance has been authorized (including the amount of financial assistance) or that it has been denied or terminated. Under this requirement, adequate notice means a written notice that contains a statement of the action taken, and the reasons for and specific regulations supporting such action, and an explanation of the individual's right to request a hearing.

(5) Financial assistance and medical care and services included in the plan shall be furnished promptly to eligible individuals without any delay attributable to the agency's administrative process, and shall be continued regularly to all eligible individuals until they are found to be ineligible. Under this requirement there must be arrangements to assist applicants and recipients in obtaining medical care and services in emergency situations on a 24-hour basis, 7 days a week.

(6) Assistance shall begin as specified in the State plan, which:

(i) For financial assistance

(A) Must be no later than:

(*1*) The date of authorization of payment, or

(*2*) Thirty days in OAA, AFDC, AB, and AABD (as to the aged and blind), and 60 days in APTD and AABD (as to the disabled), from the date of receipt of a signed and completed application form, whichever is earlier: *Provided*, That the individuals then met all the eligibility conditions, and

(B) For purposes of Federal financial participation, may be as early as the first of the month in which an application has been received and the individual meets all the eligibility conditions; and

(ii) For medical assistance must be no later than the date of application for either financial or medical assistance, and may be as early as the third month prior to the month of application if the individual was eligible in that month.[1]

(7) In cases of proposed action to terminate, discontinue, suspend or reduce assistance, the agency shall give timely and adequate notice. Such notice shall comply with the provisions of § 205.10 of this chapter.

(8) Each decision regarding eligibility or ineligibility will be supported by facts in the applicant's or recipient's case record. Under this requirement each application is disposed of by a finding of eligibility or ineligibility unless:

(i) The applicant voluntarily withdraws his application, and there is an entry in the case record that a notice has been sent to confirm the applicant's notification to the agency that he does not desire to pursue his application; or

(ii) There is an entry in the case record that the application has been disposed of because the applicant died or could not be located.

(9) Where an individual has been determined to be eligible, eligibility will be reconsidered or redetermined:

(i) When required on the basis of information the agency has obtained previously about anticipated changes in the individual's situation;

(ii) Promptly, within 30 days, after a report is obtained which indicates changes in the individual's circumstances that may affect the amount of assistance to which he is entitled or may make him ineligible; and

(iii) Periodically, within agency-established time standards, but not less frequently than every 6 months in AFDC, and every 12 months in the other categories, including medical assistance, on eligibility factors subject to change.

(10) Standards and methods for determination of eligibility shall be consistent with the objectives of the programs, and shall respect the rights of individuals under the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964, and all other relevant provisions of Federal and State laws.

(11) With respect to title XIX, policies and procedures shall assure that eligibility for medical assistance shall be determined in a manner consistent with simplicity of administration and the best interests of the applicant or recipient.

(12) The State agency shall establish and maintain methods by which it shall be kept currently informed about local agencies' adherence to the State plan provisions and to the State agency's procedural requirements for determining eligibility, and it shall take corrective action when necessary.

(b) *Definitions.* For purposes of this section:

(1) "Applicant" is a person who has, directly, or through his authorized representative, or where incompetent or incapacitated, through someone acting responsibly for him, made application for public assistance from the agency administering the program, and whose application has not been terminated.

(2) "Application" is the action by which an individual indicates in writing to the agency administering public assistance his desire to receive assistance. The relative with whom a child is living or will live ordinarily makes application for the child for AFDC. An application is distinguished from an inquiry, which is simply a request for information about eligibility requirements for public assistance.

Such inquiry may be followed by an application.

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[1] For proposed revisions to this subdivision see Notice published on June 21, 1973 (38 FR 16310)

PART 233 COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

4. Section 233.20(a) is amended by deleting subdivision (D) from subparagraph (3)(ii) and redesignating subdivision (E) thereof as (D); and by adding a new subparagraph (12), as set forth below:

§ 233.20 Need and amount of assistance.

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

* * * * *

(12) *Recoupment of overpayments and correction of underpayments.* Specify uniform Statewide policies for:

(i) Recoupment of overpayments of assistance, including overpayments resulting from assistance paid pending a hearing decision; Under this requirement:

(A) The State may recoup any overpayment (election by the State not to recoup overpayments shall not waive the provisions of §§ 205.40, 205.41 or any other quality control requirement);

(B) Except where there is evidence which clearly establishes that a recipient willfully withheld information about his income and resources, recoupment shall be limited to overpayments made during the 12 months preceding the month in which the overpayment was discovered;

(C) The plan may provide for recoupment from available income and resources (including disregarded, set-aside or reserved items) or from current assistance payments or from both; and

(D) If the recoupments are made from current assistance payments, the State shall establish reasonable limits on the proportion of such payments that may be deducted, so as not to cause undue hardship on recipients.

(E) The plan may provide for recoupment in all situations or in specified circumstances and for waiver of the overpayment where the cost of collection would exceed the amount of the overpayment.

(ii) Prompt correction of underpayments to current recipients, resulting from administrative error where the State plan provides for recoupment of overpayments. Under this requirement:

(A) Retroactive corrective payment shall be made only for the 12 months preceding the month in which the underpayment is discovered;

(B) For purposes of determining continued eligibility and amount of assistance, such retroactive corrective payments shall not be considered as income or as a resource in the month paid nor in the next following month; and

(C) No retroactive payment need be made where the administrative cost would exceed the amount of the payment.

* * * * *

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

Effective Date: The regulations in this section shall be effective October 15, 1973, or earlier at the option of the State.

Dated: July 19, 1973.

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

Approved: August 10, 1973.

CASPAR W. WEINBERGER,
Secretary.

[FR Doc. 73-16944 Filed 8-14-73;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19550 RM-1859 RM-2049; FCC 73-842]

PART 73—RADIO BROADCAST SERVICES

Report and Order and Order To Show Cause

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Shorewood, Ottawa, Lockport and Crest Hill, Illinois).

1. On July 19, 1972, the Commission adopted a Notice of Proposed Rule Making in this proceeding (FCC 72-638, 37 Fed. Reg. 15171) in response to a petition of Joliet Radio Corporation, licensee of standard broadcast Station WJRC, Joliet, Illinois. The Notice proposed the reassignment of Channel 252A from Ottawa, Illinois, to Shorewood, Illinois, and the replacement of Channel 252A at Ottawa with Channel 237A.

2. Interested parties, after extensions of time were granted, were afforded an opportunity to file comments on or before September 11, 1972, and (taking into account an intervening holiday) to reply to such comments on or before October 10, 1972. Timely comments and/or reply comments were filed by Joliet Radio Corporation (Joliet Radio); Van Schoick Enterprises, Inc. (Van Schoick Enterprises) [1]; and WFMT, Inc. (WFMT). Mr. Joseph Oswald filed three separate reply comments. One of these was timely and proper and has been given consideration in arriving at our decision herein. The other two were reply comments directed at reply comments of another party.[2] Section 1.415 of the rules does not contemplate the filing of such pleadings unless specifically requested or authorized by the Commission, which they were not in the instant case. Because of this and because the contents of these two pleadings are not essential to our decision, they are not accepted for filing and are given no consideration herein. Additionally, Mr. Oswald filed a petition for rule making (RM-2049) which contained two counterproposals. This petition, filed prior to the date for filing initial comments in this proceeding, was considered as a comment (pursuant to our cut-off procedures announced in the Notice).

3. Although inviting comments on the proposed assignment of Channel 252A to Shorewood, the Notice also stated that it would be in the public interest to consider the needs and importance of other communities larger in size to which the channel might be assigned if deleted from Ottawa and not assigned to Shorewood. Examples of some such communities were listed and we indicated that we would entertain showings by interested parties as to the possible use of Channel 252A in such communities on the condition that any such counterproposals must be accompanied by an offer to reimburse the licensee of WOLI for reasonable expenses incurred for shifting its operation from Channel 252A to 237A at Ottawa, Illinois.

4. The only filing which did so was that of Mr. Oswald which sets out alternative counterproposals (RM-2049), i.e., the assignment of Channel 252A to either Lockport or Crest Hill, Illinois, rather than Shorewood, Illinois. With regard to the Lockport proposal, we observe that Channel 252A cannot meet our minimum mileage separation requirements to Class B Channels 250 and 254 assigned to Chicago, Illinois, and at the same time put the minimum signal required over the entire community of Lockport, i.e., a field strength of 70 dB above 1 uV/m. Approximately 4 percent of the area to Lockport would not receive the required signal strength if our minimum mileage requirements are adhered to. In view of this fact, our normally strict observance of our engineering rules, and the possibility of using the channel in full compliance with our rules at either Shorewood or Crest Hill, Illinois, we find that it would not be in the public interest to grant the requested waiver of our rules and attempt to make the assignment of Channel 252A to Lockport, Illinois. Hence, we now have pending before us in this proceeding the possible assignment of Channel 252A to Shorewood or Crest Hill, Illinois, and the replacement of Channel 252A at Ottawa, Illinois, with Channel 237A.

5. In view of the pleadings, we are required to make one further preliminary judgment. WFMT, operating on Class B FM Channel 254 in Chicago, Illinois, points out that it has a significant audience in the Joliet area of Illinois and indicates that it would be in the public interest to permit that audience to continue its enjoyment of WFMT. It further points out that a station at either Shorewood or Crest Hill operating on Channel

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[1] Mr. Wayne J. Hess, Receiver, WOLI Broadcasting Corp. (operating on Channel 252A at Ottawa, Illinois), participated in the early phase of this proceeding by filing an opposition to the petition for rule making. On December 22, 1971, the Commission granted BALH-1587, assigning the license of WOLI from Mr. Hess to Van Schoick Enterprises. Among other things, the comments filed by Van Schoick Enterprises adopt and incorporate by reference the aforesaid opposition filed by Mr. Hess.

[2] These two pleadings are "Reply to: Further Reply Comments of the Joliet Radio Corporation—Oct. 4, 1972" and "Reply to Opposition Comments to Oswald Counterproposals."

252A would impair WFMT's signal in and around those communities. We acknowledge this probability while observing that WFMT, as any other station in its power class (Class B), is only entitled to the standard protection of 40 miles separation between it and the proposed service on Channel 252A. In connection with the WFMT filing, we received approximately 100 letters from members of the public who reside in the Shorewood-Joliet-Crest Hill area of Illinois which strongly advocate the type of programming (apparently classical music and cultural) available on WFMT and express a concern about the probable loss of access to it by the interference which will be created to the WFMT signal in the Joliet area by a new service at either Shorewood or Crest Hill on Channel 252A. In this proceeding we bring these expressions of community interest and taste to the attention of any applicant for the use of Channel 252A in the Shorewood-Joliet-Crest Hill area of Illinois.

6. Will County, Illinois (population 249,498)[3] contains the two communities of Shorewood (population 1,749[4]) and Crest Hill (population 7,460). Neither community has either an FM assignment or a standard broadcast station. Shorewood is immediately west of Joliet while Crest Hill abuts Joliet on the north.

7. With regard to Shorewood, Joliet Radio states:

"Shorewood is an incorporated village, with a Village Council form of government. The village government provides police service within its boundaries, performs construction and maintenance of streets within the village, and performs other government functions, such as zoning. The village government is faced with policy decisions on zoning applications, demands for street improvements and for police protection and other municipal matters. The presence of these issues naturally gives rise to a need for a local outlet for self-expression by shorewood residents on these matters. In addition to the problems of the village government, there are other local activities which also create a need for local self-expression.

"Shorewood has one public school. It has a fire department (located in Shorewood) which provides protection for Shorewood and adjoining parts of Troy township. Shorewood also has the usual voluntary organizations created by its residents. It has churches (a Methodist Church and a Church of God), the Shorewood Lions Club, a Boy Scout Troop, and the Shorewood Homeowners Association.

"Shorewood also has its own commercial life. It is not a mere bedroom community for workers whose jobs are elsewhere. For instance, it has two major liquor wholesalers. One of them, United Liquor & Beverage Company, is a wholesale beer distributor. It has two motels—a Holiday Inn and a Howard Johnson's Motel. Two major industrial parks are now under development in Shorewood. Immediately outside of Shorewood, Mobile Oil Company is building a multi-million dollar refinery. In the same area are located the new stockyards which opened recently. Since the famed Chicago Stockyards closed, this facility now serves the entire midwest. In Shorewood itself there is a new shopping area, recently opened, which provides a wide range of retail services."

Mr. Oswald questions the veracity of a number of the above statements and in sum agrees with Van Schoick Enterprises that Shorewood is in essence too small to support an independent station and is in reality but a "bedroom" community for Joliet, Illinois. Mr. Oswald suggests that because of the smallness of Shorewood and its proximity to Joliet any FM station assigned to it and licensed to Joliet Radio would necessarily be simulcasting with WJRC much of the time.

8. In supporting the proposed assignment of Channel 252A to Shorewood, Joliet Radio shows that there are other channels available to most of the communities listed in the Notice, and submits that a station at Shorewood would provide a first and second FM service to substantial areas.

9. Concerning Crest Hill, Mr. Oswald provides the following information. Its 1970 population of 7,460 represents a 25 percent increase over its 1960 population which was 5,886. Its retail sales in 1967 (latest official figures) were $14,700,000. It is a community with its own government (mayor, city council) and with more than 100 commercial establishments. It shares the same school system with nearby Lockport, it has resisted annexation by Joliet, and it strives to maintain its own identity. (Hence, he avers, its problems, needs, and interests must be dealt with separate from those of adjoining Joliet.) It has a strategic physical location as to expressways and canal commerce and has a favorable growth pattern. It not only is without local AM, FM, or TV stations, but it has no regular daily newspaper. Mr. Oswald states that if the channel is assigned to Crest Hill he will promptly file an application for its use and that he is willing to reimburse WOLI for reasonable expenses incurred for shifting its operation from Channel 252A to 237A.

10. We have carefully considered the record in this proceeding. Joliet Radio and Mr. Oswald have each attempted to show that there is a need for a first local radio service in Shorewood and Crest Hill, the respective communities to which they seek assignment of the channel. Each has tried to show that the community it proposes is capable of supporting a local FM station. Each adverts to a favorable growth pattern. Each has stated that the community it proposes has no AM, FM, or TV station, and no daily newspaper. Each makes statements to show that its chosen community, although an immediate neighbor of Joliet, seeks to preserve its separate identity as a community.[5]

11. We believe that Mr. Oswald has adequately demonstrated a need for a channel at Crest Hill (see para. 9 *supra*) and that the public interest would be served by the assignment of Channel 252A to that community and the substitution of Channel 237A for 252A at Ottawa. Although it appears from the record that Cresh Hill could support a viable local FM service, a question has been raised as to whether Shorewood could do so or whether it is a mere bedroom community of Joliet. We do not find it necessary to decide this question because even if decided favorably to Shorewood, the proposed assignment to that community fails on other grounds. While there may be a need for an FM channel at Shorewood, there has been no showing that the need there is greater than the need at Crest Hill. Both communities are without local AM, FM, or TV stations; both have no daily newspaper; both are adjacent to Joliet and presumably receive broadcast services from that community; both apparently have local governments and local problems; and both have shown favorable growth patterns. As to the latter point, although the Shorewood population increased about 250 percent from 1960 to 1970 while that of Crest Hill increased only about 25 percent, as to actual population Shorewood increased by 1,250 persons and Crest Hill by 1,574 (Shorewood: 1960 pop. of 499 and 1970 pop. of 1,749; Crest Hill: 1960 pop. of 5,886 and 1970 pop. of 7,460).[6] Therefore, at best it would appear that the need for a channel at Shorewood is equal to that at Crest Hill if one does not consider the population sizes of the two communities. However, in view of the fact that the population of Crest Hill is substantially larger than that of Shorewood, it appears that the mandate of section 307(b) of the Communications Act for a fair, efficient, and equitable distribution of radio service requires that the channel be assigned to Crest Hill if such an assignment would otherwise be in the public interest.

12. We note that Mr. Oswald has indicated his willingness, if ultimately granted a license for Channel 252A at Crest Hill, to reimburse the licensee of Station WOLI for reasonable costs for changing its operation from Channel 252A to 237A. We also note that this representation is made in the light of the costs set out by Van Schoick Enterprises with regard to such a channel change.

13. Authority for the actions taken herein is contained in sections 4(i), 303, 307(b) and 316 of the Communications Act of 1934, as amended.

14. *Accordingly, it is ordered,* That effective September 14, 1973, the

[3] All population figures cited are from the 1970 U.S. Census unless otherwise specified.

[4] A special 1972 U.S. Census indicates that the population of Shorewood as of 1972 is 2,809.

[5] In addition, Joliet Radio avers that if Channel 252A is assigned to Shorewood it would provide a first and second FM service to substantial areas. However, its coverage showing is based on existing facilities. If it were made on the basis of the Roanoke Rapids-Goldsboro criteria (9 FCC 2d 672 (1971)), a Shorewood station would not provide a first FM service to any portion of the service area, and would provide a second FM service to a very limited area.

[6] Joliet Radio submits the results of a special census taken as of June 19, 1972, showing the population of Shorewood at that time to be 2,809. In the absence of such a census for Crest Hill, we of course cannot compare the populations of the two communities as of that date; however, there is no reason to believe that the population of Crest Hill has not continued to increase since the 1970 Census was taken.

Table of Assignments in section 73.202 (b) of the Commission's rules IS AMENDED, insofar as the cities listed below are concerned, to read as follows:

City:	Channel No.
Crest Hill, Illinois	252A
Ottawa, Illinois	237A

15. *It is further ordered*, That Van Schoick Enterprises, Inc., licensee of WOLI at Ottawa, Illinois, shall show cause under the provisions of section 316 (a) of the Communications Act of 1934, as amended, why its outstanding license for the operation of WOLI on Channel 252A should not be modified to specify operation on Channel 237A and that it do so not later than September 14, 1973.

16. After the receipt of Van Schoick Enterprises, Inc.'s response to the above show cause order, it will be evaluated. In the event that it is determined to be in the public interest to modify the license of Van Schoick Enterprises for WOLI to specify operation on Channel 237A in lieu of Channel 252A, we shall issue appropriate orders including an order which will require that any successful applicant for the use of Channel 252A at Crest Hill, Illinois, reimburse the licensee of WOLI at Ottawa, Illinois, for all reasonable costs it incurs for shifting its operating frequency from Channel 252A to Channel 237A.

(Secs. 4, 303, 307, 48 Stat., as amended; 1066, 1082, 1083, Sec. 12, 66 Stat. 717; 47 U.S.C. 154, 303, 307, and 316.)

By the Commission.

Adopted: August 2, 1973.

Released: August 8, 1973.

FEDERAL COMMUNICATIONS COMMISSION
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-16907 Filed 8-14-73;8:45 am]

[Docket No. 19688 RM-1924; FCC 73-841]

PART 73—RADIO BROADCAST SERVICES

Report and Order

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Flint, Michigan)

1. On February 14, 1973, the Commission adopted a Notice of Proposed Rule Making (FCC 73-176; 38 Fed. Reg. 5193) looking towards the assignment of FM Channel 224A to Flint, Michigan. The Notice stemmed from a petition filed by Flint Family Radio, Inc. (Family) on February 16, 1972. Interested parties were requested to submit comments concerning the proposed change in the Table of Assignments on or before March 28, 1973, and to file reply comments on or before April 6, 1973. Comments in support of the proposal were received from the petitioner and from Sherwood Broadcasting, Inc. (Sherwood), a newly formed corporation that wishes to enter the broadcast field. No opposing statements were filed.

2. Flint, with a population of 193,317, is located in Genesee County (population 444,341).[1] It has been assigned three FM channels (two Class B's and one Class A) and all are currently occupied.[2] There are also six standard broadcast stations in Flint—four full-time and two daytime-only. One of the daytime-only AM stations operates in conjunction with an FM station operating on the Class A channel. The broadcast facilities in Flint are the only ones located in Genesee County. Both Family and Sherwood state in their supporting comments that if an additional FM channel is assigned to Flint, each will apply for the channel and, if granted a construction permit, build promptly.

3. As evidence that Flint can support an additional FM service, petitioner indicates that the average annual rate of growth of personal income from 1959 through 1968 was 7.73 percent and that retail sales for Genesee County totaled over $728 million. Also, while primarily an automobile manufacturing city with approximately 342 manufacturing concerns, petitioner notes that Flint's retail area has a radius of 25 miles with a population of over 500,000. The information submitted by the petitioner is sufficient to enable us to conclude that Flint is a prosperous and growing community, able to support an additional FM service.

4. According to the population criteria for assignment of FM channels, communities with populations ranging from 100,000 to 250,000 are normally assigned four to six channels.[3] However, Flint, with a population of nearly 200,000, presently has only three channels, one of which is used by a noncommercial educational station. It therefore appears that there is a need for the additional channel requested for the community. Although the assignment of Channel 224A to Flint intermixes classes of channels, we note the channels in Flint are already intermixed; moreover, demand for a Class A channel has been evidenced by two parties both of whom have indicated an interest in using the channel and both of whom have apparently made the business judgment that a Class A facility would be viable in Flint.

5. Channel 224A can be assigned to Flint without violating our mileage separation requirements and without making any other changes in the Table of Assignments. The preclusion study submitted by petitioner discloses that if Channel 224A is assigned to Flint, future assignments on Channels 223 and 224A would be prohibited. However, the preclusion on Channel 223 occurs in a limited region where the channel cannot be used efficiently. On Channel 224A the zone of preclusion is limited to the Flint area where an assignment could be made to the adjoining community of Mount Morris, Michigan (population 3,778). The proximity of Mount Morris to Flint signifies that Channel 224A would be available to applicants of Mount Morris under § 73.203(b) of the Commission's Rules. Thus, the assignment of Channel 224A to Flint would result in a more efficient administration of the FM frequencies because it cannot be used at any other community in this area of the state.

6. Since Flint is within 250 miles of the U.S.-Canadian border, concurrence has been obtained from the Canadian Government for the assignment of Channel 224A to that community.

7. In view of the foregoing, we are of the opinion that the additional assignment would serve the public interest and should be made.

8. Authority for the amendment adopted herein is found in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

9. *Accordingly, it is ordered*, That, effective September 14, 1973, the Table of Assignments contained in section 73.202(b) of the Commission's rules and regulations is amended, insofar as the community named below is concerned, to read as follows:

City	Channel No.
Flint, Michigan	224A, 236, 288A, 300

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

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307.)

By the Commission.

Adopted: August 2, 1973.

Released: August 7, 1973.

FEDERAL COMMUNICATIONS COMMISSION
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-16908 Filed 8-14-73;8:45 am]

[Docket No. 19738 FM-1983; FCC 73-839]

PART 73—RADIO BROADCAST SERVICES

Report and Order

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Oberlin, Kansas)

1. The Commission has before it a Notice of Proposed Rule Making adopted May 9, 1973 (FCC 73-492, 38 Fed. Reg. 13387), inviting comments on a petition filed by the Decatur County Area Chamber of Commerce, Inc. (petitioner), which requested the assignment of Channel 266 to Oberlin, Kansas. This channel could be assigned to Oberlin in conformity with the Commission's minimum mileage separation rule and without affecting any presently assigned channel in the FM Table of Assignments. There were no oppositions to the proposal. Supporting comments were filed by petitioner. Information in the rec-

[1] Population figures are from the 1970 U.S. Census.

[2] One of the Class B channels is occupied by noncommercial educational Station WFBE, licensed to the Flint Board of Education.

[3] See para. 4 of the Further Notice of Proposed Rule Making in Docket No. 14185, adopted July 25, 1962 (FCC 62-867), and incorporated by reference in para. 25 of the Third Report, Memorandum Opinion and Order (40 FCC 747, 758 (1968)).

ord indicates that petitioner is organized as a non-profit organization and that it has no charter provision for operating a business. It further indicates that a responsible group consisting of Chamber of Commerce members intends to incorporate and apply for the channel if it is assigned, and build and operate a station if authorized.

2. Oberlin, with a population of 2,291 persons, is the seat of Decatur County, which has a population of 4,988 persons,[1] and is located in the northwest portion of Kansas. Oberlin does not have a local aural broadcast station. Petitioner notes that there is no full-time AM radio service in the northwest Kansas-southwest Nebraska area and very limited FM service. It points out that Oberlin serves as a principal trading center for a wide area of northwest Kansas and southwest Nebraska, and has sufficient size and economic strength to support a Class C FM facility. Petitioner contends that a Class A station operating at Oberlin would serve so small an area and audience that it could not survive. Petitioner states that based on the reasonable facilities assumption, a Class C facility, operating with an ERP of 100 Kw and an antenna height of 500 feet at Oberlin, would serve a total population of 33,711 persons, with 20,048 people receiving a first FM service and 13,663 receiving a second FM service in an area of 1,648 and 2,138 square miles, respectively.

3. The preclusion study indicates that the proposed assignment would foreclose future assignments on six channels: Channel 264, 265A, 266, 267, 268 and 269A. The size of the precluded areas varies with the channel. However, in the sparsely populated areas of the northwestern part of Kansas and the southwestern part of Nebraska, a number of other FM channels are available which could be assigned to communities located in the precluded areas.

4. The Commission would ordinarily assign a Class A channel to a community the size of Oberlin, but under the above circumstances and the fact that this assignment will provide a first local FM service, we conclude that the public interest would be served by assigning Channel 266 to Oberlin, Kansas.

5. Authority for the amendment adopted herein is found in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

6. *Accordingly, it is ordered*, That, effective September 14, 1973, the Table of Assignments contained in § 73.202(b) of the Commission's rules and regulations is amended, insofar as the community named below is concerned to read as follows:

City	*Channel No.*
Oberlin, Kansas	266

7. *It is further ordered*, That this proceeding IS TERMINATED.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307.)

[1] Population figures cited are from the 1970 U.S. Census.

By the Commission.

Adopted: August 2, 1973

Released: August 7, 1973

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-16906 Filed 8-14-73;8:45 am]

[Doc No. 19545; FCC 73-819]

USE OF LAND MOBILE FREQUENCIES ABOARD AIRCRAFT

In the Matter of amendment of Parts 89, 91, and 93 of the Commission's rules concerning use of land mobile frequencies aboard aircraft.

1. On July 12, 1972, the Commission adopted a Notice of Proposed Rule Making (35 FCC 2d 797) in the above entitled proceeding to amend its rules to limit the licensing and operation of communication facilities on board aircraft in the land mobile radio services. Comments in response to the Notice were received from the parties listed in Appendix A and have been carefully considered.

2. The basic purpose of this proceeding is to restrict the potential for interference to land-base operations primarily from operation on land mobile frequencies aboard high-flying aircraft, particularly on aircraft operated by scheduled passenger airlines. Aircraft communications for airline radio operations are regularly authorized in Aviation Radio Services under Part 87 of the Commission's Rules. However, a few airlines have obtained additional authorizations in the Business Radio Service to transmit convenience-type messages from planes related to passenger activities. Favorable passenger response to this special service has apparently increased airline interest in expansion of operations of this nature. The Commission has found, however, that the transmission range and effect of radio operation on board planes at the heights and distances involved in passenger airline flights greatly increase the potential for widespread interference to regular land-based operations. The rule change would restrict these radio communications to provide protection from such interference to licensees operating within the normal framework and regulatory plan for land mobile systems.

3. There was no disagreement in the comments with respect to necessity for this rule to restrict airline radio operations on land mobile frequencies. Two parties, Continental Airlines, Inc. and Aeronautical Radio, Inc. (ARINC) asked that deletion of these operations not be put into effect until there were alternative frequencies for the airlines to use for passenger messages. Continental argues that it has been using the frequency 461.-25 MHz in the Business Radio Service for air-to-ground radio traffic on behalf of passengers to coordinate cabin service activities, to arrange reservations and connecting flights, for medical advisory consultations, and to obtain interpreter services.

It contends that these operations should be permitted to continue "on the basis of procedures established over a twelve (12) year period of operation, until such time as new allocations of the radio spectrum are provided for air/ground Business Radio purposes." More specifically, ARINC, which provides en-route radiocommunications for airlines related to the safety of aircraft, states that it believes the solution to meeting the requirement for passenger communications lies in the allocation of spectrum exclusively for "cabin requirements" from the band 806–960 MHz.

4. As indicated in our Notice, the Commission realizes that an accommodation for aircraft passenger service communications may be justifiable in a different structure where inherent interference problems are not involved. For example, ARINC's recommendation for accommodating this service on frequencies in the 806–947 MHz region will be given further consideration in our proceeding in Docket 18262. At this time, however, we find that, consistent with the purposes of this proceeding, the paramount public interest requirement is for deletion of this type of aircraft operation on the existing land mobile frequencies. Accordingly, our proposal to preclude operations of this nature in land mobile services is being adopted. With respect to presently authorized operations in these services, we believe that it would be reasonable to require the licensees to amortize their equipment investment within the current license terms. Consequently, these airline operations will be permitted to continue only for the duration of present license terms. At the same time, as we have noted, the Commission will look for reasonable alternatives for permitting this type of operation and we welcome suggestions in this regard.

5. A different category of aircraft operation also under consideration in our Notice involves the low-flying, short-range helicopters and fixed-wing planes that are extensively used in a variety of applications. Examples include such diverse functions as water-scanning by fisheries that have become dependent upon "spotting" capability of aircraft, pipe-line surveillance in the petroleum and natural gas industries, "flying-ambulances" for hospitals, and numerous local government activities. Generally, these aircraft fly at low altitudes from a few hundred to a few thousand feet, as opposed to passenger airline planes which regularly operate above 20,000 feet. The potential for extended-range interference from operations on board such aircraft, therefore, is much reduced. Further, the comments have indicated that in many situations such aircraft are an integral part of land based operations and in others practical communications alternatives are not readily available. For these reasons, the following rule specifically providing for regular licensing of these aircraft in land mobile services was proposed for inclusion in Parts 89, 91 and 93:

"Radio facilities authorized under this part may not be operated on board aircraft in flight except where the aircraft is an integral part of an operation in which land vehicles are primarily involved and where there is a requirement for direct communications between the aircraft and the land vehicles."

6. The comments generally supported the proposed rule change. There was some concern, however, that the specific rule is too limited in restricting communications to air-to-ground, and only when directed to land vehicles. These parties ask that the rule provide also for authorization of land mobile systems which incorporate air-to-air, air-to-base, or air-to-ship transmissions as an integral, or even sole, radio communication requirement.

7. It is not inconsistent with the underlying intent of our proposal that these aircraft radio operations, in addition to air-to-mobile operations, be included as permissible communications. At the same time, however, there must be practical limitations. Our analysis of the communication requirements for aircraft operating as part of land mobile radio systems shows that most aircraft can achieve a reasonable transmission range with a transmitter output power of 10 watts, below a one-mile ceiling.[1] Accordingly, we are incorporating these power and ceiling limitations as basic standards and will authorize exceptions only upon a showing of unusual operational requirements, and only where the potential for interference is not thereby increased. Even within these standards, however, in a given geographical area or for a particular utilization, some aircraft operations may manifest an unacceptable potential for interference. The reasonable solution appears to be case-by-case analysis of each proposed land mobile service aircraft operation, and attachment of conditions to licenses which will afford requisite protection to regular land-based operations. Conditions to be applied might include further restriction on transmitter power and ceilings for operations, a limitation on the geographic area which may be served, or other appropriate restriction. One general condition that will apply to all aircraft licensing of this nature is that the operations must be on a non-interference basis to regular land mobile systems.

8. Within this framework, the Commission is adopting rule changes for the land mobile services for regular authorization of aircraft operations. The specific proposed rule is being modified to expand the allowable points of communication, to provide power limits and flying ceilings for radio transmissions, and to reflect the conditional nature of these aircraft operations.

9. In the Notice in this rule making matter, the Commission determined that pending its resolution of the issues in this proceeding, no action would be taken on new applications for licensing aircraft radio operations in land-mobile services. A number of these applications have been received, and they will be expeditiously handled in accordance with the rule changes being adopted herein. There are also a number of present authorizations for land mobile operations which include operations on board low-flying aircraft. Few of these operations conform to the standards being adopted, particularly with respect to authorized transmitter power. For the reasons already discussed, we find that these operations should not be permitted on an indefinite basis. Accordingly, we will permit only one renewal of current licenses for aircraft operations which do not meet the new standards. A longer period for temporary continued operation of these aircraft stations has been afforded than for the high-flying airline radio operations in consideration of lesser interference potential of the latter transmissions.

10. Pursuant to the foregoing, the Commission determines that the public interest, convenience, and necessity will be served by amendment of its rules, essentially as proposed, to restrict licensing of aircraft operations in the land-mobile radio services.

11. Accordingly, pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, *It is ordered*, That effective September 14, 1973, Parts 89, 91, and 93 of the Commission's Rules are amended as shown in the attached Appendix B. *It is further ordered* That this proceeding is terminated.

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

By the Commission.

Adopted: August 2, 1973.

Released: August 8, 1973.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] VINCENT J. MULLINS, *Acting Secretary.*

NOTE. Rules changes herein will be covered by T.S.V(70)-10.

The following parties submitted timely comments and/or reply comments in response to the Notice of Proposed Rule Making in Docket 19545:

Aeronautical Radio, Inc.
Aerospace and Flight Test Radio Coordinating Council.
Air Logistics, Inc.
Air Marine, Inc.
Alert Identification Directive Service, Inc.
American Petroleum Institute.
Arizona Department of Public Safety.
Associated Public-Safety Communications Officers, Inc.
Boise Cascade Corporation.
California State Communications Division.
Continental Airlines.
Forest Industries Telecommunications.
General Electric Company.
International Association of Fire Chiefs.
International Municipal Signal Association.
State of Iowa.
Louisiana Menhaden Fisheries et al.
Louisiana Wild Life and Fisheries Commission.
Moyer Aero-Spray.
National Association of Business and Educational Radio, Inc.
National Association of Manufacturers.
Offshore Raydist, Inc.
Offshore Navigation, Inc.
Simpson Timber Company.
Special Industrial Radio Service Association, Inc.
Teledyne Hastings-Raydist.
Vir James Consulting Radio Engineers.

PART 89—PUBLIC SAFETY RADIO SERVICES

I. Part 89 of the Commission's Rules is amended by adding new rule Section 89 to read as follows:

§ 89.156 Operations on board aircraft.

(a) Except as provided in paragraph (b) and (c) of this section, mobile stations first authorized after September 14, 1973, under this part may be operated aboard aircraft for air-to-mobile, air-to-base, air-to-air, and air-to-ship communications subject to the following:

(1) Operations are limited to aircraft that are regularly flown at altitudes below one-mile above the earth's surface;

(2) Transmitters are to operate with an output power not to exceed ten watts;

(3) Operations are subject to non-interference to land-based systems by transmitters operated aboard aircraft;

(4) Such other conditions, including additional reductions of altitude and power limitations, as may be required to minimize the interference potential to land-based systems by transmitters operated aboard aircraft.

(b) Exceptions to the altitude and power limitations set forth in paragraph (a) of this section may be authorized upon a showing of unusual operational requirements which justify departure from those standards, provided that, the interference potential to regular land-based operations would not thereby be increased.

(c) Mobile stations operated aboard aircraft under this part under licenses in effect September 14, 1973, may be continued without regard to provisions of paragraph (a) of this section, as follows:

(1) Operations may be continued only for the balance of the term of such licenses if aircraft involved are regularly flown at altitudes above one mile above the earth's surface;

(2) Operations may be continued for one additional renewal license term if the aircraft involved are regularly flown at altitudes below one mile above the earth's surface.

II. Part 91 of the Commission's Rules is amended by adding new rule Section 91.162 to read as follows:

PART 91—INDUSTRIAL RADIO SERVICES

§ 91.162 Operations on board aircraft.

(a) Except as provided in paragraph (b) and (c) of this section, mobile sta-

[1] Ceiling in this instance being altitude above the earth's surface. Based upon line-of-sight propagation, the radio horizon from the aircraft approximates 100 miles. The limitation of ten watts transmitter output power at the frequencies involved, taking into account other system parameters, should normally provide adequate communications between the aircraft and associated base and mobile stations on the surface at distances up to 60 miles.

tions first authorized after September 14, 1973, under this part may be operated aboard aircraft for air-to-mobile, air-to-base, air-to-air, and air-to-ship communications subject to the following:

(1) Operations are limited to aircraft that are regularly flown at altitudes below one mile above the earth's surface;

(2) Transmitters are to operate with an output power not to exceed ten watts;

(3) Operations are subject to non-interference to land-based systems by transmitters operated aboard aircraft;

(4) Such other conditions, including additional reductions of altitude and power limitations, as may be required to minimize the interference potential to land-based systems by transmitters operated aboard aircraft.

(b) Exceptions to the altitude and power limitations set forth in paragraph (a) of this section may be authorized upon a showing of unusual operational requirements which justify departure from those standards, provided that, the interference potential to regular land-based operations would not thereby be increased.

(c) Mobile stations operated aboard aircraft under this part under licenses in effect September 14, 1973, may be continued without regard to provisions of paragraph (a) of this section, as follows:

(1) Operations may be continued only for the balance of the term of such licenses if aircraft involved are regularly flown at altitudes above one-mile above the earth's surface,

(2) Operations may be continued for one additional renewal license term if the aircraft involved are regularly flown at altitudes below one-mile above the earth's surface.

III. Part 93 of the Commission's Rules is amended by adding new rule Section 93.164 to read as follows:

PART 93—LAND TRANSPORTATION RADIO SERVICES

§ 93.164 Operations on board aircraft.

(a) Except as provided in paragraph (b) and (c) of this section, mobile stations first authorized after September 14, 1973, under this part may be operated aboard aircraft for air-to-mobile, air-to-base, air-to-air, and air-to-ship communications subject to the following:

(1) Operations are limited to aircraft that are regularly flown at altitudes below one mile above the earth's surface;

(2) Transmitters are to operate with an output power not to exceed ten watts;

(3) Operations are subject to non-interference to land-based systems by transmitters operated aboard aircraft;

(4) Such other conditions, including additional reductions of altitude and power limitations, as may be required to minimize the interference potential to land-based systems by transmitters operated aboard aircraft.

(b) Exceptions to the altitude and power limitations set forth in paragraph (a) of this section may be authorized upon a showing of unusual operational requirements which justify departure from those standards, provided that, the interference potential to regular land-based operations would not thereby be increased.

(c) Mobile stations operated aboard aircraft under this part under licenses in effect September 14, 1973, may be continued without regard to provisions of paragraph (a) of this section, as follows:

(1) Operations may be continued only for the balance of the term of such licenses if aircraft involved are regularly flown at altitudes above one mile above the earth's surface;

(2) Operations may be continued for one additional renewal license term if the aircraft involved are regularly flown at altitudes below one mile above the earth's surface.

[FR Doc.73-16905 Filed 8-14-73;8:45 am]

Title 50—Wildlife and Fisheries

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

MIGRATORY BIRD HUNTING

Miscellaneous Amendments

By notice of proposed rulemaking published in the FEDERAL REGISTER of April 25, 1973 (38 FR 10208), it was proposed to revise and and restructure subchapter B of Chapter One of this title. Among other things, that Proposed Rulemaking advised that current "Part 10—Migratory Birds" would be redesignated "Part 20—Migratory Bird Hunting" and a new "Part 10—General Provisions" would be added along with conforming modifications to subchapter A, Part 1—Definitions.

It was proposed at that time to amend § 10.21(e) to allow shooting crippled migratory game birds from a craft under power and to delete § 10.21(f) which prohibited the use of livestock as a means of concealment. After consideration of comments received and other data presented, the enforcement problems expected, and the concern of many States, it is determined that only the latter of these two proposals should be adopted.

On July 13, 1973, a notice of proposed rulemaking was published in the FEDERAL REGISTER (38 FR 18670) which proposed further changes in proposed § 20.21(i) concerning the baiting regulation with respect to doves. After consideration of comments received and other data presented it is determined to adopt that proposal as a final rule.

In the FEDERAL REGISTER on July 5, 1973, (38 FR 17841) subchapter B of 50 CFR, Chapter I, was retitled and Part 20—Migratory Bird Hunting was added reserving subparts A—K and M, and publishing only subpart L—Administrative and Miscellaneous Provisions. Subpart K—Annual Season, Limit, and Shooting Hour Schedules was published in part in the FEDERAL REGISTER on August 1, 1973 (38 FR 20456). Since subpart K will be further modified in the near future it is not republished at this time, however, the remainder of Part 20 is herein adopted and subpart L is republished.

Since evaluation of comments, suggestions and objections to the Proposed Rulemaking of April 25, 1973 (subchapter B), is not complete, and the migratory game bird hunting season is approaching, it is determined to adopt the proposed changes in subchapter B in segments, rather than republish it in its entirety at this time. Parts 10—General Provisions and 20—Migratory Bird Hunting, along with conforming modifications to Part 1 of subchapter A of this title, are hereby adopted.

PART 1—DEFINITIONS

§§ 1.9, 1.10, and 1.11 [Deleted]

1. Accordingly, Part 1 of 50 CFR, Chapter I, is hereby amended by deleting §§ 1.9, 1.10, and 1.11.

2. Accordingly, Part 10 of 50 CFR, Chapter I is amended to read as follows:

PART 10—GENERAL PROVISIONS

SUBPART A—INTRODUCTION

Sec.

Subpart B—Definitions

Subpart C—Addresses

AUTHORITY.—Lacey Act, 62 Stat. 687, as amended, 63 Stat. 89, 74 Stat. 753, and 83 Stat. 281; Black Bass Act, sec. 5, 44 Stat. 576, as amended, 46 Stat. 846; Migratory Bird Treaty Act, sec. 3, 40 Stat. 755, Bald Eagle Protection Act, sec. 2, 54 Stat. 251; Tariff Classification Act of 1962, sec. 102, 76 Stat. 73–74, 19 U.S.C. 1202, Schedule 1, Part 15D, Headnote. 2(d), "Tariff Schedules of the United States"; Endangered Species Conservation Act of 1969, sec. 4(e), 83 Stat. 278; Fish and Wildlife Act of 1956, sec. 13(d), 86 Stat. 905 amending 85 Stat. 480; Marine Mammal Protection Act of 1972, sec. 112(a), 86 Stat. 1042.

Subpart A—Introduction

§ 10.1 Purpose of regulations.

The regulations of this subchapter B are promulgated to implement the following statutes enforced by the Bureau of Sport Fisheries and Wildlife which regulate the taking, possession, transportation, sale, purchase, barter, exportation, and importation of wildlife:

Lacey Act, 18 U.S.C. 42–44.
Black Bass Act, 16 U.S.C. 851–856.
Migratory Bird Treaty Act, 16 U.S.C. 703–711.
Bald Eagle Protection Act, 16 U.S.C. 668–668d.
Tariff Classification Act of 1962, 19 U.S.C. 1202, (Schedule 1, Part 15D, Headnote 2, T.S.U.S.).
Endangered Species Conservation Act of 1969, 16 U.S.C. 668aa–668cc–6.
Fish and Wildlife Act of 1956, 16 U.S.C. 742a–1.
Marine Mammal Protection Act of 1972, 16 U.S.C. 1361–1384, 1401–1407.

§ 10.2 Scope of regulations.

The various parts of this subchapter B are interrelated, and particular note should be taken that the parts must be construed with reference to each other.

§ 10.3 Other applicable laws.

No statute or regulation of any State shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this subchapter B. In addition, nothing in this subchapter B, nor any permit issued under this subchapter B, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of any State or of the United States, including any applicable health, quarantine, agricultural, or customs laws or regulations, or other Bureau enforced statutes or regulations.

§ 10.4 When regulations apply.

The regulations of this subchapter B shall apply to all matters arising after the effective date of such regulations, with the following exceptions:

(a) *Civil Penalty Proceedings.*—Regardless of when the act or omission which is the basis of a civil penalty proceeding occurred, the regulations herein which are concerned with civil penalty procedures shall apply if a notice of a proposed assessment has not been sent prior to the effective date of these regulations.

(b) *Permits.*—The regulations in this subchapter B shall apply to any permit application received after the effective date of the appropriate regulations in this subchapter B and, insofar as appropriate, to any permit which is renewed after such effective date.

Subpart B—Definitions

§ 10.11 Scope of definitions.

In addition and subject to definitions contained in applicable statutes and subsequent parts or sections of this subchapter B, words or their variants shall have the meanings ascribed in this subpart. Throughout this subchapter B words in the singular form shall include the plural, words in the plural form shall include the singular, and words in the masculine form shall include the feminine.

§ 10.12 Definitions.

"Aircraft" means any contrivance used for flight in the air.

"Amphibians" means a member of the class, Amphibia, including, but not limited to, frogs, toads, and salamanders; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Animal" means an organism of the animal kingdom, as distinguished from the plant kingdom; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Birds" means a member of the class, Aves; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Bureau" means the Bureau of Sport Fisheries and Wildlife, United States Fish and Wildlife Service, Department of the Interior.

"Country of exportation" means the last country from which the animal was exported before importation into the United States.

"Country of origin" means the country where the animal was taken from the wild, or the country of natal origin of the animal.

"Crustacean" means a member of the class, Crustacea, including but not limited to, crayfish, lobsters, shrimps, crabs, barnacles, and some terrestrial forms; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Director" means the Director of the Bureau of Sport Fisheries and Wildlife, United States Fish and Wildlife Service, Department of the Interior, or his authorized representative.

"Endangered wildlife" means any wildlife listed in § 17.11 or § 17.12 of this chapter.

"Fish" means a member of any of the following classes: (1) Cyclostomata, including, but not limited to, hagfishes and lampreys; (2) Elasmobranchii, including but not limited to, sharks, skates, and rays; and (3) Pisces, including but not limited to trout, perch, bass, minnows, and catfish; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Fish or wildlife" means any wild mammal, bird, fish, amphibian, reptile, mollusk, or crustacean, whether or not raised in captivity, and including any part, product, egg, or offspring thereof, or the dead body or parts thereof, whether or not included in a manufactured product or in a processed food product.

"Foreign commerce" includes, among other things, any transaction (1) between persons within one foreign country, or (2) between persons in two or more foreign countries, or (3) between a person within the United States and a person in one or more foreign countries, or (4) between persons within the United States, where the fish or wildlife in question are moving in any country or countries outside the United States.

"Fossil" means the remains of an animal of past geological ages which has been preserved in the earth's crust through mineralization of the object.

"Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the tariff laws of the United States.

"Injurious Wildlife" means any wildlife for which a permit is required under subpart B of part 16 of this chapter before being imported into or shipped between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States.

"Mammal" means a member of the class, Mammalia; including any part, product, egg, or offspring, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Migratory birds means all birds, whether or not raised in captivity, included in the terms of conventions between the United States and any foreign country for the protection of migratory birds and the Migratory Bird Treaty Act, 16 U.S.C. 703–711. (For reference purposes only a list of migratory birds by species appears in § 10.13.)

"Migratory game birds": See § 20.11 of this chapter.

"Mollusk" means a member of the phylum, Mollusca, including but not limited to, snails, mussels, clams, oysters, scallops, abalone, squid, and octopuses; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"Permit" means any document so designated as a permit by the Bureau and signed by an authorized official of the Bureau.

"Person" means any individual, firm, corporation, association, partnership, club, or private body, any one or all, as the context requires.

"Possession" means the detention and control, or the manual or ideal custody of anything which may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. Possession includes the act or state of possessing and that condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons. Possession includes constructive possession which means not actual but assumed to exist, where one claims to hold by virtue of some title, without having actual custody.

"Public" as used in referring to museums, zoological parks, and scientific or educational institutions, refers to such as are open to the general public and are either established, maintained, and operated as a governmental service or are privately endowed and organized but not operated for profit.

"Reptile" means a member of the class, Reptilia, including but not limited to, turtles, snakes, lizards, crocodiles, and alligators; including any part, product, egg, or offspring thereof, or the dead body or parts thereof, whether or not included in a manufactured product or in a processed food product.

"Secretary" means the Secretary of

the Interior or his authorized representative.

"Shellfish" means an aquatic invertebrate animal having a shell, including, but not limited to, (a) an oyster, clam, or other mollusk; and (b) a lobster or other crustacean; or any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

"State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

"Take" means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect. (With reference to marine mammals, see part 18 of this chapter.)

"Transportation" means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

"United States" means the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

"Whoever" means the same as person.

"Wildlife" means the same as fish or wildlife.

§ 10.13 List of migratory birds.

The following is a list of migratory birds by species, shown by the most widely used common name or names followed by the scientific name in italics. The birds are listed in two categories, "Game Birds" and "Nongame Birds". "Game Birds" are members of those families named in § 20.11, for which open seasons are prescribed. The species are listed alphabetically except for ducks, which are all grouped under the heading "Duck". Within the category "Nongame Birds" all members of those families named in § 21.28 which may be used for falconry are listed under "Raptor" and all species are in alphabetical order.

GAME BIRDS

Brant: *Branta bernicla.*
  Black *Branta nigricans.*
Coot: American *Fulica americana.*
Crane:
  Sandhill (Lesser or Little Brown subspecies) *Grus canadensis.*
Dove:
  Ground *Columbina passerina.*
  Mourning *Zenaida macroura.*
  White-winged *Zenaida asiatica.*
  Zenaida *Zenaida aurita.*
Duck:
  Black *Anas rubripes.*
  Bufflehead *Bucephala albeola.*
  Canvasback *Aythya valisineria.*
  Eider:
    Common (Northern, American, and Pacific) *Somateria mollissima.*
  King *Somateria spectabilis.*
  Spectacled *Somateria fischeri.*
  Steller's *Polysticta stelleri.*
Gadwall *Anas strepera.*
Goldeneye:
  Barrow's *Bucephala islandica.*
  Common *Bucephala clangula.*
Harlequin *Histrionicus histrionicus.*
Mallard *Anas platyrhynchos.*
Masked *Oxyura dominica.*
Merganser:
  Common (American) *Mergus merganser.*
  Hooded *Lophodytes cucullatis.*
  Red-breasted *Mergus serrator.*
Mottled (Florida and Louisiana) *Anas fulvigula.*
Oldsquaw *Clangula hyemalis.*
Pintail *Anas acuta.*
Redhead *Aythya americana.*
Ring-necked *Aythya collaris.*
Ruddy *Oxyura jamaicensis.*
Scaup:
  Greater *Aythya marila.*
  Lesser *Aythya affinis.*
Scoter:
  Black (Common) *Oidemia nigra.*
  Surf *Melanitta perspicillata.*
  White-winged *Melanitta deglandi.*
Shoveler: Northern *Anas clypeata.*
Teal:
  Blue-winged *Anas discors.*
  Cinnamon *Anas cyanoptera.*
  Green-winged (American and Eurasian) *Anas crecca.*
Tree:
  Black-bellied *Dendrocygna autumnalis.*
  Fulvous *Dendrocygna bicolor.*
Wigeon:
  American *Anas americana.*
  European *Anas penelope.*
Wood *Aix sponsa.*
Gallinule:
  Common *Gallinula chloropus.*
  Purple *Porphyrula martinica.*
Goose:
  Barnacle *Branta leucopsis.*
  Canada (all subspecies except the Aleutian Canada goose) *Branta canadensis.*
  Emperor *Philacte canagica.*
  Ross' *Chen rossii.*
  Snow (Greater, Lesser, and Blue) *Chen caerulescens.*
  White-fronted (Tule) *Anser albifrons.*
Pigeon:
  Band-tailed *Columba fasciata.*
  White-crowned *Columba leucocephala.*
Rail:
  Black *Laterallus jamaicensis.*
  Clapper *Rallus longirostris.*
  King *Rallus elegans.*
  Sora *Porzana carolina.*
  Virginia *Rallus limicola.*
  Yellow *Coturnicops noveboracensis.*
Snipe: Common (Wilson's) *Capella gallinago.*
Swan: Whistling *Olor columbianus.*
Woodcock:
  American *Philohela minor.*
  European *Scolopax rusticola.*

NONGAME BIRDS

Albatross:
  Black-footed *Diomedea nigripes.*
  Laysan *Diomedea immutabilis.*
  Short-tailed *Diomedea albatrus.*
Anhinga *Anhinga anhinga.*
Ani:
  Groove-billed *Crotophaga sulcirostris.*
  Smooth-billed *Crotophaga ani.*
Auklet:
  Cassin's *Ptychoramphus aleuticus.*
  Crested *Aethia cristatella.*
  Least *Aethia pusilla.*
  Parakeet *Cyclorrhynchus psittacula.*
  Rhinoceros *Cerorhinca monocerata.*
  Whiskered *Aethia pygmaea.*
Avocet: American *Recurvirostra americana.*
Becard: Rose-throated *Platypsaris aglaiae.*
Bittern:
  American *Botaurus lentiginosus.*
  Least *Ixobrychus exilis.*
Blackbird:
  Brewer's *Euphagus cyanocephalus.*
  Red-winged *Agelaius phoeniceus.*
  Rusty *Euphagus carolinus.*
  Tricolored *Agelaius tricolor.*
  Yellow-headed *Xanthocephalus xanthocephalus.*
Bluebird:
  Eastern *Sialia sialis.*
  Mountain *Sialia currucoides.*
  Western *Sialia mexicana.*
Bluethroat *Luscinia svecica.*
Bobolink: *Dolichonyx oryzivorus.*
Booby:
  Blue-faced *Sula dactylatra.*
  Blue-footed *Sula nebouxii.*
  Brown *Sula leucogaster.*
  Red-footed *Sula sula.*
Bunting:
  Indigo *Passerina cyanea.*
  Lark *Calamospiza melanocorys.*
  Lazuli *Passerina amoena.*
  McKay's *Plectrophenax hyperboreus.*
  Painted *Passerina ciris.*
  Snow *Plectrophenax nivalis.*
  Varied *Passerina versicolor.*
Bushtit: Common (Black-eared, California, Coast and other subspecies) *Psaltriparus minimus.*
Cardinal *Cardinalis cardinalis.*
Catbird: Grey *Dumetella carolinensis.*
Chat: Yellow-breasted *Icteria virens.*
Chickadee:
  Black-capped *Parus atricapillus.*
  Boreal (Hudsonian) *Parus hudsonicus.*
  Carolina *Parus carolinensis.*
  Chestnut-backed *Parus rufescens.*
  Gray-headed (Alaska) *Parus cinctus.*
  Mexican *Parus sclateri.*
  Mountain *Parus gambeli.*
Chuck-will's-widow *Caprimulgus carolinensis.*
Condor: California *Gymnogyps californianus.*
Cormorant:
  Brandt's *Phalacrocorax penicillatus.*
  Double-crested *Phalacrocorax auritus.*
  Great *Phalacrocorax carbo.*
  Olivaceous *Phalacrocorax olivaceus.*
  Pelagic *Phalacrocorax pelagicus.*
  Red-faced *Phalacrocorax urile.*
Cowbird:
  Bronzed (Red-eyed) *Tangavius aeneus.*
  Brown-headed (Eastern, Nevada, California, and Dwarf) *Molothrus ater.*
Crane:
  Sanhill (Florida and Greater subspecies) *grus canadensis.*
  Whooping *Grus americana.*
Creeper: Brown *Certhia familiaris.*
Crossbill:
  Red (Bendire's and other subspecies) *Loxia curvirostra.*
  White-winged *Loxia leucoptera.*
Crow:
  Common *Corvus brachyrhynchos.*
  Fish *Corvus ossifragus.*
  Hawaiian *Corvus tropicus.*
  Northwestern *Corvus caurinus.*
Cuckoo:
  Black-billed *Coccyzus erythropthalmus.*
  Mangrove (Maynard's) *Coccyzus minor.*
  Yellow-billed *Coccyzus americanus.*
Curlew:
  Bristle-thighed *Numenius tahitiensis.*
  Eskimo *Numenius borealis.*
  Long-billed *Numenius americanus.*
Dickcissel *Spiza americana.*
Dipper (Water Ouzel) *Cinclus mexicanus.*
Dotterel *Eudromias morinellus.*
Dove:
  Inca *Scardafella inca.*
  White-fronted *Leptotila verreauxi.*
Dovekie *Alle alle.*
Dowitcher:
  Long-billed *Limnodromus scolopaceus.*
  Short-billed *Limnodromus griseus.*
Duck:
  Hawaiian *Anas wyvilliana.*
  Laysan (Laysan teal) *Anas laysanensis.*
  Mexican (New Mexican) *Anas diazi.*
Dunlin (Red-backed Sandpiper) *Calidris alpina.*
Eagle:
  Bald *Haliaeetus leucocephalus.*
  Golden *Aquila chrysaetos.*

Egret:
- Cattle *Bubulcus ibis.*
- Great *Casmerodius albus.*
- Little *Egretta garzetta.*
- Reddish *Dichromanassa rufescens.*
- Snowy *Egretta thula.*

Falcon (see Raptor)

Finch:
- Black Rosy *Leucosticte atrata.*
- Brown capped Rosy *Leucosticte australis.*
- Cassin's *Carpodacus cassinii.*
- Gray-crowned Rosy *Leucosticte tephrocotis.*
- House *Carpocadus mexicanus.*
- Purple *Carpocadus purpureus.*

Flamingo, American *Phoenicopterus ruber.*

Flicker: Common (Gilded, Red-shafted, and Yellow-shafted) *Colaptes auratus.*

Flycatcher:
- Acadian *Empidonax virescens.*
- Alder *Empidonax alnorum.*
- Ash-throated *Myiarchus cinerascens.*
- Beardless *Camptostoma imberbe.*
- Buff-breasted *Empidonax fulvifrons.*
- Coues' *Contopus pertinax.*
- Dusky *Empidonax oberholseri.*
- Gray *Empidonax wrightii.*
- Great Crested (Northern and Southern) *Myiarchus crinitus.*
- Hammond's *Empidonax hammondii.*
- Kiskadee (Derby) *Pitangus sulphuratus.*
- Least *Empidonax minimus.*
- Nutting's *Myiarchus nuttingi.*
- Olivaceous *Myiarchus tuberculifer.*
- Olive-sided *Nuttallornis borealis.*
- Scissor-tailed *Muscivora forficata.*
- Sulphur-bellied *Myiodynastes luteiventris.*
- Vermillion *Pyrocephalus rubinus.*
- Western *Empidonax difficilis.*
- Wied's Crested *Myiarchus tyrannulus.*
- Willow *Emipidonax traillii.*
- Yellow-bellied *Empidonax flaviventris.*

Frigatebird:
- Great *Fregata minor.*
- Magnificent *Fregata magnificens.*

Fulmar: Northern *Fulmarus glacialis.*

Gannet *Morus bassanus.*

Gnatcatcher:
- Black-capped *Polioptila nigriceps.*
- Black-tailed (Plumbeous and other subspecies) *Polioptila melanura.*
- Blue-gray *Polioptila caerulea.*

Godwit:
- Bar-tailed *Limosa lapponica.*
- Hudsonian *Limosa haemastica.*
- Marbled *Limosa fedoa.*

Goldfinch:
- American *Spinus tristis.*
- Lawrence's *Spinus lawrencei.*
- Lesser (Arkansas) *Spinus psaltria.*

Goose:
- Aleutian Canada *Branta canadensis.*
- Hawaiian (Nene) *Branta sandvicensis.*

Grackle:
- Boat-tailed *Cassidix major.*
- Common (Purple, Bronzed, and Florida) *Quiscalus quiscula.*
- Great-tailed *Cassidix mexicanus.*

Grebe:
- Eared *Podiceps nigricollis.*
- Horned *Podiceps auritus.*
- Least *Podiceps dominicus.*
- Pied-billed *Podilymbus podiceps.*
- Red-necked (Holboell's) *Podiceps grisegena.*
- Western *Aechmophorus occidentalis.*

Grosbeak:
- Black-headed *Pheucticus melanocephalus.*
- Blue *Guiraca caerulea.*
- Evening *Hesperiphona vespertina.*
- Pine *Pinicola enucleator.*
- Rose-breasted *Pheucticus ludovicianus.*

Ground-chat *Geothlypis poliocephala.*

Guillemot:
- Black *Cepphus grylle.*
- Pigeon *Cepphus columba.*

Gull:
- Bonaparte's *Larus philadelphia.*
- California *Larus californicus.*
- Franklin's *Larus pipixcan.*
- Glaucous *Larus hyperboreus.*
- Glaucous-winged *Larus glaucescens.*
- Great Black-backed *Larus marinus.*
- Heermann's *Larus heermanni.*
- Herring *Larus argentatus.*
- Iceland *Larus glaucoides.*
- Ivory *Pagophila eburnea.*
- Laughing *Larus atricilla.*
- Lesser Black-backed *Larus fuscus.*
- Little *Larus minutus.*
- Mew *Larus canus.*
- Ring-billed *Larus delawarensis.*
- Ross' *Rhodostethia rosea.*
- Sabine's *Xema sabini.*
- Slaty-backed *Larus schistisagus.*
- Thayer's *Larus thayeri.*
- Western *Larus occidentalis.*

Hawk (see Raptor)

Heron:
- Black-crowned Night *Nycticorax nycticorax.*
- Great Blue (Great White and other subspecies) *Ardea herodias.*
- Green *Butorides virescens.*
- Little Blue *Florida caerulea.*
- Louisiana *Hydranassa tricolor.*
- Yellow-crowned Night *Nyctanassa violacea.*

Hummingbird:
- Allen's *Selasphorus sasin.*
- Anna's *Calypte anna.*
- Black-chinned *Archilochus alexandri.*
- Blue-throated *Lampornis clemenciae.*
- Broad-billed *Cynanthus latirostris.*
- Broad-tailed *Selasphorus platycercus.*
- Buff-bellied *Amazilia yucatanensis.*
- Calliope *Stellula calliope.*
- Costa's *Calypte costae.*
- Heloise's *Atthis heloisa.*
- Lucifer *Calothorax lucifer.*
- Rivoli's *Eugenes fulgens.*
- Ruby-throated *Archilochus colubris.*
- Rufous *Selasphorus rufus.*
- Violet-crowned *Amazilia verticalis.*
- White-eared *Hylocharis leucotis.*

Ibis:
- Glossy *Plegadis falcinellus.*
- White *Eudocimus albus.*
- White-faced *Plegadis chihi.*

Jacana *Jacana spinosa.*

Jaeger:
- Long-tailed *Stercorarius longicaudus.*
- Parasitic *Stercorarius parasiticus.*
- Pomarine *Stercorarius pomarinus.*

Jay:
- Blue *Cyanocitta cristata.*
- Gray *Perisoreus canadensis.*
- Green *Cyanocorax yncas.*
- Mexican *Aphelocoma ultramarina.*
- Pinon *Gymnorhinus cyanocephalus.*
- San Blas *Cissilopha sanblasiana.*
- Scrub *Aphelocoma coerulescens.*
- Steller's *Cyanocitta stelleri.*

Junco:
- Dark eyed (Oregon, Slate-colored, White-winged and other subspecies) *Junco hyemalis.*
- Gray-headed *Junco caniceps.*
- Yellow-eyed (Mexican and other subspecies) *Junco phaeonotus.*

Killdeer *Charadrius vociferus.*

Kingbird:
- Cassin's *Tyrannus vociferans.*
- Eastern *Tyrannus tyrannus.*
- Gray *Tyrannus dominicensis.*
- Tropical (Couch's *Tyrannus melancholicus.*
- Western (Arkansas) *Tyrannus verticalis.*

Kingfisher:
- Belted *Megaceryle alcyon.*
- Green *Chloroceryle americana.*

Kinglet:
- Golden-crowned *Regulus satrapa.*
- Ruby-crowned *Regulus calendula.*

Kite:
- Everglade *Rostrhamus sociabilis.*
- Mississippi *Ictinia mississippiensis.*
- Swallow-tailed *Elanoides forficatus.*
- White-tailed *Elanus leucurus.*

Kittiwake:
- Black-legged (Atlantic and Pacific) *Rissa tridactyla.*
- Red-legged *Rissa brevirostris.*

Knot: Red *Calidris canutus.*

Lark:
- Horned *Eremophila alpestris.*

Limpkin *Aramus guarauna.*

Longspur:
- Chestnut-collared *Calcarius ornatus.*
- Lapland *Calcarius lapponicus.*
- McCown's *Calcarius mccownii.*
- Smith's *Calcarius pictus.*

Loon:
- Arctic (Pacific) *Gavia arctica.*
- Common *Gavia immer.*
- Red-throated *Gavia stellata.*
- Yellow-billed *Gavia adamsii.*

Magpie:
- Black-billed *Pica pica.*
- Yellow-billed *Pica nuttalli.*

Martin:
- Gray-breasted *Progne chalybea.*
- Purple *Progne subis.*

Meadowlark:
- Eastern *Sturnella magna.*
- Western *Sturnella neglecta.*

Millerbird *Acrocephalus familaris.*

Mockingbird *Mimus polyglottos.*

Murre:
- Common (Atlantic and California) *Uria aalge.*
- Thick-billed (Brünnich's) *Uria lomvia.*

Murrelet:
- Ancient *Synthliboramphus antiquus.*
- Craveri's *Endomychura craveri.*
- Kittlitz's *Brachyramphus brevirostris.*
- Marbled *Brachyramphus marmoratus.*
- Xantus' *Endomychura hypoleuca.*

Nighthawk:
- Common (Eastern) *Chordeiles minor.*
- Lesser (Texas) *Chordeiles acutipennis.*

Nutcracker, Clark's *Nucifraga columbiana.*

Nuthatch:
- Brown-headed *Sitta pusilla.*
- Pigmy *Sitta pygmaea.*
- Red-breasted *Sitta canadensis.*
- White-breasted *Sitta carolinensis.*

Oriole:
- Black-headed (Audubon's) *Icterus graduacauda.*
- Fuertes' *Icterus fuertesi.*
- Hooded (Sennett's) *Icterus cucullatus.*
- Lichtenstein's (Altamira) *Icterus gularis.*
- Northern (Baltimore and Bullock's) *Icterus galbula.*
- Orchard *Icterus spurius.*
- Scott's *Icterus parisorum.*

Osprey *Pandion haliaetus.*

Ovenbird *Sciurus aurocapillus.*

Owl: (also see Raptors)
- Barn *Tyto alba.*

Oystercatcher:
- American *Haematopus palliatus.*
- Black *Haematopus bachmani.*

Pauraque *Nyctidromus albicollis.*

Petrel:
- Ashy Storm *Oceanodroma homochroa.*
- Black Storm *Oceanodroma melania.*
- Bonin *Pterodroma hypoleuca.*
- Bulwer's *Bulweria bulwerii.*
- Dark-rumped *Pterodroma phacopygia.*
- Fork-tailed Storm *Oceanodroma furcata.*
- Hartcourt's Storm (Hawaiian) *Oceanodroma castro.*
- Leach's Storm *Oceanodroma leucohoa.*
- Least Storm *Halocyptena microsoma.*
- Scaled *Pterodroma inexpectata.*
- Sooty Storm *Oceanodroma markhami.*
- Wilson's Storm *Oceanites oceanicus.*

Pewee:
- Eastern Wood *Contopus virens.*
- Western Wood *Contopus sordidulus.*

Pelican:
- Brown *Pelecanus occidentalis.*
- White *Pelecanus erythrorhynchos.*

Phainopepla *Phainopepla nitens.*

Phalarope:
Northern *Lobipes lobatus.*
Red *Phalaropus palicarius.*
Wilson's *Steganopus tricolor.*
Phoebe:
Black *Sayornis nigricans.*
Eastern *Sayornis phoebe.*
Say's *Sayornis saya.*
Pigeon:
Red-billed *Columba flavirostris.*
Pipit:
Sprague's *Anthus spragueii.*
Water (American) *Anthus spinoletta.*
Plover:
American Golden (Atlantic and Pacific) *Pluvialis dominica.*
Black-bellied *Pluvialis squatarola.*
Mongolian *Charadrius mongolus.*
Mountain *Charadrius montana.*
Piping *Charadrius melodus.*
Semipalmated *Charadrius semipalmatus.*
Snowy *Charadrius alexandrinus.*
Wilson's *Charadrius wilsonia.*
Poor-will *Phalaenoptilus nuttallii.*
Puffin:
Common *Fratercula arctica.*
Horned *Fratercula corniculata.*
Tufted *Lunda cirrhata.*
Pyrrhuloxia *Pyrrhuloxia sinuata.*
Raptor:
Caracara *Caracara cheriway.*
Falcon:
Aplomado *Falco femoralis.*
Peregrine *Falco peregrinus.*
Prairie *Falco mexicanus.*
Goshawk *Accipiter gentilis.*
Gyrfalcon *Falco rusticolus.*
Hawk:
Black *Buteogallus anthracinus.*
Broad-winged *Buteo platypterus.*
Cooper's *Accipiter cooperii.*
Ferruginous *Buteo regalis.*
Gray *Buteo nitidus.*
Harris' *Parabuteo unicinctus.*
Hawaiian *Buteo solitarius.*
Marsh *Circus cyaneus.*
Red-shouldered *Buteo lineatus.*
Red-tailed (Harlan's and other subspecies) *Buteo jamaicensis.*
Rough-legged *Buteo lagopus.*
Sharp-shinned *Accipiter striatus.*
Short-tailed *Butea brachyurus.*
Swainson's *Buteo swainsoni.*
White-tailed *Buteo albicaudatus.*
Zone-tailed *Buteo albonotatus.*
Kestrel: American *Falco sparverius.*
Merlin *Falco columbarius.*
Owl:
Barred *Strix varia.*
Boreal *Aegolius funereus.*
Burrowing *Speotyto cunicularia.*
Elf *Micrathene whitneyi.*
Ferruginous *Glaucidium brasilianum.*
Flammulated *Otus flammeolus.*
Great Gray *Strix nebulosa.*
Great Horned *Bubo virginianus.*
Hawk *Surnia ulula.*
Long-eared *Asio otus.*
Pygmy *Glaucidium gnoma.*
Saw-whet *Aegolius acadicus.*
Screech *Otus asio.*
Short-eared *Asio flammeus.*
Snowy *Nyctea scandiaca.*
Spotted *Strix occidentalis.*
Whiskered *Otus trichopsis.*
Raven:
Common *Corvus corax.*
White-necked *Corvus cryptoleucus.*
Razorbill *Alca torda.*
Redpoll:
Common *Acanthis flammea.*
Hoary *Acanthis hornemanni.*
Redstart:
American *Setophaga ruticilla.*
Painted *Setophaga picta.*
Roadrunner *Geococcyx californianus.*
Robin:
American *Turdus migratorius.*
Rufous-backed *Turdus rufo-palliatus.*
Ruby-throat: Siberian *Luscinia calliope.*
Ruff *Philomachus pugnax.*
Sanderling *Calidris alba.*
Sandpiper:
Baird's *Calidris bairdii.*
Buff-breasted *Tryngites subruficollis.*
Curlew *Calidris ferruginea.*
Least *Calidris minutilla.*
Pectoral *Calidris melanotos.*
Purple *Calidris maritima.*
Rock (Aleutian) *Calidris ptilocnemis.*
Semipalmated *Calidris pusillus.*
Sharp-tailed *Calidris acuminata.*
Solitary *Tringa solitaria.*
Spotted *Actitis macularia.*
Stilt *Micropalama himantopus.*
Upland *Bartramia americana.*
Western *Calidris mauri.*
White-rumped *Calidris fuscicollis.*
Sapsucker:
Williamson's *Sphyrapicus thyroideus.*
Yellow-bellied (Red-naped and Red-breasted) *Sphyrapicus varius.*
Seedeater: White-collared *Sporophila torqueola.*
Shearwater:
Audubon's *Puffinus lherminieri.*
Christmas Island *Puffinus nativitatus.*
Cory's *Puffinus diomedea.*
Flesh-footed *Puffinus carneipes.*
Greater *Puffinus gravis.*
Manx *Puffinus puffinus.*
New Zealand *Puffinus bulleri.*
Pink-footed *Puffinus creatopus.*
Short-tailed *Puffinus tenuirostris.*
Sooty *Puffinus griseus.*
Wedge-tailed *Puffinus pacificus.*
Shrike:
Loggerhead *Lanius ludovicianus.*
Northern *Lanius excubitor.*
Siskin Pine *Spinus pinus.*
Skua *Catharacta skua.*
Skimmer: Black *Rynchops nigra.*
Solitaire: Townsend's *Myadestes townsendi.*
Sparrow:
Bachman's *Aimophila aestivalis.*
Baird's *Ammodramus bairdii.*
Black-chinned *Spizella atrogularis.*
Black-throated *Amphispiza bilineata.*
Botteri's *Aimophila botterii.*
Brewer's *Spizella breweri.*
Cape Sable *Ammospiza mirabilis.*
Cassin's *Aimophila cassinii.*
Chipping *Spizella passerina.*
Clay-colored *Spizella pallida.*
Field *Spizella pusilla.*
Fox *Passerella iliaca.*
Golden-crowned *Zonotrichia atricapilla.*
Grasshopper *Ammodramus savannarum.*
Harris *Zonotrichia querula.*
Henslow's *Ammodramus henslowii.*
Lark *Chondestes grammacus.*
Le Conte's *Ammospiza leconteii.*
Lincoln's *Melospiza lincolnii.*
Olive (Texas) *Arremonops rufivirgata.*
Rufous-crowned *Aimophila ruficeps.*
Rufous-winged *Aimophila carpalis.*
Sage (Bell's) *Amphispiza belli.*
Savannah (Belding's, Ipswich, Large-billed and other subspecies) *Passerculus sandwichensis.*
Seaside (Cape Sable, Dusky, and other subspecies) *Ammospiza maritima.*
Sharp-tailed *Ammospiza caudacuta.*
Song *Melospiza melodia.*
Swamp *Melospiza georgiana.*
Tree *Spizella arborea.*
Vesper *Pooecetes gramineus.*
White-crowned *Zonotrichia leucophrys.*
White-throated *Zonotrichia albicollis.*
Worthen's *Spizella worthenl.*
Spoonbill: Roseate *Ajaia ajaja.*
Stilt: Black-necked *Himantopus mexicanus.*
Stork: Wood *Mycteria americana.*
Surfbird *Aphriza virgata.*
Swallow:
Bahama *Callichelidon cyaneoviridis.*
Bank *Riparia riparia.*
Barn *Hirundo rustica.*
Cave *Petrochelidon fulva.*
Cliff *Petrochelidon pyrrhonota.*
Rough-winged *Stelgidopteryx ruficollis.*
Tree *Iridoprocne bicolor.*
Violet-green *Tachycineta thalassina.*
Swan:
Trumpeter *Olor buccinator.*
Whooper *Olor cygnus.*
Swift:
Black *Cypseloides niger.*
Chimney *Chaetura pelagica.*
Vaux's *Chaetura vauxi.*
White-throated *Aeronautes saxatalis.*
Tanager:
Hepatic *Piranga flava.*
Scarlet *Piranga olivacea.*
Summer *Piranga rubra.*
Western *Piranga ludoviciana.*
Tattler:
Polynesian *Heteroscelus brevipes.*
Wandering *Heteroscelus incanus.*
Tern:
Aleutian *Sterna aleutica.*
Arctic *Sterna paradisaea.*
Black *Chlidonias niger.*
Blue-gray Noddy *Procelsterna cerulea.*
Bridled (Gaviota Oscura) *Sterna anaethetus.*
Caspian *Hydroprogne caspia.*
Common *Sterna hirundo.*
Elegant *Thalasseus elegans.*
Fairy (White) *Gygis alba.*
Forster's *Sterna forsteri.*
Gray-backed *Sterna lunata.*
Gull-billed *Gelochelidon nilotica.*
Least *Sterna albifrons.*
Noddy *Anous stolidus.*
Roseate *Sterna dougallii.*
Royal *Thalasseus maximus.*
Sandwich (Cabot's) *Thalasseus sandvicensis.*
Sooty *Sterna fuscata.*
White-capped Noddy (Hawaiian Tern) *Anous minutus.*
Thrasher:
Bendire's *Roxostoma bendirei.*
Brown *Toxostoma rufum.*
California *Toxostoma redivivum.*
Crissal *Toxostoma dorsale.*
Curve-billed *Toxostoma curvirostre.*
Le Conte's *Toxostoma lecontei.*
Long-billed (Sennett's) *Toxostoma longirostre.*
Sage *Oreoscoptes montanus.*
Thrush:
Gray-checked *Catharus minimus.*
Hawaiian *Phaeornis obscurus.*
Hermit *Catharus guttatus.*
Small Kauai *Phaeornis palmeri.*
Swainson's (Russet-backed and Olive-backed) *Catharus ustulatus.*
Varied *Ixoreus naevius.*
Wood *Hylocichla mustelina.*
Titmouse:
Black-crested *Parus atricristatus.*
Bridled *Parus wollweberi.*
Plain *Parus inornatus.*
Tufted *Parus bicolor.*
Towhee:
Abert's *Pipilo aberti.*
Brown *Pipilo fuscus.*
Green-tailed *Chlorura chlorura.*
Rufous-sided *Pipilo erythrophatmus.*
Trogon:
Coppery-tailed *Trogon elegans.*
Tropicbird:
Red-billed *Phaethon aethereus.*
Red-tailed *Phaethon rubricauda.*
White-tailed *Phaethon lepturus.*
Turnstone:
Black *Arenaria melanocephala.*
Ruddy *Arenaria interpres.*
Veery *Catharus fuscescens.*
Verdin *Auriparus flaviceps.*
Vireo:
Bell's *Vireo bellii.*
Black-whiskered *Vireo altiloquus.*
Black-capped *Vireo atricapilla.*
Gray *Vireo vicinio.*

Hutton's *Vireo huttoni*.
Philadelphia *Vireo philadelphicus*.
Red-eyed *Vireo olivaceus*.
Solitary (Blue-headed) *Vireo solitarius*.
Warbling *Vireo gilvus*.
White-eyed *Vireo griseus*.
Yellow-throated *Vireo flavifrons*.
Vulture:
Black *Coragyps atratus*.
Turkey *Cathartes aura*.
Wagtail:
White *Motacilla alba*.
Yellow *Motacilla flava*.
Warbler:
Arctic *Phylloscopus borealis*.
Bachman's *Vermivora bachmanii*.
Bay-breasted *Dendroica castanea*.
Black-and-white *Mniotilta varia*.
Blackburnian *Dendroica fusca*.
Blackpoll *Dendroica striata*.
Black-throated Blue *Dendroica caerulescens*.
Black-throated Gray *Dendroica nigrescens*.
Black-throated Green *Dendroica virens*.
Blue-winged *Vermivora pinus*.
Canada *Wilsonia canadensis*.
Cape May *Dendroica tigrina*.
Cerulean *Dendroica cerulea*.
Chestnut-sided *Dendroica pensylvanica*.
Colima *Vermivora crissalis*.
Connecticut *Oporornis agilis*.
Golden-cheeked *Dendroica chrysoparia*.
Golden-winged *Vermivora chrysoptera*.
Grace's *Dendroica graciae*.
Hermit *Dendroica occidentalis*.
Hooded *Wilsonia citrina*.
Kentucky *Oporornis formosus*.
Kirtland's *Dendroica kirtlandii*.
Lucy's *Vermivora luciae*.
MacGillivray's *Oporornis tolmiei*.
Magnolia *Dendroica magnolia*.
Mourning *Oporornis philadelphia*.
Nashville *Vermivora ruficapilla*.
Northern Parula *Parula americana*.
Olive *Peucedramus taeniatus*.
Orange-crowned *Vermivora celata*.
Palm *Dendroica palmarum*.
Pine *Dendroica pinus*.
Prairie *Dendroica discolor*.
Prothonotary *Protonotaria citrea*.
Red-faced *Cardellina rubrifrons*.
Swainson's *Limnothlypis swainsonii*.
Tennessee *Vermivora peregrina*.
Townsend's *Dendroica townsendi*.
Tropical Parula (Olive-backed) *Parula pitiayumi*.
Virginia's *Vermivora virginiae*.
Wilson's *Wilsonia pusilla*.
Worm-eating *Helmitheros vermivorus*.
Yellow *Dendroica petechia*.
Yellow-rumped (Audubon's and Myrtle) *Dendroica coronata*.
Yellow-throated *Dendroica dominica*.
Waterthrush:
Louisiana *Seiurus motacilla*.
Northern (Grinnell's) *Seiurus noveboracensis*.
Waxwing:
Bohemian *Bombycilla garrulus*.
Cedar *Bombycilla cedrorum*.
Wheatear *Oenanthe oenanthe*.
Whimbrel (Hudsonian curlew) *Numenius phaeopus*.
Whip-poor-will *Caprimulgus vociferus*.
Willet *Catoptrophorus semipalmatus*.
Woodpecker:
Actor (California and other subspecies) *Melanerpes formicivorus*.
Arizona *Dendrocopos arizonae*.
Black-backed Three-toed *Picoides arcticus*.
Downy *Dendrocopos pubescens*.
Gila *Centurus uropygialis*.
Golden-fronted *Centurus aurifrons*.
Hairy *Dendrocopos villosus*.
Ivory-billed *Campephilus principalis*.
Ladder-backed (Texas, Cactus, and other subspecies) *Dendrocopos scalaris*.
Lewis' *Asyndesmus lewis*.
Northern Three-toed *Picoides tridactylus*.
Nuttall's *Dendrocopos nuttallii*.
Pileated *Dryocopus pileatus*.
Red-bellied *Centurus carolinus*.
Red-cockaded *Dendrocopos borealis*.
Red-headed *Melanerpes erythrocephalus*.
White-headed *Dendrocopos albolavatus*.
Wren:
Bewick's *Thryomanes bewickii*.
Brown-throated *Troglodytes brunneicollis*.
Cactus *Campylorhynchus brunneicapillus*.
Canon *Catherpes mexicanus*.
Carolina *Thryothorus ludovicianus*.
House *Troglodytes aedon*.
Long-billed Marsh *Telmatodytes palustris*.
Rock *Salpinctes obsoletus*.
Short-billed Marsh *Cistothorus platensis*.
Winter *Troglodytes troglodytes*.
Wrentit *Chamaea fasciata*.
Yellowlegs:
Greater *Tringa melanoleucus*.
Lesser *Tringa flavipes*.
Yellowthroat: Common *Geothylpis trichas*.

Subpart C—Addresses

§ 10.21 Director.

Mail forwarded to the Director with reference to law enforcement or permits should be addressed:

Director (FSF/LE), Bureau of Sport Fisheries and Wildlife, U.S. Department of the Interior, Washington, D.C. 20240.

§ 10.22 Law enforcement districts.

Bureau law enforcement districts and their area of jurisdiction follow. Mail should be addressed:

Special Agent in Charge, Bureau of Sport Fisheries and Wildlife (appropriate address below).

Area of jurisdiction:	*Address*
Alabama	474 South Court St., Montgomery, Ala. 36104.
Alaska: Except that portion lying in election districts 1–6.	813 D St., Anchorage, Alaska 99501.
Alaska: Southeastern part of State which includes only election districts 1–6.	P.O. Box 1287, Juneau, Alaska 99801.
Arizona	2721 North Central Ave., Phoenix, Ariz. 95004.
Arkansas	311 Post Office and Courts Bldg., Little Rock, Ark. 72201.
California: That part of the State lying north of a line forming the southern boundaries of the counties of: Alpine, Calaveras, San Joaquin, Santa Clara, and Santa Cruz.	650 Capitol Mall, Sacramento, Calif. 95814.
California: That part of the State lying south of a line forming the southern boundaries of the counties of: Alpine, Calaveras, San Joaquin, Santa Clara and Santa Cruz, and north of a line forming the southern boundaries of the counties of Inyo, Kern, and San Luis Obispo.	1130 O St., Fresno, Calif. 93721.
California: That part of the State lying south of the southern boundaries of the counties of Inyo, Kern, and San Luis Obispo.	125 South Grand Ave., Pasadena, Calif. 91105.
Colorado	Building 45, Denver Federal Center, Denver, Colo. 80225.
Connecticut and Rhode Island	450 Main Street, Hartford, Conn. 06103.
Delaware	P.O. Box 692, Dover, Del. 19901.
Florida	P.O. Box 190, Tallahassee, Fla. 32302.
Georgia	17 Executive Park Dr. NE., Atlanta, Ga. 30329.
Hawaii	337 Uluniu St., Kailua, Oahu, Hawaii 96734.
Idaho	P.O. Box 031, Boise, Idaho 83702.
Illinois	600 East Monroe, Springfield, Ill. 62704.
Indiana	36 South Pennsylvania St., Indianapolis, Ind. 46204.
Iowa	627 New Federal Bldg., Des Moines, Iowa 50309.
Kansas	P.O. Box 10, Hutchinson, Kans. 67501.
Kentucky	P.O. Box 1003, Paducah, Ky. 42001.
Louisiana	P.O. Box 3473, Baton Rouge, La. 70821.
Maine	P.O. Box 800, Augusta, Maine 04364.
Maryland	1409 Forest Dr., Annapolis, Md. 21403.
Massachusetts, New Hampshire, and Vermont.	U.S. Post Office and Courthouse, Boston, Mass. 02109.
Michigan	106 Manly Miles Bldg., 1405 South Harrison Rd., East Lansing, Mich. 48823.
Minnesota	568 Federal Building and Courthouse, St. Paul, Minn. 55101.
Mississippi	P.O. Box 1104, Jackson, Miss. 39205.
Missouri	P.O. Box 815, Jefferson City, Mo. 65101.
Montana and Wyoming	711 Central Avenue, Billings, Mont. 59102.

Nebraska	P.O. Box 7, Lincoln, Nebr. 68505.
Nevada	300 Booth St., Reno, Nev. 89502.
New Jersey	P.O. Box 232, Trenton, N.J. 08602.
New Mexico	P.O. Box 14324, Albuquerque, N. Mex. 87111.
New York	P.O. Box 717, Albany, N.Y. 12201.
North Carolina	P.O. Box 506, Washington, N.C. 27889.
North Dakota	P.O. Box 1613, Bismarck, N. Dak. 58501.
Ohio	P.O. Box 15002, Columbus, Ohio 43215.
Oklahoma	200 Northwest Fourth St., Oklahoma City, Okla. 73102.
Oregon	1775 32d Place NE., Salem, Oreg. 97303.
Pennsylvania and West Virginia	P.O. Box 1154, Harrisburg, Pa. 17108.
The Commonwealth of Puerto Rico and all of the Virgin Islands of the United States.	G.P.O. 3708, San Juan, Puerto Rico 00936.
South Carolina	1100 Laurel St., Columbia, S.C. 29201.
South Dakota	P.O. Box 254, Pierre, S. Dak. 57501.
Tennessee	P.O. Box 1033, Nashville, Tenn. 37202.
Texas: That part of the State of Texas lying north of the northern boundaries of the counties of Winkler, Ector, Midland, Glasscock, Sterling, Coke, Runnels, Coleman, and Brown and lying east of the eastern boundaries of the counties of Brown, Mills, Lampasas, Burnet, Blanco, Comal, Guadalupe, Gonzales, DeWitt, Victoria, and Calhoun.	P.O. Box 61161, Houston, Tex. 77061.

PART 20—MIGRATORY BIRD HUNTING

3. Accordingly, Part 20 of 50 CFR, Chapter I, is amended to read as follows:

AUTHORITY.—Migratory Bird Treaty Act, section 3, 40 Stat. 755.

Subpart A—Introduction

§ 20.1 Scope of regulations.

(a) *In general.*—The regulations contained in this part relate only to the hunting of migratory game birds, and crows.

(b) *Procedural and substantive requirements.*—Migratory game birds may be taken, possessed, transported, shipped, exported, or imported only in accordance with the restrictions, conditions, and requirements contained in this part. Crows may be taken, possessed, transported, exported, or imported only in accordance with subpart H of this part and the restrictions, conditions, and requirements prescribed in § 20.133.

§ 20.2 Relation to other provisions.

(a) *Migratory bird permits.*—The provisions of this part shall not be construed to alter the terms of any permit or other authorization issued pursuant to part 21 of this chapter.

(b) *Migratory bird hunting stamps.*—The provisions of this part are in addition to the provisions of the Migratory Bird Hunting Stamp Act of 1934 (48 Stat. 451, as amended; 16 U.S.C. 718a).

(c) *National wildlife refuges.*—The provisions of this part are in addition to, and are not in lieu of, any other provision of law respecting migratory game birds under the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927, as amended; 16 U.S.C. 668dd) or any regulation made pursuant thereto.

(d) *State Laws for the protection of migratory birds.*—No statute or regulation of any State shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this part, however, nothing in this part shall be construed to prevent the several States from making and enforcing laws or regulations not inconsistent with these regulations and the conventions between the United States and any foreign country for the protection of migratory birds or with the Migratory Bird Treaty Act, or which shall give further protection to migratory game birds.

Subpart B—Definitions

§ 20.11 Meaning of terms.

For the purpose of this part, the following terms shall be construed, respectively, to mean and to include:

"Migratory game birds" means those migratory birds included in the terms of conventions between the United States and any foreign country for the protection of migratory birds, for which open seasons are prescribed in this part and belong to the following families:

(1) Anatidae (wild ducks, geese, brant, and swans);

(2) Columbidae (wild doves and pigeons);

(3) Gruidae (little brown cranes);

(4) Rallidae (rails, coots, and gallinules); and

(5) Scolopacidae (woodcock and snipe).

A list of migratory birds protected by the international conventions and the Migratory Bird Treaty Act appears in §10.13 of this chapter.

"Open season" means the days on which migratory game birds may lawfully be taken. Each period prescribed as an open season shall be construed to include the first and last days thereof.

"Closed season" means the days on which migratory game birds shall not be taken.

"Daily bag limit" means the maximum number of migratory game birds permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

"Aggregate daily bag limit" means the maximum number of migratory game birds permitted to be taken by one person in any one day during the open season when such person hunts in more than one specified geographic area for which a daily bag limit is prescribed. The aggregate daily bag limit is equal to, but shall not exceed, the largest daily bag limit prescribed for any one of the specified geographic areas in which taking occurs.

"Possession limit" means the maximum number of migratory game birds permitted to be possessed by any one person when lawfully taken in the United States in any one specified geographic area for which a possession limit is prescribed.

"Aggregate possession limit" means the maximum number of migratory game birds taken in the United States, permitted to be possessed by any one person when taking and possession occurs in more than one specified geolimit is prescribed. The aggregate possession limit is equal to, but shall not exceed, the largest possession limit prescribed for any one of the specified geographic areas in which taking and possession occurs.

"Personal abode" means one's principal or ordinary home or dwelling place, as distinguished from his temporary or transient place of abode or dwelling such as a hunting club, or any club house, cabin, tent, or trailer house used as a hunting club, or any hotel, motel, or rooming house used during a hunting, pleasure, or business trip.

"Commercial preservation facility" means any person, place, establishment, or cold-storage or locker plant that, for hire or other consideration, receives, possesses, or has in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storage, or shipment.

Subpart C—Taking

§ 20.21 Hunting methods.

Migratory birds on which open seasons are prescribed in this part may be taken by any method except those prohibited in this section. No person shall take migratory game birds:

(a) With a trap, snare, net, crossbow, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machinegun, fish hook, poison, drug, explosive, or stupefying substance;

(b) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

(c) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water;

(d) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind;

(e) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has ceased: *Provided*, That a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power except in the seaduck area as permitted in Subpart K of this part;

(f) By the use or aid of live birds as decoys; although not limited to, it shall be a violation of this paragraph for any person to take migratory waterfowl on an area where tame or captive live ducks or geese are present unless such birds are and have been for a period of 10 consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds;

(h) By means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of any migratory bird; or

(i) By the aid of baiting, or on or over any baited area. As used in this paragraph, "baiting" shall mean the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them; and "baited area" means any area where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed whatsoever capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for 10 days following complete removal of all such corn, wheat or other grain, salt, or other feed. However, nothing in this paragraph shall prohibit:

(1) The taking of all migratory game birds, including waterfowl, on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; and

(2) The taking of all migratory game birds, except waterfowl, on or over any lands where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed has been distributed or scattered as the result of bona fide agricultural operations or procedures, or as a result of manipulation of a crop or other feed on the land where grown for wildlife management purposes: Provided, that manipulation for wildlife management purposes does not include the distributing or scattering of grain or other feed once it has been removed from or stored on the field where grown.

§ 20.22 Closed seasons.

No person shall take migratory game birds during the closed season.

§ 20.23 Shooting hours.

No person shall take in any 1 calendar day, more than the daily bag limit or aggregate daily bag limit, whichever applies.

§ 20.24 Daily limit.

No person shall take in any 1 day, more than the daily bag limit or aggregate daily bag limit, whichever applies.

§ 20.25 Wanton waste of migratory game birds.

No person shall kill or cripple any migratory game bird pursuant to this part without making a reasonable effort to retrieve the bird and include it in his daily bag limit.

Subpart D—Possession

§ 20.31 Prohibited if taken in violation of subpart C.

No person shall at any time, by any means, or in any manner, possess or have in custody any migratory game bird or part thereof, taken in violation of any provision of subpart C of this part.

§ 20.32 During closed season.

No person shall possess any freshly killed migratory game birds during the closed season.

§ 20.33 Possession limit.

No person shall possess more migratory game birds taken in the United States than the possession limit or the aggregate possession limit, whichever applies.

§ 20.34 Opening day of a season.

No person on the opening day of the season shall possess any freshly killed migratory game birds in excess of the daily bag limit, or aggregate daily bag limit, whichever applies.

§ 20.35 Field possession limit.

No person shall possess, have in custody, or transport more than the daily bag limit or aggregate daily bag limit, whichever applies, of migratory game birds, tagged or not tagged, at or between the place where taken and either (a) his automobile or principal means of land transportation; or (b) his personal abode or temporary or transient place of lodging; or (c) a commercial preservation facility; or (d) a post office; or (e) a common carrier facility.

§ 20.36 Tagging requirement.

No person shall put or leave any migratory game birds at any place (other than at his personal abode), or in the custody of another person for picking, cleaning, processing, shipping, transportation, or storage (including temporary storage), or for the purpose of having taxidermy services performed, unless such birds have a tag attached, signed by the hunter, stating his address, the total number and species of birds, and the date such birds were killed. Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

§ 20.37 Custody of birds of another.

No person shall receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by § 2036.

§ 20.38 Possession of live birds.

Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become a part of the daily bag limit. No person shall at any time, or by any means, possess or transport live migratory game birds taken under authority of this part.

§ 20.39 Termination of possession.

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have ceased when such birds have been delivered by him to another person as a gift; or have been delivered by him to a post office, a common carrier, or a commercial preservation facility and consigned for transport by the Postal Service or a common carrier to some person other than the hunter.

Subpart E—Transportation Within the United States

§ 20.41 Prohibited if taken in violation of subpart C.

No person shall at any time, by any means, or in any manner, transport any migratory game bird or part thereof, taken in violation of any provision of subpart C of this part.

§ 20.42 Transportation of birds of another.

No person shall transport migratory game birds belonging to another person unless such birds are tagged as required by § 20.36.

§ 20.43 Species identification requirement.

No person shall transport within the United States any migratory game birds, except doves, unless the head or one fully feathered wing remains attached to each such bird at all times while being transported from the place where taken until they have arrived at the personal abode of the possessor or a commercial preservation facility.

§ 20.44 Marking package or container.

No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds therein contained clearly and conspicuously marked on the outside thereof.

Subpart F—Exportation

§ 20.51 Prohibited if taken in violation of subpart C.

No person shall at any time, by any means, or in any manner, export or cause to be exported any migratory game bird or part thereof, taken in violation of any provision of subpart C of this part.

§ 20.52 Species identification requirement.

No person shall export migratory game birds unless one fully feathered wing remains attached to each such bird while being transported from the United States and/or any of its possessions to any foreign country.

§ 20.53 Marking package or container.

No person shall export migratory game birds via the Postal Service or a common carrier unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds therein contained clearly and conspicuously marked on the outside thereof.

Subpart G—Importations

§ 20.61 Importation limits.

No person shall import during any 1 calendar week beginning on Sunday migratory game birds in excess of the following importation limits:

(a) *Doves and pigeons.*—Not to exceed 25 doves, singly or in the aggregate of all species, and 10 pigeons, singly or in the aggregate of all species from any foreign country.

(b) *Waterfowl.*—(1) From any foreign country except Canada, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species.

(2) From Canada, not to exceed the maximum number permitted to be exported by Canadian authorities.

§ 20.62 Importation of birds of another.

No person shall import migratory game birds belonging to another person.

§ 20.63 Species identification requirement.

No person shall import migratory game birds unless each such bird has one fully feathered wing attached, and such wing must remain attached while being transported between the port of entry and the personal abode of the possessor or between the port of entry and a commercial preservation facility.

§ 20.64 Foreign export permits.

No person shall import, possess or transport, any migratory game birds killed in a foreign country unless such birds are accompanied by export permits, tags, or other documentation required by applicable foreign laws or regulations.

§ 20.65 Processing requirement.

No person shall import migratory game birds killed in any foreign country, except Canada, unless such birds are dressed (except as required in § 20.63), drawn, and the head and feet are removed: *Provided*, That this shall not prohibit the importation of legally taken, fully feathered migratory game birds consigned for mounting purposes to a taxidermist who holds a current taxidermist permit issued to him pursuant to § 21.24 of this chapter and who is also licensed by the U.S. Department of Agriculture to decontaminate such birds.

§ 20.66 Marking of package or container.

No person shall import migratory game birds via the Postal Service or a common carrier unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds therein contained clearly and conspicuously marked on the outside thereof.

Subpart H—Federal, State, and Foreign Law

§ 20.71 Violation of Federal law.

No person shall at any time, by any means or in any manner, take, possess, transport, or export any migratory bird, or any part, nest, or egg of any such bird, in violation of any act of Congress or any regulation issued pursuant thereto.

§ 20.72 Violation of State law.

No person shall at any time, by any means or in any manner, take, possess, transport, or export any migratory bird, or any part, nest, or egg of any such bird, in violation of any applicable law or regulation of any State.

§ 20.73 Violation of foreign law.

No person shall at any time, by any means, or in any manner, import, possess, or transport, any migratory bird, or any part, nest, or egg of any such bird taken, bought, sold, transported, possessed, or exported contrary to any applicable law or regulation of any foreign country, or State or province thereof.

Subpart I—Commercial Preservation Facilities

§ 20.81 Tagging requirement.

No commercial preservation facility shall receive or have in custody any migratory game birds unless such birds are tagged as required by § 20.36.

§ 20.82 Records required.

No commercial preservation facility shall:

(a) Receive or have in custody any migratory game birds unless accurate records are maintained showing (1) the number of each species; (2) the date such birds were received; (3) the name and address of the person from whom such birds were received; (4) the date such birds were disposed of; and (5) the name and address of the person to whom such birds were delivered, or

(b) Destroy any records required to be maintained under this section for a period of 1 year following the last entry on the record.

§ 20.83 Inspection of premises.

No commercial preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried on.

Subpart J—Feathers or Skins

§ 20.91 Commercial use of feathers.

Any person may possess, purchase, sell, barter, or transport for the making of fishing flies, bed pillows, and mattresses, and for similar commercial uses the feathers of migratory waterfowl (wild ducks, geese, brant, and swans) killed by hunting pursuant to this part, or seized and condemned by Federal or State game authorities, except that:

(a) No person shall purchase, sell, barter, or offer to purchase, sell, or barter for millinery or ornamental use the feathers of migratory game birds taken under authority of this part; and

(b) No person shall purchase, sell, barter, or offer to purchase, sell, or barter mounted specimens of migratory game birds taken under authority of this part.

§ 20.92 Personal use of feathers or skins.

Any person for his own use may possess, transport, ship, import, and export without a permit the feathers and skins of lawfully taken migratory game birds.

Subpart K—Annual Season, Limit, and Shooting Hour Schedules

Subpart L—Administrative and Miscellaneous Provisions

§ 20.131 Extension of seasons.

Whenever the Secretary shall find that emergency State action to prevent forest fires in any extensive area has resulted in the shortening of the season during which the hunting of any species of migratory game bird is permitted and that compensatory extension or reopening the hunting season for such birds will not result in a diminution of the abundance of birds to any greater extent than that contemplated for the original hunting season, the hunting season for the birds so affected may, subject to all other provisions of this subchapter, be extended or reopened by the Secretary upon request of the chief officer of the agency of the State exercising administration over wildlife resources. The length of the extended or reopened season in no event shall exceed the number of days during which hunting has been so prohibited. The extended or reopened season will be publicly announced.

§ 20.132 Native use in Alaska.

(a) In Alaska, Eskimos and Indians may take, possess, and transport, in any manner and at any time, auks, auklets, guillemots, murres, and puffins and their eggs for food and their skins for clothing, but the birds and eggs so taken shall not be sold or offered for sale.

(b) In Alaska, any person may, for subsistence purposes, take, possess, and transport, in any manner and at any time, snowy owls and cormorants and their eggs for food and their skins for clothing, but the birds and eggs so taken shall not be sold or offered for sale.

§ 20.133 Hunting regulations for crows.

(a) Crows may be taken, possessed, transported, exported, or imported, only in accordance with such laws or regulations as may be prescribed by a State pursuant to this section.

(b) Except in the State of Hawaii, where no crows shall be taken, States may by statute or regulation prescribe a hunting season for crows. Such State statutes or regulations may set forth the method of taking, the bag and possession limits, the dates and duration of the hunting season, and such other regulations as may be deemed appropriate, subject to the following limitations for each State:

(1) Crows shall not be hunted from aircraft;

(2) The hunting season or seasons on crows shall not exceed a total of 124 days during a calendar year;

(3) Hunting shall not be permitted during the peak crow nesting period within a State; and

(4) Crows may only be taken by firearms, bow and arrow, and falconry.

Subpart M—Wildlife Development Areas

§ 20.141 Approval of area development program.

With respect to any lands which have been or may hereafter be acquired by the United States for future use as a migratory bird sanctuary or other wildlife refuge, subject to an outstanding possessory estate, the owner of such outstanding estate may, in accordance with a program for the development of the area and the limitation of shooting during such development period, approved by the Secretary, take such measures as are calculated to maintain and increase the waterfowl population of the area in question, and engage in the shooting of migratory birds within the limitations set forth in the approved program.

§ 20.142 Revocation of program approval.

Approval of any such program may be revoked by the Secretary upon a finding that the terms of such program have been violated by the proponents thereof. Following such revocation, all rights and privileges derived from the existence of an approved area development program shall cease.

§ 20.143 Notice and hearing.

Prior to any determination by the Secretary that the terms of an approved area development program have been or are being violated by the proponent thereof, a notice shall be sent to said proponent specifying the character, time, and locality of the alleged violation and designating a representative of the Secretary with whom the proponent of the program may discuss any controverted issue of fact or interpretation in an effort to reach an amicable agreement of understanding. Thereupon, the said proponent shall cease and desist from the commission of acts specified in such notice for a period of 60 days, or if the case be finally determined during such 60-day period then only until such final determination. If, within 30 days after such notice has been received, no such agreement or understanding is reached then the Secretary may, after allowing such further opportunity for hearing as he deems proper, make and promulgate a final order revoking approval of the development area program. Thereupon, the provisions of § 20.21 shall be fully applicable to the area in question.

These amendments conform to the public procedure requirements of 5 U.S.C. 553 with respect to substantive rules as set out in the preamble. The amendments make only conforming, clarifying and editorial changes, and it is therefore determined that notice and public procedure thereon are impracticable, unnecessary, and contrary to the public interest. Accordingly, these amendments will be effective as of August 15, 1973.

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

AUGUST 10, 1973.

[FR Doc.73-16914 Filed 8-14-73;8:45 am]

PART 32—HUNTING

Agassiz National Wildlife Refuge, Minn.

The following special regulation is issued and is effective on August 15, 1973.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

MINNESOTA

AGASSIZ NATIONAL WILDLIFE REFUGE

Public hunting of moose on the Agassiz National Wildlife Refuge, Minnesota is permitted from sunrise to sunset September 22 to September 30, 1973, and from December 8 to December 16, 1973, all dates inclusive, on all areas except those designated by closed area signs. This open area comprises approximately 57,600 acres and is delineated on a map available at the refuge headquarters at Middle River, Minnesota, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Hunting shall be in accordance with all applicable State regulations subject to the following special conditions:

1. All parties hunting Agassiz National Wildlife Refuge are required to report to the Agassiz check station located 11 miles east of Holt, Minnesota, before they begin to hunt.

2. All moose killed on Agassiz Refuge must be registered at the Agassiz Refuge check station within 48 hours of the kill.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 19, 1973.

JOSEPH KOTOK,
Refuge Manager, Agassiz National Wildlife Refuge Middle River, Minnesota 56737

August 7, 1973

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

[Commissioner's Order No. 1879]

Regulations for the taking of Moose During 1973

JULY 11, 1973.

Pursuant to authority vested in me by law, I, Robert L. Herbst, Commissioner

of Natural Resources, hereby prescribe the following regulations for the taking of moose during 1973.

SECTION 1. SEASON DATES AND HOURS.

Moose may be taken by legal firearms or bow and arrow between sunrise and sunset from September 22 to October 7, 1973, and from December 8 to December 16, 1973, all dates inclusive. Moose may be taken in that portion of Zone 2 designated as the Agassiz National Wildlife Refuge from September 22 to September 30, 1973, and from December 8 to December 16, 1973, all dates inclusive.

SEC. 2. BAG LIMIT.

Limit is one moose of any age or either sex per party of four persons.

SEC. 3. OPEN MOOSE HUNTING ZONES—1973.

Those portions of the state lying within the following described boundaries are open to the taking of moose during the period described in Section 1.

ZONE 1

Beginning at State Trunk Highway 11 at Williams; thence southerly along County State Aid Highway (CSAH) 2, Lake of the Woods County, to the Southeast corner of Section 13, Township 160 North, Range 34 West; thence along the East line of Township 160 North, 159 North, 158 North and 157 North, Range 34 West, to the Southeast corner of Section 13, Township 157 North, Range 34 West; thence along a road traversing through Sections 24, 23, 22, 21, 28, 29, 30 and 31, Township 157 North, Range 34 West, and continuing through Section 36, Township 157 North, Range 35 West, and continuing through Sections 1, 2, 3, 10, 9, 8, 7, and 18 of Township 156 North, Range 35 West; thence along County Road 704, Beltrami County, to CSAH 44, Beltrami County; thence along CSAH 44, Beltrami County, to Fourtown; thence along State Trunk Highway 89 to Thorhult; thence along CSAH 42, Beltrami County, to CSAH 2, Marshall County; thence along CSAH 2, Marshall County, to CSAH 54, Marshall County; thence along CSAH 54, Marshall County, to CSAH 9, Roseau County; thence along CSAH 9, Roseau County, to CSAH 29, Roseau County; thence along CSAH 20, Roseau County, to State Trunk Highway 89; thence along State Trunk Highway 89 to Roseau; thence along State Trunk Highway 310 to the northerly boundary of the state; thence easterly along the northern boundary of the state to State Trunk Highway 313; thence along State Trunk Highway 313 to Warroad; thence along State Trunk Highway 11 to the point of beginning at Williams.

[FR Doc.73-16861 Filed 8-14-73;8:45 am]

PART 32—HUNTING

Piedmont National Wildlife Refuge, Georgia

The following special regulation is issued and is effective on August 15, 1973.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

GEORGIA

PIEDMONT NATIONAL WILDLIFE REFUGE

Public hunting of bobwhite quail and squirrels on the Piedmont National Wildlife Refuge, Georgia, is permitted only on the area designated by signs as open to hunting. The open area, comprising approximately 32,000 acres, is delineated on a map available at the refuge headquarters and from the Office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 17 Executive Park Drive, NE, Atlanta, Georgia 30329. Hunting shall be in accordance wth all applicable State regulations covering the hunting of bobwhite quail and squirrels subject to the following special conditions:

(1) Species permitted to be taken: Bobwhite quail and squirrel only.

(2) Open season: Quail—November 20, 1973—February 28, 1974, on Tuesdays and Saturdays only. Squirrel—August 18, 1973—September 8, 1973 (every day except Sundays); November 20, 1973—February 28, 1974, on Tuesdays and Saturdays only. Hunters are permitted on areas open to quail and squirrel hunting from 30 mnutes before sunrise until 30 minutes after sunset on the above cited hunting days.

(3) No vehicular or horseback travel except on State and County roads.

(4) Hunters not having reached their 18th birthday must be under the immediate supervision of a responsible adult.

(5) Camping and fires are prohibited.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through February 28, 1974.

PHILLIP S. MORGAN,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

August 7, 1973.

[FR Doc.73-16862 Filed 8-14-73;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Subpart C—Extensions

Under § 110(f)(1) of the Clean Air Act (the Act), the Governor of a State may, on behalf of a source located within the State, request that the source's obligation to comply with any of the requirements of the State's implementation plan be postponed for a period of time not to exceed one year. The Agency may grant such a request only if it is satisfied that the requirements of § 110(f)(1)(A)–(D) have been met. In addition, under § 110(f)(2), the decision of the Agency must be based upon the record of a public hearing held pursuant to reasonable notice and made available to all interested persons.

The rules which follow will govern the conduct of such public hearings. The rules are in conformity with §§ 554–57 of the Administrative Procedure Act (APA) which set forth the requirements for a formal adjudicatory hearing. Pursuant to APA § 556(b)(3), the Agency has secured the services of Civil Service Commissioned Administrative Law Judges who will preside over all hearings held under § 110(f) of the Act. The Administrative Law Judge (ALJ) will hear and consider all motions raised by the parties and will render an initial decision as to whether a § 110(f) postponement should be granted. If appeal to the administrator is not taken within 30 days of the ALJ's initial decision and if, within 20 days after receiving notice that no appeal has been lodged by any of the parties, the Administrator declines to review the initial decision of the ALJ, such decision shall become final.

Every effort has been made, in constructing the accompanying rules, to assure due process and maximum review, while allowing for the most expeditious presentation of the facts. To this end, a prehearing conference has been provided for whenever, in the estimation of the ALJ, such a conference will serve to quicken the pace of the hearing. At the prehearing conference, the parties will be encouraged to identify areas which are in dispute, stipulate to noncontested facts, recommend matters of which official notice may be taken, limit the number of expert and other witnesses, agree to the use of written statements in lieu of oral direct testimony, establish a hearing schedule and attend to any other matters which may expedite the hearing or aid in the disposition of the proceedings. In addition the prehearing conference will, in most instances, serve as a forum for exchanging witness lists and short synopses of expected testimony—a form of discovery which is required by paragraph (*1*) of the accompanying rules—and for requesting leave to engage in other forms discovery.

Pursuant to § 307(a)(1) of the Act, the presiding ALJ will have authority, either on his own motion or on a proper showing of one of the parties, to issue

subpoenas for the attendance and testimony of witnesses and/or the production of relevant papers, books and documents.

As permitted by APA § 556(d), the ALJ may permit the introduction of reliable evidence having probative value even though such evidence might be inadmissible under the usual rules of evidence.

The accompanying rules permit cross-examination as a matter of right. However, where it appears that the cross-examination by one party will protect the rights of all parties similarly situated, the ALJ may limit cross-examination to one party on either side of an issue.

Other provisions of note include a provision permitting the right to intervene—even after a prehearing conference if proper cause is shown, elaborate notice provisions calculated to give all interested persons an opportunity to either submit comments, make an oral statement at the hearing or participate as a party, a provision permitting persons to file amicus briefs and a provision for appeal from and review of interlocutory orders and rulings issued by the ALJ.

Because the Agency has already received a request from the Governor of West Virginia for a § 110(f) public hearing, it deems it important to publish the accompanying rules with an immediately effective date. The rules which follow will therefore apply to the West Virginia hearing in their present form. However, since other § 110(f) hearings are expected, the Agency is interested in receiving comments on the accompanying rules. Any comments which are deemed useful will be incorporated into the present rules by way of amendment. In this regard, the Agency is particularly interested in receiving comments relating to paragraph (c)(6) of the accompanying rules. The provisions contained in this paragraph reflect the Agency's view that persons who do not wish to be made a party to a public hearing, but who are interested in making an oral statement at the hearing ought to be permitted to do so. The Agency believes that by permitting persons to participate in this fashion it will be opening § 110(f) hearings to public minded citizens who wish to present their views in a public forum, but who might possibly lack the time and funds necessary to become a party.

To be considered by the Agency, all comments must be filed on or before September 14, 1973. Comments should be filed in duplicate and addressed to Mrs. Betty J. Billings, Hearing Clerk, Environmental Protection Agency, Room 3902, Waterside Mall, Washington, D.C. 20460. All written submissions filed pursuant to this notice will be available for public inspection at the office of the Hearing Clerk during regular business hours, 8:00 a.m.–4:30 p.m.

Authority: §§ 110(f) and 301 of the Clean Air Act; 42 U.S.C. 1857 et seq.

Dated: August 13, 1973.

JOHN R. QUARLES, Jr.
Acting Administrator.

§ 51.33 Hearings and appeals relating to request for one year postponement.

(a) Definitions.
(b) Notice of adjudicatory hearings.
(c) Parties.
(d) Filing and service.
(e) Time.
(f) Intervention.
(g) Amicus curiae.
(h) Consolidation.
(i) Representatives.
(j) Qualifications and duties of Administrative Law Judge.
(k) Prehearing conference.
(l) Primary discovery (Exchange of witness lists and documents).
(m) Other discovery.
(n) Motions.
(o) Subpoenas.
(p) Fees of witnesses.
(q) Evidence and cross-examination.
(r) Appeals from and review of interlocutory orders or rulings.
(s) Burden of proof.
(t) Transcript.
(u) Initial decision.
(v) Appeals from or review of the initial decision of the Administrative Law Judge.
(w) Decision upon appeal or review.

(a) *Definitions*

(1) The term "Act" is defined at 40 CFR § 51.1(a).

(2) The term "Administrative Law Judge" means an employee of the Environmental Protection Agency whose services have been retained pursuant to §§ 556(b)(3) and 3105 of the Administrative Procedures Act for the duties and functions hereinafter set forth. The Administrator may delegate all or part of his authority to act in a given case under this section to an Administrative Law Judge. There may be included within such delegation authority to issue subpoenas, authority to make findings of fact and conclusions of law with respect to a given case and authority to recommend a decision (hereinafter referred to as the "initial decision"). A delegation of authority to render an initial decision shall not preclude the Administrative Law Judge from referring any motion or case to the Administrator when the Administrative Law Judge determines such referral to be appropriate.

(3) The term "Administrator" is defined at 40 CFR § 51.1(b).

(4) The term "Agency," unless otherwise specified, means the United States Environmental Protection Agency.

(5) The term "initial decision" means the decision of the Administrative Law Judge as supported by findings of fact and conclusions regarding all material issues of law, fact, or discretion, as well as reasons therefore. Such decision shall become the final decision of the Agency unless an appeal therefrom is taken or the Administrator orders review thereof as herein provided.

(6) The term "party" means the Agency and any person (as that term is defined below) who, pursuant to paragraph (c), has filed a request to participate as a party in a public hearing required by § 110((f)(2) of the Act and has had such request approved.

(7) The term "persons" means the Governor of a State which is requesting a one year postponement under § 110(f) of the Act, any officials designated by the Governor to appear on behalf of the State, and any other State, foreign country, Federal agency, or other interested person or persons (whether individual or formed as an association, public interest group or corporation).

(8) The term "prehearing conference" means a conference held prior to a § 110(f) public hearing for the purposes set forth in paragraph (k) of these rules.

(9) The term "regional hearing clerk" means an employee of the Environmental Protection Agency designated by the Administrator to establish a repository for all documents relating to hearings under this section.

(10) The term "source" means any stationary source or class of moving sources whose alleged inability to comply with any requirement of an applicable implementation plan has given rise to a request for a postponement under § 110(f) of the Act.

(b) *Notice of Adjudicatory Hearings.*

(1) Public notice of every application for a postponement under § 110(f) of the Act shall be circulated in a manner designed to inform interested and potentially interested persons of the intention of the Agency to hold hearings on the requested postponement.

(2) Procedures for accomplishing such public notice shall include at least the following:

(i) Notice shall be published in the FEDERAL REGISTER. The hearing shall convene at the place and time announced in the notice, unless amended by subsequent notice, but thereafter it may be moved to a different place and may be continued from day to day or recessed to a later day without other notice than announcement thereof at the hearing.

(ii) Where the source for which postponement is being requested is a stationary source, notice shall be circulated within the geographical area of the source. Such circulation shall be accomplished by either of the following methods:

(A) Posting in the main post office and in other public places of the municipality or municipalities closest to the source;

(B) Publication in at least one newspaper of general circulation which regularly reaches the geographical area of the source.

(iii) Notice shall be mailed to the source with respect to which the postponement is being requested.

(3) The contents of any public notice referred to in subparagraph (2) shall include at least the following:

(i) The purpose of the hearing;

(ii) A brief description of the activities or operations of the source with respect to which the postponement is being requested and a concise statement setting forth the grounds on which the request is being made;

(iii) A brief statement of the legal authority under which the hearing is being held;

(iv) Information regarding the time and location of the hearing;

(v) The address and phone number of the place or places where documents relating to the hearing can be copied or inspected;

(vi) The address and phone number of the regional filing clerk and a statement advising interested persons that requests to be made a party to the hearing are to be mailed to the regional filing clerk within the time frame noted in paragraph (c) of this section;

(vii) A statement advising persons who do not wish to be made a party to the hearing that, at any time prior to the commencement of the hearing they may either submit comments or request to make an oral statement at the hearing. The statement shall indicate that all such comments or requests are to be filed with the regional hearing clerk. The statement shall also indicate that requests to make an oral statement at the hearing will be routinely granted and that such oral presentations shall be open to questioning at the hearing.

(4) Notice shall be mailed to any person upon request.

(c) *Parties.* (1) Within 30 days following the issuance of public notice of a proposed postponement under § 110(f) of the Act, any person may request to be made a party to the hearing.

(2) Requests to be made a party shall be in writing and shall be addressed to the office of the regional filing clerk.

(3) Requests to be made a party shall:

(i) State the name and address of the person making the request (the requester);

(ii) Identify the interest of the requester;

(iii) Identify any others whom the requester represents;

(iv) State with particularity the position of the requester on the matters to be considered at the hearing.

(4) All requests to be made a party will be reviewed by the Administrative Law Judge within 10 days of receipt. Where the requirements of subparagraph (3) of this paragraph have been met, the Administrative Law Judge shall notify the requester that his request to be made a party has been approved. If, however, the Administrative Law Judge determines that the requirements of subparagraph (3) have not been satisfied, he shall, by appropriate notice, advise the requester as to which of the requirements under paragraph (c) of this section have not been met and that his request to be made a party can not be approved until such requirements are fully met. Such notice shall afford the requester a reasonable period of time (not to exceed 14 days) in which to file an amended request.

(5) Any documents relating to the procedures described in subparagraph (3) of this paragraph shall be made part of the record.

(6) Any person who does not wish to be made a party to the hearing but who desires to make an oral statement at the hearing shall be permitted to do so. Such persons shall be designated as nonparty participants. Nonparty participants shall be subject to questioning at the hearing; however, nonparty participants may not question any other nonparty participants nor may they cross-examine any of the witnesses presented by the parties. Apart from the opportunity to testify at the hearing, nonparty participants shall have no further rights or obligations with respect to either the hearing, or to any facet of the decision making process which follows the hearing.

(d) *Filing and service.* (1) All documents or papers required or authorized to be filed, shall be filed with the regional hearing clerk. Except for a request to be made a party, at the same time that a party files documents or papers with the regional hearing clerk, it shall serve upon all other parties copies thereof, with a certificate of service on each document or paper, including those filed with the regional hearing clerk. Filing shall be deemed timely if received by the regional hearing clerk within the time allowed by this section, or where not provided for by the explicit terms of this section, within the time prescribed by the Administrative Law Judge.

(2) In addition to copies served on all other parties, each party shall file with the regional hearing clerk an original and two copies of all papers filed in connection with the hearing.

(e) *Time.* (1) In computing any period of time prescribed or allowed by the regulations in this part, except as otherwise provided, the day of the act or event from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and holidays, shall be included in computing the time allowed for the filing of any document or paper, except that when such time expires on a Saturday, Sunday, or legal holiday, such period shall be extended to include the next following business day.

(2) Documents and papers which are postmarked prior to the expiration of a given filing date shall be deemed to have been timely filed.

(f) *Intervention.* (1) Following the expiration of the time prescribed in paragraph (c) of this section for the submission of requests to be made a party, any person may file a motion for leave to intervene in a hearing. A motion must set forth the grounds for the proposed intervention and the position and interest of the movant in the proceeding. A motion for leave to intervene in a hearing must ordinarily be filed prior to the commencement of the first prehearing conference. Any motion filed after that time must contain, in addition to the information set forth in paragraph (c) of this section, a statement of good cause for the failure to file the motion prior to the commencement of the first prehearing conference and shall be granted only upon a finding that (i) extraordinary circumstances justify the granting of the motion, and (ii) the intervenor agrees to be bound by agreements, arrangements and other matters previously made in the proceeding.

(2) Leave to intervene will be freely granted but only insofar as such leave raises matters which are pertinent to and do not unreasonably broaden the issues already presented. If leave is granted, the movant shall thereby become a party with the full status of the original parties to the proceedings. If leave is denied, the movant may request that the ruling be certified to the Administrator, pursuant to paragraph (r) of this section, for a speedy appeal.

(g) *Amicus Curiae.* (1) Persons not parties to the proceedings wishing to file briefs may do so by leave of the Administrative Law Judge granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. Unless all parties otherwise consent, an amicus curiae shall file its brief within the time allowed the party whose position the brief will support. Upon a showing of good cause, the Administrator or Administrative Law Judge may grant permission for later filing.

(h) *Consolidation.* (1) The Administrative Law Judge, by motion of sua sponte, may consolidate two or more proceedings relating to sources located within a single State whenever it appears that this will expedite or simplify consideration of the issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred. At

the conclusion of proceedings consolidated under this paragraph, the Administrative Law Judge shall issue one decision.

(i) *Representatives.* (1) Parties may appear in person or by counsel or other representative. Persons who appear as counsel or in a representative capacity must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

(j) *Qualifications and duties of Administrative Law Judge.* (1) Qualifications—The Administrative Law Judge shall have the qualifications required by statute. He shall not decide any matter in connection with a proceeding where he has a financial interest in any of the parties or a relationship with a party that would make it otherwise inappropriate for him to act.

(2) Disqualification of the Administrative Law Judge—Any party may, by motion made to the Administrative Law Judge, as soon as practicable, request that he disqualify himself and withdraw from the proceeding. The Administrative Law Judge shall then rule upon the motion and, upon request of the movant, shall certify an adverse ruling for appeal.

(3) Withdrawal sua sponte—The Administrative Law Judge may at any time withdraw from any proceeding in which he deems himself disqualified for any reason.

(4) Absence or change of the Administrative Law Judge—In the case of the absence of the Administrative Law Judge, or his inability to act, or his removal by disqualification or withdrawal, the powers and duties to be performed by him under this part in connection with a hearing assigned to him may, without abatement of the proceeding unless otherwise directed by the Administrator, be assigned to another Administrative Law Judge so designated to act by the Administrator.

(5) Duties and authorities—Administrative Law Judges at adjudicatory hearings shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. They shall have all powers necessary to that end, including the following:

(i) To administer oaths and affirmations;

(ii) To rule upon offers of proof and receive relevant evidence;

(iii) To regulate the course of the hearings and the conduct of the parties and their counsel therein;

(iv) To hold prehearing conferences in accordance with paragraph (k);

(v) To consider and rule upon all procedural and other motions appropriate in such proceedings;

(vi) To encourage and authorize the submission of testimony in written or affidavit form whenever the taking of evidence in such form is agreed to by the parties and will, in the opinion of the Administrative Law Judge, (i) assist in expediting the hearing, (ii) not prejudice the rights of any of the parties and (iii) provide as full and true a disclosure of the facts as would the examination and cross examination of the individuals concerned. The admissibility of the evidence contained in such statement or affidavit shall be subject to the same rules as if such testimony were produced in the usual manner and the affiant or person responsible for the contents of any written evidence shall be subject to oral cross-examination on the contents of such statements.

(vii) To issue subpoenas and take any other action authorized by these regulations or in conformance with law.

(k) *Prehearing conference.* (1) Except as otherwise provided in subparagraph (3), the Administrative Law Judge shall, prior to the commencement of the hearing and for the purpose of expediting the hearing, file with the regional hearing clerk an order for a prehearing conference. More than one such conference may be held. Such order or orders shall direct the parties or their counsel to appear at a specified time and place to consider:

(i) The identification and simplification of disputed issues of fact and law;

(ii) The possibility of obtaining stipulations of fact and documents which will avoid unnecessary delay;

(iii) Matters of which official notice may be taken;

(iv) The limitation of the number of expert and other witnesses;

(v) Procedure at the hearing;

(vi) The use of written statements or affidavits in lieu of oral direct testimony;

(vii) The need for discovery;

(viii) The issuance of subpoenas and subpoenas duces tecum for discovery and hearing purposes;

(ix) The setting of a hearing schedule;

(x) Any other matter that may expedite the hearing or aid in the disposition of the proceeding.

(2) No transcript of any prehearing conference shall be made unless a request therefor by one of the parties is granted by the Administrative Law Judge. Such party shall bear the cost of the taking of the transcript unless otherwise ordered by the Administrative Law Judge. The Administrative Law Judge shall prepare and file for the record a written report of the action taken at each conference, which shall incorporate any stipulations or agreements made by the parties at or as a result of such conference, all rulings upon matters considered at such conference and appropriate orders.

(3) Upon a finding that circumstances render a prehearing conference unnecessary, or impracticable, or upon a finding that a prehearing conference would serve primarily to delay the proceedings rather than to expedite them, the Administrative Law Judge, on motion or sua sponte, may order that the prehearing conference not be held. In these circumstances he may request the parties to correspond with him for the purpose of accomplishing any of the objectives set forth in this paragraph. Such correspondence shall not be made a part of the record, but the Administrative Law Judge shall submit a written summary for the record if any action is taken.

(*l*) *Primary discovery (Exchange of witness lists and documents).*—At a prehearing conference or within some reasonable time set by the Administrative Law Judge prior to the hearing, each party shall make available to the other parties the names of the expert and other witnesses the party expects to call, together with a brief narrative summary of their expected testimony and a list of all documents and exhibits which the party expects to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and narrative summaries of expected testimony amended upon motion by a party.

(m) *Other discovery.* (1) Except as so provided by paragraph (*l*) further discovery, under this paragraph, shall be permitted only upon determination by the Administrative Law Judge (i) that such discovery shall not in any way unreasonably delay the proceeding, (ii) that the information to be obtained is not otherwise obtainable and (iii) that such information has significant probative value. The Administrative Law Judge shall be guided by the procedures set forth in the Federal Rules of Civil Procedure, where practicable, and the precedents thereunder, except that no discovery shall be undertaken except upon order of the Administrative Law Judge or upon agreement of the parties.

(2) The Administrative Law Judge shall order depositions upon oral questions only upon a showing of good cause and upon a finding that (i) the information sought cannot be obtained by alternative methods, or (ii) there is a substantial reason to believe that rele-

vant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party to the proceeding desiring discovery shall make a motion or motions therefor. Such a motion shall set forth (i) the circumstances warranting the taking of the discovery, (ii) the nature of the information expected to be discovered and (iii) the proposed time and place where it will be taken. If the Administrative Law Judge determines the motion should be granted, he shall issue an order and appropriate subpoenas, if necessary, for the taking of such discovery together with the conditions and terms thereof.

(n) *Motions.* (1) All motions, except those made orally during the course of a public hearing or as otherwise provided by this part, shall be in writing and shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be filed with the regional hearing clerk and served on all parties.

(2) Within 10 days after service of any motion filed pursuant to this paragraph, or within such other time as may be fixed by the Administrative Law Judge, any party may serve and file an answer to the motion. The movant shall, if requested by the Administrator, his designee, or the Administrative Law Judge, serve and file reply papers within the time set by the request.

(3) The Administrative Law Judge shall rule upon all motions filed or made prior to the filing of the initial decision at the time of filing on ex parte motions or where the movant has stated that no party objects to the granting of such motion. Otherwise, such decision shall await the answering papers and reply papers if permitted. The Administrator shall rule upon all motions filed after the filing of the initial decision. Oral argument of motions will be permitted only if the Administrative Law Judge or Administrator deems it necessary.

(o) *Subpoenas.* (1) The attendance of witnesses or the production of documentary evidence may, by subpoena, be required at any designated place of hearing or place of discovery. Subpoenas may be issued by the Administrative Law Judge sua sponte or upon a showing by an applicant that evidence sought for hearing is relevant and material to the issues involved in the hearing or that the sought discovery pursuant to paragraph (m) of this section meets the standards set forth therein. The Administrative Law Judge shall be guided by the principles of the Federal Rules of Civil Procedure in making any order for the protection of a witness or the content of the documents produced.

(2) Motion for subpoena duces tecum.—Subpoenas for the production of documentary evidence, unless issued by the Administrative Law Judge sua sponte, shall be issued only upon a written motion. Such motion shall specify, as exactly as possible, the documents desired.

(3) Subpoenas shall be served as provided by the Federal Rules of Civil Procedure.

(p) *Fees of witnesses.* (1) Witnesses summoned before the Administrative Law Judge shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and persons whose depositions are taken, and the persons taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears or the deposition is taken. Where a witness appears pursuant to a request initiated by the Administrative Law Judge, fees shall be paid by the Agency.

(q) *Evidence and cross-examination.* (1) The Administrative Law Judge shall admit all relevant and material evidence except evidence that is unduly repetitious. Relevant and material evidence may be received at the hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value.

(2) Parties shall have the right to cross-examine a witness to the extent that such cross-examination is necessary for a full and true disclosure of the facts. In multiparty proceedings the Administrative Law Judge may limit cross-examination to one party on each side if it appears that the cross-examination by one party will adequately protect parties similarly situated. Other parties may, however, engage in cross-examination upon alleging that their cross-examination will go into matters not already covered by previously cross-examination.

(3) If a party objects to the admission or rejection of any evidence or the limitation of the scope of any examination or cross-examination, he shall state briefly the grounds for such objection. The transcript shall include any argument or debate thereon, unless the Administrative Law Judge, with the consent of all parties, orders that such argument not be transcribed. The ruling and the reasons given therefor by the Administrative Law Judge on any objection shall be a part of the transcript. Parties shall automatically be presumed to have taken exception to an adverse ruling.

(r) *Appeals from and review of interlocutory orders or rulings.*

Except as provided herein, appeals as a matter of right shall lie to the Administrator only from the initial decision of the Administrative Law Judge. Appeals from other orders or rulings shall, except as provided in this paragraph, lie only if the Administrative Law Judge certifies such orders or rulings for appeal, or otherwise as provided. The Administrative Law Judge may certify an order or ruling for appeal to the Administrator when: (1) The order or ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and (2) either (i) an immediate appeal from the order and ruling will materially advance the ultimate termination of the proceeding or (ii) review after the initial decision is issued will be inadequate or ineffective. The Administrative Law Judge shall certify orders or rulings for appeal only upon the request of a party. If the Administrator determines that certification was improvidently granted, or takes no action within thirty (30) days of the certification, the appeal shall be deemed dismissed. When an order or ruling is not certified by the Administrative Law Judge, it shall be reviewed by the Administrator only upon appeal from the initial decision except when the Administrator determines, upon request of a party and in exceptional circumstances, that delaying review would be deleterious to vital public or private interests. Except in extraordinary circumstances, proceedings will not be stayed pending an interlocutory appeal: where a stay is granted, a stay of more than 30 days must be approved by the Administrator. Ordinarily, the interlocutory appeal will be decided on the basis of the submission made to the Administrative Law Judge, but the Administrator may allow further briefs and oral argument.

(s) *Burden of Proof.* The burden of proof shall be on the proponents of the postponement sought under § 110(f) of the Act.

(t) *Transcript.* (1) Hearings shall be stenographically reported and transcribed as soon as practicable after the taking of the last evidence, the Administrative Law Judge shall certify (i) that the original transcript is a true transcript of the testimony offered or received at the hearing, except in such particulars as he shall specify and (ii) that the exhibits accompanying the transcript are all the exhibits introduced at the hearing, with such exceptions as he shall specify. A copy of such certificate shall be attached to each of the copies of the transcript. The original transcript shall be a part of the record and the sole official transcript. Copies of the transcript shall be available from the Agency.

(u) *Initial decision.* (1) Within 20 days after the last evidence is taken in a hearing, each party may file proposed findings of fact and conclusions of law based solely on the record, and a brief in support thereof. Within 10 days thereafter, each party may file a reply brief. The Administrative Law Judge may, in his discretion, extend the total time period for filing any proposed findings, conclusions, briefs or reply briefs for an additional 10 days. The hearing shall be deemed closed at the conclusion of the briefing period.

(2) The Administrative Law Judge, within 30 days after the close of the hearing, shall evaluate the record before him,

and prepare and file his initial decision with the regional hearing clerk. A copy of the initial decision shall be served upon each of the parties, and the regional hearing clerk shall immediately transmit a copy to the Administrator. The initial decision shall become the decision of the Administrator without further proceedings unless an appeal is taken from it or the Administrator orders review of it, pursuant to paragraph (v) of this section.

(3) The initial decision shall include a statement of findings and conclusions and a decision including the reasons and basis thereof. Such statement shall encompass all issues of fact, law or discretion presented by the proposed findings and conclusions of the parties.

(v) *Appeals from or review of initial decision of the Administrative Law Judge.* (1) Within 20 days after filing of the Administrative Law Judge's initial decision, each party may take exception to any matter set forth in such decision or to any adverse order or ruling to which he objected during the hearing and may appeal such exceptions to the Administrator for decision by filing them in writing with the hearing clerk. Within the same period of time each party filing exceptions and amicus curiae shall file with the hearing clerk a brief concerning each of the exceptions being appealed. The brief shall contain, in the order indicated, the following:

(i) A subject index of the matter in the brief, with page references, and a table of cases, textbooks, statutes, and other material cited, with page references thereto;

(ii) A concise statement of the case;

(iii) A specification of the questions intended to be urged, including any objections to rulings of the Administrative Law Judge, to the validity of facts officially noticed, or to any matter in the initial decision;

(iv) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific references to the record and to statutory or other material relied upon; and

(v) A proposed decision for the Administrator's consideration in lieu of the decision of the Administrative Law Judge; and where appropriate, proposed findings of fact, conclusions, orders or rulings.

(2) Within 7 days of the service of exceptions, and of a brief under paragraph (1) of this paragraph, any other party or amicus curiae may file and serve a brief responding to exceptions or arguments raised by any other party. Such brief shall include references to the relevant portions of the record. Such brief shall not, however, raise additional exceptions.

(3) Five copies of all material filed under this section shall be filed with the regional hearing clerk.

(4) If no exceptions are filed within the time provided, the regional hearing clerk shall notify the Administrator 30 days from the date of filing of the Administrative Law Judge's initial decision. Within 20 days after said notification, the initial decision of the Administrative Law Judge shall become the decision of the Administrator unless the Administrator issues an order expressing his intent to review said initial decision. Such order may include a statement of issues to be briefed by the parties and amicus curiae and a time schedule concerning service and filing of briefs adequate to allow the Administrator to issue a final order within 100 days from the close of the hearing. Briefs filed pursuant to this subparagraph shall conform to requirements (i) through (iv) of subparagraph (1).

(w) *Decision upon appeal or review.*

(1) Except as provided in paragraphs (w) (4) and (5) of this section, within 100 days after the close of the hearing, the Administrator shall, on appeal or review from an initial decision of the Administrative Law Judge, issue his final decision. In doing so, the Administrator shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and may, in his discretion, exercise any of the powers specified in paragraph (j) (5) of this section.

(2) In rendering his decision, the Administrator shall adopt, modify, or set aside the findings, conclusions, and decision contained in the initial decision, and shall include in his decision a statement of the reasons or basis for his action. The final decision of the Administrator may accept or reject all or part of the initial decision of the Administrative Law Judge.

(3) The Administrator may, in his discretion, allow oral argument on appeal or review of a decision of the Administrative Law Judge.

(4) Where the Administrator determines that the volume of the record will prohibit an adequate review within the time constraints imposed by subparagraph (1) of this paragraph, he may withhold his decision for an additional period of time not to exceed 45 days.

(5) In those cases where the Administrator believes that he requires further information or additional views of the parties as to the form and content of the decision to be rendered, the Administrator, in his discretion, may withhold final action pending the receipt of such additional information or views.

(6) The decision of the Administrator on appeal shall become effective as specified by him therein or 20 days after the date of the decision, whichever first occurs. Notice of the Administrator's decision on appeal shall be given to all parties.

[FR Doc.73-17110 Filed 8-14-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 73-GL-19]

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

Designation of Transition Area; Correction

In FR Doc. 73-13874, on Page 18363 in the issue of Tuesday, July 10, 1973, the latitude coordinate recited in the Greenwood, Illinois, Galt Airport, transition area description as "43°24'09''N." is changed to read "42°24'09''N."

Issued in Des Plaines, Illinois, on July 26, 1973.

LYLE K. BROWN,
Director, Great Lakes Region.

[FR Doc.73-16854 Filed 8-14-73;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER IV—SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

PART 401—SEAWAY REGULATIONS AND RULES

Definition of "Seaway"

The purpose of this document is to amend § 401.2, Definitions, of the Seaway Regulations and Rules and is made pursuant to the Saint Lawrence Seaway Development Corporation's enabling act (33 U.S.C. 981 et seq.) and section 104 of the Ports and Waterways Safety Act of 1972, P.L. 92-340, as delegated by the Secretary of Transportation to the Administrator of the Corporation in 49 CFR 1.50a. Specifically, § 401.2(g), the definition of "Seaway", is being revised to include the phrase "and contiguous waters" after the phrase "deep waterway". The reason for this revision is for clarification. Some concern has been expressed as to whether or not the "Seaway" encompasses the total reach of the St. Lawrence River. While the term "Seaway" has always been interpreted by the Corporation to include all the United States waters of the St. Lawrence River, it is believed that this amendment will remove that concern.

Since the revision deals with a matter of interpretation, notice of proposed rulemaking is exempted under section 553 of Title 5, United States Code. However, in accordance with the spirit of the public policy set forth in 5 U.S.C. 553, the Corporation will consider comments addressed to the Saint Lawrence Seaway Development Corporation, Seaway Circle, Massena, New York 13662, Attention General Counsel, received before September 15, 1973.

Section 401.2 is amended as follows:

§ 401.2 Definitions.

* * * * *

(g) "Seaway" means that portion of the deep waterway and contiguous waters between the Port of Montreal and Lake Erie that are under the jurisdiction of the Authority and includes all canals, works and connecting channels that are part of the deep waterway and all other canals and works, wherever located, the management, administration and control of which have been entrusted to the Authority;

* * * * * *

(68 Stat. 92–97, 33 U.S.C. 981–990, as amended, and Sec. 104, Pub. L. 92–340, 86 Stat. 424, 49 CFR 1.50a (37 FR 21943)).

Effective date: August 17, 1973.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION,

[SEAL] D. W. OBERLIN,
Administrator.

[FR Doc.73–16930 Filed 8–14–73;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY EXCHANGE AUTHORITY (INCLUDING COMMODITY EXCHANGE COMMISSION), DEPARTMENT OF AGRICULTURE

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

Filing of Information by Contract Markets

A proposal was published in the FEDERAL REGISTER on November 14, 1972 (37 FR 24117), pursuant to the authority of sections 5, 6, 8, and 8a of the Commodity Exchange Act (7 U.S.C. 7, 8, 12, 12a), to issue a regulation setting forth certain conditions and requirements which must be met by contract markets for their continued designation as a contract market. Interested persons were given an opportunity to request a hearing or to make written submissions on the matter on or before January 15, 1973. On February 13, 1973, the proposed regulation was amended and again published in the FEDERAL REGISTER (38 FR 4346). Interested persons were again given an opportunity to request a hearing or to make written submission on the matter on or before April 16, 1973. Since there is no request for hearing, none will be held.

As set forth in the notice of proposed rule making published on February 13, 1973, § 1.50 establishes requirements whereby each contract market will be required to file at stated periodic intervals, once every 5 years or within 90 days after a special call by the Act Administrator, a statement and supporting data showing the provisions that it has made to meet the designation requirements and conditions of section 5 and 5a of the Commodity Exchange Act (7 U.S.C. 7, 7a). This is to afford the contract market opportunity to show (1) how the provisions of an existing futures contract reflect current marketing conditions, and (2) how its bylaws, rules, regulations, and resolutions carry out the requirements of sections 5 and 5a.

After consideration of all relevant matters presented by interested persons, the proposed regulation is amended by adding paragraph (e) and is hereby adopted as set forth below.

Effective date. This regulation shall become effective October 1, 1973.

§ 1.50 Filing of information by contract markets.

(a) Each contract market shall file with the Commodity Exchange Authority, at least once every 5 years, a statement with supporting data showing the provisions that it has made to continue to comply with the conditions and requirements for designation as a contract market for a specified commodity. Such statement shall be responsive to the provisions of sections 5 and 5a of the Act. The supporting data shall include any information which will assist the Act Administrator in evaluating the effectiveness of the provisions described in the statement.

(b) The contract market shall file the required information for each commodity at least once every 5 years but not less than 90 days after the effective date of this regulation, in accordance with a schedule showing dates of required filing established by the Act Administrator and which will be provided by him to each contract market, and every 5 years after the date of the first filing: *Provided*, That a contract market need not file earlier than 5 years after the effective date of its designation, unless so requested upon special call by the Act Administrator.

(c) The information required in paragraph (a) of this section also shall be filed within 90 days after a special call by the Act Administrator.

(d) Any failure by a contract market to continue to comply with the conditions and requirements for designation as a contract market as set forth in sections 5 and 5a of the Act, and any failure or refusal to file the information required by this regulation shall be cause for action by the Commodity Exchange Commission under sections 5b, 6(a) or 6b of the Act (7 U.S.C. 7b, 8(a), and 13a).

(e) Upon a showing of good cause by a contract market, the Act Administrator may extend for a reasonable time the filing date for, or may amend the schedule or sequence of, any report under this regulation.

(Secs. 5, 6, 8, 42 Stat. 1000, as amended, 1001, as amended, 1003 as amended; Sec. 8a, 49 Stat. 1500, as amended; 7 U.S.C. 7, 8, 12, 12a)

The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Issued: August 9, 1973.

CLAYTON YEUTTER,
Assistant Secretary for Marketing and Consumer Services.

[FR Doc.73–16950 Filed 8–14–73;8:45 am]

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 THE TREASURY

U.S. Customs Service

[19 CFR Part 1]

CUSTOMS FIELD ORGANIZATION

Proposed Change in Customs Region VIII, Designating Columbia River (Portland, Astoria, Longview) Port of Entry

AUGUST 8, 1973.

A notice was published in the FEDERAL REGISTER on March 15, 1973 (38 FR 7008), of a proposed change in Customs Region VIII, designating Portland, Oregon, as the Customs port of entry on the Columbia River.

The notice proposed to designate Portland, Oregon, as the sole port of entry on the Columbia River, with proposed geographical limits including all the areas now falling within the port limits of Longview, Washington, and Astoria, Oregon. After reviewing comments received, it is clear that the notice of proposed rule making should be republished to clarify the intent of the designation of a new Customs port of entry on the Columbia River.

Therefore, the notice published in the Federal Register dated March 15, 1973 (38 FR 7008), is superseded by this notice of proposed rule making.

By virtue of the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR Ch. II), and pursuant to authority provided by Treasury Department Order No. 190, Rev. 9 (38 FR 17517), it is proposed to establish a consolidated Columbia River (Portland, Astoria, Longview) Customs port of entry with geographical limits of the present port limits of Portland, Oregon, Longview, Washington, and Astoria, Oregon, and including all points and places on either bank of the Columbia River bounded on the west by the Pacific Ocean, and terminating on the north bank at the eastern corporate limits of Washougal, Washington, and on the south bank at the eastern boundary of the Portland International Airport.

Currently, vessels arriving at Portland, Longview or Astoria, and subsequently moving to either of the other two ports, are required to enter and clear at each port. The proposed amendment would permit vessels arriving within the new port limits to enter only at the first port area of arrival and clear only at the port area of departure. Entries for imported merchandise would continue to be accepted at Portland, Longview or Astoria, and there would be no decrease in Customs services at any of these ports as the result of this consolidation.

Data, views, or arguments with respect to the foregoing proposal may be addressed to the Commissioner of Customs, Attention: Regulations Division, Washington, D.C. 20229. To insure consideration of such communications, they must be received in the United States Customs Service not later than September 17, 1973.

Written material or suggestions submitted will be available for public inspection in accordance with § 103.3(b) of the Customs Regulations (19 CFR 103.3(b)) at the Regulations Division, Headquarters, United States Customs Service, Washington, D.C., during regular business hours.

[SEAL] EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[FR Doc.73-16993 Filed 8-14-73;8:45 am]

Fiscal Service

[31 CFR Part 209]

PAYMENT TO FINANCIAL ORGANIZATIONS FOR CREDIT TO ACCOUNTS OF EMPLOYEES

The Department of the Treasury finds that it is necessary to revise its existing regulations governing payments to financial organizations for credit to accounts of employees at 31 CFR Part 209 (also appearing as Department Circular No. 1076, Revised), so as to:

(1) Include drawing of checks in favor of financial organizations for any class of recurring payments, as authorized by Public Law 92-366 (31 U.S.C. 492(d)) approved on August 7, 1972;

(2) Emphasize that Civil Service Commission regulations exclusively govern allotments to pay membership dues in labor organizations;

(3) Make mandatory the formerly permissive use of composite checks under certain circumstances for payments of net pay to employees;

(4) Delete certain procedural provisions which are incorporated in the Treasury Fiscal Requirements Manual; and

(5) Make current certain minor, but outdated, provisions.

Accordingly, notice is hereby given pursuant to 5 U.S.C. 553 that the Secretary of the Treasury is considering the revision effective September 30, 1973, under authority of 31 U.S.C. 492 (b) and (d), of Part 209 of Subchapter A, Chapter II of Title 31 of the Code of Federal Regulations, so as to read:

PART 209—PAYMENT TO FINANCIAL ORGANIZATIONS FOR CREDIT TO ACCOUNTS OF EMPLOYEES AND BENEFICIARIES

Sec.

AUTHORITY: The provisions of this Part 209 issued under R.S. 3620, as amended, 31 U.S.C. 492.

§ 209.1 Scope of regulations.

(a) The regulations in this part govern the regular remittance to financial organizations of Federal payments which are for credit to the accounts of employees and beneficiaries, as defined herein, including payments for:

(1) Full amounts of salaries and wages of civilian employees, and pay and allowances of members of the uniformed services;

(2) Allotments of pay for savings accounts (available hereunder only to civilian employees [1]); and

(3) Recurring annuities and benefits.

(b) The regulations in this part do not supersede, and shall not be used to circumvent, the requirements of particular statutes, Executive orders or other executive branch regulations; for example, see Civil Service Commission regulations at 5 CFR Part 550, Subpart C, issued pursuant to 5 U.S.C. 5525. Savings allotments under the regulations in this part shall not be used as a means to pay dues to labor organizations.

§ 209.2 Definitions.

As used in these regulations:

(a) "Agency" means any department, agency, independent establishment, board, office, commission, or other establishment in the executive, legislative (except the Senate and House of Representatives), or judicial branch of the Government, any wholly owned or controlled Government corporation, and the municipal government of the District of Columbia;

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[1] See 32 CFR Part 59—Voluntary Military Pay Allotments, issued pursuant to 37 U.S.C. 701-706, for military allotments for savings.

(b) "Financial organization" means any bank, savings bank, savings and loan association or similar institution, or Federal or State chartered credit union;

(c) "Employee" means (1) when used in reference to allotments of pay for savings accounts, a civilian employee of an agency, and (2) when used otherwise, a civilian employee of an agency or a member of a uniformed service;

(d) "Beneficiary" means a person or persons receiving an annuity or benefit payment or other recurring payment under Federal law, other than a payment of salary or wages or pay and allowances;

(e) "Allotment of pay for a savings account" means an authorization from an employee for a recurring payroll deduction from salary or wages due, in a specified dollar amount, to be remitted to a financial organization of his choice, for credit to his savings account;

(f) "Savings account" means an account (single or joint) for the purchase of shares (other than shares of stock) or for the deposit of savings in any financial organization, the title of which account includes the name of the authorizing employee;

(g) "Net pay" means the amount of salaries or wages of civilian employees and pay and allowances of members of the uniformed services remaining due after all payroll deductions for allotments of pay for savings accounts and other purposes and all other payroll deductions;

(h) "Recurring payment" means a benefit, annuity, or other payment which is made repeatedly at regular intervals.

§ 209.3 Allotments of pay for savings accounts.

(a) Any employee whose place of employment is within the United States may authorize an allotment of pay for a savings account under these regulations, provided that allotments of pay for savings are not otherwise available to the employee under the regulations referred to in § 209.1(b).

(b) The head of an agency shall effectuate such allotments of pay for savings accounts:

(1) If the employee provides the agency with a written request (on a form promulgated by the Treasury or such agency-adapted form as may be approved by the Treasury for the purpose) which designates the financial organization and such financial organization, by endorsement thereon, states its willingness to act in this respect as agent of the employee and to accept, as its expense, the service charge specified in accordance with § 209.8 which is to be deducted from the aggregate total of the allotments remitted;

(2) If the allotment is a fixed amount, in round dollars (no cents), to be deducted in each successive payroll (until canceled by the employee, in writing, or otherwise terminated);

(3) If not more than two such allotments for any employee shall be in effect at any time;

(4) To the extent that the amount of salary or wages becoming due an employee for any pay period thereafter is sufficient to cover (i) in the case of a single allotment, the full amount thereof, or (ii) in the case of two allotments, the aggregate amount of both. In making any determinations under this subparagraph, all payroll deductions otherwise required shall have priority over those authorized by this section; and

(5) Regardless of the manner in which the allotment for savings ultimately will be disposed of by the employee (which is at his own discretion), except that the purpose of the allotment may not circumvent statutes, Executive orders, and other executive branch regulations (see § 209.1(b)).

§ 209.4 Payments of net pay for employees.

(a) Any employee may request that the full amount of net pay due him, in lieu of being paid by check drawn to his order, be paid to him regularly by check drawn in favor of a financial organization of his choice, for credit to his account.

(b) The head of an agency shall authorize the appropriate disbursing officer to pay an employee by sending to the financial organization designated by that employee a check that is drawn in favor of that organization and for credit to the account of that employee. This procedure shall be used only:

(1) If the employee provides the agency with a written request (on a form promulgated by the Treasury or such agency-adapted form as may be approved by the Treasury for the purpose) which designates the financial organization.

(2) For the full amount of net pay becoming due on successive payrolls (until the request is canceled by the employee in writing); and

(3) For payments for credit to any account (single or joint) designated by the employee, the title of which includes the name of the employee as stated on the check.

(c) Whenever, under the procedures set out in paragraph (b) of this section, payments are made by an agency on the same regularly recurring dates to five or more employees who designate the same financial organization, the head of the agency shall authorize the appropriate disbursing officer to draw the check for the total amount in favor of that organization for credit to the accounts of the several employees.

§ 209.5 Recurring payments for beneficiaries.

(a) The head of an agency may authorize the appropriate disbursing officer to make a recurring payment to a beneficiary by sending to the financial organization designated by that beneficiary a check that is drawn in favor of that organization and is for credit to the account of that beneficiary, in lieu of payment by check drawn to his order.

(b) The procedure set out in paragraph (a) of this section may be adopted only:

(1) If the beneficiary to whom the recurring payment is to be made provides the agency with a written request (on a form promulgated by the Treasury or such agency-adapted form as may be approved by the Treasury for the purpose) which designates the financial organization;

(2) For the full amount of the recurring payment becoming due on successive payment dates (until the request is canceled by the beneficiary in writing); and

(3) For payments for credit to an account, designated by the beneficiary to whom the recurring payment is to be made, the title of which includes the name of the beneficiary as stated on the check, or, in the case of payments made jointly to more than one individual, the name of one beneficiary as stated on the check.

(c) Whenever, under the procedures set out in paragraph (a) of this section, recurring payments are made to two or more beneficiaries who designate the same financial organization, the head of the agency, may, after consultation with, and approval by, the Fiscal Assistant Secretary of the Treasury, authorize the appropriate disbursing officer to draw a single check for the total amount in favor of that organization for credit to the accounts of the several beneficiaries.

(d) The procedures set out in this section shall not be used for allotting a part of a recurring payment or for effectuating an assignment of a recurring payment.

(e) The Fiscal Assistant Secretary will initiate, as appropriate, joint Treasury-agency consideration of application of the procedures set forth in this section.

§ 209.6 Identification of financial organization office to receive remittances for allotments of pay.

(a) Except as authorized in accordance with paragraph (b) of this section, remittances covering allotments of pay for savings accounts in behalf of all employees designating the same financial organization shall be forwarded uniformly to a single office of such financial organization notwithstanding the fact that the employees may otherwise make deposits to their accounts at different branch offices of such financial organization. In executing the form required pursuant to § 209.3, each employee will be expected to ascertain from the financial organization the address of its single office which is to receive remittances. In any event, the financial organization, in executing the form, shall:

(1) Review the address inserted and, if necessary, correct it to conform with the requirements of this section;

(2) Insert, in the space provided, the "employer identification number" assigned to it by the Internal Revenue Service, Department of the Treasury. Such identification numbers, which are susceptible of universal application in identifying each individual financial organization as a whole, will be used in agency payroll systems to facilitate the assembly of all of its payroll deductions

applicable to the same financial organization; and

(3) Identify the block specified on the form which indicates conformance with the requirement for a single remittance point in the financial organization.

(b) A financial organization which maintains its savings accounts at branch offices only and which cannot comply with the requirements of paragraph (a) of this section, on the basis that its own internal transmission of deposit credits from a single remittance point to its respective branch offices is impracticable, may certify to that effect by identifying the block provided for this purpose on the form required by § 209.3. Such certification shall serve to waive the requirements of paragraph (a) of this section on the basis that the financial organization cannot otherwise agree to accept remittances for credit to accounts of employees designating such financial organization. Such financial organization shall:

(1) Establish a standardized series of numeric codes consisting of three digits (001 through 999) to be used uniformly in identifying each of its branch offices required to receive remittances;

(2) Insert, in the space provided on the form, its "employer identification number" and, as a parenthetical suffix, its three-digit code identifying the applicable branch office consistent with the addresses of that office as shown on the form; and

(3) Make such inter-office adjustments of deposit credits as may become necessary in the event a remittance to one branch office includes credit for a particular savings account at a different branch office, whether by reason of an inconsistency in the initial designation of the branch office code on the form or otherwise.

§ 209.7 Depositor account numbers.

Based on the forms submitted by employees and beneficiaries pursuant to §§ 209.3, 209.4 and 209.5, agencies shall use depositor account numbers supplied by the financial organization as an identification of the account to be credited, in addition to the name and social security account number of the employee or beneficiary. Records supporting checks issued pursuant to § 209.3, § 209.4(c) and § 209.5(c) shall be so identified. Individual checks issued pursuant to § 209.4(b) and § 209.5(a) shall be identified, as a minimum, with the name and depositor account number of the employee or beneficiary. The United States shall not assume responsibility for the correctness of such depositor account numbers, and the name and/or social security account number of the employee or beneficiary to whom payment is to be made will govern the crediting of the account.

§ 209.8 Service charge.

The Government's cost in the administration of the system established by § 209.3 shall be recovered by each agency on the basis of standard (Government-wide) rates established in these regulations. The total service charge applicable to a remittance to a financial organization, derived by application of the standard rates, shall be automatically collected from the financial organization by deduction from the total amount to be remitted.

(a) Subject to revision from time to time on the basis of studies of Government-wide costs incurred, the standard rates shall be:

(1) Six (6) cents for each payroll deduction stated on the record which is to accompany the aggregate remittance (for all administrative and payrolling costs in the agency); plus

(2) Twelve (12) cents for each remittance, as a single charge for the entire record accompanying the remittance, regardless of the number of payroll deductions listed (for all check preparation and mail preparation costs in the disbursing office, including postage).

(b) In accordance with the provisions of section 501 of the Act of August 31, 1951, 65 Stat. 290 (31 U.S.C. 483a), the total service charge collected pursuant to this section shall be covered into the Treasury as miscellaneous receipts unless the agency has statutory authority otherwise to dispose of the credit.

§ 209.9 Financial organization as agent.

A financial organization which receives checks under the procedure set out in §§ 209.3, 209.4 and 209.5 does so in each case as the agent of the employee or beneficiary who has designated the financial organization to receive the check and credit his account. Such a financial organization may revoke its agency by notice to the employee or beneficiary. The death of that employee or beneficiary revokes the authority of the financial organization to credit the amount to the account of that individual. In the case of a check covering a payment to one employee or beneficiary, the proceeds of which cannot be credited to the account because of death or any other reason, the financial organization shall promptly return the check to the issuing disbursing officer or remit its own check in an equal amount, with a statement in either case identifying the reason therefor and the individual. In the case of a check covering payment to more than one employee or beneficiary, a portion of which cannot be credited to an account because of death or for any other reason, the financial organization shall promptly remit to the agency responsible for making payment a check in an amount equal to that portion which could not be properly credited to the account, with a statement identifying the individual and the reason for refund.

§ 209.10 Acquittance to the United States.

(a) A financial organization which receives checks under the procedure set out in §§ 209.3, 209.4 and 209.5 shall comply with the provisions of 31 CFR Part 360—Indorsement and Payment of Checks Drawn on the Treasurer of the United States, in particular 31 CFR 360.8. A financial organization's endorsement shall constitute a guaranty of the continued existence of the beneficiary for whom it receives payment.

(b) Payment by the United States of a check drawn in favor of and properly endorsed by the financial organization designated by an employee or beneficiary to whom payment is to be made shall, if the check or accompanying record properly specifies that employee's or beneficiary's name and/or social security account number, constitute a full acquittance to the United States for the amount of such payment.

§ 209.11 Financial organization not Government depositary.

A financial organization to which a check is drawn under the procedures set out in §§ 209.3, 209.4 and 209.5 does not thereby become a Government depositary and shall not advertise itself as one because of that fact.

§ 209.12 Procedural instructions.

Procedural instructions for the guidance of agencies in the implementation of these regulations and a new form to request the remittance of recuring payments to financial organizations will be issued by the Commissioner of Accounts. The several forms presently in use to request remittance of the full amount of net pay to a financial organization, and the form presently used to request an allotment of pay for credit to a savings account with a financial organization (Standard Form No. 1198), will be continued.

Prior to adoption of the proposed revision, consideration will be given to any data, views, or arguments submitted to the Commissioner of Accounts, U.S. Department of the Treasury, Washington, D.C. 20226, and received not later than September 14, 1973. Pursuant to 31 CFR 1.4(b), 36 FR 13835, comments submitted in response to this notice are available to the public upon request therefor unless confidential status for the submission has been requested and approved.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

AUGUST 10, 1973.

[FR Doc.73-16994 Filed 8-14-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 243]

JACKSON RANCHERIA, AMADOR COUNTY, CALIFORNIA

Distribution of Assets

Notice is hereby given that it is proposed to add a new Part 243 to Subchapter V, Chapter I, of Title 25 of the Code of Federal Regulations. This addition is proposed pursuant to the authority contained in the Act of August 18, 1958 (72 Stat. 619), as amended by the Act of August 11, 1964 (78 Stat. 390).

The purpose of the regulations is to establish criteria and guidelines to determine the membership of the Jackson Rancheria in Amador County, California, for the purpose of voting on whether a

distribution of assets shall be made and to provide the method of sale of unoccupied tracts within the Rancheria.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions or objections regarding these proposed regulations to the Bureau of Indian Affairs, Washington, D.C. 20245, on or before September 14, 1973.

It is proposed to add a new Part 243 to Subchapter V, Chapter I, of Title 25 of the Code of Federal Regulations to read as follows:

PART 243—THE JACKSON RANCHERIA, AMADOR COUNTY, CALIFORNIA—DISTRIBUTION OF ASSETS

Sec.

AUTHORITY: Sec. 12, 72 Stat. 619, as amended by 78 Stat. 390.

§ 243.1 Purpose and scope.

The purpose of this Part is to provide policies and procedures governing distribution of the assets of the Jackson Rancheria, Amador County, California.

§ 243.2 Definitions.

As used in this Part 243, terms shall have the meanings set forth in this section.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs.

(c) "Director" means the Area Director, Bureau of Indian Affairs, Sacramento Area Office, Sacramento, California, or his authorized representative.

(d) "Adult Indian" means any Indian who is 18 years of age or over.

(e) "Distributee" means any Indian who is entitled to receive any assets of the Jackson Rancheria under a plan of distribution prepared and approved pursuant to section 2 of the Act of August 18, 1958 (72 Stat. 619), as amended by the Act of August 11, 1964 (78 Stat. 390).

(f) "Dependent members" as used in the phrase "dependent members of their immediate families" means all persons of Indian descent not sharing directly in the distribution of the Rancheria assets who: (1) Are related to the distributee by blood or adoption or by marriage, including common law or Indian custom marriage; (2) are domiciled in the household of the distributee; (3) are not members of any other tribe or band of Indians, and (4) receive more than one-half of their support from such distributee or for whose support a distributee is legally liable according to the laws of the State of California.

(g) "Formal assignment" means any privilege of use and/or occupancy of the real property of the Rancheria which is evidenced by an instrument in writing.

(h) "Informal assignment" means any privilege of use and/or occupancy of the real property of the Rancheria which is not based on an instrument in writing.

§ 243.3 Requests for distribution.

(a) *Procedure.* Upon receipt of a written request from an adult Indian or adult Indians of the Jackson Rancheria for the distribution of the assets of the Rancheria, the Director shall prepare a list of Indians in the following categories:

(1) Those who have allotments on the Rancheria;

(2) Those who hold formal assignments on the Rancheria;

(3) Those who reside on the Rancheria pursuant to an informal arrangement;

(4) Those not in the above categories who have resided on the Rancheria for a period of at least three consecutive years immediately preceding the receipt of the request as provided for in the introductory text of this paragraph;

(5) The dependent members of the immediate families of those Indians in (a) paragraphs (1), (2), (3) and (4) of this section.

(b) *Eligibility to participate.* The adults whose names appear on a list prepared in accordance with paragraph (a) of this section shall constitute those persons eligible to vote on the issue of whether a distribution plan is to be developed. A list shall not include the name of any person who is a member of any Indian tribe, band or community other than the Jackson Rancheria.

(c) *Notice.* When the Director is satisfied that the list is complete, he shall publish it once weekly for three successive weeks in a local newspaper. Within 15 days after the date of the last publication of the list, anyone may protest in writing the omission of a name from the list or the inclusion of any name thereon. His written protest together with arguments to sustain it shall be presented to the Director who will render his decision, which shall be final. After all protests have been heard and have been duly disposed of, the Director shall hold an election on whether the distribution of the Rancheria assets shall be made. If a majority of the eligible voters vote for distribution, a distribution plan shall be prepared in accordance with the applicable portions of this Part 243.

§ 243.4 Plan of distribution.

(a) The plan of distribution provided for in section 2 of the Act of August 18, 1958, as amended, shall be in writing and may be prepared by:

(1) Those adult Indians whose names appear on the final list as provided for in § 243.3; or

(2) By the Secretary of the Interior after consultation with such Indians.

(b) The primary source of distributees shall be those persons whose names appear on the list prepared in accordance with § 243.3. Additional names may be added to the list upon the approval of a majority of the adults included on the original list referred to above; *Provided*, That no new name shall be added without the approval of the individual and of the Director. In the event of a per capita distribution of the Rancheria assets, all persons whose names appear on the final list prepared pursuant to § 243.3 and all persons whose names have been added thereto, shall be entitled to participate. Any distribution plan must have the approval of the Secretary before it is submitted to the adult distributees for approval. Such plan shall provide for a description of the assets and shall identify, by name and last known address, those persons to be distributees under the plan and the dependent members of their immediate families; *Provided*, That for the purpose of this section any person who is a member of any other tribe or band of Indians shall not be considered a dependent member of a distributee's immediate family.

§ 243.5 General notice.

When the Secretary has approved a plan for the distribution of the assets of the Jackson Rancheria, notice of the contents of such plan shall be given in the following manner:

(a) A copy of the plan shall be delivered in person or mailed to the last known address of those who participated in the drafting of the plan and the distributees named in the plan;

(b) A copy of the plan shall be delivered in person or mailed to the last known address of all other persons who have indicated by a letter addressed to the Director that they claim an interest in the assets of the Jackson Rancheria;

(c) Posting a copy of the plan in a public place on the Rancheria and in the post office serving the Rancheria; and

(d) Publication of the general contents of the plan once weekly for three successive weeks in one or more local newspapers.

§ 243.6 Objections to plan.

Any Indian who feels that he is unfairly treated in the proposed distribution of the assets of the Jackson Rancheria as set forth in the plan prepared and approved in accordance with the regulations of this Part 243 may, within thirty (30) days after the date of the last publication required under § 243.5(d), submit his views and arguments in writing to the Director. The Director shall act for persons who are minors or non compos mentis if he finds that such persons are unfairly treated in the proposed distribution of the assets. Such views and arguments shall be promptly forwarded by the Director for consideration by the Secretary.

§ 243.7 Referendum.

After consideration by the Secretary of all the views and arguments, a copy of the plan or a revision thereof and a notice of a referendum meeting shall be sent by certified mail, return receipt re-

quested, to each distributee. Thereafter the Secertary shall cause a referendum to be held at a general meeting of the distributees at the time and place set forth in the notice of the meeting. Each adult Indian distributee may indicate acceptance or rejection of the plan by depositing his or her ballot in a ballot box at the meeting place or by mailing his or her ballot to the Director, in which case the envelope shall be clearly marked to identify it as containing a ballot cast in the Jackson Rancheria referendum. All ballots mailed to the Director must be received by the Director at least two days before the date set for the referendum meeting. Ballots received thereafter shall not be accepted. At the close of the meeting all ballots shall be counted and if the plan is approved by a majority vote of the adult Indian distributees, it shall be effective on the date approved.

Subject to modification as provided in § 243.8, the plan shall thereupon be put into effect and its provisions carried out as expeditiously as possible, including the distribution of assets as therein provided.

§ 243.8 Modification of plan.

If after approval by the Secretary and the adult distributees it shall be determined by an appropriate resolution approved by a majority of the adult distributees that a plan of distribution is not in conformity with the wishes of the proposed distributees or that it contemplates acts or actions determined to be unfeasible and if modification of the plan of distribution is required to correct the circumstances, such resolution shall be submitted to the Secretary for approval. The approval of the resolution by the Secretary shall be final and the plan of distribution shall be considered modified as of the date of such approval.

§ 243.9 Beneficial interest.

Upon approval of a plan, revision or modification thereof by the Secretary and acceptance of it by a majority of the adult distributees, the distributees listed in the plan, revision or modification shall be the final list of Indians entitled to participate in the distribution of the assets of the Rancheria. The rights or beneficial interests of each person whose name appears on this list may be inherited or bequeathed, but shall not otherwise be subject to assignment, alienation or encumbrance before the transfer by the United States of full legal title to such assets, except with the approval of the Secretary.

§ 243.10 Sale of unoccupied land.

The sale of any Rancheria pursuant to the authority contained in section 5(d) of the Act of August 18, 1958, as amended, shall be conducted as nearly as practicable in the manner prescribed in that portion of Part 121 of this title which applies to the sale of individually owned trust or restricted land.

§ 243.11 Notice of termination.

When the provisions of the plan have been carried out to the satisfaction of the Secretary, he shall publish in the FEDERAL REGISTER a notice declaring that the special relationship of the United States to the Jackson Rancheria and the distributees and the dependent members of their immediate families is terminated. The notice shall list the names of the distributees and the dependent members of their immediate families who are no longer entitled to any services performed by the United States for Indians because of their status as Indians, the fact that all restrictions and tax exemptions applicable to trust or restricted land or interests therein owned by them are terminated, the fact that all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them and that state laws shall apply to them in the same manner as they apply to other citizens.

§ 243.12 Special instructions.

To facilitate the work of the Director, the Commissioner may issue special instructions not inconsistent with the purpose of the regulations in this Part 243 and within any authority delegated to him.

WILLIAM L. ROGERS,
Deputy Assistant Secretary of the Interior.

August 8, 1973.

[FR Doc.73-16864 Filed 8-14-73;8:45 am]

Fish and Wildlife Service

[50 CFR Part 32]

Notice of Proposed Rulemaking

PIEDMONT NATIONAL WILDLIFE REFUGE, GEORGIA

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the Migratory Bird Conservation Act of February 18, 1929, as amended (45 Stat. 1222; 16 U.S.C. 715), and the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927 as amended; 16 U.S.C. 668dd), as delegated to the Director, Bureau of Sport Fisheries and Wildlife by Chapter 2, Part 242 of the Departmental Manual, it is proposed to amend 50 CFR 32 by the addition of Piedmont National Wildlife Refuge, Georgia, to the list of areas open to hunting of migratory birds.

It has been determined that regulated hunting of migratory birds (other than waterfowl) may be permitted as designated on the above refuge without detriment to the objectives for which the area was established.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections, with respect to the proposed amendment, to the Director, Bureau of Sport Fisheries and Wildlife, Washington, D.C. 20240, by September 15, 1973.

§ 32.11 [Amended]

Accordingly, § 32.11, List of open areas; migratory gamebirds, is amended by the following addition:

GEORGIA

PIEDMONT NATIONAL WILDLIFE REFUGE

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

AUGUST 8, 1973.

[FR Doc.73-16865 Filed 8-14-73;8:45 am]

Office of the Secretary

[43 CFR, Part 6]

PATENT LICENSING REGULATIONS

Notice of Proposed Revision

Notice is hereby given that the Department of the Interior proposes to revise 43 CFR, Part 6, Subpart B, to implement Title 41 CFR, Chapter 101, Subchapter A, Part 101-4 (38 FR 3328, February 5, 1973) relating to the nonexclusive and limited exclusive licensing of Government-owned inventions. The licensing regulations are being adopted pursuant to the President's Revised Memorandum and Statement of Government Patent Policy dated August 23, 1971. The regulations authorize the exclusive licensing of government-owned patents in cases where exclusivity is deemed essential to their exploitation. Prior experience and studies have shown that licensing technology to private firms is an efficient method of marketing technology. In certain areas, marketing is difficult due to the need for private industry to invest its own risk capital to bring certain technology into the stream of commerce. In such cases, exclusive licenses may represent the necessary incentive for the investment of such private risk capital.

It is the policy of the Department of the Interior wherever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, objections with respect to the proposed regulations to the Solicitor, Attention: Associate Solicitor, Procurement and Patents, Department of the Interior, Washington, D.C. 20240. Comments received on or before Oct. 15, 1973 will be considered before final action is taken.

All written submissions made pursuant to this notice will be available for public inspection in the Office noted above during regular business hours.

It is proposed that the table of sections in 43 CFR, Part 6, Subpart B, be revised to read as follows:

Subpart B—Licenses

Sec.
6.51 Purpose
6.52 Definitions
6.53 Policy
6.54 Publication Requirements
6.55 Applications and Correspondence
6.56 Contents of a Nonexclusive License Application
6.57 Contents of a Limited Exclusive License Application
6.58 Processing of Applications
6.59 Terms of Nonexclusive License

Sec.
6.60 Terms of Limited Exclusive License
6.61 Modification or Revocation
6.62 Notice of Grant, Modification, or Revocation of Limited Exclusive License
6.63 Solicitor
6.64 Appeals
6.65 Litigation

AUTHORITY: 5 U.S.C. 301; sec. 2, Reorganization Plan No. 3 of 1950, 15 FR 3174; Federal Property Management Regulations, Title 41, Chapter 101, Subchapter A, Subpart 101–4.1, 38 FR 3328.

It is proposed that the text of 43 CFR, Part 6, Subpart B, be revised to read as follows:

§ 6.51 Purpose.

This subpart prescribes the terms, conditions, and procedures for licensing and dedication of inventions, the subject of U.S. patents and patent applications for which the Department of the Interior holds title on behalf of the United States of America. The procedures and regulations prescribed in the Federal Property Management Regulations, Title 41, Chapter 101, Subchapter A, Subpart 101–4.1 (38 FR 3328, February 5, 1973) are included within this subpart.

§ 6.52 Definitions.

(a) Government invention—means an invention covered by a domestic patent or patent application for which the Department of the Interior holds title on behalf of the United States.

(b) To the point of practical application—means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(c) The Department—means the Department of the Interior.

(d) The Secretary—means the Secretary of the Department of the Interior.

(e) The Solicitor—means the Solicitor of the Department of the Interior, or his authorized representative.

(f) Applicant—means any person, individual, corporation, partnership, firm, trust, estate, or other entity.

§ 6.53 Policy.

(a) A major premise of the Presidential Memorandum and Statement of Government Patent Policy, August 23, 1971 (36 FR 16887, August 26, 1971), is that Government-owned inventions normally will best serve the public interest when they are developed to the point of practical application and made available to the public in the shortest possible time. The provisions of this subpart are guided by the (1) objectives set forth in the Presidential Memorandum and Statement, and in the Federal Property Management Regulations, Title 41, Chapter 101, Subchapter A, Subpart 101–4.1, and (2) express requirements of specific statutes which cover the utilization or disposition of Government inventions. Among the most important goals hereof are to provide incentives to foster inventiveness and encourage reporting of inventions made under Department programs, and to encourage the expeditious development and adoption of this new technology for commercial purposes.

(b) The granting of express nonexclusive or limited exclusive licenses for the practice of these inventions may assist in the accomplishment of the national objective to achieve a dynamic and efficient economy. However, it is recognized that there may be inventions as to which the Department deems dedication preferable to accomplish these objectives. The granting of nonexclusive licenses is preferable since the invention is thereby made available to all interested parties and serves to promote competition in industry, if the invention is in fact promoted commercially. However, to obtain commercial utilization of the invention, it may be necessary to grant a limited exclusive license for a limited period of time as an incentive for the investment of risk capital to achieve practical application of an invention.

(c) All Government inventions are available for licensing. Although the Department encourages the nonexclusive licensing of its inventions to promote competition and achieve their widest possible utilization, the commerical development of certain inventions calls for a substantial capital investment which private manufacturers may be unwilling to risk under a nonexclusive license. It is the policy of the Department to grant limited exclusive licenses when such exclusivity appears to be the only means of providing the necessary incentive to the licensee to achieve early practical application of the invention.

(d) Any person may apply for a license in a Government invention. Licenses will be granted only to applicants who have shown the capability and intent to make practical application of the invention.

(e) The terms and conditions of a nonexclusive license will be standardized to the extent practicable. Additions and modifications to the standardized forms may be made as necessary to accommodate provisions agreed upon pursuant to negotiations with the prospective licensee.

(f) Whenever the grant of a limited exclusive license is deemed appropriate, it shall be negotiated on terms and conditions most favorable to the public interest. A limited exclusive license shall give the licensee the right to practice the invention for a term of years less than the remaining life of the patent, usually for a period not to exceed five years. The concept is to allow a period for investment of funds and development of the invention for marketing coupled with a period for exploitation of the developed invention to recover the investment with profit. The limited exclusive licensee must agree to invest a specified amount of money in development of the invention and to continue to use best efforts to practice the invention for the term of the license. A limited exclusive license shall be revoked or terminated if the licensee no longer desires to practice the invention or fails to adhere to one or more of the substantive terms of the license.

(g) In selecting a limited exclusive licensee, consideration shall be given to the capabilities and plans of the prospective licensee to further the technical and market development of the invention, the projected impact on competition, and the benefit to the United States. Where there is more than one application for a limited exclusive license, that applicant shall be selected who is determined to be most capable of satisfying the criteria and achieving the goals set forth in this subpart. Other factors being equal, preference shall be given to assisting small business and minority business enterprises as well as economically depressed, low income and surplus labor areas.

(h) Subject to (1) any existing or future treaty or agreement between the United States and any foreign government or intergovernmental organization, or (2) licenses under, or other rights to inventions, made or conceived in the course of or under Government contracts for research, development, testing, or experimentation where such licenses or other rights to such invention are granted to or provided for in the contract and acquired by the party contracting with the Department, no license shall be granted or implied in a Government invention except as provided for in this subpart. Licenses and all of the terms thereof shall be by express written instruments.

(i) No grant of a license under this subpart shall be construed to confer upon any licensee any immunity from the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this subpart shall not be immunized from the operation of state or Federal law by reason of the source of the grant.

(j) Subject to the terms of any outstanding licenses, nothing in this subpart shall preclude the Department from granting additional nonexclusive or limited exclusive licenses for Government inventions when the Department determines that to do so would provide for an equitable exchange of patent rights. The following exemplify circumstances wherein such licenses may be granted:

(1) In consideration of the settlement of an interference;

(2) In consideration of a release of a claim of infringement; or

(3) In exchange for or as part of the consideration for a license under adversely held patents.

(k) The Department reserves the right to transfer and receive from other Government agencies custody of Government-owned inventions for purposes of administration, including the granting of licenses pursuant to this subpart.

§ 6.54 Publication Requirements.

(a) The Department shall cause to be published in the FEDERAL REGISTER, the Official Gazette of the U.S. Patent Office, and at least one other publication that the Department deems would best serve the public interest, a list of the Government inventions in its custody available for licensing under the conditions specified in this subpart. The list shall be re-

vised periodically to include directly, or by reference to a previously published list, all inventions currently available for licensing. Other publications of inventions available for licensing may include abstracts, when appropriate, as well as information on the design, construction, use, and potential market for the inventions.

(b) A limited exclusive license in a Government invention shall be available only after the invention has been published for a period of at least six months.

(c) The Office of the Solicitor, Department of the Interior, shall be responsible for complying with all publication and notice requirements under this subpart.

§ 6.55 Applications and Correspondence.

All applications and related correspondence for the granting of express nonexclusive or limited exclusive licenses shall be made in writing and shall be addressed to the Solicitor, U.S. Department of the Interior, Washington, D.C., 20240.

§ 6.56 Contents of a Nonexclusive License Application.

An application for a nonexclusive license under a Government invention shall include:

(a) Identification of invention for which license is desired, including the patent application serial number or patent number, title, and date, if known, and any other pertinent identification.

(b) Name and address of the applicant, and whether the applicant is a U.S. citizen or a U.S. corporation.

(c) Name and address of representative of applicant to whom correspondence should be sent.

(d) Nature and type of applicant's business.

(e) Source of information concerning the availability of a license on the invention.

(f) Purpose for which license is desired, including a statement of the fields of use for which applicant intends to practice the invention, and a complete description of applicant's plan to achieve that purpose.

(g) A statement as to the geographic areas in which the applicant intends to practice the invention.

§ 6.57 Contents of a Limited Exclusive License Application.

In addition to the information indicated in § 6.56, an application for a limited exclusive license shall include:

(a) Applicant's status, if any, in any one or more of the following categories: (1) Small business firm, (2) minority business enterprise, (3) location in a labor surplus area, (4) location in a low income area, and (5) location in an economically depressed area;

(b) A statement of applicant's capability to undertake the development and marketing required to achieve the practical application of the invention;

(c) A statement describing the time, expenditure, and other acts which the applicant considers necessary to achieve practical application of the invention and the applicant's offer to invest that time and money and to perform such acts if the license is granted;

(d) A statement that contains the applicant's best knowledge of the extent to which the Government invention is being practiced by private industry and the Government; and

(e) Any other facts which the applicant believes are evidence that it is in the public interest for the Department to grant a limited exclusive license rather than a nonexclusive license and that such a limited exclusive license should be granted to the applicant.

§ 6.58 Processing of Applications.

(a) Applications for licenses shall be evaluated on bases consistent with the policy set forth in § 6.53 of this subpart.

(b) Upon determination that a nonexclusive license may be granted to the applicant, the appropriate terms and conditions thereof shall be negotiated. The grant of a license shall be dependent upon agreement by the applicant to terms and conditions acceptable to the Department.

(c) After receipt of application(s) for a limited exclusive license, a determination shall be made as to whether the invention may properly be the subject of a limited exclusive license. If it is determined that the invention may properly be the subject of such a license, then a notice shall be published in the FEDERAL REGISTER advising of receipt of application(s) for a limited exclusive license on the particular invention, and that other interested applicants for such a license, may, in accordance with § 6.57 of this Subpart, submit applications within twenty (20) days from date of the notice. Applications mailed after twenty (20) days of the date of notice in the FEDERAL REGISTER will not be considered. Thereafter, all applications will be considered and a prospective limited exclusive licensee selected. A notice thereof shall be published in the FEDERAL REGISTER, with a copy to the Attorney General, and shall include:

(1) Identification of the invention;

(2) Identification of the proposed licensee;

(3) Duration and scope of the contemplated license; and

(4) A statement to the effect that the license will be granted unless:

(i) An application for a nonexclusive license, submitted by a responsible applicant pursuant to § 6.56, is received by the Department within 60 days from the publication of the notice in the FEDERAL REGISTER, and the Department determines that the applicant has established that he has already achieved or is likely to bring the invention to the point of practical application within a reasonable period under a nonexclusive license; or

(ii) a third party presents evidence satisfactory to the Department that it would not be in the public interest to grant (a) a limited exclusive license for the invention, or (b) a limited exclusive license to the particular prospective licensee, or (c) a limited exclusive license upon the proposed duration and scope.

(d) During the 60-day period of notice of a prospective limited exclusive licensee, an application for a nonexclusive license will not be entertained in opposition to the prospective licensee from anyone who has previously applied for a limited exclusive license and been denied the same.

(e) Applications for a limited exclusive license received after commencement of the 60-day period of notice of a prospective licensee shall not be considered.

(f) Upon expiration of the 60-day period of notice of a prospective licensee, all written responses to the notice shall be considered and a determination made whether to (1) grant the requested limited exclusive license, (2) grant a limited exclusive license of a duration or scope different from those in the notification, (3) grant a nonexclusive license, or (4) decline to grant a nonexclusive or limited exclusive license at that time. If it is determined to award a limited exclusive license, such license will be granted only upon the final negotiation of terms and conditions acceptable to the Department.

(g) The determination for granting a limited exclusive license shall be based in part upon a finding that no applicant for a nonexclusive license has brought or will bring the invention within a reasonable period, to the point of practical application as specified in the limited exclusive license, and that to grant the limited exclusive license would be in the public interest.

§ 6.59 Terms of Nonexclusive License.

(a) A nonexclusive license shall be granted subject to the provisions of any other licenses.

(b) The duration of the license shall be for a period as specified in the license agreement, normally a period of two years, provided that the licensee complies with all the terms of the license.

(c) The license shall require the licensee to bring the invention to the point of practical application within a period specified in the license, or such extended period as may be agreed upon, and to continue to make the benefits of the invention reasonably accessible to the public.

(d) The license may be granted for all, or less than all fields of use of the invention, and throughout the United States of America, its Territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(e) After termination of the initial period specified in the license agreement, the Department may at its option extend the license, subject, however, to a restriction thereof to the fields of use and/or geographic areas in which the licensee has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public.

(f) The license may extend to wholly-owned subsidiaries of the licensee but shall be nonassignable and nontransfer-

able without approval of the Department, except to the successor for that part of the licensee's business to which the invention pertains.

(g) The license shall require the licensee to submit periodic reports at least annually on the anniversary date of the grant of the license, unless otherwise specified, on the licensee's efforts to achieve practical application of the invention, and the extent to which benefits of the invention are continued to be made accessible to the public. The reports shall contain information within the licensee's knowledge, or which the licensee may acquire under normal business practices, pertaining to the commercial use being made of the invention and other information which the Department may determine is pertinent to the Department's licensing activities and is specified in the license.

(h) Normally, royalties shall not be charged under nonexclusive licenses granted to U.S. citizens on Government inventions; however, the license may be subject to such other terms and conditions as the Department may deem in the public interest.

(i) Subject to the terms and conditions specified in the license and the rights reserved to the Government in this section, the licensee shall be granted the nonexclusive right to make, use, and/or sell the invention.

§ 6.60 Terms of Limited Exclusive Licenses.

(a) The license may be granted for all, or less than all fields of use of the Government invention, and throughout the United States of America, its Territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(b) Subject to the terms and conditions of the license and the rights reserved to the Government in this section, the licensee shall be granted the exclusive right to make and/or use and/or sell the invention.

(c) The duration of the license shall be the subject of negotiation but shall be for a period less than the terminal portion of the patent, the period remaining being sufficient to make the invention reasonably available for the grant of nonexclusive licenses; and such period of exclusivity shall not exceed five years unless it is determined on the basis of a written submission supported by a factual showing that a longer period is necessary to permit the licensee to enter the market and recoup his reasonable costs in so doing.

(d) The license shall require the licensee to bring the invention to the point of practical application within a period specified in the license, or within such longer period as determined by the Department, and to continue to make the benefits of the invention reasonably accessible to the public.

(e) The license shall require the licensee to expend a specified minimum amount of money and/or to take other specified actions within a stated period of time to bring the invention to the point of practical application.

(f) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to practice, and have practiced, the invention by or on behalf of the Government of the United States and any foreign government or intergovernmental organizations pursuant to any existing or future treaty or agreement with the United States.

(g) The license shall reserve to the Department the right to require the licensee to grant sublicenses to responsible applicants on terms that are reasonable in the circumstances (i) to the extent that the invention is required for public use by Government regulations, (ii) as may be necessary to fulfill health or safety needs, or (iii) for other public purposes. In the event reasonable royalties cannot be agreed upon, the Department shall unilaterally determine such royalties subject to appeal under § 6.64.

(h) The license may extend to wholly-owned subsidiaries of the licensee but shall be nonassignable and nontransferable without approval of the Department, except to successors of that part of the licensee's business to which the invention pertains.

(i) A licensee may grant sublicenses under the license subject to the approval of the Department. Each sublicense granted by a licensee shall make reference to the limited exclusive license and be subject to the terms and conditions of the limited exclusive license. A copy of any such sublicense shall be furnished to the Department. The sublicensee shall have the same rights, duties, and obligations under this subpart as a limited exclusive licensee.

(j) The license shall require the licensee to submit periodic reports at least annually on the anniversary date of the grant of the license, unless otherwise specified, on the licensee's efforts to achieve practical application of the invention, and the extent to which benefits of the invention are continued to be made reasonably accessible to the public. The reports shall contain information within the licensee's knowledge, or which the licensee may acquire under normal business practices, pertaining to the commercial use being made of the invention and other information which the Department may determine is pertinent to its licensing activities and is specified in the license. The licensee shall fully and promptly reply to any specific requests for such information by the Department.

(k) A limited exclusive license of a Government invention may require the payment of royalties, and be subject to other terms and conditions, when the licensing situation and the policy in § 6.53 considered together, indicate that it is in the public interest to do so.

§ 6.61 Modification or Revocation.

(a) Any nonexclusive or limited exclusive license granted pursuant to this subpart may be modified in any manner or revoked by the Department if the licensee at any time defaults in making any payments or reports required by the license, or commits any breach of any covenant or agreement therein contained.

(b) A license may also be revoked by the Department if the licensee wilfully omits a material fact in the license application or any report required in the license agreement.

(c) Before modifying or revoking any license granted pursuant to this subpart for any cause, the Department shall by registered mail forward to the licensee and any sublicensee of record, at the last address filed with the Department, a written determination of breach of an identified term of the license, and notice of intention to modify or revoke the license. The licensee and any sublicensee shall be allowed thirty (30) days after receipt of such notice to remedy such breach of any covenant or agreement contained in the license or to otherwise show cause why the license should not be modified or revoked.

§ 6.62 Notice of Grant, Modification, or Revocation of Limited Exclusive License.

(a) If a limited exclusive license has been granted, modified, or revoked pursuant to this subpart, notice thereof shall be published in the FEDERAL REGISTER. Such notice shall include:

(1) Identification of the invention;

(2) Identification of the licensee;

(3) Duration and scope of the limited exclusive license;

(4) That such limited exclusive license is being granted or revoked, or the nature of the modification thereof; and

(5) The effective date of the grant, modification, or revocation.

§ 6.63 Solicitor.

The Solicitor shall make all determinations, and shall grant, deny, modify, or revoke licenses in accordance with sections §§ 6.58, 6.59, 6.60 and 6.61.

§ 6.64 Appeals.

(a) An applicant for a license, a licensee, a sublicensee, or other party who has participated under this subpart shall have the right to appeal any decision of the Department concerning the grant, denial, interpretation, modification, or revocation of a license or sublicense under this subpart by the filing of a notice of appeal with the Director, Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Boulevard, Arlington, Va., 22203, within thirty (30) days from the date of receipt of a notice by the Department of the decision or, if there has been no such notice to the person desiring to appeal, then within thirty (30) days from publication in the FEDERAL REGISTER of the facts which identify such a decision. An appeal by a sublicensee must be brought by or in the name and with the consent of the licensee.

(b) Upon notice of appeal the Director, Office of Hearings and Appeals, will designate an ad hoc Invention Licensing Appeals Board to decide such an appeal. The Board will consist of three members having an equal vote. Parties

will be advised of the designation of the Board, its composition and chairman.

(c) Appeals taken under this section will be in accordance with procedures contained in this section and 43 CFR, Part 4, Subpart G, provided that where appropriate the Chairman may designate special procedural rules where the circumstances so warrant.

§ 6.65 Litigation.

A licensee is granted the right to sue at his own expense any party who infringes the rights set forth in the license and covered by the licensed patent. The licensee may join the Government upon consent of the Attorney General as a party complainant in such suit but without expense to the Government, and the licensee shall pay all costs and any final judgment or decree that may be rendered against the Government in such suit. The Government shall have an absolute right to intervene in any suit at its own expense. The licensee shall be obligated to furnish promptly to the Government, upon request, copies of all pleadings and other papers filed in any such suit and of evidence adduced in proceedings relating to the licensed patent including, but not limited to, negotiations or settlement and agreements settling claims by a licensee based on the licensed patent, and all other books, documents, papers, and records pertaining to such suit. If as a result of any such litigation the patent shall be declared unvalid, the license and all sublicenses granted thereunder shall be null and void.

JAMES T. CLARKE,
Assistant Secretary of the Interior.

AUGUST 9, 1973.

[FR Doc.73-16863 Filed 8-14-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 991]

HOPS OF DOMESTIC PRODUCTION

Proposed Expenses of the Hop Administrative Committee and Rate of Assessment for the 1973–74 Marketing Year

Notice is given of proposed expenses of the Hop Administrative Committee, and the rate of assessment, for the 1973–74 marketing year. The proposal is pursuant to §§ 991.55 and 991.56 of Order No. 991, as amended (7 CFR Part 991). The amended marketing order regulates the handling of hops of domestic production, and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The proposal is based on the unanimous recommendation of the Hop Administrative Committee. Proposed expenses of the Committee for the 1973–74 marketing year, beginning August 1, 1973, total $175,245. The proposed rate of assessment is 0.3 cent per pound of salable hops handled by each handler during the 1973–74 marketing year.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposal should file the same, in quadruplicate, with the Hearing Clerk, U. S. Department of Agriculture, Room 112, Administration Building, Washington, D. C. 20205, to be received not later than August 27, 1973. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposal is as follows:

§ 991.308 Expenses of the Hop Administrative Committee and rate of assessment for the 1973–74 marketing year.

(a) *Expenses.* Expenses in the amount of $175,245 are reasonable and likely to be incurred by the Hop Administrative Committee during the marketing year beginning August 1, 1973, for its maintenance and functioning and for such purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate.

(b) *Rate of assessment.* The rate of assessment for said marketing year, payable by each handler in accordance with § 991.56, is fixed at 0.3 cent per pound of salable hops.

Dated: August 9, 1973.

D. S. KURYLOSKI,
Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc.73-16868 Filed 8-14-73;8:45 am]

Animal and Plant Health Inspection Service

[9 CFR Part 91]

EXPORT RESTRICTIONS ON CATTLE AND SWINE

Notice of Proposed Rulemaking

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to provisions of the Act of August 30, 1890, the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, and the Act of March 4, 1907, as amended (21 U.S.C. 105, 112, 113, 120, 121, and 612–614), the Animal and Plant Health Inspection Service is considering whether or not changes are needed in the regulations contained in 9 CFR Part 91 to protect United States export markets for swine and cattle.

Statement of considerations. The Department has received reports that two shipments of swine of United States origin may have caused extensive outbreaks of transmissible gastroenteritis in swine of two South American countries and that cattle received from the United States were infested with cattle grubs on arrival in three other countries.

The Act of March 4, 1907 requires the Secretary to cause a careful inspection to be made of all cattle, sheep, swine, goats, horses, mules and other equines intended and offered for export to foreign countries to insure that such livestock are free from disease. Scientific knowledge, and laboratory testing procedures are available which will reasonably insure that swine are not infected with transmissible gastroenteritis and grubicides are available for treatment which when applied will destroy at least 95 percent of the cattle grubs in any cattle.

The additional health requirements under consideration for export swine would include a negative serum neutralization test, in a dilution of 1:16, within 30 days preceding the date of exportation and would limit the source of swine for export to herds where transmissible gastroenteritis has not been known to exist for at least 12 months preceding the date of exportation and no additions have been made to such herds during the 30 days immediately preceding exportation.

The additional health requirements under consideration for all cattle intended for export, except cattle for slaughter purposes, would require that such cattle be treated for hypodermosis (cattle grubs) with a duly registered pesticide in accordance with label instructions at least once not less than 10 days nor more than 30 days immediately preceding the date of export.

The Department requests data, views, arguments, and any other information from the public relating to the need, if any, of revising the existing regulations and adding additional health requirements for swine and cattle as specified. Also, the Department wishes to determine whether or not additional health requirements to insure that swine for export are free of transmissible gastroenteritis will limit the source of potential exports and whether or not requiring treatment for hypodermosis (cattle grubs) will substantially increase costs for cattle exported. Such data, views, or arguments, would be most useful if they contain published scientific articles or other evidence which will support the views of the writer. The publishing of this notice should not be construed to mean that the present regulations in 9 CFR Part 91 are, in any way, negated. The present regulations continue in effect unless at some subsequent time they are amended.

Any person who wishes to submit written data, views, arguments, or information concerning this notice may do so by filing them with the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, Room 821–A, Federal Center Building, Hyattsville, Maryland 20782, before October 15, 1973.

All written submissions made pursuant to this notice will be made available for public inspection at Room 821–A, Federal Center Building, Hyattsville, Maryland, during regular hours of business (8 a.m. to 4:30 p.m. Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

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

Done at Washington, D.C., this 10th day of August, 1973.

F. J. MULHERN,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc.73-16951 Filed 8-14-73;8:45 am]

[9 CFR Parts 304, 305, 317]

TENANCIES AND SUBSIDIARIES IN OFFICIAL ESTABLISHMENTS

Notice of Proposed Rulemaking

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that the Animal and Plant Health Inspection Service is considering amending Parts 304, 305, and 317 of the Federal meat inspection regulations (9 CFR 304.1, 305.1, and 317.2), pursuant to the authority contained in the Federal Meat Inspection Act, as amended (34 Stat. 1260, as amended; 21 U.S.C. 601 et seq.), to eliminate the provisions allowing persons to operate as tenants or subsidiaries in establishments without a separate grant of Federal inspection.

Statement of Considerations: The Federal meat inspection regulations permit persons operating as tenants or subsidiaries in official establishments to prepare products at such establishments without an independent grant of Federal inspection, by registering with the Department. Once registered, tenants and subsidiaries are then entitled to have their products marked with the official devices and to use certificates and labels bearing the marks of Federal inspection of the establishment in which they operate, and to whom the official grant of inspection was made. Such an arrangement has caused several problems in determining responsibility for compliance with provisions of the Act and regulations, such as sanitary maintenance of facilities. It also appears to make it easier for persons to conduct operations subject to the Act who might not be eligible for a grant of inspection under the Act.

This proposal would more definitely identify and fix responsibility for compliance with the Act and regulations by each entity conducting operations subject to the Act, because each such entity, whether tenant, subsidiary or landlord, would have to make formal application and meet the requirements of the Act and regulations for a grant of inspection.

It is proposed to amend the Federal meat inspection regulations in 9 CFR Parts 304, 305, and 317 as set forth below.

PART 304—APPLICATIONS FOR INSPECTION; GRANT OR REFUSAL OF INSPECTION

1. The Table of Contents with respect to § 304.1, the heading for § 304.1, and the text for § 304.1 would be amended to read as follows:

Sec.
304. Application for inspection.

* * * * *

§ 304.1 Application for inspection.

(a) Before the inspection is granted, each person conducting operations at an establishment subject to the Act, whether tenant, subsidiary, or landlord, shall make application therefor to the Administrator as provided for in this part.

(b) Every application under this section shall be made on an official form furnished by the Program, available from any Regional Director identified in § 301.2(iii) of this chapter, and shall be completed to include all information requested. Trade names of the applicant for labeling purposes, shall be inserted in the appropriate blank in the application. Each applicant for inspection will be held responsible for compliance with the Act and the regulations in this subchapter if inspection is granted. Preparation of product and other operations at the establishment for which inspection is granted may be conducted only by the applicant named in the application.

(c) In cases of change of ownership or location, a new application shall be made.

* * * * *

PART 305—OFFICIAL NUMBERS; INAUGURATION OF INSPECTION; WITHDRAWAL OF INSPECTION; REPORTING OF VIOLATION

2. The Table of Contents and heading for § 305.1 would be amended, and the text of paragraph (c) of that section would be amended to read as follows:

Sec.
305.1 Official numbers.

§ 305.1 Official numbers.

* * * * *

(c) When inspection has been granted to any applicant at an establishment, it shall not be granted to any other person at the same establishment. Tenants or subsidiaries operating as separate entities in the same building or structure may operate separate establishments therein under their own grant of inspection.

* * * * *

PART 317—LABELING; MARKING DEVICES, AND CONTAINERS

3. Section 317.2(g)(1) would be amended to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(g)(1) The name or trade name of the person that prepared the product may appear as the name of the manufacturer or packer without qualification on the label. Otherwise the name of the distributor of the product shall be shown with a phrase such as "Prepared for * * *" or "Distributed by * * *." The place of business of the manufacturer, packer, or distributor shall be shown on the label by city, State, and postal ZIP code when such business is listed in a telephone or city directory, and if not listed in such directory, then the place of business shall be shown by street address, city, State, and postal ZIP code.

* * * * *

Any person wishing to submit written data, views, or arguments concerning the proposed amendments may do so by filing them in duplicate with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by October 19, 1973.

Any person desiring opportunity for oral presentation of views should address such requests to the Compliance Staff, Field Operations, Meat and Poultry Inspection Program, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, so that arrangements may be made for such views to be presented prior to the date specified in the preceding paragraph. A record will be made of all views orally presented.

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

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

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

F. J. MULHERN,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc.73-16954 Filed 8-14-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

FOOD STARCH-MODIFIED

Proposal To Specify Sequence in Etherification Treatment

Published elsewhere in this issue of the FEDERAL REGISTER an order amends § 121.1031 (21 CFR 121.1031) of the food additive regulations by providing for the safe use of a food starch modified by etherification. The order prescribes the sequence of etherifying treatments as 0.1 percent epichlorohydrin followed by 25 percent propylene oxide. Section 121.1031(e) currently prescribes the use of a food starch modified by etherification with the combined treatment of these same two substances at levels not to exceed 0.1 percent epichlorohydrin and 10 percent propylene oxide.

In evaluating data supporting the order cited above, it has come to the attention of the Commissioner of Food and Drugs

that the etherification of the food starch with these two chemicals, already provided for in the regulation, was by a sequential rather than a combination treatment. Thus, in order to identify the modified food starch that has been shown to be safe by feeding studies, the Commissioner concludes that the listing for the already regulated additive should be amended to specify the sequence of etherification treatment as, "propylene oxide, not to exceed 10 percent, followed by epichlorohydrin, not to exceed 0.1 percent."

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(d), 72 Stat. 1787; 21 U.S.C. 348(d)) and under authority delegated to the Commissioner (21 CFR 2.120), it is proposed that the listing for "Epichlorohydrin, not to exceed 0.1 percent, combined with * * *" in paragraph (e) of § 121.1031 be revised to read as follows:

§ 121.1031 **Food starch-modified.**

* * * * *

(e) * * *

	Limitation
* * *	* * *
Propylene oxide, not to exceed 10 percent, followed by epichlorohydrin, not to exceed 0.1 percent.	* * *
* * *	* * *
* * *	* * *

Interested persons may, on or before October 15, 1973, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–88, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: August 7, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73–16874 Filed 8–14–73;8:45 am]

Social and Rehabilitation Service

[45 CFR Part 205]

PUBLIC ASSISTANCE EXCEPTION FROM TIMELY NOTICE—PROBABLE FRAUD

Notice of Proposed Rule Making

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 establish an exception from timely notice where probable fraud is the reason for discontinuation, suspension, termination, or reduction of assistance, under Titles I, IV–A, X, XIV, XVI and XIX of the Social Security Act.

The exception was published as part of the proposed regulations published April 20, 1973 (~~38 FR 9934~~) but was withdrawn from the final regulations because of concerns expressed in the comments. As now proposed, the exception is limited to situations where the agency has verified facts supporting their allegation of fraud and where the agency has provision for an immediate hearing providing the recipient the opportunity to show the allegations are incorrect.

Prior to the adoption of the proposed regulations, consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington, D.C. 20201 on or before September 14, 1973. Comments received will be available for public inspection in Room 5121 of the Department's offices at 301 C Street, SW., Washington, D.C. on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (area code 202–963–7361).

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

Dated: July 27, 1973.

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

Approved: August 10, 1973.

CASPAR W. WEINBERGER,
Secretary.

Section 205.10(a)(4)(ii) is revised to add subdivision (J) as set forth below:

§ 205.10 **Hearings.**

(a) *State plan requirements.* * * *

* * * * *

(4) In cases of intended action to discontinue, terminate, suspend or reduce assistance:

* * * * *

(ii) The agency may dispense with timely notice but shall send adequate notice not later than the date of action when:

* * * * *

(J) The agency has evidence clearly indicating that assistance should be discontinued, suspended, terminated, or reduced because of the criminal fraud of the recipient; and

(*1*) where possible, the facts which such evidence indicates have been verified through collateral sources; and

(2) the agency did not have such evidence in sufficient time to send timely notice; and

(3) an immediate hearing is offered and made available to the recipient.

* * * * *

[FR Doc.73–16943 Filed 8–14–73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Airworthiness Docket No. 72–SW–26]

MOONEY MODEL M20 SERIES

Proposed Airworthiness Directive

Amendment 39–1455 (37 FR 11462), A.D. 72–12–2 as amended by Amendment 39–1482 (37 FR 13336) requires lubrication of the flight control system and landing gear system rod end bearings and the addition of specific grease fittings on Mooney Model M20 series airplanes. After issuing Amendment 39–1482 the agency determined that landing gear failures are still occurring due to misrigging necessitating the issuance of additional instructions. Therefore, the agency is considering superseding Amendment 39–1482 with a new A.D. that requires retraction tests and inspection of the landing gear rigging in addition to the requirements of A.D. 72–12–2.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in triplicate to the Federal Aviation Administration, Regional Counsel, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before September 14, 1973 will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, at the office of the Regional Counsel, Southwest Region, Fort Worth, Texas, for examination by interested persons.

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

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

MOONEY: Applies to Mooney Models M20, M20A, M20B, M20C, M20D, M20E, M20F and M20G airplanes.

Compliance required as indicated.

To prevent corrosion and/or misrigging in the flight control and landing gear systems which may result in binding or seizure of the joints and loss of flight control or collapse of the landing gear, accomplish the following:

(a) Within 25 hours time in service after July 10, 1972 unless already accomplished within the last 25 hours time in service and thereafter at intervals not to exceed 12 calendar months from the last inspection or 100 hours time in service from the last inspection, whichever comes first, lubricate all flight control systems and landing gear system rod end bearings with a silicone spray lubricant or with an FAA approved equivalent lubricant.

(b) Within the next 50 hours time in service after July 10, 1972, unless already accomplished, install retracting links, P/N 530003–13 (1 ea.) and 510011–13 (2 ea.) on all M20B, C, E, F, and G aircraft and on M20D models converted to a retractable gear or equivalent parts approved by the Chief, Engineering and Manufacturing Branch, Flight Standards Division, Southwest Region, FAA, Fort Worth, Texas. The new links incorporate grease fittings and improved overcenter travel resulting in lower preload rigging. New links are not required if the existing installations use –13 links which have

38 FR 9820

grease fittings. (Reference Mooney Service Bulletin M20-155 dated 6-15-67, or later FAA approved revision.)

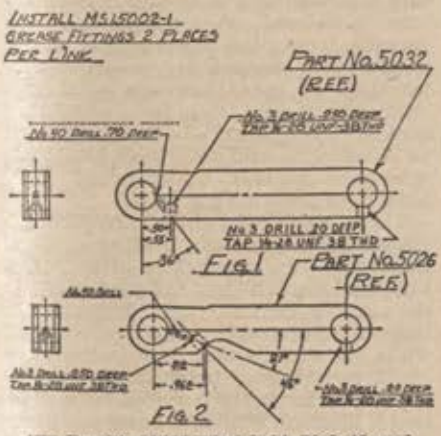
NOTE: For M20 and M20A models the present retract links are to be modified by the addition of grease fittings as shown in figures 1 and 2 attached. Follow procedures in Mooney Service Bulletin M20-155 dated 6-15-67, or later FAA approved revision, for removal and replacement of links. Service Bulletins, Service Letters and Service Instructions referenced in this A.D. may be obtained from AACT, Louis Schreiner Field, Kerrville, Texas.

(c) At the next lubrication as required in (a) and thereafter at the same interval as specified in (a), perform a landing gear retraction test and check the landing gear rigging. Information regarding rigging may be found in Mooney Service Instruction No. 20-31, dated 6-25-68 for Models M20 and M20A, Mooney Service Instruction No. M20-32 dated 11-3-72 for other models or later FAA approved revisions.

This supersedes Amendment 39-1455 (37 FR 11462), A.D. 72-12-2 as amended by Amendment 39-1482 (37 FR 13336).

Issued in Fort Worth, Texas on August 1, 1973.

A. H. THURBURN,
Acting Director,
Southwest Region.



[FR Doc.73-16765 Filed 8-14-73;8:45 am]

[14 CFR PART 71]

[Airspace Docket No. 73-WA-7]

PITTSBURGH, PA., TERMINAL CONTROL AREA

Proposed Adoption

The Federal Aviation Administration (FAA) is considering the adoption of a Group II Terminal Control Area (TCA) for Pittsburgh, Pa. 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. Additionally, comments are invited on the potential impacts of this proposal on the quality of the human environment. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received on or before October 15, 1973 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Rules Docket, Room 916, 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 Pittsburgh, Pa.

An FAA/Industry meeting was held in Pittsburgh on February 28, 1973, to consider user operational requirements. It was suggested that the TCA configuration presented at the meeting be modified by defining the east and west extensions as radials of the Imperial VORTAC. This modification along with the configuration presented was generally acceptable to those in attendance.

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.

PITTSBURGH, PA., TERMINAL CONTROL AREA

PRIMARY AIRPORT

Greater Pittsburgh Airport (Latitude 40° 29'37" N., Longitude 80°13'54" W.) Imperial VORTAC (Latitude 40°29'12" N, Longitude 80°14'03" W.)

Boundaries (Based on Imperial VORTAC (IRL) Arcs, DME Distances and radials):

1. *Area A.* That airspace extending upward from the surface to and including 8,000 feet MSL within the Pittsburgh, Pa., (Greater Pittsburgh) Control Zone.

2. *Area B.* That airspace extending upward from 2,500 feet MSL to and including 8,000 feet MSL within a 10-mile radius of IRL VORTAC; excluding Area A.

3. *Area C.* That airspace extending upward from 4,000 feet MSL to and including 8,000 feet MSL within a 20-mile radius of IRL VORTAC and between the 20 and 30-mile radii of the IRL VORTAC extending from the 076°T (081°M) radial clockwise to the 106°T (111°M) radial and from the 259°T (264°M) radial clockwise to the 288°T (293°M) radial; excluding Areas A and B.

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

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

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

[FR Doc.73-16855 Filed 8-14-73;8:45 am]

Federal Railroad Administration

[49 CFR Part 217]

[Docket No. RSOR-1; Notice 3]

RAILROAD OPERATING PRACTICES

Extension of Time for Filing Comments; New Date for Public Hearing

On May 14, 1973, the Federal Railroad Administration (FRA) published in the FEDERAL REGISTER a notice of proposed rule making to add a new Part 217 to Title 49 of the Code of Federal Regulations to establish initial rules respecting railroad operating practices (38 FR 12617). The closing date for comments and date for public hearing provided in that notice were re-scheduled to August 14, 1973, and August 15, 1973, respectively, in a second notice of rule making published at 38 FR 14865.

The Association of American Railroads (AAR) has filed a request for additional time to submit the views and arguments of its member railroads and to make an oral presentation. This request was made, in part, due to the FRA's late response in issuing an interpretation of the scope and intent of the proposed rules as asked by the AAR in a letter of July 5, 1973. The July 5 letter and the FRA's interpretation are available in the public docket.

For good cause shown in the AAR request, the FRA has decided to extend the closing date for filing written comments and to set a new time for the public hearing. The new deadline for filing written comments is September 19, 1973, except that written statements may be submitted at the oral hearing. Written comments received after September 19, other than at the oral hearing, will be considered only so far as practicable. The new time and the place for the oral hearing are 10:00 a.m., September 20, 1973, in Room 5332, Nassif Building, 400 Seventh St., SW., Washington, D.C. Persons wishing to make an oral presenta-

tion should notify the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh St., SW., Washington, D.C. 20590, before September 20. Participants should refer to the original notice (38 FR 12619) for a brief statement of the procedures to be followed at the hearing.

(Sec. 202, 84 Stat. 971, 45 U.S.C. 431; § 1.49 (n), 49 CFR 1.49(n))

Issued in Washington, D.C. on August 7, 1973.

DONALD W. BENNETT,
Chief Counsel.

[FR Doc.73-16857 Filed 8-14-73;8:45 am]

Office of Pipeline Safety

[49 CFR Part 192]

[Notice No. 73-2; Docket No. OPS-24]

GAS IN TRANSMISSION LINES

Odorization Requirements

The Office of Pipeline Safety is considering amending Part 192 of Title 49, Code of Federal Regulations, to require odorization of gas in certain transmission lines, and to prescribe special patrolling and leakage survey requirements for transmission lines on the basis of their class location and whether or not they are carrying odorized gas.

Interested persons are invited to comment on the proposed amendment by submitting written information, views, or arguments. Communications should be identified by the notice number and docket number and submitted in duplicate to the Office of Pipeline Safety, Department of Transportation, Washington, D.C. 20590. Comments received by Sept. 28, 1973, will be considered before final action is taken on the proposal. All comments received will be available for examination by interested persons in the Rules Docket at the Office of Pipeline Safety.

The present requirement for odorization of gas in transmission lines represents an interim measure that was adopted to permit the continued application of State law pending outcome of a study by the Office of Pipeline Safety (OPS). That study has now been completed. Its conclusions, reflected in this notice, are based on comments made in response to previous notices (70-5, 35 FR 5482; 70-11, 35 FR 9293; 70-13, 35 FR 13470), an informal public hearing held on September 17, 1970, and on information which has been furnished by recent contacts with transmission operators, distribution operators, and State commissions experienced in the transportation of odorized gas in transmission lines.

In the transmission lines of those operators who odorize gas, a number of leaks have been located through odorization. The fact of such results refutes any contentions that odorization is appropriate only for distribution mains and service lines and that high pressure leaks are detectable only by other means. Odorization allows the early detection of leaks and does not limit detection to company employees. In a number of cases, odorization led to discovery of leaks that would not have been disclosed until later by the means normally used.

Some transmission operators unfamiliar with odorization are concerned over possible difficulties in handling odorized gas as it goes through compressor stations and through high pressure metering and regulating stations. They also fear an adverse effect on the operation of dehydration units and the possibility of false gas leak scares at the time of blow down for maintenance. However, operators with long experience in odorizing all their transmission facilities, including compressors, regulators, and measuring stations, have reported no significant problems once a system is stabilized. Normally, odorizers are placed downstream of dehydration units so that the units are not subject to adverse effects. Moreover, even though blow down may be required for maintenance, adequate planning with advance notice to the public should minimize problems caused by odorant dropping out of the gas.

With regard to stability of odorizing systems, during the early stages of an odorization program there may be considerable fade of odorant level, particularly in extensive piping systems. However, over a long period of operation, the system tends to stabilize. Moreover, experience has shown that once a reasonable degree of stability has been reached in a transmission line, the distribution companies supplied gas from that line have little problem maintaining a stable concentration.

The OPS recognizes that odorization of gas destined for use in some industrial processes would serve no purpose and could even be detrimental. Thus, where odorants would be detrimental to the industrial process itself, or where strong plant odors characteristic of the customer's process would mask the natural gas odorants, odorization should not be required. Accordingly, it is proposed to except the gas in transmission lines intended for use in such industrial processes from the odorization requirement.

Comments in response to previous notices observed that considerable expense would be incurred by operators and consumers in providing deodorizing equipment to prepare the gas from odorized transmission lines for industrial and other uses where odorization is detrimental. As proposed in this notice, however, the exceptions to the odorization requirement in such cases would make deodorization equipment unnecessary and equipment costs for deodorization are therefore not a consideration.

There should be little or no problem of odorization poisoning of the hydrostatic test water that is removed by pigging operations after requalification or uprating tests, or of poisoning the liquids that are required to be initially removed from the gas. Most liquids are removed at the dehydration plants near the point of production prior to odorization. Odorization of transmission lines is required only where the lines go into populated areas, and most liquids are removed by that time.

A situation may exist in which a distributor is supplied from two or more transmission systems that use different odorants. Such distributors have reported no problems of compatibility and no potentially hazardous conditions. One distributor that is supplied gas odorized with mercaptan has supplemented this with cyclic-sulfide without problems.

The effectiveness of transmission line odorization has been questioned in the case of a small leak in a buried high pressure transmission pipeline, because of the odor adsorption properties of soil and the refrigeration effect of expanding high pressure gas. However, although there may be some initial reduction of the detectable qualities of the odorant due to these causes, such effects last for a limited time only. While the type of soil influences the adsorption rate, moisture in the soil and in the gas and a high gas velocity reduce the adsorption rate. Moreover, the refrigeration effect, which forms a shield of ice crystals, thus reducing the area of soil adsorbent surface, combined with the high vaporization pressure of mercaptans at low temperature and the high solubility of mercaptans in natural gas, tends to carry the odorant from high pressure gas at low temperature through to the surface better than at lower pressure with little temperature drop. Field tests using mercaptan type odorants have shown them to be effective and detectable in the atmosphere around underground leaks from high pressure gas lines.

There now exist high pressure gas transmission pipelines in Class 4 locations that run parallel to other utility lines underneath the solid paving of city streets. To permit these transmission lines to be operated without odorization while gas distribution lines in the same street operating at much lower pressure and stress levels are required to be odorized is illogical. While for these and other built-up areas, flame ionization surveys appear to be an effective means of locating small leaks, such surveys are required only on a periodic basis. However, people who have a normal sense of smell are in the area everyday and are capable of detecting any escaping odorized gas.

Under this proposal, a general requirement for odorization of gas in transmission lines in Class 3 and Class 4 locations would be established. Exceptions would be provided, however, for gas in transmission lines enroute to underground storage fields, and in Class 3 locations enroute to predominantly Class 1 or Class 2 locations. Since the transmission lines in such locations are relatively few and are not those normally supplying distribution systems, safety considerations do not indicate that the cost of odorization is justified. As noted above, there is also an exception for gas intended for use in an industrial process where the presence of odorant would be detrimental.

Under the proposal, additional requirements for patrolling would be set forth in § 192.705 and new requirements for conducting leakage surveys would be estab-

lished in a new § 192.706. Such requirements are consistent with the odorization requirements proposed in § 192.625 and give effect to the need for increased surveillance of transmission lines in which the gas is not odorized and of transmission lines in the higher class locations.

In consideration of the foregoing, it is proposed to amend Part 192 of Title 49 of the Code of Federal Regulations as set forth below.

1. It is proposed to amend § 192.625 by amending paragraph (g) and adding a new paragraph (h) to read as follows:

§ 192.625 Odorization of gas.

* * * * *

(g) Except as provided in paragraph (h) of this section, combustible gases in transmission lines in Class 3 and Class 4 locations must be odorized as provided in paragraphs (b) through (f) of this section.

(h) Notwithstanding paragraph (g) of this section, odorization of combustible gas in a transmission line is not required—

(1) When the gas is enroute to an underground storage field;

(2) In a Class 3 location through which the line is passing enroute to a predominantly Class 1 or Class 2 location; or

(3) In a Class 3 location when any part of the gas is intended for use in an industrial process in which the presence of odorant would be detrimental.

2. It is proposed to amend § 192.705 to read as follows:

§ 192.705 Transmission lines: patrolling.

(a) Each operator shall have a patrol program to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation.

(b) The frequency of the patrol must be determined by the size of the line, the operating pressures, the class location, terrain, weather, and other relevant factors, but in no case at intervals exceeding 1 year.

(c) In addition to the frequency requirements of paragraph (b) of this section, each transmission line must be patrolled—

(1) At intervals not exceeding 6 months in a Class 3 location when carrying unodorized gas;

(2) At intervals not exceeding 3 months in a Class 4 location whether carrying odorized or unodorized gas; and

(3) At highway and railroad crossings more often and in greater detail than adjoining areas of the transmission line.

3. It is proposed to add a new § 192.706 to read as follows:

§ 192.706 Transmission lines: leakage surveys.

(a) Each operator of a transmission line shall provide for periodic leakage surveys in its operating and maintenance plan.

(b) Leakage surveys of a transmission line must be conducted at intervals not exceeding 1 year except that gas detector surveys must be conducted—

(1) At intervals not exceeding 6 months in a Class 3 location when carrying unodorized gas; and

(2) At intervals not exceeding 3 months in a Class 4 location whether carrying odorized or unodorized gas.

This notice is issued under the authority of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 et seq.), § 1.58(d) of the regulations of the Office of the Secretary of Transportation (49 CFR 1.58(d)), and the redelegation of authority to the Director, Office of Pipeline Safety, set forth in Appendix A of Part 1 of the regulations of the Office of the Secretary of Transportation (49 CFR Part 1).

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

JOSEPH C. CALDWELL,
Director,
Office of Pipeline Safety.

[FR Doc.73-16856 Filed 8-14-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

APPROVAL AND PROMULGATION OF STATE IMPLEMENTATION PLANS; OHIO

Opportunity for Public Comment on Proposed Transportation and/or Land Use Control Strategies

On June 15, 1973, pursuant to section 110(a) of the Clean Air Act and 40 CFR Part 51, the Administrator announced his disapproval of the control strategy for photochemical oxidants in the Cincinnati, Toledo, and Dayton regions of Ohio due to the lack of timely submittal of transportation control plans. This was published in the FEDERAL REGISTER on June 22, 1973 (38 FR 16550).

The Administrator has proposed a transportation control plan for Cincinnati (38 FR 17702, July 2, 1973). The Administrator has not proposed plans for Toledo and Dayton because of preliminary indications that no transportation controls are necessary in those regions.

If, prior to promulgation, a State has adopted and submitted a plan or revision which the Administrator determines to be in accordance with applicable requirements, the State plan will be approved in lieu of promulgation. This notice is issued to advise the public that supplemental information has been received from the State of Ohio regarding these three regions, and that comments may be submitted on whether the control strategy for photochemical oxidants in the regions should be approved or disapproved by the Administrator under section 110(a) of the Clean Air Act. Only comments received within 21 days from the publication of this notice will be considered. Notice of opportunity to comment on State plans has been published previously on April 24, April 27, May 4, June 1, June 22, and July 18, 1973.

A more detailed description of the information submitted is set forth below.

OHIO

A document entitled "Implementation Plan to Achieve Ambient Air Quality Standards for Photochemical Oxidants—Cincinnati Air Quality Control Region," dated March 1973, was received on July 16, 1973, along with a submittal letter from the Governor dated June 29, 1973. A public hearing on the plan was held by the Ohio Environmental Protection Agency on May 29, 1973. The plan states that a 44 percent reduction in hydrocarbon emissions is necessary in order to attain the oxidant standard, and that the standard will be met by July 1975 without any control measures other than the stationary source controls in the original plan. In order to attain this result, the plan states that mobile source emissions will decline sufficiently due to a combination of the Federal Motor Vehicle Control Program for new cars, as well as expected improved bus service and traffic flow improvements resulting from completion of the interstate highway and bridge system.

A document entitled "Implementation Plan to Achieve Ambient Air Quality Standards for Photochemical Oxidants—Toledo Air Quality Control Region," dated March 1973, was received on July 16, 1973, along with a submittal letter from the Governor dated June 29, 1973. A public hearing was held by the Ohio Environmental Protection Agency on May 30, 1973. The plan states that a 50 percent reduction in hydrocarbon emissions is necessary in order to attain the oxidant standard, and that the standard will be met by 1975 without any control measures other than the stationary source controls in the original plan. In order to attain this result, the plan states that mobile source emissions will decline sufficiently due to the Federal Motor Vehicle Control Program for new cars. For informational purposes, the plan includes a discussion of programs underway to improve traffic flow in Toledo.

A document entitled "Implementation Plan to Achieve Ambient Air Quality Standards for Photochemical Oxidants—Dayton Air Quality Control Region," dated July 1973, was received on August 3, 1973, along with a submittal letter from the Governor dated July 24, 1973. A public hearing was held on May 17, 1973, by the Ohio Environmental Protection Agency. The plan states that the prescribed standard can be achieved in the Dayton Region without any control measures other than the stationary source controls in the original plan. This conclusion is based on data for calendar year 1972, which include maximum oxidant readings substantially below the maximum measured in 1971. The State proposes to submit a revised control strategy on or about November 15, 1973, if air quality data from 1973 show the need for one. The document submitted contains a preliminary strategy which might be used, including an inspection program for light-duty vehicles, improvements in mass transit, and an epi-

sode control plan during periods of air stagnation.

Copies of the proposed plans are available at the Program Support Branch, Division of Air and Water Programs, Environmental Protection Agency, Region V, 1 North Wacker Drive, Chicago, Illinois 60606, and at the Ohio Environmental Protection Agency, 450 East Town Street, Columbus, Ohio 43216. The Cincinnati plan is available at the Cincinnati Division of Air Pollution Control, 2400 Beekman Street, Cincinnati, Ohio 45214, the Dayton plan at the Regional Air Pollution Control Agency, 451 West Third Street, County Government Plaza, Dayton, Ohio 45402, and the Toledo plan at the Toledo Pollution Control Agency, 26 Main Street, Toledo, Ohio 43605.

Dated: August 10, 1973.

ROBERT L. SANSOM,
Assistant Administrator for Air and Water Programs.

[FR Doc.73-16991 Filed 8-14-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 95]

[Docket No. 19798; FCC 73-820]

ANTENNA HEIGHT RESTRICTIONS

Notice of Proposed Rule Making

In the matter of amendment of § 95.37 (c) concerning the antenna height restrictions on Class C or D stations in the Citizens Radio Service.

1. The Commission has under consideration the petitions for rule making in the above-entitled matter which have been submitted by the Five County C. B. Club, Inc. (RM-800), the late George Nims Raybin (RM-953), the Electronic Industries Association (RM-1688), Alert (RM-1714), the Illinois State Citizens Band Radio Association Inc., (RM-2126), and the United States Citizens Radio Council (RM-2147). All of the foregoing petitions request amendment of § 95.31 to increase the permissible height for Class D station antennas.

2. RM-800 requests that antennas be allowed to be 20 feet above any natural formation, tree, or man-made structure within a specified distance from the antenna structure. RM-953 requests that § 95.37(c)(1) and (2) be amended by changing "20" to "25." RM-1688 requests essentially two changes to allow antennas to be 60 feet high, (1) if they are not within one mile from airport or, (2) if they are shielded by a structure located within 500 yards of the antenna structure. RM-1714 proposes a limitation of 200 feet except within a specified slope pattern. RM-2126 proposes to allow antennas to be as high as 100 feet and would establish a slope pattern. RM-2147 requests a maximum height of 80 feet except within a specified slope pattern.

3. The Commission is in agreement with the basic thrust of these petitions for rule making. The present Class D antenna rules, see § 95.37(c), have resulted in some inequities and as pointed out in RM-2147 in some cases is discriminatory to Citizens licensees as opposed to other land mobile radio operators. However, any change the Commission makes in the rules affecting antenna height limitations must meet at least the following criteria. First, it must be capable of uniform application without the necessity for Commission consideration on an individual application basis of the facts in a particular case. The large volume of Citizens radio applications received each month precludes any rule which would require such an individual determination. Second, the uniform application of the rule must result in no situation where the antenna might be considered to be a potential hazard to air navigation under Federal Aviation Administration (FAA) regulations. Third, the rule must be written in a manner so as to be easily understood and applied to particular situations by licensees.

4. None of the suggested rules contained in the foregoing petitions comply with all of these criteria. RM-800, 953, 1688, and 1714 all fail to comply with the FAA regulations. RM-2126 and 2147 would require the Commission to make a determination on certain applications that no antenna hazard exists. Accordingly, the Commission is unable to find that any of the proposed rule amendments contained in the aforementioned petitions present a viable alternative to our present Class D antenna rules.

5. Moreover, putting aside the FAA standards and the need for individual examination by the Commission of proposed antenna construction, the Commission is somewhat concerned that any rule based on a slope pattern, as many of the six petitions are, will prove difficult for licensees to understand and apply properly. Slope patterns, it should be emphasized, are not measured from ground level but from the established elevation (mean sea level) of the airport. While other radio services, with the exception of the Amateur Radio Service, use slope patterns, licensees in those services have trained manufacturers representations available for consultation and assistance. Citizens Radio Service licensees for the most part do not have that type of assistance available to them.

6. Nevertheless, the Commission proposes to amend § 95.37(c) to provide some relaxation of the antenna height limitations. Currently, a Class C or D station antenna must comply with at least one of the limitations contained in subparagraphs 1 through 4 of that section. The Commission proposes to amend § 95.37(c) to allow a Class D or Class C antenna and its supporting structure to be as high as 60 feet, in many cases, if it is more than 6,000 feet from an airport. For antenna structures located within 20,000 feet of an airport we are proposing a slope pattern but with an explanatory note. This note sets forth the procedure a licensee must use in order to determine the maximum permitted antenna height when his antenna structure is located within the slope pattern. It is important to emphasize that our proposed rule still will present some difficulties in application. A licensee who wants to erect an antenna higher than 20 feet within 20,000 feet of an airport will be required to determine his antenna site's height above sea level and also the airport's established elevation (height above mean sea level). Under our proposed rule he may then erect an antenna to the limit of the slope pattern from the level of the airport but not more than 60 feet above ground level. A practical example of this requirement is that if the nearest airport is 40 feet above sea level, the antenna site is 50 feet above sea level and 4,000 feet from the airport, then the antenna may only be 30 feet above ground level not 40 feet as might otherwise be supposed. Another example of this is if the nearest airport is 50 feet above sea level, the antenna site is 40 feet above sea level and 4,000 feet from the airport, then the antenna may be 50 feet above ground level. The practical effect on the proposed rule is that an applicant must drawn an imaginary horizontal line from the level of the airport to this antenna site. From that imaginary line, he may erect an antenna of one foot in height for every 100 feet in horizontal distance from the nearest point of the runway but not more than 60 feet above ground level. See figures 1 and 2.

7. The primary purpose of permitting such an increase in height is to enable licensees to erect antennas above nearby obstacles which may absorb radiated energy and thus decrease ability to communicate. The Commission believes that the 60 foot maximum proposal of this notice represents a reasonable antenna height which will accomplish this purpose. Moreover, this increase in permissible height may tend to decrease television interference problems since it will allow increased height differential between Class D antennas and television antennas.

8. These proposed amendments will provide in substantial degree the relief requested in these six petitions while still meeting the criteria set forth in paragraph 3 of this notice. The text of the proposed amendment is set forth in the attached Appendix. We invite, however, suggestions and comments from informed persons on how we might be able to simplify these proposed rules and whether increased antenna heights will cause undue interference.

9. The proposed greater antenna heights will, however, result in a general escalation in transmission distances. When high gain directional antennas, e.g., Yagis and cubical quads, are employed, the increase in propagated signal strength by sky wave transmission may be sufficient to encourage illegal long distance skip communications. Accordingly, we are inviting specific comments on whether we should ban the use of high gain directional antennas in the Class D service after January 1, 1976, while permitting Omni-directional antennas with a maximum gain of 3 dB.

10. Authority for this action is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

11. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before October 15, 1973, and reply comments on or before October 26, 1973. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

12. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

Adopted: August 2, 1973.

Released: August 8, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 95.37 is amended to read as follows:

§ 95.37 Limitations on antenna structures.

* * * * *

(c) A Class C or Class D station operated at a fixed location shall employ a transmitting antenna which complies with at least one of the following:

NOTE: a manmade structure is any construction other than a tower, mast, or pole.

1. The antenna and its supporting structure does not exceed 20 feet in height above ground level; or

2. The antenna and its supporting structure does not exceed by more than 20 feet the height of any natural formation, tree or man-made structure on which it is mounted; or

3. The antenna is mounted on the transmitting antenna structure of another authorized radio station and does not exceed the height of the antenna supporting structure of the other station; or

4. The antenna is mounted on and does not exceed the height of the antenna structure otherwise used solely for receiving purposes, which structure itself complies with subparagraph (1), (2), or (5) of this paragraph.

5. The highest point of the antenna or its supporting structure does not exceed 60 feet above ground level and the highest point also does not exceed one foot in height above the established airport elevation for each 100 feet of horizontal distance from the nearest point of an airport runway.

Determining maximum antenna height for class C/D citizens radio service stations under subparagraph 5. The highest point, for an antenna installation used in a station licensed in the Class C and Class D categories of the Citizens Radio Service, is 60 feet above ground level, except where the installation would penetrate an imaginary sloping line extending outward from an airport runway. In such areas, antenna installations could pose hazards to operating aircraft. Only those installations which would exceed one foot above the nearest runway for every 100 feet from the runway would be limited to less than 60 feet in height. Because the antenna site ground level may be at a different elevation than the runway, both points must be referenced to a common line, in this case mean sea level, in order to determine the maximum allowable antenna height above ground level. Prior to erecting an antenna structure, the following procedure must be followed to determine the maximum allowable antenna height above ground level (MAAHAGL).

Step 1. The use of a suitable topographic map(s) is necessary. From the map(s), determine the elevation above mean sea level (AMSL) of the antenna site.

Elevation of antenna site = ------ feet AMSL.

Step 2. Contact the operator of the airport having the runway nearest to the antenna site, and determine the elevation AMSL of the point on the runway nearest to the antenna site.

Elevation of nearest airport runway = ------ feet AMSL.

Step 3. From the map(s), determine the distance in feet between the antenna site and the nearest point on the runway.

Distance from nearest airport runway = ------ feet.

Step 4. Determine the maximum allowable height of the antenna installation *above the nearst airport runway.* This is done by dividing the distance between the antenna site and the runway (determined in step 3), by 100.

Maximum allowable height of antenna installation above nearest airport runway (within the 60 feet above antenna site ground level limitations).

(divide) ------ (from step 3) = ------ feet.
100

Step 5. Determine the maximum allowable height of the antenna installation above mean sea level. This is done by adding the height determined in step 4 to the elevation of the runway determined in step 2.

Maximum allowable height of the antenna installation above mean sea level.

------ feet AMSL (from step 2)
(add) +------ feet (from step 4) =------ feet AMSL

Step 6. Determine the maximum allowable height of the antenna installation above ground level. This is the maximum vertical distance from the topmost point of the antenna installation above the ground level immediately below that point. This is done by substracting the elevation of the antenna site (determined in step 1) from the maximum allowable height of the antenna installation above mean sea level (determined in step 5).

Maximum allowable antenna height above ground level (MAAHAGL)

------ feet AMSL (from step 5)
(subtract) —------ feet AMSL (from step 1) =------ feet

NOTE: In no case may the MAAHAGL exceed 60 feet! In case the elevation of the antenna site (determined in step 1) exceeds the maximum allowable height of the antenna installation above mean sea level (determined in step 5), the MAAHAGL shall be 20 feet.

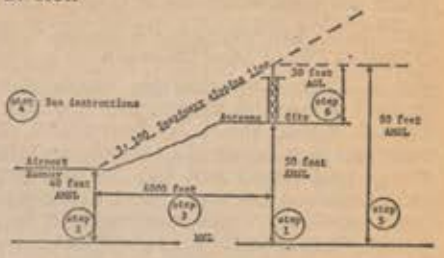


Figure 1. Elevation of antenna site above elevation of runway.

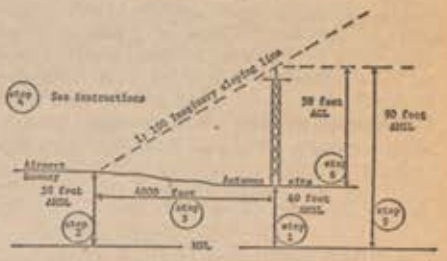


Figure 2. Elevation of antenna site below elevation of runway.

[FR Doc.73-16796 Filed 8-14-73;8:45 am]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Part 545]

[No. 73-1112]

FEDERAL SAVINGS AND LOAN SYSTEM

Proposed Amendment Relating to Loans on Second or Vacation Homes

AUGUST 8, 1973.

The Federal Home Loan Bank Board considers it advisable to propose an amendment of § 545.6-1(a) of the rules and regulations for the Federal Savings and Loan System (12 CFR 545.6-1(a)) for the purpose of limiting the authority of a Federal savings and loan association regarding the making of certain loans in excess of 80 percent of the security property's value to the making of such loans on the security of a borrower's single-family dwelling which the borrower certifies is or will be his "principal" dwelling place. Pursuant to the present provisions of said § 545.6-1(a), such loans also may be made on the security of a borrower's second or vacation home.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend said § 545.6-1(a) by revising subdivision (iv) of subparagraph (4) thereof to read as set forth below.

Interested persons are invited to submit written data, views, and arguments to the Office of the Secretary, Federal Home Loan Bank Board, 101 Indiana Avenue, NW., Washington, D.C. 20552, by September 15, 1973, as to whether this proposal should be adopted, rejected, or modified. Written material submitted will be available for public inspection at the above address unless confidential

[1] Commissioners H. Rex Lee and Reid absent.

treatment is requested or the material would not be made available to the public or otherwise disclosed under § 505.6 of the general regulations of the Federal Home Loan Bank Board (12 CFR 505.6).

§ 545.6–1 Lending powers under sections 13 and 14 of Charter K.

Any Federal association which has Charter K may, under sections 13 and 14 thereof, make the following types of loans on the security of first liens on improved real estate and the use by such an association of loan plans, practices, and procedures which comply with the applicable provisions of §§ 545.6 to 545.6–13, are hereby approved by the Board:

(a) *Homes or combination of homes and business property—*

(1) *Monthly installment loans.* Subject to the limitations of § 545.6–7, installment loans may be made on homes or combination of homes and business property for an amount not in excess of 75 percent of the value thereof, repayable monthly within 30 years or, if an insured or guaranteed loan, within the period acceptable to the insuring or guaranteeing agency: *Provided,* That, when the members of such an association have authorized loans to be made for an amount exceeding 75 percent of the value, such loans may be made up to the percentage of value authorized by the members but not in excess of:

(i) 80 percent of the value, if the loan is not an insured or guaranteed loan;

(ii) The maximum percentage of the value acceptable to the insuring agency, if an insured loan;

(iii) 80 percent of the value, plus the amount guaranteed if a guaranteed loan.

* * * * *

(4) *Loans in excess of 80 percent of value.* The limitation of 80 percent set forth in subdivision (i) of subparagraph (1) of this paragraph shall be 90 percent in the case of any loan with respect to which the following requirements are met:

* * * *

(iv) The borrower, including a purchaser who assumes the loan, has executed a certification in writing stating (a) that no lien or charge upon such property, other than the lien of the association or liens or charges which will be discharged from the proceeds of the loan, has been given or executive by the borrower or has been contracted or agreed to be so given or executed, and (b) that the borrower is actually occupying the property as the borrower's principal dwelling or that the borrower in good faith intends to do so;

* * * * *

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary.

[FR Doc.73–16882 Filed 8–14–73;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 73-214]

MICHAEL FRANK PRPICH

Cancellation With Prejudice of Customhouse Broker's License

AUGUST 7, 1973.

Notice is hereby given that the Commissioner of Customs on August 7, 1973, pursuant to section 641, Tariff Act of 1930, as amended, and section 111.51(b), Customs Regulations, as amended, upon the specific request of Michael Frank Prpich canceled with prejudice customhouse broker's license No. 2841 issued to him on March 4, 1955, for Customs Collection District No. 39 (now the Customs District of Chicago). The Commissioner's decision is effective as of August 7, 1973.

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

[FR Doc.73-16955 Filed 8-14-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA

Notice of Filing of California State Protraction Diagram

AUGUST 7, 1973.

Notice is hereby given that effective September 17, 1973, the following protraction diagram, approved March 16, 1970, is officially filed and of record in the California State Office, Bureau of Land Management, Sacramento, California. In accordance with Title 43, Code of Federal Regulations, this protraction will become the basic record for describing the land for all authorized purposes at and after 10:00 a.m. of the above date. Until this date and time, the diagram has been placed in the open files and is available to the public for information only.

CALIFORNIA PROTRACTION DIAGRAM 79

SAN BERNARDINO MERIDIAN, CALIFORNIA

T. 24 N., R. 3 E.,
Secs. 1 to 35, inclusive.
T. 25 N., R. 3 E.,
Secs. 1 to 4, inclusive;
Secs. 6 and 7;
Secs. 9 to 15, inclusive;
Secs. 18 to 35, inclusive.
T. 26 N., R. 3 E.,
Secs. 1 to 15, inclusive;
Sec. 17, N½, SW¼, N½SE¼, SW¼SE¼;
Secs. 18 and 19;
Sec. 20, NW¼NE¼, S½NE¼, W½, SE¼;
Sec. 21, NE¼, S½NW¼, S½;
Secs. 22 to 35, inclusive.
T. 24 N., R. 4 E.,
Secs. 1 to 15, inclusive;
Secs. 17 to 35, inclusive.
T. 25 N., R. 4 E.,
Secs. 1 to 15, inclusive;
Secs. 17 to 35, inclusive.
T. 26 N., R. 4 E.,
Secs. 1 to 15, inclusive;
Secs. 17 to 35, inclusive.

Copies of this diagram are for sale at two dollars ($2.00) each by the Survey Records Office, Bureau of Land Management, Room E-2807, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

[SEAL] ELEANOR K. WILKINSON,
Chief, Branch of Records and Data Management.

[FR Doc.73-16860 Filed 8-14-73;8:45 am]

NORTH DAKOTA

Notice of Termination of Proposed Withdrawal and Reservation of Lands

AUGUST 7, 1973.

Notice of a Bureau of Sport Fisheries and Wildlife application, Montana 039303 (ND), for withdrawal and reservation of lands for a waterfowl production area, was published as a FEDERAL REGISTER Document No. 60-7222, on page 7338 of the issue for August 4, 1960. The applicant agency has canceled its application involving the lands described in the FEDERAL REGISTER publication referred to above. Therefore, pursuant to the regulations contained in 43 CFR, Part 2353, such lands, at 10 a.m., on August 24, 1973, will be relieved of the segregative effect of the above-mentioned application.

ROLAND F. LEE,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.73-16931 Filed 8-14-73;8:45 am]

Office of Hearings and Appeals

[Docket No. M 74-10]

W. B. SPRADLIN COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), W. B. Spradlin Coal Company, located at Lafollette, Tennessee, has filed a petition to modify the application of 30 CFR 77.1605(k) to its Mine No. 1.

30 CFR 77.1605(k) reads as follows:

(k) Berms or guards shall be provided on the outer bank of elevated roadways.

In support of its petition, petitioner states that the addition of berms or guardrails would make it impossible to maintain proper drainage and would hamper snow removal. The road would ice over during winter months and the grader now used for maintenance could no longer be used. Petitioner also states that additional man-hours and equipment would be needed for road maintenance which would result in an increased accident potential during snow and ice conditions. The installation of guardrails would not be effective because they would have to be built on fill material.

As an alternative method petitioner wishes to continue maintaining its roads by its currently existing methods. Petitioner states that by using its current methods of maintenance, its roads, are as safe as possible.

Petitioner contends that the application of the mandatory standard will result in a diminution of safety to miners in the affected area. Petitioner contends that berms and guardrails would create a drainage hazard by creating improper drainage which would cause washouts and hazardous conditions in wet weather. The road is too narrow to build berms, therefore, solid rock would have to be blasted, resulting in a highwall which would be a new hazard.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before September 14, 1973. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES M. DAY,
Director, Office of Hearings and Appeals.

AUGUST 1, 1973.

[FR Doc.73-16858 Filed 8-14-73;8:45 am]

Office of the Secretary

ANDREW P. JONES

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 June 30, 1973.

Dated: June 30, 1973.

ANDREW P. JONES.

[FR Doc.73-16921 Filed 8-14-73;8:45 am]

B. C. HULSEY

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 June 28, 1973.

Dated: June 28, 1973.

B. C. HULSEY.

[FR Doc.73-16920 Filed 8-10-73;4:44 pm]

B. M. GUTHRIE

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 June 28, 1973.

Dated: June 28, 1973.

B. M. GUTHRIE.

[FR Doc.73-16918 Filed 8-14-73;8:45 am]

C. N. WHITMIRE

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 July 1, 1973.

Dated: July 3, 1973.

C. N. WHITMIRE.

[FR Doc.73-16929 Filed 8-14-73;8:45 am]

CARLOS O. LOVE

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 July 1, 1973.

Dated: July 1, 1973.

CARLOS O. LOVE.

[FR Doc.73-16922 Filed 8-14-73;8:45 am]

FRED M. TREFFINGER

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 June 27, 1973.

Dated: June 27, 1973.

F. M. TREFFINGER.

[FR Doc.73-16927 Filed 8-14-73;8:45 am]

HARLEY L. COLLINS

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 June 27, 1973.

Dated: June 27, 1973.

HARLEY L. COLLINS.

[FR Doc.73-16916 Filed 8-14-73;8:45 am]

JOHN MADGETT

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 July 2, 1973.

Dated: July 2, 1973.

JOHN MADGETT.

[FR Doc.73-16923 Filed 8-14-73;8:45 am]

RAY F. DAVIS

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 June 30, 1973.

Dated: July 5, 1973.

RAY F. DAVIS.

[FR Doc.73-16917 Filed 8-14-73;8:45 am]

ROBERT J. MARCHETTI

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 June 28, 1973.

Dated: June 28, 1973.

ROBERT J. MARCHETTI.

[FR Doc.73-16924 Filed 8-14-73;8:45 am]

ROBERT WINFREE

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 June 26, 1973.

Dated: June 26, 1973.

ROBERT WINFREE.

[FR Doc.73-16928 Filed 8-14-73;8:45 am]

SAMUEL RIGGS SHEPPERD

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 July 1, 1973.

Dated: July 1, 1973.

SAMUEL RIGGS SHEPPERD.

[FR Doc.73-16925 Filed 8-14-73;8:45 am]

WILLARD B. SIMONDS

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 June 30, 1973.

Dated: July 2, 1973.

WILLARD B. SIMONDS.

[FR Doc.73-16926 Filed 8-14-73;7:45 am]

WILLIAM HENNE

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 July 2, 1973.

Dated: July 2, 1973.

WILLIAM HENNE.

[FR Doc.73-16919 Filed 8-14-73;8:45 am]

Office of the Secretary

[INT FES 73-44]

FINAL ENVIRONMENTAL STATEMENT ON THE PROPOSED ENDANGERED SPECIES CONSERVATION ACT OF 1973

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, the Department of the Interior has prepared a final environmental statement for the proposed Endangered Species Conservation Act of 1973 (HR 4758).

The proposed legislation would amend present authority enbodied in the Endangered Species Conservation Act of 1969. Among provisions of the new legislation are (1) expansion of the definition of endangered to include species and subspecies not only threatened with extinction but those likely within the foreseeable future to become threatened with extinction; (2) provision for the first time of Federal regulation of the taking of endangered non-migratory species; (3) restoration of authority to acquire lands and waters with Land and Water Conservation Funds; and (4) increase the penalties for violation of the Act. Overall result of the action will be more effective protection and management of more species and subspecies, both native and foreign.

Copies of the final statement are available for inspection at the following locations:

Bureau of Sport Fisheries and Wildlife
1500 N.E. Irving Avenue
Portland, Oregon 97208
Bureau of Sport Fisheries and Wildlife
500 Gold Avenue, S.W.
Albuquerque, New Mexico 87103
Bureau of Sport Fisheries and Wildlife
Federal Building, Fort Snelling
Twin Cities, Minnesota 55111
Bureau of Sport Fisheries and Wildlife
17 Executive Park Drive
Atlanta, Georgia 30329
Bureau of Sport Fisheries and Wildlife
U.S. Post Office and Courthouse
Boston, Massachusetts 02109
Bureau of Sport Fisheries and Wildlife
10597 West Sixth Avenue
Denver, Colorado 80215
Bureau of Sport Fisheries and Wildlife
Office of Area Director
813 D Street
Anchorage, Alaska 99501
Bureau of Sport Fisheries and Wildlife
Office of Environmental Quality
Department of the Interior
Room 2246
18th and C Streets, N.W.
Washington, D.C. 20240

Single copies may be obtained by writing the Chief, Office of Environmental Quality, Bureau of Sport Fisheries and Wildlife, Department of the Interior, Washington, D.C. 20240. Comments concerning the proposed action should also be addressed to the Chief, Office of Environmental Quality. Please refer to the statement number above.

Dated: August 7, 1973.

JOHN M. SEIDL,
Deputy Assistant Secretary—Program Development and Budget.

[FR Doc.73-16859 Filed 8-14-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

CITIZENS ADVISORY COMMITTEE ON CIVIL RIGHTS

Notice of Determination

Notice is hereby given that the Secretary of Agriculture will appoint a Citizens Advisory Committee on Civil Rights for the purpose of reviewing the Department's policies, practices and procedures which promote equality of opportunity. The Secretary has determined that establishment of this Committee is in the public interest in connection with the duties imposed on the Department by law.

The Committee members will be from varied backgrounds and interests. The Committee, which will report to the Secretary, will terminate two years from the date of establishment.

This notice is given in compliance with Public Law 92-463. Views and comments of interested persons must be received by the Director, Office of Equal Opportunity, on or before September 14, 1973.

All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Office of Equal Opportunity, during regular business hours (7 CFR 1.27(b)).

Dated: August 9, 1973.

JOE WRIGHT,
Assistant Secretary for Administration.

[FR Doc. 73-16948 Filed 8-14-73;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

NATIONAL AERONAUTICS & SPACE ADMINISTRATION

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

DOCKET NUMBER: 73-00038-00-41700. APPLICANT: National Aeronau-

tics & Space Administration, Ames Research Center, Moffett Field, California 94035. ARTICLE: Accessories for Cilas VD-320(c) Laser System. MANUFACTURER: Compagnie Industrielle Des Lasers, France. INTENDED USE OF ARTICLE: The articles are accessories for a Cilas VD-320(c) laser system used in fundamental studies of the interaction of intense (laser) radiation with matter. Investigations of the possible self-focusing of laser light in a plasma, spontaneous magnetic field in laser-produced plasma, and anomolous soft x-ray emission in a laser plasma are now in progress. In addition, the stimulation of long chain organic dye vapors, using the second and fourth harmonics of the fundamental (1.06 u) Nd^3-glass output wavelength will be investigated.

COMMENTS: No comments have been received with respect to this application.

DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

REASONS: The application relates to compatible accessories for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used and is pertinent to the applicant's purposes.

The Department of Commerce knows of no similar accessories being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

A. H. STUART,
Director, Special Import Programs Division.

[FR Doc.73-16849 Filed 8-14-73;8:45 am]

VETERANS ADMINISTRATION HOSPITAL—DURHAM

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D. C. 20230.

DOCKET NUMBER: 73-00516-33-46040. APPLICANT: Veterans Administration Hospital Chief, Supply Service, 508 Fulton Street, Durham, N.C. 27705. ARTICLE: Electron Microscope, model JEM 100B. MANUFACTURER: JEOL Ltd., Japan. INTENDED USE OF ARTICLE: The article is intended to be used for studies of various types of materials. In general, human, animal microbial and viral tissues will be studied. Also, homogenized, centrifuged fractions of tissue will be examined, for example, in order to determine their content. Studies will range from low magnification survey studies to high resolution membrane and protein subunit analysis. Planned experiments include: (1) Study of spherical and tubular particles in the serum of patients with hepatitis and in the serum of asymptomatic chronic carriers.

(2) Studies on macromolecules such as fibrin, DNA, ribosomes, antibodies (such as IgM), collagen, muscle proteins, etc., and

(3) Low power studies on kidney biopsies.

The article will also be used for training of residents, medical and graduate students, and technologists, including student technologists in various aspects of electron microscopy.

COMMENTS: No comments have been received with respect to this application.

DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. REASONS: The foreign article has a specified resolving capability of 3 Angstroms. The most closely comparable domestic instrument is the Model EMU-4C electron microscope manufactured by the Forgflo Corporation. The Model EMU-4C has a specified resolving capability of 5 Angstroms. (The lower the numerical rating in terms of Angstrom units, the better the resolving capability.) We are advised by the Department of Health, Education, and Welfare in its memorandum dated July 27, 1973 that the additional resolving capability of the foreign article is pertinent to the purposes for which the foreign article is intended to be used. We, therefore, find that the Model EMU-4C is not of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

A. H. STUART,
Director, Special Import Programs Division.

[FR Doc.73-16847 Filed 8-14-73;8:45 am]

UNIVERSITY OF CALIFORNIA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

DOCKET NUMBER: 73-00241-31-41700. APPLICANT: University of California, Los Alamos Scientific Laboratory, Post Office Box 990 Los Alamos, NM 87544. ARTICLE: Amplifier, double discharge for CO_2 laser system. MANUFACTURER: Lumonics Research Ltd., Canada. INTENDED USE OF ARTICLE: The article is intended to be used as a preamplifier stage for a 1000 Joule CO_2 laser system currently under construction which will be used to investigate radiation damage in materials and the feasibility of controlled thermonuclear fusion.

COMMENTS: No comments have been received with respect to this application.

DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

REASONS: The foreign article provides the capabilities of a 10.6 mircrometer wavelength, CO_2 laser amplifier. The article will be used as a preamplifier stage for a 1000 joule CO_2 laser system which requires amplification of a 1 multi-joule pulse to 50 multi-joules. We are advised by the National Bureau of Standards (NBS) in its memorandum dated July 31, 1973 that the capabilities of the article described above are pertinent to the applicant's research studies. NBS further advises that it knows of no domestically manufactured instrument scientifically equivalent to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

A. H. STUART,
Director, Special Import Programs Division.

[FR Doc.73-16850 Filed 8-14-73;8:45 am]

UNIVERSITY OF CALIFORNIA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

DOCKET NUMBER: 72-00431-65-46070. APPLICANT: University of California, Lawrence Livermore Laboratory, CA 94550. ARTICLE: Scanning electron microscope, Model S-4. MANUFAC-

TURER: Cambridge Scientific Instruments, Ltd., United Kingdom. INTENDED USE OF ARTICLE: The article is intended to be used in research programs in the solid state/thin film area, specifically, surface topography of nucleating thin films, diagnostics of integrated, emulsion studies of holographic plates, and laser mirrows. For organic Chemistry programs the article will be used in the study of nucleation, growth, and peculiar morphologies of organic crystalline solids. In support of the general Metallurgy programs, the article will be used to great advantage in the study of fracture mechanics, hydrogen embrittlement, properties, of composite materials, and dynamic deformation studies. The article will also be used for dynamic phase transformation studies in the temperature range from −115°C. to +400°C. in Plutonium Metallurgy programs. Additionally, surface morphological and contamination rate studies on ceramic and salt-type materials and metal hydrides as well as characterization of particulate matter pertinent to environmental studies will require the use of the article.

COMMENTS: No comments have been received with respect to this application.

DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the article was ordered (February 16, 1972).

REASONS: The foreign article is equipped with an electron gun having a Lanthanum Hexaboride (LaB_6) rod emitter. The use of an LaB_6 emitter instead of a tungsten filament source increases the resolution capability of a scanning electron microscope resulting in obtaining a greater amount of useful information from the specimen being observed. We are advised by the National Bureau of Standards (NBS) in its memorandum dated July 31, 1973 that the LaB_6 emitter is pertinent to the applicant's intended research. NBS further advises that it knows of no domestic manufacturer that could supply an LaB_6 equipped scanning electron microscope at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the foreign article was ordered.

A. H. STUART,
Director, Special Import Programs Division.

[FR Doc.73-16851 Filed 8-14-73;8:45 am]

UNIVERSITY OF CALIFORNIA—LOS ANGELES

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

DOCKET NUMBER: 73-00511-75-41700. APPLICANT: University of California-Los Angeles, 405 Hilgard Avenue, Los Angeles, Calif. 90024. ARTICLE: Model TEA-103-IF laser. MANUFACTURER: Lumonics Research, Ltd., Canada. INTENDED USE OF ARTICLE: The article is intended to be used for studies of high density plasmas to determine the degree of reflection or absorption of 10.6 u laser radiation by plasmas.

COMMENTS: No comments have been received with respect to this application.

DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

REASONS: The foreign article is a high-powered (5 joules output in fundamental mode, 1 to 2 joules in central spot with angular divergence 0.6 milliradian) CO_2 laser (10.6 micrometer wavelength). We are advised by the National Bureau of Standards (NBS) in its memorandum dated July 31, 1973 that the specifications of the article cited above are pertinent to the applicant's research studies involving coupling of energy and momentum locally into a plasma via non linear effects. NBS further advises that it knows of no domestically manufactured instrument scientifically equivalent to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

A. H. STUART,
Director, Special Import Programs Division.

[FR Doc.73-16853 Filed 8-14-73;8:45 am]

UNIVERSITY OF ILLINOIS

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

DOCKET NUMBER: 73-00246-33-46595. APPLICANT: University of Illinois at Urbana-Champaign, Purchasing Division, 223 Administration Building, Urbana, Ill. 61801. ARTICLE: Pyramitome, Model LKB 11800-1. MANUFACTURER: LKB Produkter AB, Sweden. INTENDED USE OF ARTICLE: The article is intended to be used to obtain sections for use in the electron microscope from limited, nearby regions in the glomerulus of man and various animals which are oriented to each other at 90°. The article will also be used in the courses Biology-Chemistry 429; Electron Microscopy with Laboratory and Biology-Chemistry 493; Advanced Electron Microscopy (research projects) to teach graduate students in the Biological Sciences new modern method of preparing materials for study under the electron microscopes.

COMMENTS: No comments have been received with respect to this application.

DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

REASONS: The foreign article has the ability to trim two precise pyramids oriented at exactly 90° from each other from which ultrathin sections may be cut. We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated July 27, 1973 that the characteristic described above is pertinent to the applicant's three dimensional study of the glomeruli and their capillary walls. HEW further advises that it knows of no domestic instrument having an equivalent capability and accuracy of angle measurement.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

A. H. STUART,
Director, Special Import Programs Division

[FR Doc.73-16848 Filed 8-14-73;8:45 am]

UNIVERSITY OF WASHINGTON

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

DOCKET NUMBER: 73-00350-33-46040. APPLICANT: University of Washington, Department of Genetics

SK–50, Seattle, Wash. 98195. ARTICLE: Electron microscope, Model EM 201. MANUFACTURER: Philips Electronic Instruments NVD, The Netherlands. INTENDED USE OF ARTICLE: The article is intended to be used for studies of isolated biological particles including avian ribosome crystals and yeast chromatin particles by negative staining in sodium phosphotungstate, uranyl acetate, and other heavy-metal salts to determine their three-dimensional structures. Sections of plastic-embedded cells from which these particles are derived will also be examined by the article. Examination of spread deoxyribonucleic acid (DNA) molecules, prepared by the methods of Kleinschmidt and others will also be carried out. Another research application will be in the development of very small electron-dense particles—10 to 20 Angstroms in diameter—to serve as means of marking the locations of particular macromolecules within ribosomes, chromatin particles, and other highly organized aggregates. In addition the article will be used for teaching of pertinent electron microscopic methods to graduate students in genetics and biochemistry. This instruction is encompassed by the course entitled Genetics 584, Analysis of Genetic and Biochemical Systems by Electron Microscopy.

COMMENTS: No comments have been received with respect to this application.

DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the article was ordered (November 20, 1972).

REASONS: The foreign article is equipped with a eucentric goniometer stage, capable of motion through large angles. At the time the foreign article was ordered, the most closely comparable domestic instrument was the Model EMU–4C electron microscope manufactured by Forgflo Corporation. We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated July 27, 1973 that the eucentric goniometer stage of the foreign article is pertinent to the applicant's studies involving examination of the third dimensional ultrastructure of single ribosomes and ribosome crystals to determine the macromolecular orientation. HEW further advises that the Model EMU–4C does not have a scientifically equivalent stage. We, therefore, find that the EMU–4C is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the foreign article was ordered.

A. H. STUART,
Director Special Import Programs Division.

[FR Doc.73–16852 Filed 8–14–73;8:45 am]

UNIVERSITY OF WISCONSIN

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

DOCKET NUMBER: 73–00526–01–90000. APPLICANT: University of Wisconsin, department of biochemistry, 420 Henry Hall, Madison, Wis. 53706. ARTICLE: Rotating anode X-ray generator, model GX–6. MANUFACTURER: Elliott Automation Radar Systems, Ltd., United Kingdom. INTENDED USE OF ARTICLE: The article is intended to be used to make X-ray diffraction studies of single crystals of macromolecules like proteins and nucleic acids. The intensities of the thousands of reflections made by X-rays from the generator passing through the crystal will be photographically recorded and then processed to aid in the calculation of an electron density map which reveals the three-dimensional architecture of these giant molecules.

COMMENTS: No comments have been received with respect to this application.

DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

REASONS: The foreign article provides a focused spot of minimal size and a rotating target for maximum x-ray power. We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated July 27, 1973 that both of the characteristics of the article described above are pertinent to the applicant's research studies. HEW further advises that it knows of no domestic instrument that provides both of the pertinent characteristics.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

A. H. STUART,
Director, Special Import Programs Divisions.

[FR Doc.73–16846 Filed 8–14–73;8:45 am]

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

National Marine Fisheries Service

MARINE MAMMAL PROTECTION ACT

Notice of Issuance of Letters of Exemption

Notice is hereby given that, on July 16 and 19, 1973, as authorized by section 101(c) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq., 86 Stat. 1027 (1972)), and § 216.13 of the regulations Governing the Taking and Importing of Marine Mammals (37 FR 28177, 28182, December 21, 1972), Letters of Exemption from the provisions of the Act on grounds of undue economic hardship were issued to the following named persons authorizing them to engage in the following described activities, subject to the conditions specified in the Letters:

(1) On July 16, 1973, to Bernd Gerhard Wuersig, Division of Biological Sciences, State University of New York at Stony Brook, Stony Brook, New York 11790, to capture by net and affix radio transmitting devices to as many as three dusky dolphins (*Lagenorhynchus obscurus*) and to affix visual tags to as many as 12 dusky dolphins within one-half mile of the shore of Golfo San Jose, Chubut, Argentina, between July 16 and October 21, 1973, for the purposes of scientific research. A notice containing a summary of this application was published in the FEDERAL REGISTER on May 16, 1973 (38 FR 13839).

(2) On July 19, 1973, to John L. Hrachovec, President, Black Hills Marineland, Inc., P.O. Box 1243, Rapid City, South Dakota 57701, to take three California sea lions (*Zalophus californianus*) for public display. A notice containing a summary of this application, and containing a request to take also one Atlantic bottle-nose dolphin (*Tursiops truncatus*) was published in the FEDERAL REGISTER on March 6, 1973 (38 FR 6088) and, after notice in the FEDERAL REGISTER on April 6, 1973 (38 FR 8758) a public hearing to consider the application was held in Pensacola, Florida on April 25, 1973. Prior to the hearing, the Applicant's request to take the Atlantic bottlenose dolphin was withdrawn when the Applicant contracted to lease a dolphin from another displayer.

(3) On July 19, 1973, to Dr. H. L. Stone, Chief, Cardiovascular Control Section, Division of Comparative Marine Neurobiology, Galveston, Texas, to take and hold 10 California sea lions (*Zalophus californianus*) to continue scientific research efforts to describe their diving reflexes elicited by face immersion. A notice containing a summary of this application, describing a request for 20 sea lions, was published in the FEDERAL REGISTER on March 7, 1973 (38 FR 6087) and, after notice in the FEDERAL REGISTER on April 6, 1973 (38 FR 8757) a public hearing to consider the application was held in Galveston, Texas, on April 24, 1973. At that hearing, the Applicant reduced his request from 20 to 15 sea lions. The decision to grant an exemption for only 10

sea lions was based on the fact that the holding facility for the sea lions, Sea-Arama Marineworld in Galveston, Texas, could maintain only 10 sea lions properly between the date of issuance of the Letter of Exemption and October 21, 1973, after which no sea lions could be taken under a Letter of Exemption.

(4) On July 19, 1973, to Keith C. Koontz, P.O. Box 87, Savoonga, Alaska, to take by shooting as many as 10 bearded seals (*Erignathus barbatus*), 30 ringed seals (*Pusa hispida*), 30 harbor seals (*Phoca vitulina*) and 10 ribbon seals (*Histriophoca fasciata*) for subsistence purposes. A notice containing a summary of this application was published in the FEDERAL REGISTER on June 15, 1973 (38 FR 15742).

(5) On August 1, 1973, to Clyde A. Hill, San Diego Zoological Garden, P.O. Box 551, San Diego, California 92112, to take four ringed seals (*Pusa hispida*), two bearded seals (*Erignathus barbatus*), and two ribbon seals (*Histriophoca fasciata*) for public display. A notice containing a summary of this application and containing a request to take also four southern sea lions (*Otaria byronia*) was published in the FEDERAL REGISTER on June 8, 1973 (38 FR 15088). The request to take the southern sea lions was denied due to the Applicant's failure to demonstrate that he would suffer undue economic hardship should an exemption for these animals not be granted.

Copies of the applications for the exemptions, of the Letters of Exemption and of all supporting documents except documents containing information exempt from public disclosure pursuant to the Freedom of Information Act (5 U.S.C. 522(b)), are available for inspection at the Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235, and at the National Marine Fisheries Service Regional Offices.

The Regional Offices are located at the following addresses: Southwest Region, 300 South Ferry Street, Terminal Island, California 90731, telephone 213–831–9281; Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930, telephone 617–281–0640; Southeast Region, William C. Cramer Federal Office Building, 144 First Avenue South, St. Petersburg, Florida 33701, telephone 813–893–3141; Northwest Region, Lake Union Building, 1700 Westlake Avenue North, Seattle, Washington 98109, telephone 206–442–7575; Alaska Region, P.O. Box 1668, Juneau, Alaska 99801, telephone 907–586–7221.

Dated: August 8, 1973.

ROBERT W. SCHONING,
Director.

[FR Doc.73–16880 Filed 8–14–73;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[Docket No. NFD–121]

JOHN F. SULLIVAN

Appointment as Federal Coordinating Officer

Notice is hereby given that 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, to administer the Disaster Relief Act of 1970 (Public Law 91–606, 84 Stat. 1744), I hereby appoint John F. Sullivan as Federal Coordinating Officer to perform the duties specified by section 201 of that Act for the Disaster listed below, effective July 1, 1973:

State	Disaster Number	Declaration Date
Massachusetts: Vice Philip D. Bassett, appointed July 4, 1972 (37 F R 13585, July 11, 1972).	325	March 6, 1972

Dated: July 31, 1973.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.73–16996 Filed 8–14–73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket Nos. 24963 and 24964; Order 73–8–53]

ALLEGHENY AIRLINES, INC.

Order to Show Cause

Application of Allegheny Airlines, Inc. for an amendment of its certificate of public convenience and necessity for Route 97 so as to delete Poughkeepsie, New York.; application of Allegheny Airlines, Inc. for authority to suspend service temporarily at Poughkeepsie, New York.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 10th day of August, 1973.

By Order 73–2–39, February 9, 1973, the Board set for hearing an application filed by Allegheny Airlines to delete Poughkeepsie, New York, from the carrier's route 97. The prehearing conference was held on April 3, 1973, but by Notice of May 9, 1973, the Administrative Law Judge deferred further procedural steps pending disposition of a motion filed by Allegheny to delete Poughkeepsie via Show Cause procedures. Allegheny's motion was filed in response to a letter sent to the Administrative Law Judge by the county executive of Dutchess County, New York (Poughkeepsie) which advised that the County would not oppose Allegheny's application or participate further in the proceeding. The New York State Department of Transportation also advised the Administrative Law Judge that it would not oppose Allegheny's request.

Upon consideration of the pleadings and all the relevant facts, the Board has decided to issue an Order to Show Cause proposing to amend Allegheny's certificate so as to delete Poughkeepsie. The Board tentatively finds and concludes that the public convenience and necessity require the amendment of Allegheny's certificate so as to delete Poughkeepsie. It further tentatively finds that Allegheny is fit, willing and able properly to perform the transportation to be authorized in the proposed certificate and to conform to the provisions of the Act and the Board's rules, regulations and requirements thereunder.

By Orders 70–1–130, January 27, 1970, and 70–12–159, December 31, 1970, the Board authorized Mohawk Airlines (Allegheny's predecessor) to suspend service temporarily at Poughkeepsie contingent upon a satisfactory level of air taxi replacement service. The Board noted at that time that Poughkeepsie had been a low traffic-generating point, that suspension would eliminate an uneconomic point from the local service carrier's system, and that the replacement air taxi service would be commensurate with the community's traffic-generating potential. Nothing over the past two to three years casts doubt on those conclusions. Indeed, Allegheny indicates that resumption of service would result in an operating loss of about $58,000 and increase its subsidy need by approximately $81,000, assuming one round trip five days per week between Poughkeepsie and Binghamton with Convair 580 aircraft. Similarly, the carrier observes that Poughkeepsie is connected to the national air transportation network by air taxi service to New York, Boston, Washington, Binghamton, and Burlington, Vermont; that there is rail and bus service available to numerous destinations; and that the city is located adjacent to an excellent network of limited-access four-lane highways.

Interested persons will be given fourteen days following service of this order to show cause why the tentative findings and conclusions set forth herein should not be made final. We expect such persons to support their objections, if any, with detailed answers, specifically setting forth the tentative findings and conclusions to which objection is taken. Such objections should be accompanied by arguments of fact or law and should be supported by legal precedent or detailed economic analysis. General, vague, or unsupported objections will not be entertained.

Accordingly, it is ordered, That:

1. All interested persons are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated herein amending Allegheny's certificate of public convenience and necessity for route 97 so as to delete Poughkeepsie, N.Y.;[1]

2. Any interested persons having objection to the issuance of an order mak-

[1] Condition (15) will also be appropriately amended.

ing final any of the proposed findings, conclusions, or certificate amendments set forth herein shall, within fourteen days after service of a copy of this order, file with the Board and serve upon all persons listed in paragraph 5, below, a statement of objections together with a detailed summary of testimony, statistical data, and other evidence expected to be relied upon to support the stated objections;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board;

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Board may proceed to enter an order in accordance with the tentative findings and conclusions set forth herein; and

5. A copy of this order shall be served upon Allegheny Airlines, the New York State Department of Transportation, the County of Dutchess, the Department of Aviation of the County of Dutchess, and the Bureau of Operating Rights.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.73-16979 Filed 8-14-73;8:45 am]

[Docket 25691, 25725, 22859; Order 73-8-46]

AMERICAN AIRLINES, INC., ET AL.

Order of Suspension

Container loading and/or unloading proposed by American Airlines, Inc. Braniff Airways, Inc. United Air Lines, Inc.; Domestic Air Freight Rate Investigation.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 9th day of August, 1973.

By tariff revisions bearing the posting dates of June 28 and July 10, and marked to become effective August 12, 1973, American Airlines, Inc. (American), Braniff Airways, Inc. (Braniff), and United Air Lines, Inc. (United) propose to establish a rule providing carrier loading and/or unloading at airport terminals and "city terminals." [1]

At the designated airport terminals, the rule proposes loading or unloading, but not both, by the several carriers at specified charges, as follows:

Container Type	Charge per Container		Carrier
	Loading	Unloading	
A	N.A.	$18.00	AA, BN, UA
LD-3	$19.00	6.00	BN, UA
LD-3	N.A.	6.00	AA
LD-5	N.A.	11.00	AA
LD-7	N.A.	15.00	AA

N.A.—No service available.

[1] Rule 19 in Airline Tariff Publishers, Inc., Agent, CAB 131.

The carriers also propose to establish provisions for loading and/or unloading service to be performed by the carrier at the carrier's city terminals, as follows:

Container Type	Charge per Container			
	Loading		Unloading	
	Rate per cwt.	Minimum Charge	Rate per cwt.	Minimum Charge
A, LD-7	$.60	$18.00	$.60	$18.00
B	.60	10.80	.60	10.80
LD-1, LD-3	.60	6.60	.60	6.60
B-2, LD-N	.60	5.40	.60	5.40
D, LD-W	.60	3.00	.60	3.00

A list of 55 city terminals is contained in the proposals. Of these, 16 are apparently located at the chief commercial airport of the cities involved.[2]

In support of the proposals the carriers assert that, inter alia, this rule will extend container service to shippers who lack sufficient physical facilities to handle containers and will contribute growth to the container program by making container service available to more customers; will permit shippers to obtain loading or unloading service with full airline responsibility, and will enable the airlines to offer container service at virtually equivalent rates as motor carrier less-than-truckload service; and that the proposed charges cover the costs of container loading and/or unloading.

Complaints requesting rejection or, in the alternative, suspension and investigation of the proposed rule have been filed by The Flying Tiger Line Inc. (Tiger) and jointly by WTC Air Freight and Shulman Air Freight, Inc., air freight forwarders. The complaints state, inter alia, that this proposal will result in unjustified, broad-ranging, rate reductions on bulk traffic; that the necessary justification is not submitted; that the container discount would apply, but still leave the carrier with exposure to liability as on a bulk shipment; that the shipper will not be able to determine the transportation costs prior to loading; that the proposal does not demonstrate that carrier containerization of bulk traffic would result in sufficient cost savings to offset dilution; that the container discounts exceed the charges for loading and unloading; and that the proposal is not clear with respect to application of assembly and distribution rules. Tiger estimates that it would experience annual revenue dilution of approximately $966,000.

In their answers to the complaints, American [3] and United variously assert, among other things, that dilution of revenue will be minimal, if any; that no burden of loss and damage claims will be shifted to the airlines; that no significant portion of current bulk traffic will shift to containers; that approximately 50 percent of United's current lower-deck containerized traffic is now being loaded/unloaded by someone other than the shipper; that there are numerous container loading and unloading services available today outside the tariff performed by independent cartage agents and carrier subsidiaries; that the airline's cost for handling containerized freight remains the same whether the freight is containerized and tendered by the shipper to the airline or whether it is containerized and tendered by the ACI contractor; that the Board has previously endorsed the expanded availability of the container program to shippers lacking facilities; and that United does not and will not load daylight discounted containers on prime-time night freight flights, thus extending daylight discounts to bulk traffic.

The proposed rule for loading and/or unloading comes within the scope of the Domestic Air Freight Rate Investigation, Docket 22859, and its lawfulness will be determined in that proceeding. The issue now before the Board is whether to reject or suspend the proposal or permit it to become effective pending final decision of the Board in that investigation. We shall not reject the proposal because the filing conforms to the Board's tariff regulations.

Upon consideration of all relevant factors, however, the Board finds that the proposed rule should be suspended pending investigation. We believe that the proposal would significantly reduce the carrier economies of containerization for the shipments involved and reduce the justification for the current container discounts to shippers.

The container program instituted by the carriers several years ago involved incentive discounts to shippers on the basis of economies to the carriers. These economies were essentially grounded on the basis that carriers would receive loaded containers from consignors and tender such containers to consignees, thus bypassing the air freight terminals. This would save the airlines the cost of loading and unloading containers and of keeping track of numerous pieces, and reduce loss and damage.[4] In fact, the current tariff requires that containers entitled to a discount be loaded by the shipper and unloaded by the consignee at places other than the carriers' premises. Beginning in May 1971, however, certain carriers filed exceptions to the foregoing, along the following lines: (1) Carriers may unload at their premises specified container types; (2) consignees may unload containers at carriers' premises; and (3) shippers may load and/or consignees unload contain-

[2] The carriers, in addition, propose that the current pick-up and delivery rules, which cover service between shipper's dock and airport, be revised to permit stopping-in-transit at city terminals (at no increase in rates) for the loading or unloading services proposed.

[3] American and United filed separate answers to each of the two complaints. The answers on behalf of American were submitted by Air Cargo, Inc., the airlines' wholly owned subsidiary, which, inter alia, negotiates pick-up and delivery contracts with truckers for the airlines.

[4] Bulk traffic also moves in containers for the most part, but these containers are loaded and unloaded by the airlines.

ers at carriers' premises (Orders 71–5–13, 71–5–52, and 72–10–42).

The current proposals, however, go far beyond the present exceptions, to such an extent as to significantly alter the current containerization procedures. Instead of receiving loaded containers from shippers or their agents, carriers would receive bulk shipments and load them into LD–3 containers (the principal containers for wide-bodied jets) on their own premises, or load and unload other types of containers at city terminals. These city terminals are, in numerous cases, at the airports and close to the carrier's premises. As indicated above, a number of carriers currently offer unloading services at their own airport terminals.

At the current level of container rates, shippers would frequently find that container discounts significantly exceed the charges paid by the shippers and consignees for loading and unloading. Thus, in our view, carriers would often incur unwarranted dilution of revenues, inasmuch as they would grant container discounts to numerous bulk shipments that they would continue handling in the same fashion as now (carrier loading and unloading of containers).

In fact, the proposals may result in reducing the flexibility of carrier operations by permitting shippers to specify the container types desired. When carriers currently load bulk shipments in containers, they may be able to combine several shipments in the same container. But this would be impossible under this proposal.

In their answers, the carriers assert that there are currently available container loading and unloading services offered by concerns that enable shippers to obtain container discounts without loading the containers themselves. American refers to ACI contractors and United calls them independent entrepreneurs and carrier subsidiaries, stating that they operate at rates outside of the tariff.

The foregoing arguments miss the thrust of our objections. It has always been possible for shippers and consignees to have others perform loading and unloading of the containers for which discounts were offered. The point is that carriers incurred no costs for these operations, and their premises (allegedly overcrowded) were not utilized. Under the proposals, two of the three carriers would load certain containers at their own terminals and other containers at city terminals, frequently at the airports close to their own terminals.[2] Consequently, the carriers would load bulk shipments into containers, but would be giving container discounts under the proposed rule. Although the carriers assert that the loading and unloading charges would be compensatory, they are not closely related to the differential between the charges for bulk and containerized freight; thus, the economic basis for container discounts appears subverted. Such basic changes in the economics of containerized service should, in our view, await conclusion of the cost and other studies presently in process in the Domestic Air Freight Rate Investigation.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof,

It is ordered, That:

1. Pending hearing and decision by the Board, the rates, charges, and provisions described in Appendix A hereto are suspended and their use deferred to and including November 9, 1973, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

2. Except to the extent granted herein, the complaint of The Flying Tiger Line Inc. in Docket 25691 and the joint complaint of WTC Air Freight and Shulman Air Freight, Inc., in Docket 25725 are dismissed; and

3. Copies of this order shall be filed with the tariff and served upon American Airlines, Inc., Braniff Airways, Inc., The Flying Tiger Line Inc., United Air Lines, Inc., WTC Air Freight, and Shulman Air Freight, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc. 73-16980 Filed 8-14-73;8:45 am]

[Docket 23333 and 25280; Order 73-8-39]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Cargo Rate Matters

AUGUST 8, 1973.

Agreement adopted by the International Air Transport Association relating to cargo rate matters.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreement was adopted for expedited effectiveness at the Worldwide Cargo Traffic Conference held in May–June, 1973 at Mexico City.

The resolutions dealt with herein propose amendments to the specific commodity rate structure applicable within the Western Hemisphere. These amendments, insofar as they would affect air transportation, are set forth in Attachment A.[1] Additionally, the resolutions revalidate certain intra-Pacific commodity rates, not applicable in air transportation, due to expire September 29, 1973 for a one day period to September 30, 1973, and propose a new cargo escape resolution for application in the Mid Atlantic area. We will approve subject to conditions the amendments to Western Hemisphere specific commodity rates since these rates remain below the otherwise applicable general cargo rates, and will likewise approve subject to condition the new Mid Atlantic escape resolution. We will disclaim jurisdiction with respect to the resolution dealing with revalidation of the intra-Pacific specific commodity rates since none of the rates involved affect air transportation.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14:

1. It is not found that the following resolutions incorporated in Agreement 23748, as indicated in the attachment hereto, are adverse to the public interest or in violation of the Act provided that approval is subject to conditions stated herein:

Agreement C.A.B. 23748	IATA No.	Title	Application
R-1	590	(Expedited) Specific Commodity Rates Board (Amending)	1

Provided, That approval shall not constitute approval of the specific commodity descriptions contained herein for purposes of tariff publication; provided further that tariff filings shall be marked to become effective on not less than 30 days' notice from date of filing.

Agreement C.A.B. 23748	IATA No.	Title	Application
R-3	001z	Mid Atlantic Escape Resolution—Cargo (New)	1/2

Provided, That with respect to Resolution 001z, all notices sent or received pursuant to said resolution shall be filed with the Board at the same time and in the same manner as circulated to the carriers; provided further that any change, deletion, or addition to the Mid Atlantic cargo rate structure and related resolutions, whether or not in air transportation as defined by the Act, shall be filed with the Board under section 412 of the Act, and approved by the Board prior to being placed in effect.

2. It is not found that the following resolution, incorporated in Agreement 23748, as indicated, affects air transportation within the meaning of the Act:

Agreement C.A.B. 23748	IATA No.	Title	Application
R-2	590	(Expedited) Specific Commodity Rates Board (Amending)	3

Accordingly, *It Is Ordered That:*

1. Agreement C.A.B. 23748, R–1 and R–3, be and hereby is approved subject to the conditions set forth herein; and

2. Jurisdiction is disclaimed with respect to Agreement C.A.B. 23748, R–2.

Persons entitled to petition the Board for review of this order, pursuant to

[2] As indicated, the third carrier, American, proposes to load various containers at city terminals.

[1] Attachment filed as part of the original document.

the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.73-16977 Filed 8-14-73;8:45 am]

[Docket 23333; Order 73-8-30]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Specific Commodity Rates

AUGUST 7, 1973.

Agreement adopted by Joint Traffic Conferences of the International Air Transport Association relating to specific commodity rates.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic regulations, between various air carriers, foreign aid carriers, and other carriers, embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA) and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

The agreement names four additional specific commodity rates and the cancellation of an existing rate, as set forth in the attachment[1] hereto, reflecting reductions from general cargo rates; and was adopted pursuant to unprotested notices to the carriers and promulgated in an IATA letter dated July 27, 1973.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions hereinafter ordered.

Accordingly, *It Is Ordered*, That:

1. Agreement C.A.B. 23822, R-1 through R-5 be and hereby is approved, provided that approval shall not constitute approval of the specific commodity descriptions contained herein for purposes of tariff publication, provided further that tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing; and

2. The findings and approval herein shall not be deemed to modify the findings and Order of the Board in its decision in Agreements Adopted by IATA Relating to North Atlantic Cargo Rates, Order 73-2-24 of February 6, 1973, as amended and finalized by Order 73-7-9 of July 5, 1973, and are subject to all provisions of such order.

Persons entitled to petition the Board for review of this order, pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.73-16978 Filed 8-14-73;8:45 am]

[1] Attachment filed as part of the original document.

ENVIRONMENTAL PROTECTION AGENCY

CONNECTICUT

Request for State Program Approval for Control of Discharges of Pollutants to Navigable Waters

Section 402(b) of the Federal Water Pollution Control Act (33 USC 1251) provides that the Governor of a State desiring to administer the National Pollutant Discharge Elimination System (NPDES) program to control discharges into navigable waters within its jurisdiction may submit to the Administrator of the U.S. Environmental Protection Agency (EPA) a full and complete description of the program it intends to administer, including a statement from the State Attorney General that the laws of the State provide adequate authority to carry out the described program. The Administrator is required to approve each such submitted program unless he determines that (1) the State does not have adequate legal authority to comply with Section 402(b) of the Act, including the authority to issue permits which comply with all pertinent requirements of the Act and the authority to abate violations of any permit (including civil and criminal penalties); or (2) the State does not comply with the requirements for State permit programs promulgated by the Administrator pursuant to section 304(h)(2) of the Act. A complete description of the State program elements necessary for approval of the State program was published in Volume 37 of the FEDERAL REGISTER, December 22, 1972 (40 CFR 124), beginning at page 28390. (A copy is available by writing the above address.)

The State of Connecticut has submitted a full and complete Request for State Program Approval, and proposes that the Connecticut Department of Environmental Protection, Room 129, State Office Building, Hartford, Connecticut 06115 (Douglas Costle, Commissioner, 203/566-3245), operate the NPDES permit program for discharges into navigable waters of the State in compliance with the Act.

This request and program description may be inspected at the offices of the Water Compliance Unit of the Connecticut Department of Environmental Protection at the above address or at the Regional Office of the U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203 (617/223-5600).

A public hearing to consider this request will be held at the Hall of the House, The State Capitol Building, Hartford, Connecticut, on September 13, 1973, at 10 a.m. It will continue until all present are heard.

The hearing panel will consist of the Administrator's representative who will serve as the Presiding Officer, the Commissioner of the Department of Environmental Protection or his representative, and the Regional Administrator, Region I, EPA, or his representative.

All interested persons wishing to comment upon or object to this request are invited to appear at the public hearing to present their views. Written comments may be presented at the hearing or submitted within 5 days thereafter either in person or by mail to the Regional Office of the U.S. Environmental Protection Agency at the above address, marked "Attention: Permits Branch".

Oral statements will be received and considered, but, for accuracy of the record, all testimony should be submitted in writing. Statements should summarize extensive written material so that there will be time for all interested persons to be heard. Persons submitting written statements are encouraged to bring additional copies for the use of the hearing panel and other interested persons.

A written transcript of the hearing will be made. The hearing record will be kept open for 5 days following the hearing to permit persons to submit additional written statements or to present evidence or views to rebut testimony presented at the hearing.

All comments or objections received on or prior to 5 days following the hearing date or presented at the public hearing, will be considered in the formulation of the Regional Administrator's recommendation to the Administrator regarding Connecticut's Request for State Program Approval. Further information can be obtained by contacting the EPA Permits Branch by telephone (617/223-3061) or in writing at the above address.

ALAN G. KIRK II,
Acting Assistant Administrator for Enforcement and General Counsel.

AUGUST 9, 1973.

[FR Doc.73-16992 Filed 8-14-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19793; FCC 73-791]

CHASTAIN ET AL.

Order Regarding Oral Argument Before Commission En Banc

In the matter of referral of Chastain et al. v. AT&T from the United States District Court for the District of Columbia.

1. We have before us a Memorandum-Order of the Honorable Oliver Gasch, Judge, United States District Court for the District of Columbia, in the case of

Paul Y. Chastain and Patsy P. Chastain, et al. v. American Telephone and Telegraph Company, dated December 18, 1972. This matter was instituted as an antitrust complaint for treble damages and injunctive relief filed with the Court on July 13, 1970. Petitioners, who are fifteen individuals or business organizations, alleged therein that the American Telephone and Telegraph Company (AT&T, sometimes referred to as the Bell System operating companies) acted unreasonably in refusing to provide mobile telephone service to users of a portable manual mobile telephone device, known as the Attache Phone, between 1968 and the time that the complaint was filed. The Memorandum-Order requests the Commission to determine the justness, reasonableness, validity and effect of this policy and practice under the Communications Act of 1934, as amended. We have also received a Petition for Oral Argument and Prompt Action filed by Petitioners on March 23, 1973; a Response filed April 5, 1973 by AT&T; and a Reply to AT&T's Response filed by Petitioners on April 19, 1973. In addition to the pleadings filed with us, we are considering certain documents filed with the Court, including Plaintiff's memorandum in support of its motion for summary judgment; a number of affidavits in support of Petitioners' position; Defendant's memorandum in opposition to the motion for summary judgment; affidavits of certain individuals in support of AT&T's position, particularly those of A. A. Bottani, Jr., and Richard T. Duggan; Plaintiff's reply to the memorandum in opposition to the motion for summary judgment; and a stipulation signed by the attorneys for the parties.

2. During the period of time covered by the complaint, Petitioners had been engaged in the selling or distributing of the Attache Phone. In their petition filed with us, they requested that we determine AT&T's practices with respect to the Attache Phone unreasonable between 1968 and the time that the antitrust complaint was filed with the Court, that the policy was without any sound basis in terms of protection of the company's facilities, and that further there is nothing in communications law or policy to bar the Court from proceeding on their motion for summary judgment. AT&T argued in its response that its refusal to allow Attache Phone operation in certain areas was, and is, justified, since its general use in those areas would be detrimental to many of its customers.

3. For the reasons stated below, we find that there are questions whether AT&T's exclusionary policy with respect to Petitioners' Attache Phone during the period of time in issue, may have been unreasonable and therefore in violation of sections 201(a) and 202(a) of the Act (47 U.S.C. 201(a), 202(a)); whether the company may have violated section 214 (a) of the Act (47 U.S.C. 214(a)) by discontinuing service without first receiving authority from the Commission to do so; and whether the company has been in continuous violation of its tariff obligation under section 203(c) of the Act (47 U.S.C. 203(c)). We have decided, therefore, to hold oral argument on these questions, as amplified below.

NATURE OF THE SERVICE[1]

4. The Attache Phone is a portable, manually operated mobile telephone contained in an attache case and designed for use in mobile telephone systems such as that provided by the Bell System operating companies. Unlike a vehicular mobile telephone, the Attache Phone is not installed for use in an automobile or truck. Consequently its owner is not limited to placing or receiving calls while in a vehicle, but may instead utilize the device from any physical location where he is able to obtain mobile telephone service.

5. An Attache Phone user places a call by first manually locating an idle channel, a process which requires selection by listening to see whether an available channel is free. When an idle channel is located, a mobile operator must intervene to connect him to the desired number. Incoming calls must also go through a mobile operator, who signals the unit and connects the call by utilizing an idle channel. The need for operator assistance characterizes the Attache Phone as a manual mobile telephone as opposed to one equipped with automatic, direct dial capability.

6. Automatic dial service is a distinguishing feature of Improved Mobile Telephone Service (IMTS), the system which AT&T has increasingly implemented within the last ten years. Under most circumstances, customers equipped with automatic, IMTS mobile telephones have no need for operator assistance. In addition, idle channels over which to place a call are selected automatically without having to first manually monitor all available channels in order to locate one which is not in use. As a result, calls are initiated and received in much the same way as the modern landline telephone.

7. Mobile telephone service originated in the mid-1940's on a manual basis, but like the transformation which affected the manual landline telephone, the introduction of advanced technology has produced many mobile telephone systems that are fully automatic. By 1971, 43 per cent of the mobile telephones registered with Bell System operating companies were equipped for automatic dial service (See Dugan affidavit, paras. 6, 9). This is a significant statistic since IMTS is of relatively recent vintage, the first proposal for an automatic mobile telephone system having been granted by the Commission in 1957. In 1962, the Bell Telephone Company of Pennsylvania was granted authority for a developmental station at Harrisburg. The company's proposal outlined the design of what was referred to as Improved Mobile Telephone Service, and the system described in its 1962 application is, for the most part, identical to present IMTS operations. Since its introduction, the Commission has been aware of the growing trend of telephone companies to convert to IMTS; and moreover we believe that this trend is in keeping with the public interest.

8. Part 21 of the Commission's rules and regulations (47 CFR, 21.14(b)), provides for licensing of mobile telephones under a blanket authorization of a carrier or individually to a mobile subscriber. A customer who wishes to utilize equipment provided by a Bell System operating company will be licensed under the specific company's blanket authorization. In such a case, the customer pays a monthly rate which includes the cost of service and the cost of using the equipment for mobile telephone exchange service.[2]

9. If instead, the customer desires to furnish his own equipment, he may obtain either manual or IMTS units from numerous suppliers located throughout the country. However, by utilizing other equipment than that provided by AT&T, he is not permitted to operate under the company's blanket authorization, and must apply individually to the Commission for a license. To be so licensed, the applicant must demonstrate that he has made appropriate arrangements with a carrier for the service requested (See 47 CFR 21.15(i)). He may achieve this by including within the application a "letter of intent" to provide the service within a specified service area, signed by an authorized official of the carrier.

10. This does not mean that a subscriber can receive service only in the area designated by the letter of intent. When the customer leaves his base station of registry, he may nevertheless qualify for service as a "roamer." Roamers are mobile telephone users who, although registered in one area, are temporarily in range of a "foreign" base station. In rendering service to roamers equipped with IMTS units, a foreign IMTS base station will complete calls manually with the assistance of a mobile operator.

16. AT&T responded by asserting that there was a sound basis for excluding the Attache Phone from IMTS areas, and that the petition contained factual allegations which were contradicted by AT&T's affidavits. For this reason, an evidentiary hearing was requested. At the same time, AT&T further stated that if no hearing were deemed necessary by the Commission, then an oral argument was acceptable, provided that Petitioners had asked for one on the assumption that their arguments must prevail notwithstanding AT&T's factual allegations. In any case, the company asserted that its participation in a Commission proceeding was without prejudice to its expressed position that the policy in issue is a matter of state regulatory authority, and therefore not subject to Commission ju-

[1] The description is based in part upon the contents of documents filed with both the Court and the Commission.

[2] This charge, as well as the regulations governing the exchange use of the service are filed with state or local regulatory authorities (See 47 U.S.C. 152(b), 221(b)).

risdiction or to attack under the antitrust laws.

17. Petitioners' reply disputed AT&T's position on jurisdiction. They claimed that the Bell System operating companies provided interstate service to mobile telephone subscribers, and offered their own affidavits which stated that the Attache Phone had been designed, at least in part, for interstate communication. Petitioners further maintained that no issues of fact were in contention that would require a hearing since they were prepared to accept AT&T's testimonial facts, although not the arguments by which ultimate conclusions were derived from testimonial facts.

COMMISSION JURISDICTION

18. We reject AT&T's contention that the Commission does not possess the jurisdictional authority to deal with this matter pursuant to the Act. AT&T argues that under Section 221(b) of the Act (47 U.S.C. 221(b)), the Commission has not been granted jurisdiction over the policy and practice in issue. It cites, in addition, a Public Notice of 1965 by which it claims the Commission affirmed its belief that it did not possess jurisdiction over mobile telephone service, Public Notice, 1 FCC 2d 830 (1965). Section 221(b) reads as follows:

> Subject to the provisions of section 301, nothing in this act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with, wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof, even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State Commission or by local governmental authority.

19. AT&T has misconstrued section 221(b), for that section denies us jurisdiction over exchange service in cases where mobile service areas cross a state border, as it does in metropolitan Washington, D.C. To say that the Commission has no jurisdiction over local mobile telephone exchange service, is not to say that the Commission has no jurisdiction over mobile telephone service at all. The user of a mobile telephone is not only offered exchange service through AT&T's tariffs filed with the state regulatory agencies, but is offered interstate toll service pursuant to AT&T's Tariff FCC No. 263 (See sections 1.1; 3.4 of Tariff). By filing this tariff, AT&T must be held to concede that part of the use of mobile telephone service is subject to our jurisdiction under Title II of the Act. According to Petitioners' affidavits, the Attache Phone was designed to be used for interstate communication as well as for local exchange service (See Rosenberg affidavit, paras. 3–7; Hennings affidavit, paras. 1–4). Thus, we must conclude that we have jurisdiction over interstate, non-exchange calls placed by users of mobile telephone under Title II of the Act, and that we may therefore proceed with this matter in accordance with the Court's request and pursuant to our own statutory authority.

20. AT&T's reference to the 1965 Public Notice lends no support to its argument, for that document was concerned with miscellaneous common carriers providing mobile telephone service. Moreover, the Public Notice goes on to assert that the Commission does have jurisdiction with respect to any interstate toll calls transmitted through interconnection of a mobile system with the telephone network.

COMMISSION PROCEDURE

21. The Court has charged the Commission with the duty of determining the reasonableness and effect of AT&T's exclusionary policy with regard to Petitioners, while leaving to the Commission's discretion the scope of the administrative examination and the factors to be considered. We feel that an evidentiary hearing is not warranted. We have been presented with the memoranda in support of, and in opposition to summary judgment, affidavits of both parties, a number of relevant documents, the pleadings specifically filed with us, and a stipulation that it is the general practice and policy of the Bell System operating companies to refuse letters of intent for manual mobile telephones like the Attache Phone when the requested service will be rendered through an IMTS base station (See Stipulation, para. 4). In addition, for the purpose of reaching our conclusions, we are accepting as true all testimonial facts offered by AT&T. However, before reaching legal conclusions on these facts, we first wish to hear oral argument from the parties.

22. Thereafter, it is our intention to advise the Court of the reasonableness, pursuant to sections 201(a) and 202(a) of the Act, of AT&T's refusal to register Attache Phones in IMTS areas during the period of time covered in the complaint. We further wish to advise the Court on a possible violation of section 214(a) of the Act, and on certain tariff matters not certified to us, and which are governed by section 203 of the Act. We believe that proceeding in this manner will satisfy the mandate of the Court, and subsequently place it in a position to rule on the antitrust questions pending before it.

QUESTIONS GOING TO THE REASONABLENESS OF AT&T'S POLICY ON ATTACHE PHONES

23. We believe that questions are raised as to whether AT&T's policy with regard to Petitioners' customers in IMTS areas has violated sections 201(a) and 202(a) of the Act, during the period of time between 1968 and the filing of the antitrust complaint.

24. The purpose of mobile telephone service is primarily to afford the public an efficient way in which to engage in two-way voice communication apart from, but in conjunction with,[2] a landline telephone installation. Mobile telephone service is offered by both landline telephone companies and miscellaneous common carriers (also known as radio common carriers). The latter category is comprised of more than 600 independent communications operations, many of them physically interconnected with landline telephone companies.

25. Manual systems and IMTS systems are the two general classifications of mobile telephone service, and in order to examine the question of AT&T's reasonableness with regard to Petitioners, it is necessary to assess the mobile telephone market during the years covered by the complaint. In the areas designated for transition to IMTS, AT&T gave what it considered to be reasonable notice of the need to convert to automatic equipment. Accordingly, vehicular manual mobile telephone customers in these areas were obliged to change their equipment to vehicular IMTS units. This may have caused some inconvenience, but it is important to note that suitable vehicular equipment was readily available from those sources previously mentioned, i.e., Bell System operating companies or independent equipment suppliers.

26. However, it appears that the same may not be true for users or potential users of portable, non-vehicular mobile telephones. In 1968, there were only manual portables available on the market, and not until June 3, 1971 was a portable IMTS mobile telephone type accepted by the Commission. As a result, the effect of excluding portable manual telephones like the Attache Phone appears to have been to preclude the use of all portable mobile telephones in IMTS areas, regardless of channel congestion in individual IMTS areas, or of the availability of suitable portable units.

27. The primary factors cited by AT&T in defense of its policy include the ability to provide a better grade of service, or service to an increased number of users, or both, where IMTS service is provided and manual mobile telephones are not registered; the enhanced privacy that results from the use of IMTS service in the absence of manual mobile telephones; the more efficient use of scarce spectrum space that is a consequence of this pattern; the danger manual mobile telephones pose in IMTS areas because of their ability to "seize" channels to the detriment of users of dial mobile telephones; and the adverse impact of manual mobile telephones, which lack automatic channel selection, on the use of the mobile telephone network as a two-way communication service (See AT&T Response, para. 17).

28. Petitioner argues that these factors were not of the same magnitude in all IMTS areas principally because circumstances such as channel congestion can vary from area to area (See Reply to AT&T's Response, paras. 18, 19, 24, and 28). AT&T admits that each of the factors listed above does vary in seriousness according to the area, but emphasized that the registration of manual mobile telephones produces disadvantages in virtually every IMTS area (See AT&T Response, para. 17; Dugan affidavit,

[2] Mobile-to-mobile service is included within Tariff FCC No. 263, 1.1.

paras. 16–25; Bottani affidavit, paras. 14–35).

29. Section 201(a) of the Act provides:

It shall be the duty of every common carrier engaged in interstate or foreign communications by wire or radio to furnish such communication upon reasonable request therefor. . . .

30. The exclusion from registry of the Attache Phone at a time when technological advancement had not yet developed portable IMTS mobile telephones presents questions of whether the carrier has complied with section 201(a). We have a situation in which it appears that a policy of complete denial from registry had been instituted on the basis that inclusion of the Attache Phone would have harmed the IMTS system, and yet AT&T has admitted that any adverse impact will differ according to the particular area under consideration. Moreover, it appears AT&T has devised no rational standards by which to deal with the Attache Phone even though the effects of its use differed in varying IMTS areas. Under such circumstances, it is questionable whether denial of all requests for service made by users of the Attache Phone is reasonable. Such a blanket prohibition may not be justifiable under section 201(a), the Carterphone decision, 13 FCC 2d 420 (1968),[4] or the decision in Hush-A-Phone v. U.S., 99 U.S. App. D.C. 190, 238 F. 2d 266 (D.C. Cir., 1956),[5] in the absence of a showing that Attache Phone users could not have been accommodated in any IMTS area without an unacceptable impact on IMTS efficiency. We are not suggesting that exclusion of the Attache Phone would have been improper under all circumstances. It does not appear, however, that AT&T made an attempt to define those circumstances wherein prohibition from registry would have been reasonably appropriate. A blanket prohibition so broad that it failed to consider diverse factors in varying IMTS areas, raises a question of whether there was an unreasonable denial of service upon reasonable request.

31. There is nothing in the record before us to show that AT&T conducted any surveys or technical studies in order to distinguish the difference in the impact of Attache Phones in those IMTS areas with heavy subscriber congestion or an abundance of roamers, and in those areas where problems of congestion were less severe. We note that AT&T admits serving IMTS roamers manually in foreign IMTS areas (See Bottani affidavit, para. 12). From this, it appears that mobile operators were necessary in order to provide roamer service, and that manual units were capable of being accommodated, for IMTS roamers could have access to the mobile telephone system only if they operated in the manual mode. We have previously held that the telephone company could set up reasonable standards by which to deal with communications devices, Carterphone, 13 FCC 2d 420, 424 (1969); however, AT&T has,thusfar, made no showing that any thought was given by the company to the development of appropriate standards which might have been applied to Petitioners' customers. Instead these customers appear to have been, apparently, completely refused registration without regard to the condditions that existed at the time in specific IMTS areas, and despite the fact that the Attache Phone might have been accommodated in any IMTS area that provided service to roamers.

32. Section 202(a) of the Act reads as follows:

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

33. The exclusion of Attache Phones at a time when IMTS portable equipment was unavailable, presents the question of whether AT&T may have subjected Petitioners to an undue and unreasonable prejudice in derogation of Section 202 (a). Although use of the Attache Phone might not have had a significantly deleterious effect on IMTS areas without heavy subscriber congestion, it appears that the refusal to register was absolute. If AT&T excluded the device from an entire mobile telephone market without a proper technological basis, Petitioners and their customers could have been unreasonably prejudiced and disadvantaged in violation of Section 202(a).

34. For the foregoing reasons, we believe that substantial questions are raised, which we do not now resolve, as to past violations of sections 201(a) and 202(a) of the Act. We recognize that recently there has been a significant change in market conditions regarding mobile telephones, i.e., portable IMTS units are now available. While we do not find at this time sufficient reason to institute a proceeding on our own motion as to the present propriety of AT&T's policy, we do not exclude the possibility of a properly supported complaint filed pursuant to section 208 of the Act (47 U.S.C. 208) which might allege facts sufficient to raise questions of present reasonableness with respect to AT&T's actions.

REQUIREMENTS OF SECTION 214(a) OF THE ACT

35. Section 214(a) of the Act provides:

* * * No carrier shall discontinue, reduce, or impair service to a community, or part of a community unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby. * * * Provided, however, that nothing in this section shall be construed to require a certificate or other authorization from the Commission for * * * changes in plant, operation or equipment, other than new construction, which will not impair the adequacy or quality of service provided.

36. When AT&T implemented its stated policy that manual mobile telephones would not be registered in IMTS areas, it did so without first obtaining authority from the Commission to discontinue the service. This omission may have adversely affected users and potential users of the Attache Phone.

37. Section 63.60 of the Commission's rules and regulations gives certain examples of discontinuance, reduction, or impairment of service, (47 CFR: 63.60). Among such examples are:

a. the closure by a carrier of a public telegraph office, a telephone exchange rendering interstate or foreign telephone toll service, a public toll station serving a community or part of a community * * *. (63.60(a)(1));

b. the reduction in hours of service by a carrier at a public telegraph office, at a telephone exchange rendering interstate or foreign telephone toll service, at any public toll station * * *, or at a public coast station (63.30(a)(2));

c. the termination or suspension by a carrier of pickup and delivery service in connection with message telegraph service to any community or part of a community * * * or the substitution of a delivery agency for the handling of messages in lieu of direct handling by a telegraph office (63.60(a)(3));

d. the dismantling or removal from service of any trunk line by a carrier which has the effect of impairing the adequacy or quality of service rendered to any community or part of a community (63.60(a)(4));

e. the severance by a carrier of physical connection with another carrier * * * or the termination or suspension

[4] Carterphone had similarly begun as an antitrust action, brought by the inventor of a device which permitted a person receiving an incoming landline telephone call to transmit such call from the location received to another location by use of two-way radio communication. AT&T's tariff had provided that no apparatus not furnished by the company could be attached to its facilities. The hearing examiner found that the device did not adversely affect the telephone system, and that the tariff to prohibit attachment was prospectively unreasonable since it did not take into consideration whether or not the device would cause harm, Carterphone, 13 FCC 2d 430 (1967). In reviewing the decision, the Commission found the tariff to be in violation of sections 201(b) and 202(a) of the Act, but further stated that it was not finding that the telephone company may not prevent the use of devices which do cause harm, Carterphone, 13 FCC 2d 420, 424 (1968).

[5] Hush-A-Phone involved the acceptability of a cup-like device mechanically fastened to the mouthpiece of a telephone handset. The Court held that a tariff prohibition of a customer supplied foreign attachment interfered with the telephone subscriber's right reasonably to use his telephone in ways which were privately beneficial without being publicly detrimental. After Hush-A-Phone, the Commission directed AT&T to rescind any tariff regulations that prohibited a customer from using, in connection with interstate or foreign service, any device which did not injure its employees, its facilities, the public in its use of those facilities, or impair the operation of the telephone system. Hush-A-Phone v. AT&T, 22 FCC 112 (1957).

of the interchange of traffic with such other carrier (63.60(a)(5)).

38. The foregoing examples are not exclusive, and we find that the discontinuance from registry of manual mobile telephone service in IMTS areas may have been a discontinuance under section 214(a) of the Act. Manual mobile telephone service was offered to registered subscribers in each of the IMTS area communities in issue. When registry ceased to become possible, this service was discontinued on a regular basis without the procedures required by section 214(a).

39. In these circumstances, we think that substantial question is raised as to whether there has been a violation of section 214(a).

REQUIREMENTS OF SECTION 203 OF THE ACT

40. AT&T's Tariff FCC No. 263 applies to long distance message telecommunications service offered by the company. It appears that AT&T did not set forth in its tariffs the exclusion of manual mobile telephones from registry in certain areas. section 203(c) of the Act provides:

* * * No carrier shall * * * (3) employ or enforce any practices affecting such charges [for interstate communications] except as specified in such schedule.

41. From February 1, 1968, to the present time, the only interstate tariff limitations on service to vehicles in AT&T's tariff offering are:

Public Land Mobile Service is available to vehicles equipped for this service when within range of a Base Station through which such service is furnished.* Service is subject to transmission, atmospheric and like limitations (see Attachment, Tariff FCC No. 263, section 3.4.1(a)(2)).

42. The tariff sections relating to mobile telephone service cite no other limitations, and we see nothing within the tariff which might be reasonably construed to limit service only to automatic dial equipped mobile telephone equipment.

43. For the foregoing reasons, we think questions are raised as to whether AT&T has been in continuing violation of section 203(c).

44. In view of the foregoing questions, we find that oral argument should be held upon the issues below.

45. We request that 10 days prior to oral argument, AT&T supply us with facts as to whether, or to what extent, if any, the exclusion of the Attache Phone from IMTS areas was based upon technical surveys or any other studies carried out before the policy decision to exclude Attache Phone from registry was implemented. Moreover, if surveys or studies were made, we request that AT&T provide independent results from each separate area where such surveys, etc., were conducted. AT&T should also list those areas which converted to IMTS in which no surveys, etc., were made prior to conversion.

46. Accordingly, oral argument will be held on the following issues:

(a) To determine whether or not AT&T failed to furnish communication service to persons wishing to use Attache Phones upon reasonable request therefor in violation of 201(a) of the Act.

(b) To determine whether or not AT&T unjustly or unreasonably discriminated against persons wishing to use Attache Phones in the practices and regulations pursued by the company in violation of section 202(a) of the Act.

(c) To determine whether or not AT&T was in violation of section 214(a) of the Act for failing to apply to the Commission for certification to discontinue mobile telephone service to persons wishing to use Attache Phones in IMTS areas on a registered basis.

(d) To determine whether or not AT&T is in violation of section 203(c) of the Act for failing to include within FCC Tariff No. 263 the provision that manual service is not rendered to manual mobile telephone users on a registered basis in IMTS areas.

47. *It is ordered*, (a) That oral argument will be held before the Commission *en banc* at 9:30 a.m. on September 24, 1973, (b) That the parties here designated are authorized to present oral argument in the following order for the times designated:

Chastain, et al., 30 minutes.
AT&T, 30 minutes.

and (c) That Chastain, et al. may reserve part of their time for rebuttal.

48. *It is further ordered*, That the Petition for Oral Argument and Prompt Action filed March 23, 1973, by Petitioners is granted, to the extent indicated above.

Adopted: July 26, 1973.

Released: Aug. 2, 1973.

By the Commission.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-16909 Filed 8-14-73;8:45 am]

* Stations other than vehicles which are authorized by the Federal Communications Commission to communicate with a Base Station are considered as vehicles (See Attachment, Tariff FCC No. 263, section 3.4.1(a)(2)).

FEDERAL MARITIME COMMISSION

PORT OF PORTLAND AND COOK INDUSTRIES, INC.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street, N.W., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before September 4, 1973. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Lloyd B. Robinson, Esq.
Legal & Regulatory Department
Port of Portland
Box 3529
Portland, Oregon 97208

Agreement No. T-2832, between the Port of Portland (Port) and Cook Industries, Inc. (Cook), provides for the construction and 30-year lease (with renewal options) of a grain elevator and terminal facility at the Port of Portland, Oregon. Cook will operate the facility as a public agricultural products facility and will act as Port's agent in its construction. As rental, Cook will pay Port a monthly amount which when added to the amount on deposit in a bond fund shall be equal to the amount payable as interest and principal on the bonds used in financing the facility. Port will assess and collect all dockage charges at its posted tariff rates, while Cook will collect all wharfage, service and facility charges, storage and other charges at a published tariff rate. The Port is restricted from entering into a more favorable leasing arrangement with a new grain elevator for 15 years from the date the 1973 bonds are issued. By Order of the Federal Maritime Commission.

Dated: August 10, 1973.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.73-16947 Filed 8-14-73;8:45 am]

FEDERAL POWER COMMISSION

[Dockets Nos. CI74-68, CI74-69, CI74-70]

ANADARKO PRODUCTION CO.

Notice of Applications

AUGUST 9, 1973.

Take notice that on July 31, 1973, Anadarko Production Company (Applicant), P.O. Box 9317, Fort Worth, Texas 76107, filed in Docket Nos. CI74-68, CI74-69, CI74-70 applications pursuant to section 7(c) of the Natural Gas Act and § 2.75 of the Commission's General Policy and Interpretations (18 CFR 2.75) for certificates of public convenience and

necessity authorizing sales for resale and deliveries of natural gas in interstate commerce to Trunkline Gas Company (Trunkline) from Block 639, West Cameron Area, Block 338, West Cameron Area, and Block 320, Vermilion Area respectively, offshore Louisiana, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Applicant in Docket No. CI74–68 proposes under the optional gas pricing procedure to sell natural gas from Block 639, West Cameron area to Trunkline at a rate of 45.0 cents per Mcf at 15.025 psia, subject to upward and downward Btu adjustment, pursuant to a contract dated July 19, 1973. Said contract provides for a 1.0-cent per Mcf price escalation, for tax reimbursement to the seller and for a term of 20 years. Applicant estimates monthly deliveries of gas at 455,400 Mcf.

Applicant in Docket No. CI74–69 proposes to sell from Block 338, West Cameron area, to Trunkline at a rate of 45.0 cents per Mcf at 15.025 psia, subject to upward and downward Btu adjustment, pursuant to a contract dated July 19, 1973. Said contract provides for a 1.0-cent per Mcf price escalation per year, for tax reimbursement to the seller, and for a term of 20 years. Applicant estimates monthly deliveries of gas at 375,000 Mcf.

Applicant in Docket No. CI74–70 proposes to sell gas from Block 320 Vermilion area, to Trunkline at a rate of 45.0 cents per Mcf at 15.025 psia, subject to upward and downward Btu adjustment, pursuant to a contract dated July 19, 1973. Said contract provides for a 1.0-cent per Mcf price escalation per year, for tax reimbursement to the seller, and for a term of 20 years. Applicant estimates monthly deliveries at 562,500 Mcf.

Applicant states that the gas offered for certification pursuant to each contract has not been previously sold in the interstate market, nor have any applications been previously filed with the Commission for certification of the sales of such gas.

Applicant asserts that the sale of gas at the proposed price with escalations is reasonable as the cost of exploration and production from these areas is higher than those applicable in other producing areas because of the water depth and the price of obtaining the leases from the United States Government. Applicant further asserts that the proposed sales at the stated rates with escalations are in line with those being charged by other producers for gas from the same areas and that since the Commission has approved other sales from the same general area at this price level it would be reckless for Applicant, a moderate sized producer, to attempt to provide similar services at a lesser price. Applicant further asserts that the rates in the instant applications are lower than those in other contracts for both intrastate and interstate sales of gas and for sales of substitute fuels including liquefied natural gas and synthetic gas from naphtha or coal.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 4, 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 proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, hearings will be held without further notice before the Commission on these applications if no petitions to intervene are filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificates is required by the public convenience and necessity. If petitions for leave to intervene are timely filed or if the Commission on its own motion believes that formal hearings are required, further notice of such hearings 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 hearings.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73–16969 Filed 8–14–73;8:45 am]

[Docket No. CI74–71]

ARKLA EXPLORATION CO.

Notice of Application

AUGUST 9, 1973.

Take notice that on July 31, 1973, Arkla Exploration Company (Applicant), P.O. Box 1734, Shreveport, Louisiana 71151, filed in Docket No. CI74–71 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to 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 60,000 Mcf of gas per month 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 August 23, 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 wth the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73–16958 Filed 8–14–73;8:45 am]

[Docket No. CI73–495]

CORBIN J. ROBERTSON, ET AL.

Amendment to Application

AUGUST 9, 1973.

Take notice that on July 30, 1973, Corbin J. Robertson, et al. (Applicants), 500 Jefferson Building, Houston, Texas 77002, filed in Docket No. CI73–495 an amendment to its application filed January 22, 1973 in said docket pursuant to section 7(c) of the Natural Gas Act and § 2.75 of the Commission's General Policy and Interpretations (18 CFR 2.75) providing for the sale for resale and delivery of natural gas in interstate commerce to Northern Michigan Exploration Company (Northern Michigan) from the South Gibson Area and the Cherokee Area in Terrebone and St. Marys Parishes, Louisiana, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In its application of January 22, 1973, Applicant proposes, among other things, to sell gas at an initial rate of 46.4 cents per Mcf, plus 3.3 cents per Mcf tax reimbursement and subject to upward and downward Btu adjustment. The contract

for said sale dated October 23, 1972, provided for 1.5 cents per Mcf annual escalation commencing on October 23, 1973, for reimbursement to the seller of 7/8 of existing and any additional State of Louisiana production, severance, gathering and similar taxes and for a term of 20 years. The application was consolidated with those of Northern Michigan in Docket Nos. CI72-301 and CI72-770 for hearing. The parties are now waiting for the initial decision in said proceeding. As the October 23, 1972, contract expired on its own terms because the Commission did not issue a certificate before July 23, 1973, Applicants and Northern Michigan entered into a new contract dated July 24, 1973.

Applicant now proposes to sell approximately 150,000 Mcf of gas per month at an initial rate of 62.2 cents per Mcf at 15.025 psia, plus 7/8 of 3.3 cents per Mcf tax reimbursement, subject to upward and downward Btu adjustment, within the contemplation of Section 2.75. The new contract provides for a 1.5-cent per Mcf annual escalation commencing on October 23, 1973, for reimbursement to seller for 7/8 of existing or additional State of Louisiana production, severance, gathering, and similar taxes and for a term of 20 years. Applicant also states that the new period of time for receiving a certificate shall be from July 23, 1973, until October 23, 1973.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before August 31, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules. Persons who have heretofore filed protests or petitions to intervene need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16970 Filed 8-14-73;8:45 am]

DYCO PETROLEUM CORP.

[Docket No. CI73-763]

Notice Deferring Procedural Dates

AUGUST 7, 1973.

On August 2, 1973, Dyco Petroleum Corp. requested that the procedural dates as fixed by order issued July 23, 1973, in the above matter be postponed indefinitely. The request states that Northern Natural Gas Co. supports the request.

Upon consideration, notice is hereby given that the procedural dates in the above matter are deferred pending further order of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16897 Filed 8-14-73;8:45 am]

[Docket No. CP73-334]

EL PASO NATURAL GAS CO.

Findings and Order

AUGUST 7, 1973.

In the matter of Certificate (Temporary) Gas Supply—Curtailment—Practice and Procedure (Hearing)—Waiver of Regulations granted.

On June 15, 1973, as supplemented July 24, 1973, El Paso Natural Gas Company (El Paso) filed an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of proposed additional facilities for the injection into and withdrawal from the Rhodes Reservoir, Lea County, New Mexico, of natural gas and authorizing the sale for resale and delivery of natural gas in interstate commerce from the Rhodes Reservoir during the 1973-74 heating season, all as more fully set forth in the application. On that date El Paso also filed certain proposed changes in its currently effective FPC Gas Tariff [1] for purposes of effectuating the proposed storage service.

El Paso requests temporary authorization to construct and operate the aforementioned facilities on the basis of a need to commence construction by July 15, 1973, in order for the storage volumes to be available for the 1973-74 heating season. It also requests waiver of the requirements of § 154.22 of the Commission's regulations under the Natural Gas Act in order that the proposed tariff sheets be allowed to become effective concurrently with the date of temporary authorization.

More specifically, El Paso proposes to drill up to 25 new storage injection and withdrawal wells and to construct and operate approximately 5.6 miles of 4 and 6-inch pipeline to connect the proposed additional wells to the existing facilities. Additionally, El Paso plans to recondition and workover 13 existing injection and withdrawal wells, and to make piping and scrubber modifications at the Jal No. 1 Plant that will permit the utilization of the existing 4,400 horsepower compression and dehydration plant facilities for the withdrawal cycle in addition to normal operations. All of these facilities will be located in Lea County, New Mexico.

In view of the deficiency in its current gas supply, El Paso anticipates that it will be unable to serve all of the Priority 1 [2] and Priority 2 [3] requirements of its Southern Division System during the 1973-74 heating season.

Alleviating a portion of this projected deficiency is the underlying reason for El Paso's proposal to reactivate the Rhodes Reservoir in Lea County, New Mexico, which is expected to provide a peaking service only for the east-of-California Priority 1 and 2 requirements during the 1973-74 heating season.

Under the instant proposal an additional 5.0 million Mcf of gas will be injected into storage during the period July through October, 1973, of which 2.9 million Mcf will be considered to be cushion gas and the remaining 2.1 million Mcf as working gas. This will provide the storage capability for a peak day withdrawal rate of approximately 63,000 Mcf.

El Paso estimates a possible 7.5 million Mcf deficiency for Priority 1 and 2 requirements for the 1973-74 heating season, of which 2.0 million Mcf will be attributable to its east-of-California market area and the remainder to its two California customers. Since the capability of the proposed storage project is limited, withdrawals are expected to meet Priority 1 and 2 requirements of the east-of-California customers only. El Paso maintains that the California distributor customers will receive the same amount of gas during the injection and withdrawal periods as would have been delivered without the storage facility and that the California customers do not oppose the project. The California customers are partial requirement customers with other sources of supply and their own storage facilities, whereas the east-of-California customers are total requirement customers that presently have no storage or peak shaving facilities.

El Paso proposes to increase the curtailment of its east-of-California customers that will benefit from the storage project during the injection period. For purposes of filling the contemplated storage, these customers will be required to absorb the additional 5 million Mcf curtailment for the July, August and September, 1973 period, thus incurring an aggregate three-month curtailment of 21.5 million Mcf. Inasmuch as the east-of-California customers' Priority 5 [4] requirement for this period is 38.5 million Mcf, El Paso asserts that the total

[1] Consisting of First Revised Sheet No. 63-C and Original Sheet Nos. 63-C.1 and 63-C.2 to Original Volume No. 1; First Revised Sheet No 1-M and Original Sheet Nos. 1-M.1 and 1-M.2 to Third Revised Volume No. 2; and First Revised Sheet No. 7-MM and Original Sheet Nos. 7-MM.1 and 7-MM.2 to Original Volume No. 2A.

[2] *Priority 1.* Residential, small commercial (less than 50 Mcf on a peak day) and residential needs associated with industrial requirements served directly or indirectly. [The Priority 1 through Priority 5 categories are set forth in Commission Opinion No. 634, El Paso Natural Gas Company, Docket No. RP72-6, issued October 31, 1972, mimeo ed., page 8]

[3] *Priority 2.* Large commercial requirements and industrial requirements for plant protection, feedstock and process needs.

[4] *Priority 5.* Industrial requirements for large volume (in excess of 3,000 Mcf per day) boiler-fuel use where existing alternate fuel capability is present.

curtailment can be satisfied within the Priority 5 category.

The estimated cost of this proposal is $2,216,363, which will be financed from funds on hand and short-term borrowings. Recovery of this cost is contemplated through a 0.64¢ per Mcf surcharge on Priority 1 and 2 deliveries to east-of-California customers during the period November 1973 through March, 1974.

During the 1973–74 heating season, when on any day the available supply is not sufficient to fulfill systemwide Priority 1 and 2 requirements, El Paso will allocate the available supply to the California and east-of-California customers in accordance with its curtailment plan. The remaining Priority 1 and 2 deficiency of the east-of-California customers will then be supplied by withdrawals from the Rhodes Reservoir.

In order to carry into effect the proposed storage project El Paso submitted the tariff sheets enumerated supra footnote (1). With respect to Original Volume No. 1, El Paso proposes to amend Section 11, Priorities and Curtailments, of the General Terms and Conditions to include a new Section 11.3A entitled Rules Concerning Storage Operations to Protect Priorities 1 and 2 and § 11.3B entitled Surcharge Related to Storage Operations. These provisions provide inter alia a differentiation between the primary curtailment level which would be based on available supply, exclusive of storage, and would be applicable to all customers, and a secondary level that would apply to all except the Rate Schedule G (California) customers for the injection of storage gas.

Pursuant to our notice published in the FEDERAL REGISTER, protests and petitions for leave to intervene were due on or before July 16, 1973. A notice of intervention was filed on July 9, 1973, by The People of the State of California and the Public Utilities Commission of the State of California, and timely petitions for leave to intervene were filed by Pacific Gas and Electric Company, Southwest Gas Corporation, California Gas Producers Association, Southern California Gas Company, San Diego Gas & Electric Company, Navajo Tribal Utility Authority, Salt River Project Agricultural Improvement and Power District (Salt River), and Tucson Gas & Electric Company (Tucson). Although Tucson and Salt River do not oppose the issuance of temporary authorization, they state that additional information will be necessary to determine the extent and necessity of the curtailment required for injection as well as the reasonableness of the surcharge and the method of billing and determinates. Tucson requests that this matter be set for an expedited hearing.

In view of the gas supply deficiency prevailing on El Paso's system as evidenced by its application herein and the record in Docket No. RP72–6, we find that an emergency does exist. Accordingly, we shall grant El Paso temporary authorization to proceed with construction and operation of the proposed facilities. However, we believe that the issues raised by certain customers in their petitions for leave to intervene should be resolved after development in an evidentiary hearing.

We shall require El Paso to submit testimony and exhibits supporting its position on the aforesaid issues. After distribution of this evidence, we are of the view that a conference should be scheduled to endeavor to settle the issues raised in this proceeding. If the conference does not result in a settlement, we will hereinafter set forth the procedures to be followed for the trial of this proceeding.

The Commission finds:

(1) Based upon the allegations presented in the request for a certificate authorizing the construction and operation of proposed additional facilities for the injection into and withdrawal from the Rhodes Reservoir of natural gas and authorizing the sale for resale and delivery of natural gas in interstate commerce from the Rhodes Reservoir during the 1973–74 heating season, the Commission finds that an emergency exists, and a temporary certificate should be issued as hereinafter ordered and conditioned.

(2) It is necessary and proper for purposes of carrying out the provisions of the Natural Gas Act that the provisions of § 154.22 of the Commission's regulations under the Natural Gas Act be waived, and that the tariff sheets filed by El Paso as set forth in footnote (1) above be accepted for filing to become effective as of the date of issuance of this order, subject to any further orders by the Commission in this proceeding.

(3) Participation by the above named petitioners in this proceeding may be in the public interest.

(4) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing to determine whether the public convenience and necessity require the grant of a certificate of public convenience and necessity to El Paso, and that the issues in this proceeding be scheduled for hearing in accordance with the procedures hereinafter set forth.

The Commission orders:

(A) Upon the terms and conditions of this order, a temporary certificate of public convenience and necessity is issued in this docket authorizing Applicant to construct and operate certain facilities for the injection into and withdrawal from the Rhodes Reservoir, Lea County, New Mexico, of natural gas and authorizing the sale for reseale and delivery of natural gas in interstate commerce from the Rhodes Reservoir during the 1973–74 heating season, all as more fully set out in the application herein.

(B) The temporary certificate issued above is conditioned as follows:

(1) Said temporary certificate shall take immediate effect and remain in effect pending final resolution of the issues raised herein.

(2) The issuance of this temporary certificate and the acceptance of El Paso's tariff filing, to be concurrently effective therewith in Ordering paragraph (C) below are without prejudice to such final disposition of this application for certificate as the record may require.

(3) The maximum inventory of natural gas stored in the Rhodes Reservoir shall not exceed 16.7 million Mcf at 14.73 psia and 60 degrees F., without prior authorization of the Commission.

(4) Applicant shall submit semiannual reports (to coincide with termination of the injection and withdrawal cycles) containing the following information on proposed operations:

(a) The volumes of natural gas injected and the volumes withdrawn during each month of the cycle.

(b) The volume of natural gas in the storage field at the end of the cycle.

(c) The maximum daily injection and withdrawal rates experienced during the cycle.

(d) The shut-in reservoir or wellhead pressure of each well in the storage field and the average of such pressures.

(e) The average working pressure on maximum days (referred to in Item (c)) taken at a central measuring point where the total volume injected or withdrawn is measured.

(f) A map of the most recent interpretation of the underground structure; this map need not be filed if there is no material change from the map previously filed.

(g) A tabulation of wells drilled, cleaned, or recompleted with subsea depth of formation and casing settings. Copies of any new core analysis, backpressure tests, or electric logs.

(5) Reports shall be continued to be filed until the storage inventory volume has reached or closely approximated the maximum volume permitted herein for two years thereafter.

(C) The provisions of § 154.22 of the Commission's Regulations under the Natural Gas Act are hereby waived, and the tariff sheets set forth in footnote (1) above are hereby accepted for filing to be effective as of the date of issuance of this order, subject to any further orders by the Commission in this proceeding.

(D) On or before August 24, 1973, El Paso shall file its case-in-chief providing evidentiary support for its proposal.

(E) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 7 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing shall be held in this proceeding commencing with a prehearing conference on September 12, 1973, at 10 a.m. (e.d.t.) in a hearing room of the Federal Power Commission, Washington, D. C., for the purpose of incorporating into the record the testimony and exhibits previously distributed. Immediately thereafter the Presiding Administrative Law Judge will convene a conference for the purpose of endeavoring to settle the issues involved in this proceeding.

(F) In the event that a settlement of the issues does not result from said conference, the Presiding Administrative

Law Judge will reconvene the hearing for the purpose of ruling on all unsatisfied data requests or any other relevant matters presented. Cross-examination will commence immediately thereafter except to the extent that it is deemed impractical in light of outstanding, unsatisfied data requests. In that event the Presiding Administrative Law Judge will prescribe an appropriate date for commencement of cross-examination as well as for the filing of any answering testimony.

(G) The above named petitioners are hereby permitted to become interveners in this proceeding, subject to the rules and regulations of the Commission; *Provided, however,* That the participation of said interveners shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions for leave to intervene; and *Provided, further,* That the admission of said interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(H) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for the purpose [see Delegation of Authority, 18 CFR 3.5(d)] shall preside at the hearing in this proceeding pursuant to the Commission's rules of practice and procedure.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-16890 Filed 8-14-73;8:45 am]

[Project No. 2219]

GARKANE POWER ASSOCIATION, INC.

Notice of Application for Approval of Exhibit L

AUGUST 7, 1973.

Public notice is hereby given that application was filed March 9, 1971, and supplemented on July 13, 1972, under the Federal Power Act (16 U.S.C. 791a–825r) by the Garkane Power Association, Inc. (Correspondence to: Mr. Glen P. Willardson, General Manager, Garkane Power Association, Inc., 56 East Center, Richfield, Utah 84701) for Commission approval of Exhibit L for the Boulder Creek Project No. 2219 located on West Fork Boulder Creek in Garfield County, Utah.

The application seeks approval of an amendment to the license for Boulder Creek Project No. 2219 for a constructed recovery pond, pumphouse, and pump used for the purpose of recovering 1–2 cubic feet per second of water which is coming to the surface from springs underneath or leakage through the West Fork diversion dam. Attempts by the Licensee to locate any leaks have been unsuccessful. The recovered water would be utilized in the powerplant for peaking purposes.

Any person desiring to be heard or to make protest with reference to said application should on or before September 13, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-16902 Filed 8-14-73;8:45 am]

[Project 485]

GEORGIA POWER CO.

Notice of Application for New License for Constructed Project

AUGUST 9, 1973.

Public notice is hereby given that application for new license has been filed December 13, 1971, under the Federal Power Act (16 U.S.C. 791a–825r) by Georgia Power Company (Correspondence to: Mr. I. S. Mitchell III, Vice President and Secretary, Georgia Power Company, P.O. Box 4545, Atlanta, Georgia 30302), for its constructed Bartletts Ferry Project No. 485 located in the counties of Lee and Chambers in the State of Alabama, and county of Harris in the State of Georgia on the Chattahoochee River. The Bartletts Ferry Project would be redeveloped to add 100,000 kw of new capacity to the existing 65,000 kw development. The project affects navigable waters of the United States.

The existing Bartletts Ferry Project consists of (1) a nonoverflow earth fill section approximately 1,040 feet long and generally 55 feet high, (2) a concrete gravity buttressed spillway crest elevation 499.16 feet (U.S.G.S.), 634 feet long with a maximum height of about 150 feet, (3) a concrete intake 92 feet long, (4) a 286 foot long connecting earth dike on the west side, (5) a reservoir having a surface area of about 5,850 acres at full pond elevation 520.16 (U.S.G.S.) and extending 10 miles upstream, (6) penstocks, (7) a 132 foot long powerhouse located 300 feet downstream from the dam and containing one 20,000 kw generating unit and three 15,000 kw generating units, (8) an outdoor 12/115 kv substation, and (9) other facilities appurtenant to operation of the project.

According to the application the estimated net investment is $6,578,540 which is less than the estimate of fair value. Applicant listed basic premises for determining severance damages and estimated partial severance damages as $46,845,000 but did not estimate a total. The annual taxes paid to State and local taxing authorities is $325,785.

Applicant plans to add an additional 100,000 kw of capacity at the project. The new facilities would consist of (1) an additional concrete intake section about 118 feet long to be constructed in the upstream toe of the existing nonoverflow earth fill section; (2) two 22 foot diameter welded steel penstocks about 350 feet long; (3) an additional powerhouse containing two 50,000 kw generating units; (4) an emergency spillway consisting of an earth fil section about 900 feet long, with a 190 foot long fuse plug section constructed of compacted rock fill with an impervious core, crest elevation 584.16 feet (U.S.G.S); (5) an additional substation adjacent to the powerhouse; and (6) all other facilities and interests appurtenant to redevelopment (and project operation). The estimated cost of the redevelopment is $15,939,333.

Applicant states that there are eight privately owned commercial facilities on the reservoir, seven of which provide public access areas to the reservoir. Applicant has cleared several areas for use by bank fishermen and provides two boat launching sites. There is further recreational development planned by the applicant at this time.

Applicant's market for project power (existing and redevelopment) is its service areas in Georgia, part of the Southern Company System, average annual energy generated is 397,900,000 kwh. Applicant maintains a minimum continuous flow downstream of 800 c.f.s.

Any person desiring to be heard or to make protest with reference to said application should on or before October 10, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervent in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-16971 Filed 8-14-73;8:45 am]

[Docket No. E-8125]

KANSAS POWER AND LIGHT CO.

Filing of Revised Fuel Clause

AUGUST 3, 1973.

Take notice that on July 30, 1973, the Kansas Power and Light Co. (KPL) filed a revised fuel clause pursuant to the Commission's order issued May 31, 1973, in the above referenced docket, wherein the Commission directed KPL to file within 60 days of the date of the issuance of the order a fuel clause in conformance with Opinion No. 633. KPL states that the revised fuel clause is proposed to be substituted for the fuel

clause originally filed in Tariff Schedule RCW-73, Wholesale Service—Rural Electric Cooperative, applicable to this class of service which superseded RCW-67. KPL states that the fuel of clause has the effect of recovering (with respect to the fuel cost component of purchased power) the seller's cost of the fuel which is consumed to generate such power as distinguished from the company's cost of fuel which might be attributed to such power.

Any person desiring to be heard or to protest said filing should file comments or protests with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such comments or protests should be filed on or before August 15, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this application are on file with the Commission and are available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.73-16903 Filed 8-14-73;8:45 am]

[Docket No. E-8125]

THE KANSAS POWER AND LIGHT CO.

Filing of Settlement Agreement

AUGUST 3, 1973.

Take notice that on July 30, 1973, the Kansas Power and Light Company (KPL) filed in the above-referenced docket a Settlement Agreement (Agreement) dated June 29, 1973, and a Petition to file settlement agreement, waive hearing, and for order placing rates into effect and terminating proceeding (Petition). According to KPL, the Agreement resolves the issues between all parties and the company requests that the Commission authorize the filing of the revised rate schedule to take effect from and after May 16, 1973, without suspension. The company further requests that the procedural dates be continued indefinitely pending Commission action upon the Petition and Settlement.

Any person desiring to be heard or to protest said filing should file comments or protests with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 and § 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such comments or protests should be filed on or before August 15, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.73-16887 Filed 8-14-73;8:45 am]

[Docket No. E-8331]

KENTUCKY UTILITIES CO.

Notice of Application

AUGUST 7, 1973.

Take notice that on July 23, 1973, Kentucky Utilities Co. (Applicant) filed an application seeking an order of the Commission pursuant to section 204 of the Federal Power Act authorizing the issuance of $60,000,000 in short-term notes to commercial banks and commercial paper, including $14,952,175 of such notes and commercial paper which Applicant is presently permitted and entitled to issue, without an order of the Commission, pursuant to the exemption provided by subsection (e) of said section 204.

Applicant is incorporated under the laws of the State of Kentucky, with its principal business office at Lexington, Kentucky, and is engaged in the electric utility business in central, southeastern and western Kentucky.

The notes to commercial banks are to mature not more than 12 months from their respective dates of issuance and the notes in the form of commercial paper to commercial paper dealers are to mature not more than nine months from their respective dates of issuance, but in any event (as to both notes and commercial paper) not later than December 31, 1975. Each note to a bank will bear interest at an interest rate not to exceed either (a) the prime rate of interest prevailing at such bank at the date of issuance of the note or (b) the applicable prime rate or rates of interest prevailing at such bank during the term of the note, determined as follows: as to each three-month period of the term of the note, at such rate of interest prevailing on the first business day of such three-month period. The commercial paper will be issued at rates not exceeding the discount rate prevailing at the date of issuance.

The proceeds from the issuance of the notes and commercial paper will be used to provide flexibility for the Applicant in meeting its 1973, 1974 and 1975 construction programs, which are estimated at $60,230,000 for 1973, $69,835,000 for 1974 and $94,093,000 for 1975.

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Power Commission, Washington, D.C. 20426, on or before August 21, 1973, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16900 Filed 8-14-73;8:45 am]

[Docket No. RP72-132]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Revision to Tariff

AUGUST 9, 1973.

Take notice that on July 27, 1973, Natural Gas Pipeline Company of America (Natural) tendered for filing revised tariffs sheets for its FPC Gas Tariff. Natural states that this filing is made in compliance with Commission order of July 18, 1973, and reflects the elimination of Coal Option Payments in the amount of $1,000,000, a reassignment of the cost of service effect of Advance Payments for Gas 100% to the Commodity Component, and a recalculation of its PGA adjustment on the basis of the Base Average Purchased Gas Cost underlying the settlement agreement approved by the aforementioned Commission order.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 27, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16972 Filed 8-14-73;8:45 am]

[Project 108]

NORTHERN STATES POWER CO.

Order Denying in Part Motion To Continue Hearings and for Other Purposes

AUGUST 7, 1973.

In a notice issued on July 16, 1973, the Administrative Law Judge designated to preside in this proceeding fixed the time and place of a public hearing session, now scheduled to commence on August 14, 1973, in Hayward, Wisconsin. An Intervenor, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, joined by several other Intervenors, on July 30, 1973, filed a motion to achieve three results: (1) To postpone

the August 14 hearing until the Commission rules on the question of its authority to issue both an annual license and a new license for Project No. 108; (2) to provide that testimony taken at the scheduled public hearing session be accorded the status of evidence; and (3) to require that hearings in this proceeding be directed to, among other things, the issue of Federal take over of Project No. 108.

To the extent that it concerns the first two points, we deny the motion. As to the first point, the issuance on August 6, 1973, upon the direction of the Commission, of a public notice concerning a new annual license issued on that date to the Northern States Power Company, indicates that an opinion of the Commission, to which there will be a dissent, is forthcoming. As to the second point, the nature of the hearings and their conduct is a matter that we leave to the Presiding Administrative Law Judge, consistent with our orders of June 28 and September 8, 1972, in this proceeding, and with our general policy as set forth in our rules of practice and procedure. As to the third point, the recommendations concerning take over from the Departments of Agriculture and the Interior are already a subject of this proceeding, as indicated by our order of June 28, 1972. Such recommendations have the effect of making those Departments parties to this proceeding under § 16.8 of our regulations.

The Commission orders: The motion filed on July 30, 1973, by the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, and other Intervenors herein, is denied to the extent indicated.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-16901 Filed 8-14-73;8:45 am]

[Project No. 308]

PACIFIC POWER & LIGHT CO.

Notice of Application for New License

AUGUST 9, 1973.

Public notice is hereby given that application for new license has been filed on June 22, 1971, under the Federal Power Act (17 U.S.C. 791a–825r) by Pacific Power & Light Company, (Correspondence to: George L. Beard, Senior Vice President, Pacific Power & Light Company, Public Service Building, Portland, Oregon 97204; Leighton and Sherline, 1701 K Street, N.W., Washington, D.C. 20006; and Rives, Bonyhadi, Hall and Epstein, 1400 Public Service Building, Portland, Oregon 97204) for its constructed Wallowa Falls Project No. 308. The project is located in the State of Oregon, County of Wallowa, on the East Fork of the Wallowa River, near the town of Joseph, partly within the Wallowa-Whitman National Forest.

The project includes an 18 foot high rock-filled log-crib dam approximately 120 feet long forming a forebay with an area of about 0.2 acre on the East Fork of Wallowa River; water from Royal Purple Creek is diverted into the forebay through a 250 foot long 8-inch pipe. A steel penstock 5,680 feet long delivers forebay water to an indoor type power house with a single 1500 horsepower impulse type turbine driving a generator rated at 1375 kva.

There is no indication of recreational use of the project lands. It should be noted, however, that the project is located partially within the Wallowa-Whitman National Forest and is in an area inhabited by mule deer and Rocky Mountain elk. Also anadromous fish do not utilize the rivers upstream of Wallowa Lake and only a few kokanee inhabit the East Fork of the Wallowa River.

Any person desiring to be heard or to make protest with reference to said application should on or before October 15, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-16973 Filed 8-14-73;8:45 am]

[Project No. 487]

PENNSYLVANIA (WALLENPAUPACK PROJECT)

Notice of Application for Change in Land Rights

AUGUST 7, 1973.

Public notice is hereby given that application was filed October 18, 1972, under the Federal Power Act (16 U.S.C. 791a–825r) by the Pennsylvania Power & Light Co. (Correspondence to: Mr. Austin Gavin, Executive Vice President, Pennsylvania Power & Light Co., 901 Hamilton Street, Allentown, Pennsylvania 18101 and Mr. Gennaro D. Calendo, Attorney, Pennsylvania Power & Light Co., 901 Hamilton Street, Allentown, Pennsylvania 18101) for change in land rights for constructed Project No. 487, known as the Wallenpaupack Project, located in Wayne and Pike Counties in the vicinity of the City of Scranton and Town of Straudsberg, Pennsylvania, on the Wallenpaupack Creek.

Applicant proposes to convey approximately 0.55 acre of project land in Pike County, Palmyra Township to the Commonwealth of Pennsylvania, Department of Transportation for the purpose of highway construction.

Pennsylvania Power & Light Co. would have the right to use the property affected by the highway construction at any time for project purposes as contemplated in the license issued by the Federal Power Commission for Wallenpaupack Project No. 487.

Any person desiring to be heard or to make protests with reference to said application should on or before September 20, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and avaliable for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-16898 Filed 8-14-73;8:45 am]

[Docket No. E-7775]

APPALACHIAN POWER CO.

Notice of Further Extension of Time

AUGUST 3, 1973.

On July 24, 1973, Appalachian Power Co. filed a motion for a further extension of time within which to file its rebuttal case as required by notice issued June 11, 1973, in the above designated matter.

Upon consideration, notice is hereby given that the time is extended to and including August 30, 1973, within which Appalachian shall file its rebuttal case. The date of the hearing is postponed to October 9, 1973, at 10 a.m. e.d.t.

MARY B. KIDD, *Acting Secretary.*

[FR Doc.73-16888 Filed 8-14-73;8:45 am]

[Docket No. 72-134]

EASTERN SHORE NATURAL GAS CO.

Notice of Revision to Tariff

AUGUST 9, 1973.

Take notice that on June 12, 1973, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as a part of its FPC Gas Tariff the following revised tariff sheets:

Third Revised Sheet No. 3A
Third Revised PGA-1

Eastern Shore states that the revised tariff sheets increase its rates under the CD-1, CD-E, G-1, E-1, I-1 and PS-1 schedules to reflect an increase in purchased gas cost occasioned by the filing of a purchased gas cost increase by Transcontinental Gas Pipe Line Corporation on May 31, 1973, in FPC Docket No. RP73-69. Eastern Shore requests waiver of the notice requirements of § 154.22 of the Regulations under the

Natural Gas Act and of § 20.2 of its General Terms and Conditions to the extent necessary to permit the tariff sheets to become effective as of July 1, 1973.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with § 1.8 and § 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 16, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16960 Filed 8-14-73;8:45 am]

[Docket No. CI74-66]

FARMERS ROYALTY POOL

Notice of Application

AUGUST 8, 1973.

Take notice that on July 30, 1973, Farmers Royalty Pool (Applicant), 3535 NW 58th Street, Oklahoma City, Oklahoma 73112, filed in Docket No. CI74-66 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Natural Gas Pipeline Company of America from the South Parker Field, Woodward County, Oklahoma, 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 for eighteen months approximately 30,000 Mcf of gas per month at 45.0 cents per Mcf at 14.65 p.s.i.a., subject to Btu adjustment, within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70).

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before August 24, 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.73-16963 Filed 8-14-73;8:45 am]

[Docket No. CI73-869]

PHILLIPS PETROLEUM CO.

Postponement of Hearing

AUGUST 7, 1973

On August 3, 1973, El Paso Natural Gas Co. filed a motion for a postponement of the hearing date as fixed by order issued July 31, 1973, in the above-designated matter. The motion states that staff counsel and Phillips Petroleum Co. have consented to the continuance.

Upon consideration, notice is hereby given that the hearing in the above matter is postponed to September 11, 1973, at 10 a.m. (e.d.t.) in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C., 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16899 Filed 8-14-73;8:45 am]

[Docket No. R-433]

RESERVES DEDICATION IN THE TEXAS GULF COAST AND SOUTHERN LOUISIANA AREAS

Order Granting Rehearing

AUGUST 6, 1973.

Associated Gas Distributors (AGD) on July 20, 1973, filed an application for rehearing of the Commission's order issued June 21, 1973, in the above-entitled proceeding denying AGD's motion to make the submittal by pipelines of reserves dedication reports mandatory, in lieu of voluntary as now provided in Order No. 459 issued November 10, 1972, in Docket No. R-433.

Solely for the purpose of allowing us an opportunity to give full and adequate consideration to the matters set forth in AGD's application for rehearing, we grant such application.

The Commission finds: It is appropriate and in the public interest in the administration of the Natural Gas Act that rehearing be granted for the purpose of further consideration.

The Commission orders: The application for rehearing filed by AGD is granted for the purpose of further consideration.

By the Commission.

[SEAL] MARY B. KIDD,
Secretary.

[FR Doc.73-16892 Filed 8-14-73;8:45 am]

[Dockets Nos. RP72-91, etc.]

SOUTHERN NATURAL GAS CO.

Proposed Changes in FPC Gas Tariff

AUGUST 9, 1973.

Take notice that Southern Natural Gas Company, on July 31, 1973, tendered for filing 13 revised tariff sheets containing proposed changes in its FPC Gas Tariff, Sixth Revised Volume No. 1. On August 3, 1973, Southern tendered substitute tariff sheets for 12 of the sheets tendered on July 31. The proposed changes would increase revenues above those provided for in the Stipulation and Agreement dated May 23, 1973, in the captioned proceedings by an additional $766,013 based on the billing determinants included in Appendix B of the Stipulation and Agreement.

On July 23, 1973, the FPC approved the Stipulation and Agreement in Docket Nos. RP72-91 et al. The tendered tariff sheets are proposed to become effective forty days following the Commission's approval of the Stipulation and Agreement on September 1, 1973, pursuant to paragraph (4), Article III, of that agreement.

Copies of this filing have been served on all jurisdictional customers, interested state commissions and all parties to the proceedings.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 24, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16961 Filed 8-14-73;8:45 am]

[Docket No. RP73-49]

SOUTH GEORGIA NATURAL GAS CO.

Revision to Tariff

AUGUST 9, 1973.

Take notice that on August 2, 1973, South Georgia Natural Gas Company (South Georgia) tendered for filing as

part of Original Volume No. 1 to its FPC Gas Tariff the following revised tariff sheets:

Substitute Third Revised Sheet No. 3A
Substitute Twenty-Eighth Revised Sheet No. 5
Substitute Twenty-Seventh Revised Sheet No. 6
Substitute Nineteenth Revised Sheet No. 9
Substitute Eighteenth Revised Sheet No. 11
Substitute Twenty-Second Revised Sheet No. 12B

South Georgia states that the above sheets represent a rate change under its PGA clause, such clause approved to become effective April 14, 1973, by Commission Order in FPC Docket No. RP73–49 issued April 13, 1973. The company further states that it proposes to increase its rates $71,731 for the purpose of tracking a rate increase filing by Southern Natural Gas Company (Southern) on July 31, 1973, which would increase South Georgia's cost of gas $113,393 annually. South Georgia intends that this filing be in substitution for revised tariff sheets tendered on May 29, 1973. An effective date of September 1, 1973, is requested.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 27, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73–16974 Filed 8–14–73;8:45 am]

[Dockets Nos. RP71–130 and RP72–58]

TEXAS EASTERN TRANSMISSION CORP.

Notice of Proposed Changes in FPC Gas Tariff

AUGUST 3, 1973.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern), on June 11, 1973, tendered for filing proposed changes in its FPC Gas Tariff, Third Revised Volume No. 1. The proposed changes revised section 12 of the General Terms and Conditions of Texas Eastern's FPC Gas Tariff which contains procedures to be followed whenever it is necessary to curtail deliveries of natural gas to its jurisdictional customers. The current modification would substitute a new Second Revised Sheet No. 92 for the one submitted May 31, 1973. This new Second Revised Sheet No. 92 supersedes First Revised Sheet No. 92 in Texas Eastern's current tariff.

Texas Eastern states that it is submitting these changes to comply with the Commission's Order issued January 24, 1973, in Docket Nos. RP71–130 and RP72–58. In addition, it states that it is incorporating into its curtailment procedures a modification of the nine priorities of service set forth in the Commission's statements of policy in Order Nos. 467, 467–A and 467–B (Docket No. R–469).

The modification of the nine priorities of service would place in category (2) any firm industrial sales of up to 300 Mcf per day in addition to the industrial requirements for plant protection, feedstock and process needs, and pipeline customer storage injection requirements presently included.

Texas Eastern states that copies of the new Substitute Second Revised Sheet No. 92 are being posted in accordance with Section 154.16 of the Commission rules and regulations.

Any person desiring to be heard or to make protest with reference to said filing should on or before August 17, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The filing is on file with the Commission and is available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.73–16886 Filed 8–14–73; 8:45 am]

[Docket No. RP72–98]

TEXAS EASTERN TRANSMISSION CORP.

Proposed Change in Rates and Charges

AUGUST 10, 1973.

Take notice that on July 31, 1973, Texas Eastern Transmission Corporation (Texas Eastern) filed five substitute revised tariff sheets in Docket No. RP72–98, to reflect the rates set forth in Appendix D of its Second Revised Stipulation and Agreement dated July 27, 1973, adjusted to reflect those rate changes made by the Company subsequent to March 1, 1973, and further adjusted to reflect the rate changes provided in Articles V and VI of the July 25, 1973, Stipulation and Agreement. Texas Eastern requests waiver of the Commission's rules and regulations and proposes that the instant filed sheets become effective August 1, 1973. Copies of the tender have been served upon all authorized purchasers and interested state commissions.

Any person desiring to do so may file comments in writing with the Commission with respect to such rates. Such comments should be filed on or before August 22, 1973. The July 31, 1973, tender is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73–16962 Filed 8–14–73;8:45 am]

[Docket No. RP72–99]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Extension of Time and Postponement of Hearing

AUGUST 9, 1973.

Motions for an extension of time within which to file and serve evidence and for a postponement of the hearing date fixed by order issued July 30, 1973, in the above-designated proceeding have been filed by the following:

Piedmont Natural Gas Company, Inc.
Brick Institute of America
General Motors Corporation and Johns-Manville Fiber-Glass, Inc.
Consolidated Edison Company of New York, Inc.
The City of New York
United Cities Gas Company
North Carolina Utilities Commission

A joint answer in support of the motion of Piedmont Natural Gas Company, Inc., was filed by Atlanta Gas Light Company. The Brooklyn Union Gas Company filed a telegram opposing all motions for an extension of time.

Upon consideration, notice is hereby given that the procedural dates set by the order issued July 30, 1973, are modified as follows:

Service of direct testimony and exhibits by Transco, September 4, 1973.
Service of testimony in opposition to Transco's curtailment procedures, September 4, 1973.
Hearing to commence, September 18, 1973 (10:00 a.m., edt).

KENNETH F. PLUMB,
Secretary.

[FR Doc.16975 Filed 8–14–73;8:45 am]

[Docket No. RP73–94]

VALLEY GAS TRANSMISSION, INC.

Further Extension of Time and Postponement of Prehearing Conference and Hearing

AUGUST 9, 1973.

On August 7, 1973, Valley Gas Transmission, Inc. filed a motion for a limited extension of time of the procedural dates fixed by a notice issued July 12, 1973. The motion states that all parties have been contacted and none have any objection. The motion also states that there is a settlement conference scheduled for August 13, 1973, at 2:30 p.m. in Room 6200, of the Federal Power Commission.

Upon consideration, notice is hereby given that the procedural dates in the above designated matter are further modified as follows:

Staff service of evidence, September 4, 1973.
Intervener service of evidence, September 13, 1973.
Prehearing conference, September 26, 1973 (10:00 a.m., EDT).
Company rebuttal evidence served, October 5, 1973.
Hearing, October 11, 1973 (10:00 a.m., EDT).

KENNETH F. PLUMB,
Secretary.

[FR Doc.73–16976 Filed 8–14–73;8:45 am]

NATIONAL POWER SURVEY; TECHNICAL ADVISORY COMMITTEE ON CONSERVATION OF ENERGY

Notice of Meeting and Agenda

Agenda for a meeting of the Technical Advisory Committee on Conservation of Energy Task Force on Environmental Aspects to be held at the Federal Power Commission Offices 825 North Capitol Street, N.E. Washington, D.C., 1:30 p.m., August 20, 1973, Room 5200.

1. Meeting called to order by the FPC Coordinating Representative.
2. Objectives and purposes of meeting:
A. Approval of minutes of July 9, 1973 meeting.
B. Review final draft of Jim MacKenzie's study entitled "Some Adverse Environmental Effects of Energy Consumption through the Year 2000".
C. Review the final draft of Fred Lawrence's study entitled "The Impact of Environmental Protection Legislation on Energy Use".
D. Review initial draft of Marc Roberts' study on economic and policy aspects of conservation of energy.
E. Other Business.
3. 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.73-16894 Filed 8-14-73;8:45 am]

EASCOGAS LNG, INC., ET AL.

Scheduling Formal Hearings, and Establishing Procedures

AUGUST 7, 1973.

Eascogas LNG, Incorporated Docket Nos. CP73-47, CP73-8 Algonquin LNG, Incorporated Docket No. CP73-139 Algonquin Gas Transmission Company Docket No. CP73-197 New England LNG Company, Inc. Docket No. CP73-199.

On June 25, 1973, Eascogas LNG, Incorporated, Algonquin LNG, Incorporated, Algonquin Gas Transmission Company, and New England LNG Company, Incorporated (Petitioners) filed an application for rehearing of our "Order Denying Motion for The Setting of a Prehearing Conference," issued in the above-titled proceedings on May 25, 1973. In the Application for Rehearing,[1] Petitioners request that we modify our order of May 25, 1973, by setting for hearing the issues involved in these dockets and granting such further relief as may be appropriate.

In our May 25, 1973 order we pointed out that Petitioners, who are also the Applicants in the above-docketed cases, had failed to submit supplementary environmental data requested by our Staff within sufficient time to allow us to grant their "Motion for The Setting of a Prehearing Conference." For this, and other reasons related largely to Petitioners' failure to prosecute their case in a timely manner, we denied their motion for a prehearing conference.

It appears now that Applicants have basically complied with certain requests of our Staff. There remain, however, several significant obstacles, discussed below, to a hasty resolution of the proceedings. Despite the numerous deficiencies still attendant to the Eascogas proposal, however, we consider it desirable to expedite the processing of their applications filed in these proceedings. The natural gas shortage which this country is currently experiencing illustrates the necessity for resolving applications which propose additional gas supplies as promptly as possible. Accordingly, we shall grant Petitioners' instant motion by consolidating the five applications which comprise the "Eascogas Project" and scheduling a formal hearing herein on those issues which we deem pertinent to the proposal.

We do not grant the instant motion without reservation, however. While preliminary environmental procedure now appears to be sufficiently near completion to warrant modifying our earlier order, many of the factors which concerned us therein and collectively led us to deny the setting of a prehearing conference at that time, are still unresolved. Therefore, our action herein is conditioned upon the several matters discussed below.

Initially, we note that, while the Department of State has by letter dated July 20, 1973, expressed no objection to the Eascogas project, no reply has yet been received from the Department of Defense to our standard request for its policy views. Defense's delay can be at least partially attributed to the Applicant's failure to supply that Department with certain requested information.[2] The viewpoints of State and Defense are not binding on us. However, as we pointed out in our order of May 25, 1973, it is our well-established policy to seek their advice on all foreign importation projects. We see no reason to further delay a hearing pending Defense's response. However, we will withhold any final disposition of the applications until Defense has informed us as to its position.

A more troubling aspect of this project is the current uncertain status of the Staten Island terminal facilities owned by Distrigas affiliates which the Applicants in Eascogas propose to use.[3] It is true, as Applicants assert in their motion, that those facilities are primarily an issue for the *Distrigas* proceedings, and that Eascogas will neither own nor operate facilities anywhere. On the other hand, we cannot blind ourselves to the very real impact the Eascogas project, should it be approved as proposed, would have on Distrigas facilities. The public interest in general, and NEPA in particular, require that we take into account the natural consequences of any proposal before us. In light of this, any authorization which we may grant for this project will be expressly conditional upon the satisfactory resolution of and Commission authorization for the operation of the Distrigas facilities.

Additionally, the environmental procedure to be followed appears to still be somewhat unsettled. As we stated in our order of May 25, 1973, the *Greene County* decision[4] and Commission Order No. 415-C require that the Staff Environmental Statement, together with any comments received thereon, be presented at any hearing(s) in a proposal. In light of this, we further stated that we believe it would be impracticable for us to schedule a hearing while the preparation of Staff's statement is still in its infancy, especially in light of the required 45-day period for circulation for comments of the statement. As we further pointed out, Staff's preparation of the Eascogas statement has been delayed to considerable extent by the Applicant's tardiness in filing all of the applications and in responding to environmental deficiency questions.

Although the Staff statement has not yet been circulated for comment, we deem it appropriate for us now to schedule a hearing in these proceedings, with a view to the 45-day circulation period and time required thereafter for finalization of Staff's statement. We still unqualifiedly reject any suggestions for a "phased" hearing which would separate the environmental testimony from the other issues. We shall therefore direct that, should testimony on all other issues be completed prior to the finalization of Staff's statement or the receipt of all environmental comments, the record shall remain open for purposes of receiving such environmental testimony in evidence and further trial of the issues involved therein. No decision by the Presiding Administrative Law Judge shall be issued prior to the completion of such testimony and subsequent closing of the record.

[1] An application for rehearing of our order of May 25, 1973 does not lie within Commission procedures. We shall, therefore treat Petitioners' application as a motion for reconsideration.

[2] It is indeed uncertain whether Defense has even yet received all of the requested information. The Department has requested information from each distribution company to receive gas from the Eascogas project. In copies filed with the Commission of the information supplied by Applicants to Defense, data from at least two distribution companies involved, Elizabethtown Gas Company and New England LNG, Inc., was lacking.

[3] By order issued May 25, 1973, in *Distrigas Corporation* Docket Nos. CP73-78, CP73-132, CP73-135; *Distrigas Pipeline Corporation*, Docket No. CP73-148; and *Distrigas of New York Corporation*, Docket Nos. CP73-205, CP73-230 (rehearing denied June 20, 1973), we required the Applicants therein to submit Section 7 applications relative to the proposed operations of their facilities. To date, no such applications have been filed.

[4] *Greene County Planning Board, et al.* v. *F.P.C.*, 455 F.2d 412 (2nd Cir., 1972) cert. denied 409 U.S. 849 (1972).

Applicant's motion proposes numerous issues on which testimony would be filed and considered in the Eascogas hearing. While we believe all of the issues therein enumerated to be relevant, we do not consider the list exhaustive. Further issues, the consideration of which we deem vital, include reliability of service of the foreign supply, shipping costs, the heavy dependence of New England and New Jersey distributors on foreign LNG to meet residential and commercial markets, availability of alternative fuels for the markets to be served by the instant project, environmental impact of the facilities proposed in the Providence, Rhode Island area, total economic feasibility of the project, overall project safety, and any such other issues as may be pertinent and appropriate.

The Commssion notes that there exists an interrelationship between the five above-entitled docket numbers, and concludes that their ultimate disposition would best be accomplished in a consolidated proceeding. The Commission therefore shall consolidate Docket Nos. CP73-47, CP73-88, CP73-139, CP73-197, and CP73-199 for hearing and disposition of all issues.

The Commission finds.

(1) The Application for Rehearing, filed June 25, 1973 in these proceedings should be granted to the extent that it requests the scheduling of a formal hearing and consolidation of these proceedings. The scheduling of a prehearing conference, as was requested in Applicant's original "Motion for The Setting of a Prehearing Conference," filed April 6, 1973 and denied by our order of May 25, 1973, appears unnecessary in view of the delineation of the issues above. To the extent that the Application for Rehearing may request the setting of such a conference, it is denied.

(2) It is appropriate that the proceedings in the above-named applications be consolidated for hearing and decision.

(3) It is necessary in the public interest that the consolidated proceedings involving the above-named applications be set for hearing in accordance with the procedure described above.

The Commission orders.

(A) Docket Nos. CP73-47, CP73-88, CP73-139, CP73-197, and CP73-199 are consolidated for purposes of hearing and disposition.

(B) The direct case of the Applicants and all intervenors in support thereof shall be filed and served on all parties on or before August 27, 1973. The Presiding Administrative Law Judge shall fix dates for the filing of answering testimony after completion of cross-examination on direct testimony.

(C) A formal hearing shall be convened in these proceedings in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C., on September 18, 1973, at 10:00 a.m. (EST). Such hearing shall consider testimony on the issues listed above and any other issues which may be relevant to the proceedings, and shall remain open until the submission of the Commission Staff's final environmental statement and any comments received on the draft statement. Furthermore, no initial decision shall be issued prior to the submission of such environmental testimony. The Chief Administrative Law Judge will designate an appropriate officer of the Commission to preside at the formal hearing of these matters, pursuant to the Commission's Rules of Practice and Procedure.

(D) Any authorization which may be issued for the Eascogas proposal to use Distrigas Corporation's LNG terminal facilities on Staten Island, New York, shall be expressly conditional upon final Commission authorization of those facilities in the various *Distrigas* proceedings. In the event that Section 7 applications for the Distrigas Staten Island facilities are not forthcoming, as required by our above-mentioned order of May 25, 1973 issued in *Distrigas*, or final Commission authorization for those facilities is not granted, amended applications herein will be required for that portion of the Eascogas project which proposes to utilize such Distrigas facilities.

By the Commission.[1]

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc. 73-16895 Filed 8-14-73;8:45 am]

[Docket No. E-8332]

MINNESOTA POWER AND LIGHT CO.

Notice of Proposed Superseding Electric Service Agreement

AUGUST 7, 1973.

Take notice that Minnesota Power and Light Company (MPL) of Duluth, Minnesota on July 27, 1973, tendered for filing a proposed Electric Service Agreement between MPL and the Stuntz Cooperation Light and Power Association (Stuntz) of Hibbing, Minnesota. MPL states that the proposed Agreement is to supercede the present Agreement, FPC Rate Schedule No. 69, and requests that the proposed Agreement become effective as soon as possible. According to MPL, the proposed Agreement will have an adverse effect upon revenue.

Any person desiring to be heard or protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure. All such petitions or protests should be filed on or before August 24, 1973. Protests will be considered by the Commission in determining the appropriate action, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16896 Filed 8-14-73;8:45 am]

[Project No. 108]

NORTHERN STATES POWER CO.

Notice of Issuance of Annual License

AUGUST 6, 1973.

On February 24, 1970, Northern States Power Company, Licensee for Chippewa Reservoir Project No. 108 located in Sawyer County, Wisconsin, filed an application for a new license under section 15 of the Federal Power Act (Act) and Commission regulations thereunder (§§ 16.1-16.6).

The license for Project No. 108 was issued effective August 8, 1921, for a period ending August 7, 1971. Since expiration of the original license, the project has been operated under an annual license. On August 4, 1972 we issued notice that an annual license was issued to Northern States Power Company under section 15 of the Act for the period August 8, 1972, to August 7, 1973, or until Federal takeover, or the issuance of a new license for the project, whichever came first.

The Chippewa Reservoir (Flowage) Project consists of: (1) A dam about 1,290 feet long and about 45 feet high, comprising a concrete gravity control section 78 feet long with three tainter gates 20 feet wide and 26 feet high and three steel vertical sliding sluice gates 7 feet wide and 10 feet high, and two earthfill concrete core wall sections extending 234 feet on the west side and 978 feet on the east side; (2) Chippewa Reservoir which impounds 223,000 acre-feet of useable storage capacity with a water surface area of about 17,600 acres at normal full pool elevation 1313.0 (m.s.l.); and (3) all other facilities and interests appurtenant to operation of the project.

The Chippewa Reservoir is a storage reservoir, impounded primarily for regulation of the flow of the Chippewa River for downstream hydroelectric power production. There are no generating facilities at the project. During the winter months, the reservoir is drawn down to accommodate snow melt and spring rains thereby contributing to flood control. The regulated flow of the Chippewa River provides for low-flow augmentation downstream. During the summer months, as nearly as is practicable, reservoir fluctuations are held to three feet in the interest of recreational activities.

On September 1, 1972, Intervenors, Lac Courte Oreilles Band of Lake Superior Chippewa Indians, the Save the Chippewa Flowage Alliance, Inc., the Wisconson Resources Conservation Council, the Great Lakes Intertribal Council, Inc., and the American Indian Movement National Directors, Inc., challenged our jurisdiction to issue annual licenses by their pleading styled "Petition and Application for Rehearing" respecting the public notice given by the Secretary on

[1] Commissioner Brooke concurs in the order, with the exception of the commentary on the status of the Distrigas facilities. He adheres to the majority position expressed in Opinion Nos. 613 and 613A and in dissents to Commission orders of May 25 and June 20, 1973.

August 4, 1972, that an annual license has been issued to Northern States Power Company. Briefing on the question of the Commission's jurisdiction was provided for by our order of February 28, 1973. We are now considering the briefs on the law for the purpose of arriving at a determination.

In order that all rights be preserved and that the status quo be maintained pending issuance of our determination of the jurisdiction question we are hereby giving notice in accordance with Section 16.5 of our Regulations under the Federal Power Act of the issuance of annual license for Project No. 108 for the period of August 8, 1973, through August 7, 1974. We do so with the express condition that should we on the basis of the facts and briefs before us decide that we do not have jurisdiction the annual license will terminate as of the date of our opinion. Our action herein is not to be construed as a ruling on the jurisdictional issue raised by the pleading before us.

Further we believe that notwithstanding a pending decision on jurisdiction that the public interest will be served by holding the public hearing in the vicinity of the project as scheduled by the Administrative Law Judge at the Sawyer County Court House, Hayward, Wisconsin at 10:00 a.m. on August 14, 1973.

By direction of the Commission.[1]

MARY B. KIDD,
Acting Secretary.

[FR Doc.73-16893 Filed 8-14-73;8:45 am]

[Docket Nos. RP71-16, etc.]

MIDWESTERN GAS TRANSMISSION CO.

Proposed Changes in FPC Gas Tariff

AUGUST 9, 1973.

Take notice that Midwestern Gas Transmission Company (Midwestern), on August 3, 1973, tendered for filing Third Revised Volume No. 1 of its FPC Gas Tariff to be effective on September 1, 1973. Such filing was made pursuant to Article I of the Amended Settlement Agreement dated May 24, 1973, and Ordering Paragraphs (A) and (B) of the Commission's order of July 24, 1973, in the above-entitled proceeding approving such Amended Settlement Agreement. Such filing reflects settlement rates, purchased gas cost adjustment provisions for the Southern and Northern Systems, and other tariff changes as provided by the Amended Settlement Agreement as approved by the Commission.

According to Midwestern, copies of this filing were served upon the Company's customers, interested state regulatory commissions, and all parties to the above-entitled proceeding.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 20, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Any person previously permitted to intervene in proceeding need not file a further petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16957 Filed 8-14-73;8:45 am]

[Docket E-7690]

NEPEX MANAGEMENT COMMITTEE NEW ENGLAND POWER POOL

Notice of Amendment

AUGUST 9, 1973.

On June 8, 1973, the NEPOOL Management Committee (NEPOOL) filed an agreement amending NEPOOL Power Pool Agreement dated as of March 1, 1973, to become effective May 1, 1973. NEPOOL's filing further amended the NEPOOL Power Pool Agreement dated September 1, 1971, as amended by an Amendment dated as of July 1, 1972.

The amendment provides for the revision of five sections of the NEPOOL Agreement. Sections 3.3, 14.2 and 14.4 are amended so as to delete the $3,000.00 annual charge originally provided for in § 14.2. Sections 6.8 and 8.9 are amended to provide that any participant, without regard to size, may appeal actions of the Executive Committee and Operation Committee. NEPOOL states that amendment is intended to remove a financial burden which might have deterred smaller systems having entitlements in generating capacity from joining the pool and to facilitate appeals of the Executive Committee and Operation Committee actions by smaller systems. NEPOOL further states that the Amendment does not change the electric service provided under the NEPOOL Agreement or the facilities or charges related therein. It requests that the Commission waive the notice period and permit the Amendment to become effective May 1, 1973, pursuant to § 35.11 of the Commission's regulations. Copies of the Amendment have been sent to all participants under the NEPOOL Agreement and to each of the parties to the Commission Docket No. E-7690.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 N. Capitol St., NE Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 30, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16959 Filed 8-14-73;8:45 am]

[Docket No. E-8330]

CENTRAL ILLINOIS PUBLIC SERVICE CO.

Notice of Application

AUGUST 9, 1973.

Take notice that on July 23, 1973, Central Illinois Public Service Company (Applicant) filed an application pursuant to section 204 of the Federal Power Act seeking authority to issue, not to exceed $65,000,000 in aggregate principal amount of its unsecured short-term notes to commercial banks and commercial paper, including $29,163,040 of such notes and commercial paper which Applicant is presently permitted and entitled to issue, without an order of the Commission, pursuant to the exemption provided by section 204(e) of the Act.

Applicant is incorporated under the laws of the State of Illinois, with its principal executive office at Springfield, Illinois. It is a public utility engaged in generating, purchasing, transmitting, distributing and selling electric energy in portions of central and southern Illinois and serves approximately 278,300 customers with electricity.

The notes to commercial banks are to mature not more than 12 months from their respective dates of issuance, and the commercial paper to be sold to commercial paper dealers is to mature not more than nine months from its date of issuance, but in any event (as to both notes and commercial paper) not later than December 31, 1975. Each note to a bank will bear interest at an interest rate not to exceed either (a) the prime rate of interest prevailing at such bank at the date of issuance of the note or (b) the applicable prime rate or rates of interest prevailing at such bank during the term of the note, determined as follows: as to each three-month period of the term of the note, at such rate of interest prevailing on the first business day of such three-month period. The commercial paper will be issued at rates not exceeding the discount rate prevailing at the date of issuance.

The proceeds from the issuance of the notes and commercial paper will be used to provide flexibility for the applicant in meeting its 1973, 1974 and 1975 construction programs, which are estimated at $67,300,000 for 1973, $100,200,000 for 1974 and $126,200,000 for 1975.

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Power Commission, Washington, D.C. 20426, on or before August 21, 1973, peti-

[1] Commissioner Moody dissents to the issuance of this notice of issuance of annual license. Majority and dissenting opinions will be issued later.

tions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16841 Filed 8-14-73;8:45 am]

[Docket Nos. RP71-14, RP71-84, RP71-137, RP72-151]

EL PASO NATURAL GAS CO.

Notice of Certification of Proposed Stipulation and Agreement

AUGUST 8, 1973.

Take notice that on July 25, 1973, the Presiding Administrative Law Judge certified to the Commission a proposed Stipulation and Agreement which would dispose of all issues in the above-captioned rate proceedings of El Paso Natural Gas Company's (El Paso) Northwest Division System, with the exception of the issues of conjunctive billing and allocation of a portion of gas supply, as described therein. There was also certified by the Presiding Judge a motion of El Paso for approval of the Stipulation and Agreement and the record of the hearing relating to the proposed settlement, as described in the certification.

The Stipulation and Agreement, inter alia, (1) provides for rate reductions and refunds on the basis of the settlement rates specified for the periods involved in the various dockets; (2) provides for refunds due to sales in excess of test period volumes during the twelve month period ending December 31, 1973; (3) requires El Paso to flow-through the jurisdictional portion of producer-supplier refunds in accordance with the provisions of prior settlement agreements, tracking orders and El Paso's Purchase Gas Adjustment clause for its Northwest Division System.

Comments relating to the proposed Stipulation and Agreement may be filed with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, on or before August 23, 1973. The proposed Stipulation and Agreement and related record are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16838 Filed 8-14-73;8:45 am]

[Docket No. E-8179]

GULF STATES UTILITIES CO.

Order Accepting for Filing, Initiating Investigation and Consolidating Proceedings

AUGUST 8, 1973.

On May 4, 1973, Gulf States Utilities (Gulf States) filed a letter agreement, dated August 10, 1970, changing its present FPC Rate Schedule No. 72 with Southwest Louisiana Electric Membership Corporation (Southwest). Gulf States states that the agreement provides for the following: (1) Extends the present contract term to August 1, 1983, (2) adds a fuel clause to the present Rate Schedule to be effective after August 1, 1973, (3) revises the Points of Delivery provisions, and (4) adds a provision concerning service interruptions.

Notice of the filing was issued on May 30, 1973, with comments, protests, or petitions to intervene due on or before June 11, 1973. No responses to this notice have been received.

On April 10, 1973, Gulf States, in Docket No. E-8121, had filed a general rate increase to its wholesale customers, including Southwest. In an order issued June 14, 1973, the Commission suspended in part the proposed increase to become effective on June 16, 1973. Included in the proposed filing was a revised fuel adjustment clause which differed from that filed in Docket No. E-8179, filed May 4, 1973.

By letter dated June 7, 1973, and July 18, 1973,[1] in response to our request for clarification of the fuel adjustment clause filed in Docket No. E-8179, Gulf States replied that the clause had been subject of correspondence concerning other rate schedules in 1970 and had been replaced by the clause included in the filing in Docket No. E-8121. The letter of July 18, 1973, substitutes, by agreement signed by Southwest, a revised fuel clause identical to that filed in Docket No. E-8121.

Gulf States requests an effective date of August 1, 1973. Even though the Commission issued a deficiency letter and this deficiency was corrected on July 20, 1973, we will establish an effective date of August 1, 1973. Our review indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. Therefore, we shall institute an investigation under section 206 of the Federal Power Act to determine the justness and reasonableness of the rates.

We note that in Docket No. E-8121, the Commission in its order of June 14, 1973, instituted an investigation under section 206 of the Federal Power Act with respect to the fuel adjustment clause contained in the FPC Rate Schedule with Southwest. Since the fuel adjustment clause in Docket No. E-8179 is identical to the clause in Docket No. E-8121, common issues of law and fact are raised. We will accordingly order consolidation of these dockets. Consistent with this action, the dates for service of evidence and hearing in this docket will be identical to those in Docket No. E-8121.

The Commission finds. (1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Federal Power Act that the Commission enter upon a hearing under section 206 of the Federal Power Act to determine the justness and reasonableness of the fuel adjustment cause in Docket No. E-8179 filed May 4, 1973.

(2) Good cause exists for consolidation of Docket Nos. E-8121 and E-8179.

(3) Consistent with our action consolidating Docket Nos. E-8121 and E-8179, the procedural dates set forth in our June 14, 1973, order in the former docket shall be the procedural dates in the instant filing.

The Commission orders. (A) The agreement filed May 4, 1973, between Gulf States and Southwest is hereby accepted for filing, to become effective August 1, 1973, as requested.

(B) An investigation into the justness and reasonableness of the fuel adjustment clause with Southwest at Docket No. E-8179 is hereby instituted under section 206 of the Federal Power Act.

(C) Docket Nos. E-8121 and E-8179 are hereby consolidated and set for hearing in accordance with the schedule established in our order of June 14, 1973, in Docket No. E-8121.

(D) Nothing contained in this order shall relieve the Applicant of any responsibility imposed by the Economic Stabilization Act of 1970, (Public Gas 91-370, 84 Stat. 799, as amended by Public Law 92-15, 85 Stat. 38), or by any Executive Order or rules and regulations promulgated pursuant to such Act.

(E) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16836 Filed 8-14-73;8:45 am]

[1] This letter was received July 20, 1973, which is considered the filing date.

[Docket No. ID-1699, etc.]

JOHN L. HANKINS ET AL.

Notice of Applications

AUGUST 9, 1973.

Take notice that the following applications were filed on the stated dates, pursuant to section 305(b) of the Federal Power Act, for authority to hold the position of officer or director of more than one public utility, or the position of officer or director of a public utility and

officer or director of a firm authorized to market utility securities, or the position of officer or director of a public utility and officer or director of a company suppling electric equipment to such public utility.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 27, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

Docket No.	Name of applicant	Date filed	Name of company
1699....	John L. Hankins.	6-12-73	Philadelphia Electric Co. Philadelphia Electric Power Co. The Susquehanna Power Co. The Susquehanna Electric Co.
1700....	William L. Maruchi.	6-12-73	Philadelphia Electric Co. Philadelphia Electric Power Co. The Susquehanna Power Co. The Susquehanna Electric Co.
1701....	Wayne C. Astley.	6-12-73	Philadelphia Electric Co. Philadelphia Electric Power Co. The Susquehanna Power Co. The Susquehanna Electric Co.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16845 Filed 8-14-73;8:45 am]

[Docket No. E-8341]

MONTAUP ELECTRIC CO.

Notice of Wholesale Electric Service Agreement

AUGUST 8, 1973.

Take notice that on July 30, 1973, Montaup Electric Company (Montaup) of Fall River, Massachusetts tendered for filing its proposed contract for sale of electric power to Newport Electric Corporation (Newport) of Newport, Rhode Island. Montaup states that the sale to Newport is comprised of a portion of Montaup's unit purchases from three electrical power generation facilities,[1] and that the charges to Newport are the exact cost of this power to Montaup (.5 percent of the purchase made by Montaup from each of the three generation plants). According to Montaup, the sole exception to the direct passage on to Newport of its own costs is the charge to Newport for the transmission of power from Boston Edison's Pilgrim No. 1 Unit, for which movement Montaup uses its own and other facilities. Montaup contends that the equitable method for charging Newport for the wheeling charge would be to use the NEPOOL agreement's Pool Transmission Facilities charge (even though Pilgrim No. 1 is not a pool-planned unit) which is agreed upon at $6.00 per kw year, subject to adjustments when the actual figures become available.

According to Montaup, agreement on the contract was reached by April 1, 1973, although delays in drafting prevented execution of the contract until July 13, 1973. Montaup requests that the contract be allowed to become effective as of April 1, 1973, the intended effective contract date, and that prior notice requirements be waived, as the only persons affected by the waiver would be the contract parties. Montaup states that copies of the filing have been sent to both parties to the contract and to the Rhode Island Division of Public Utilities.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 24, 1973. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16842 Filed 8-14-73;8:45 am]

[Project No. 2713]

NIAGARA MOHAWK POWER CORP.

Notice of Application for License for Constructed Project

AUGUST 8, 1973.

Public notice is hereby given that application for a major license was filed December 7, 1970, under the Federal Power Act (17 U.S.C. 791a–825r) by Niagara Mohawk Power Corporation (Correspondence to: Mr. Lauman Martin, Senior Vice President and General Counsel, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202) for Oswegatchie River Project No. 2713, located in the towns of Fine and Oswegatchie, and near the City of Ogdensburg, St. Lawrence County, New York, on the Oswegatchie River.

The Oswegatchie River Project, which has an installed capacity of 26,380 kw, consists of:

A. Eel Weir Development consisting of (1) an Ambursen type dam approximately 1,012 feet long with a maximum height of 25 feet, (2) a reservoir with surface area of about 96 acres, and (3) a powerhouse containing one 500 kw unit and two 1,100 kw units.

B. South Edwards Development consisting of (1) a concrete gravity type dam approximately 200 feet long with a maximum height of 51 feet, (2) a reservoir with a surface area of about 69 acres, (3) a steel pipe 1,142 feet long and 10 feet in diameter, and (4) a powerhouse containing one 680 kw unit and two 1000 kw units.

C. Flat Rock Development consisting of (1) a concrete gravity type dam approximately 568 feet long with a maximum height of 70 feet, (2) a reservoir with surface area of about 137 acres, (3) a steel penstock 40 feet long and 9½ feet in diameter, and (4) a powerhouse containing two 3,000 kw units.

D. Browns Falls Development consisting of (1) a concrete gravity type dam approximately 871 feet long with a maximum height of 65 feet, (2) a reservoir with surface area of about 171 acres, (3) a wood stove pipe 3,673 feet long and 12½ feet in diameter, (4) a steel pipe 2,400 feet long and 11 feet in diameter, (5) two steel penstocks 142 feet long and 8 feet in diameter, and (6) a powerhouse containing two 7,500 kw units.

E. All other facilities and interests appurtenant to operation of the project.

Applicant has filed a system-wide Recreational Use Plan covering proposed recreational facilities for 82 hydroelectric developments including Project No. 2713. The Commission is acting upon this plan separately.

Any person desiring to be heard or to make protest with reference to said application should on or before October 5, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16840 Filed 8-14-73;8:45 am]

[Docket No. RP73-78]

ORANGE AND ROCKLAND UTILITIES, INC.

Notice of Certification of Settlement Agreement

AUGUST 8, 1973.

Take notice that on August 3, 1973, a Settlement Agreement (Agreement) purporting to resolve all issues in this docket

[1] Maine Yankee Atomic Power Company, Vermont Yankee Nuclear Power Corporation, and Boston Edison Company (from its Pilgrim No. 1 nuclear power unit).

was certified to the Commission by the Presiding Administrative Law Judge, upon motion of Orange and Rockland Utilities (O&R). According to O&R, the Agreement resolves issues relating to rate of return, rate design, and the treatment of depreciation in O&R's proposed tariff sheets. The tariff sheets as originally filed were to become effective, subject to refund, on August 1, 1973, at the end of the five month suspension period ordered by the Commission. No specific effective date is proposed for the tariff sheets as amended pursuant to the Agreement.

Any person desiring to be heard or to protest said certification should file comments or protests with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such comments or protests should be filed on or before August 20, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this certification are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16844 Filed 8-14-73;8:45 am]

[Project No. 233]

PACIFIC GAS AND ELECTRIC CO.

Notice of Application for New License for Constructed Project

AUGUST 9, 1973.

Public notice is hereby given that application for new major license (relicense) has been filed October 28, 1970, under the Federal Power Act (16 U.S.C. 791a–825r) by Pacific Gas and Electric Company (Correspondence to: Mr. J. F. Roberts, Jr., Vice President-Rates and Valuation, Pacific Gas and Electric Company, 245 Market Street, San Francisco, California 94106) for its constructed Project No. 233 located in Shasta County, California.

Project No. 233 consists of:

(A) Pit 3 Development. (1) Pit 3 Dam; (2) Lake Britton, the reservoir formed by Pit 3 Dam; (3) Rock Creek Diversion Dam; (4) concrete tunnels and conduit 19 feet in diameter with a total length of about 21,300 feet; (5) a steel pipeline 2 feet in diameter and approximately 2,700 feet long; (6) three steel penstocks, 10 feet in diameter and 600 feet in length each; (7) three generators, 26,730 kw each and, (8) appurtenant facilities.

(B) Pit 4 Development. (1) Pit 4 Dam; (2) Pit 4 Reservoir, which also serves as the afterbay for Pit 3 powerhouse; (3) a tunnel 19 feet in diameter and approximately 21,500 feet in length; (4) two steel penstocks, each 12 feet in diameter and about 820 feet in length; (5) two generators, 45,000 kw each; (6) appurtenant facilities.

(C) Pit 5 Development. (1) Pit 5 Dam; (2) Pit 5 Reservoir, which also serves as the afterbay for Pit 4 powerhouse; (3) Pit 5 Open Conduit Dam; (4) a reservoir formed by the open conduit dam; (5) two tunnels 19 feet in diameter and a total length of approximately 28,400 feet; (6) the open conduit canal about 3,000 feet in length; (7) four steel penstocks 8 feet in diameter and each about 1400 feet in length; (8) four generators, two rated at 38,280 kw each and the other two at 32,000 kw each; (9) appurtenant facilities.

According to the application: (1) The project is carried on Licensee's books at a net amount of $56,379,432 as of December 31, 1969. There are several indicia of fair market value, among them reproduction cost new less depreciation. On this basis, the value of the Pit 3, 4 and 5 Project is currently estimated at $192,750,000; no definite figure for severance damages is given by the Applicant; (2) the Applicant states that the Pit 3, 4 and 5 Project accounts for about $3,843,000 annually in tax revenue to local, state and federal tax agencies. Applicant currently pays property taxes of $1,664,000 per year on project properties in Shasta County. Taxes on income currently attributable to the project total approximately $2,179,000 of which $1,884,000 is paid to the United States and $295,000 to the State of California.

Lake Britton is the project's principal recreation attraction though short reaches of the Pit River and Hat Creek also offer recreation opportunities in the project area. For example, Lake Britton offers opportunities for sedentary and mass appeal recreation while the Pit River Canyon offers opportunities for the hiker or fisherman.

To date, in excess of $92,000 has been invested by Licensee for conservation and recreation developments in Project 233 as part of its system-wide watershed development program.

Any person desiring to be heard or to make protest with reference to said application should on or before October 8, 1973, file with the Federal Power Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16835 Filed 8-14-73;8:45 am]

[Docket No. G-7004, etc.]

PENNZOIL CO.

Notice of Redesignation

AUGUST 8, 1973.

By a Certificate of Amendment of a Certificate of Incorporation dated May 4, 1972, filed with the Commission May 17, 1972, Pennzoil United, Inc., has changed its corporate name to Pennzoil Company.

Accordingly, the certificates issued by the Commission, the proceedings pending before the Commission, and the rate schedules on file with the Commission (without change in numerical designation), set forth in the Appendix hereto, are designated as those of Pennzoil Company in lieu of Pennzoil United, Inc.

KENNETH F. PLUMB,
Secretary.

APPENDIX

FPC Gas Rate Schedule No.	Certificate Docket No.	Rate Docket No.
8	CI61-945	
9	CI61-945	
10	G-7004	
12	G-7004	
13*	CI66-94	RI71-819
14	CI67-372	
15	CI67-662	RI70-828 RI70-705 RI72-187
16**	CI67-1471	
18	CI68-1229	RI70-828
19*	CI68-1419	
20	CI68-1450	
21	CI69-134	
22*	CI69-803	RI70-705
23*	CI69-970	RI70-705
24	CI70-23	
25	CI70-1064	
26	CI70-1063	
27**	CI71-123	
28	CI71-645	
29**	CI71-668	
30	CI71-871	RI72-146
31*	CI72-331	
32	CI72-553	
33	CI72-681	

*"(Operator), "et al."
**"et al."

[FR Doc.73-16839 Filed 8-14-73;8:45 am]

[Docket No. E-8242]

PUBLIC SERVICE COMPANY OF OKLAHOMA

Order Amending Certain Proceedings, Initiate a Proceeding Under Section 206, Dismiss a Section 206 Proceeding and Accept for Filing Under Section 205, Suspend Proposed Rates, and Establish Hearing Procedures

AUGUST 8, 1973.

On May 30, 1973, Public Service Company of Oklahoma (PSCO) tendered for filing proposed changes in its FPC Rate Schedule Nos. 163, 168–171, 173, 176–179, 182, and 185, proposing an effective date of August 1, 1973. By order of July 30, 1973, the filing was accepted under section 205 of the Federal Power Act, the rates requested were suspended until January 1, 1974, and intervention was granted six customers of PSCO. Additionally, a proceeding under section 206 with regard to the terms and conditions of the affected customers was initiated and an investigation under section 206 was ordered as to the rates proposed to be charged the City of Pawhuska and the Anadarko Public Works Authority (Anadarko).

Upon further review of the above order and the contracts of the affected parties, we have concluded that the July 30, 1973, order in this docket should be amended in the manner set forth below.

On page three of the prior order, the second sentence of the second paragraph should be amended to read: "Therefore, since the contracts presently bar a unilateral change in the terms and conditions, we will reject the filing under section 205 as to those issues."

With respect to the Anadarko, further review of their contract with PSCO persuades us that Mobile-Sierra[1] is not a bar to PSCO's proposed rate increase in this instance. Therefore, we will amend our prior order by dismissing the section 206 proceeding as to the rates charged Anadarko, accepting PSCO's application as to Anadarko under section 205, suspending the rates requested until January 1, 1974, and consolidating the proceeding with the section 205 hearing previously ordered in this docket.

We also find that the contract between PSCO and the City of Marlow bars a unilateral rate increase filing under the limitations of Mobile-Sierra. PSCO in this instance is prohibited not only from unilaterally changing terms and conditions, but also from unilaterally increasing rates. Accordingly, we will reject PSCO's filing under section 205 as to Marlow (FPC Rate Schedule No. 185), but we will institute a section 206 proceeding as to the rates, terms and conditions applicable to Marlow and consolidate the proceeding with the one initiated in our July 30, 1973, order in this docket.

The Commission orders. (A) Paragraph 3 of the Commission's findings in the July 30, 1973, order (mimeo p. 4) are amended to read:

"The motion to reject should be granted as to the terms and conditions of service reflected in PSCO's filing. The motion to reject should also be granted with regard to the proposed rates to be charged the City of Pawhuska and the City of Marlow. In all other respects, the motion to reject should be denied."

(B) Paragraph 4 of the Commission's findings in the order of July 30, 1973, (mimeo p. 4) are amended to read:

"Good cause exists to institute a proceeding under section 206 as to the terms and conditions of service proposed by PSCO's filing and with respect to the rates proposed to be charged the City of Pawhuska and the City of Marlow."

(C) Ordering paragraph A of the July 30, 1973 order (mimeo p. 4) in this docket is amended as follows:

"PSCO's proposed rate increase for its FPC Rate Schedule Nos. 163, 168–171, 173, 177–179, and 182 is accepted for filing under section 205 of the Federal Power Act. PSCO's proposed rate increase for its FPC Rate Schedule Nos. 176 (Pawhuska) and 185 (Marlow) is rejected. PSCO's filing for changes of terms and conditions in service to all affected customers is rejected under section 205 and an investigation under section 206 is initiated as to the proposed changes in terms and conditions of service in the contracts between PSCO and its customers mentioned herein. An investigation under section 206 is also initiated with respect to the rates proposed to be charged the City of Pawhuska and the City of Marlow. Pending a hearing and decision, thereon, the proposed rates are hereby suspended and the use thereof deferred until January 1, 1974, or until such time as they are made effective in the manner provided in the Federal Power Act. Increased rates and charges collected after January 1, 1974, and found by the Commission in this proceeding to be unjustified, shall be refunded according to the Commission's regulations.

(D) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16837 Filed 8-14-73;8:45 am]

[1] United Gas Pipe Line Co. v. Mobile Service Corp., 350 U.S. 332 (1956); F.P.C. v. Sierra Pacific Power Co., 350, U.S. 348 (1956).

[Docket No. E-8157]

WISCONSIN PUBLIC SERVICE CORP.

Notice of Filing of Revised Fuel Clause

AUGUST 8, 1973.

Take notice that on July 20, 1973, Wisconsin Public Service Corporation (WPS) tendered for filing a revised fuel clause pursuant to the Commission's order issued June 26, 1973, in this docket, wherein the Commission directed WPS to file within 30 days of the date of the issuance of the order a fuel clause in conformance with Opinion No. 633. The proposed revision is 5th Revised Sheet No. 1, Volume No. 1 of Schedule W-1.

Any person desiring to be heard or to protest said filing should file comments or protests with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such comments or protests should be filed on or before August 20, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-16843 Filed 8-14-73;8:45 am]

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

FREEMAN COAL MINING CO.

Application for Renewal Permit; Notice of Opportunity for Public Hearing

Application for Renewal Permit for Noncompliance with the Interim Mandatory Dust Standard (2.0 mg/m³) has been received as follows:

ICP Docket No. 20179, FREEMAN COAL MINING COMPANY, Orient No. 3 Mine, USBM ID No. 11 00600 0, Waltonville, Illinois,
Section ID No. 048 (1 South 2nd Main East),
Section ID No. 045 (33 North West North),
Section ID No. 017 (Main North (2nd Main East),
Section ID No. 043 (6 West Main North),
Section ID No. 009 (East North Chain Pillars),
Section ID No. 049 (15 West Main South),
Section ID No. 040 (8 West Main North),
Section ID No. 041 (32 North West North),
Section ID No. 047 (14 West Main South),
Section ID No. 025 (Main West North),
Section ID No. 042 (7 West Main North),
Section ID No. 039 (13 West Main South),
Section ID No. 044 (3 South 13 East),
Section ID No. 046 (2 Main West North).

In accordance with the provisions of Section 202(b)(4) (30 U.S.C. 842(b)(4)) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearings as to an application for renewal may be filed on or before August 27, 1973. Requests for public hearing must be filed in accordance with 30 CFR Part 505 (35 FR 11296, July 15, 1970), as amended, copies of which may be obtained from the Panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Room 800, 1730 K Street, NW., Washington, D.C. 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

AUGUST 10, 1973.

[FR Doc.73-16915 Filed 8-14-73;8:45 am]

PEABODY COAL CO.

Application for Renewal Permit; Opportunity for Public Hearing

Application for Renewal Permit for Noncompliance with the Interim Mandatory Dust Standard (2.0 mg/m³) has been received as follows:

ICP Docket No. 20247, PEABODY COAL COMPANY,
Mine No. 10, USBM ID No. 1100535 0,
Pawnee, Illinois,
Section ID No. 001 (3W-MN),
Section ID No. 046 (1E-1S-5-1/2W-MC),
Section ID No. 059 (5W-5-1/2W-MS),
Section ID No. 060 (7S-3W-MN),
Section ID No. 062 (2W-1N-4W-MN),
Section ID No. 063 (2E-1N-4W-MN),
Section ID No. 064 (10W-1S-5-1/2W-MS),
Section ID No. 065 (6E-1S-5W-5-1/2W-MS),
Section ID No. 066 (3E-1N-4W-MN),
Section ID No. 068 (3N-1E-1S-5-1/2W-MS).

In accordance with the provisions of section 202(b)(4) (30 U.S.C. 842(b)(4)) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be filed in accordance with 30 CFR Part 505 (35 FR 11296, July 15, 1970), as amended, copies of which may be obtained from the Panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim

Compliance Panel, Room 800, 1730 K Street, NW., Washington, D.C. 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

AUGUST 10, 1973.

[FR Doc.73-16878 Filed 8-14-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[812-3467]

FUNDAMERICA OF JAPAN, INC.

Application for Order

AUGUST 9, 1973.

Notice is hereby given that Fundamerica of Japan, Inc. (the "Fund"), 530 Fifth Avenue, New York, NY 10036, registered as a diversified, open-end management investment company under the Investment Company Act of 1940 ("the Act"), has filed an application pursuant to section 6(c) of the Act for exemption from section 22(d) of the Act and Rule 22c-1 under the Act to permit public offerings of Fund shares in Japan to non-United States nationals at public offering prices which may differ from those described in the prospectus of the Fund used in the United States. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

The Fund, a corporation organized under the laws of Delaware, makes continuous offerings of its mutual fund shares in both Japan and the United States. The Japanese general distributors for the continuous offerings are the Nomura Securities Co., Ltd. ("Nomura"), and Merrill Lynch, Pierce, Fenner and Smith, S.A. (Tokyo Branch) ("Merrill Lynch SA"). The distribution agreement between the Fund and the Japanese general distributors also contemplates block offerings of the Fund's shares in Japan. Under this arrangement, Nomura and Merrill Lynch SA, without existing orders from investors, would purchase a fixed number of shares from the Fund at a price determined in the manner described hereinafter and then resell such shares to investors.

Section 22(d) of the Act requires, in substance, that the securities of a registered investment company may be sold to the public only at the current public offering price described in the prospectus of the company.

Rule 22c-1 provides, in pertinent part, that a redeemable security must be sold at a price based on the current net asset value of the security which is next computed after receipt of an order to purchase such security.

The Fund seeks an order, pursuant to section 6(c) of the 1940 Act, exempting it, and sales of its shares in Japan to non-United States nationals in proposed block offerings, from the provisions of section 22(d) of the Act and Rule 22c-1 under the Act to the extent that these provisions would prevent such sales at prices which, though described in block offering prospectuses, would be other than the current offering prices described in the prospectuses used in respect to the continuous offering of the Fund's shares in the United States and Japan, and at prices which would be based on net asset values determined prior to such sales to the public.

In each block offering of shares of the Fund in Japan, Nomura and Merrill Lynch SA would purchase shares from the Fund at the net asset value next computed in accordance with Rule 22c-1. Within a short period of time, generally expected to be no more than six business days, they would sell these shares in Japan solely to non-United States nationals. In accordance with Japanese marketing practices, the purchase price on resale would be the lesser of the price at which Nomura or Merrill Lynch SA purchased such shares from the Fund plus the applicable sales charge or the net asset value determined as of the close of the market on the day previous to the resale plus the applicable sales charge. To protect the Fund from large scale redemptions if a block offering should fail, shares not sold during the block offering period would not be redeemed by Nomura and Merrill Lynch SA but would be retained and sold in a subsequent continuous offering at the net asset value next to be determined. Nomura and Merrill Lynch SA plan to offer Fund shares in block offerings solely in the manner and at public offering prices determined in the manner described above. Because of the time normally required to obtain an exemption under the Act, the Fund is seeking an exemption from section 22(d) of the Act and Rule 22c-1 thereunder for any and all block offerings it may make in Japan in the manner previously described. The Fund states that such an exemption is necessary to enable it to compete effectively in Japanese capital markets.

Section 6(c) of the Act authorizes the Commission, upon application, to exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act and Rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

The Fund represents that the exemption of said proposal from the provisions of section 22(d) and Rule 22c-1 pursuant to section 6(c) is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than September 4, 1973, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-16933 Filed 8-14-73;8:45 am]

[File No. 500-1]

HOME-STAKE PRODUCTION CO.

Order Suspending Trading

AUGUST 8, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $2.50 par value, and all other securities of Home-Stake Production Company being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from 10 a.m. (e.d.t.) August 8, 1973 through August 17, 1973.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-16937 Filed 8-14-73;8:45 am]

[File No. 500-1]

KENT INDUSTRIES, INC.

Order Suspending Trading

AUGUST 8, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $.10 par value, and all other securities of Kent Industries, Inc. being

traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from 10 a.m. (e.d.t.) on August 8, 1973 and continuing through August 17, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-16935 Filed 8-14-73;8:45 am]

[File No. 500-1]

KORACORP INDUSTRIES, INC.

Order Suspending Trading

AUGUST 8, 1973.

The common stock, $1 par value, of Koracorp Industries, Incorporated, being traded on the New York Stock Exchange and the Pacific Coast Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Koracorp Industries, Incorporated being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from 10 a.m. (e.d.t.) August 8, 1973 through midnight (e.d.t.) Auugst 17, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-16938 Filed 8-14-73;8:45 am]

[File No. 500-1]

M S I CORP.

Order Suspending Trading

AUGUST 8, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $.25 par value, and all other securities of M S I Corporation being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from 10 a.m. (e.d.t.) on August 8, 1973 and continuing through August 17, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-16939 Filed 8-14-73;8:45 am]

[File No. 500-1]

SILVER EXPLORATION, INC.

Order Suspending Trading

AUGUST 8, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $.01 par value, and all other securities of Silver Exploration, Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from 10 a.m. (e.d.t.) August 8, 1973 through August 17, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-16936 Filed 8-14-73;8:45 am]

[812-3478]

GNMA MORTGAGE-BACKED SECURITY FUND, SERIES 1, ET AL.

Filing of Application for Exemption and Confidential Treatment

AUGUST 9, 1973.

In the matter of the GNMA Mortgage-Backed Security Fund, Series 1 (And subsequent series); Paine, Webber, Jackson & Curtis Inc., 140 Broadway, New York, NY 10005; Dean Witter & Co. Inc. 45 Montgomery St., San Francisco, CA 94106; Reynolds Securities Inc., 120 Broadway, New York, NY 10005.

Notice is hereby given that The GNMA Mortgage-backed Security Fund, Series 1 ("Fund"), registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, and its sponsors, Paine, Webber, Jackson & Curtis Incorporated, Dean Witter & Co. Incorporated and Reynolds Securities Inc. ("Sponsors") (hereinafter collectively referred to as "Applicants") have filed an application pursuant to section 6(c) of the Act for an order exempting the Fund from the provisions of section 14(a) of the Act and exempting the frequency of the Fund's capital gains distributions and the secondary market operations of the Sponsors from Rules 19b-1 and 22c-1, respectively, under the Act, and pursuant to section 45(a) of the Act granting confidential treatment to profit and loss statements supplied by the Sponsors in connection with certain registration statements filed with the Commission from time to time.

All interested persons are referred to the application on file with the Commission for a statement of Applicants' representations contained therein, which are summarized below.

The exemptive order is requested for Series 1 and subsequent funds sponsored by the Sponsors and meeting the description of such Funds in the application. The Fund, Series 1 and each future Fund will be governed by a trust agreement for that Fund (hereinafter called the "Trust Agreement") under which the Sponsors will act as such and United States Trust Company of New York will act as Trustee and Evaluator. The Trust Agreement for each Fund will contain standard terms and conditions of trust common to all Funds. Pursuant to the Trust Agreement, the Sponsors will deposit with the Trustee not less than $5,000,000 principal amount of underlying Mortgage-backed Securities (hereinafter called the "Securities") which the Sponsors shall have accumulated for such purpose. Simultaneously with such deposit the Trustee will deliver to the Sponsors registered certificates for not less than 5,000 Units, which will represent the entire ownership of the Fund. These Units are in turn to be offered for sale to the public by the Sponsors.

It shall be noted that the Securities will not be pledged or be in any other way subjected to any debt at any time after the Securities are deposited in the Fund. All of the Securities will be GNMA Mortgage-backed Securities the principal and interest on which is guaranteed as to payment by the Government National Mortgage Association. The Sponsors have accumulated the Securities for the purpose of deposit in Series 1 of the Fund and will follow a similar procedure of accumulating the Securities for each future Fund. In selecting the Securities, the following factors are considered: (1) The variety of mortgage-backed securities available, (2) the price of the Securities relative to other comparable mortgage-backed securities, (3) maturities of such Securities, (4) the issuers of such Securities and (5) the location of the mortgaged properites collateralizing such Securities.

Each Fund will consist of the underlying Securities, such mortgage-backed securities as may continue to be held from time to time in exchange or substitution for any of the Securities upon certain refundings, accrued and undistributed interest and undistributed cash. Certain of the Securities may from time to time be sold under circumstances set forth in the Trust Agreement or may be redeemed or may mature in accordance with their terms. The proceeds from such dispositions will be distributed to holders of units ("Units") of the Fund and not reinvested. There is no provision in the Trust Agreement for Series 1 of the Fund, and there will be no provision in the Trust Agreement for any future Series, for the sale and reinvestment of the Securities, and such activity will not take place. Reference is made to the Trust Agreement and to the Prospectus

for the Fund for a full explanation of the operation of the Funds.

Each Unit for a particular Fund will represent a fractional undivided interest in that Fund. The numerator of the fractional undivided interest represented will be 1 and the denominator will be equal to the number of Units then outstanding in the Fund. Units of each Fund will be redeemable. In the event that any Units shall be redeemed, the denominator of the fraction will be reduced and the fractional undivided interest represented by such Unit increased. Units will remain outstanding until redeemed or until the termination of the Trust Agreement. The Trust Agreement may be terminated by 100% agreement of the Unit-holders of the Fund, or, in the event that the value of the Securities shall fall below 20 percent of the principal amount of Securities originally deposited in the Fund, upon direction of the Sponsors to the Trustee and shall be automatically terminated on a date 50 years after the date of its creation. There is no provision in the Trust Agreement for Series 1 of the Fund and there will be no provision in the Trust Agreements for future Funds, for the issuance of any Units after the initial offering of Units (except that the secondary trading by the Sponsors in the Units is deemed the issuance of Units under the Act) and such activity will not take place.

Following the deposit of Securities for each Fund by the Sponsors with the Trustee, and following the declaration of effectiveness of that Fund's registration statement under the Securities Act of 1933 and clearance by the securities authorities of various States, the Sponsors will offer the Units of that Fund to the public at the public offering price set forth in the Prospectus, plus accrued interest.

While not obligated to do so, the Sponsors intend to maintain a market for the Units of Series of Fund and continually offer to purchase such Units at prices based on the aggregate of the then current offering prices of the Securities in the Fund. If the supply of Units exceeds demand, or for some other business reason, the Sponsors may discontinue purchases of Units at prices based on the offering prices of the Securities. In this event the Sponsors may nonetheless purchase Units, as a service to Unitholders, at a price based on the then current redemption value of those Units. In no event will the price offered by the Sponsors for repurchase of Units be less than the then current redemption value, based on the current bid prices for the Securities in the Fund.

Section 14(a). Section 14(a) of the Act requires that a registered investment company (a) have a net worth of at least $100,000 prior to making a public offering of its securities, (b) have previously made a public offering and at that time have had a net worth of $100,000 or (c) have made arrangements for at least $100,000 to be paid in by 25 or fewer persons before acceptance of public subscriptions.

On the Date of Deposit of the portfolio Securities for Series 1 of the Fund, and before any Unit of that Series is offered to the public, the application asserts that the Fund will have a net worth of at least $5 million represented by the market value of the Securities deposited with the Trustee on that date. While the size of the portfolios of future Funds has not been established, the Sponsors anticipate that in no event would the portfolio of any Fund be less than $5 million.

In connection with this request for exemption, the Sponsors have agreed that they will refund on demand and without deduction, all sales charges to purchasers of Units of a Fund if, within 90 days from the time when that Fund becomes effective under the Securities Act, the net worth of the Fund shall be reduced to less than $100,000 or if the Fund shall have been terminated. The Sponsors further agree to instruct the Trustee on the Date of Deposit of each Fund that in the event redemption by the Sponsors of Units constituting a part of the unsold Units shall result in that Fund having a net worth of less than $5 million, the Trustee shall terminate the Fund in the manner provided in the Trust Agreement and distribute all Securities and other assets deposited with the Trustee pursuant to the Trust Agreement as provided therein. The Sponsors further agree, in such event, to refund any sales charges to any purchaser of Units purchased from the Sponsors or any dealer participating in the underwriting on demand and without deduction.

Rule 22c–1. The application also seeks an order pursuant to Section 6(c) of the Act exempting the secondary market operations of Applicant's Sponsors from the provisions of Rule 22c–1 under the Act. The Sponsors propose to adopt the practice of valuing the Fund's Units, for repurchase and resale by the Sponsors in the secondary market, at prices computed once a week as of the close of business on the last business day of the week, effective for all transactions made during the following week. The evaluation is to be made by Applicant's Trustee and Evaluator, United States Trust Company of New York.

Rule 22c–1 provides, in part, that redeemable securities of registered investment companies must be sold, redeemed or repurchased at a price based on the current net asset value (computed on each day during which the New York Stock Exchange is open for trading not less frequently than once daily as of the time of the close of trading on such Exchange) which is next computed after receipt of a tender of such security for redemption or of an order to repurchase or sell such security.

Applicants assert that the pricing by the Sponsors in the secondary market in no way affects the Fund's assets, and that Unitholders benefit from such pricing procedure by receiving a normally higher repurchase price for their Units without the cost burden of daily evaluations of the Unit redemption value. In addition, the application states that the Sponsors have undertaken to adopt a procedure whereby the Evaluator, without a formal evaluation, will provide estimated evaluations on trading days. In the case of a purchase by the Sponsors, if the Evaluator cannot state that the previous Friday's offering side evaluation is at least equal to the current bid side evaluation, the Sponsors will order a new offering side evaluation for the purpose of such purchase. Also, in the case of such a purchase, if the Evaluator cannot state that the previous Friday's offering side evaluation, to be paid to a Unitholder, is no more than one-half point lower than the current offering side evaluation, a full evaluation will be ordered to determine the current offering side evaluation to be paid the Unitholder. In the case of sale by the Sponsors, if the Evaluator cannot state that the previous Friday's offering side evaluation is no more than one-half point ($5 on the purchase of a unit representing approximately $1,000 face amount of underlying Securities) greater than the current offering side evaluation, a full evaluation will be ordered. Applicants assert that this procedure will minimize the risk to the selling Unitholders of the Units without imposing the expense of daily evaluations upon the Fund's investors.

Rule 19b–1. Rule 19b–1(a) under the Act provides, in substance, that no registered investment company which is a "regulated investment company" as defined in Section 851 of the Internal Revenue Code shall distribute more than one capital gain distribution in any one taxable year. Paragraph (b) of the Rule contains a similar prohibition for a company not a "regulated investment company" but permits a unit investment trust to distribute capital gain distributions received from a "regulated investment company" within a reasonable time after receipt.

Distributions of principal and interest to Unitholders of the Fund are to be made on a monthly basis. Distributions of principal constituting capital gains to Unitholders may arise in two instances: (1) Prepayment of mortgages underlying the Securities in the Fund, including prepayment penalties; and (2) if Units redeemed by the Trustee and Securities from the portfolio are sold to provide the funds necessary for such redemption each Unitholder will receive his pro-rata portion of the proceeds from the Securities sold. In such instances, a Unitholder may receive in his distribution funds which constitute capital gains since in many cases the value of the portfolio Securities redeemed or sold will have increased since the date of initial deposit.

Paragraph (b) of Rule 19b–1 provides that a unit investment trust may distribute capital gains received from a "regulated investment company" within a reasonable time after receipt. Applicants state that the purpose of this provision is to avoid forcing unit investment trusts to accumulate valid distributions received throughout the year and distribute them only at year end. Applicants

contend that their situation is within the intended objectives of this provision. However, in order to comply with the literal requirements of the Rule, a Fund would be forced to hold any moneys which would constitute capital gains upon distribution until the end of its taxable year. Applicants also contend that such a practice would clearly be to the detriment of the Unitholders.

In support of the requested exemption, the application states that the dangers against which Rule 19b–1 is intended to guard do not exist in Applicants' situation since the events which give rise to capital gains are independent of any action by the Sponsors and the Trustee. In addition, it is alleged that the amounts involved in a normal distribution of principal are relatively small in comparison to the normal interest distribution, at least during the early years of the Fund and dependent upon the amortization schedule of the underlying Securities, and such distributions are clearly indicated in accompanying reports to Unitholders as a return of principal.

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of the Act or of any rules or regulations under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 45(a). Applicants also seek an order of the Commission pursuant to section 45(a) of the Act granting confidential treatment to the profit and loss statements of the Sponsors, submitted in connection with registration statements of Fund, Series 1 and Subsequent Funds, filed with the Commission from time to time.

Section 45(a) of the Act provides in pertinent part that information filed with the Commission "shall be made available to the public, unless and except insofar as the Commission * * * by order upon application, finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors."

Applicants submit that public disclosure of the Sponsors' profit and loss statements is neither necessary nor appropriate in the public interest or for the protection of investors. Investors in the Fund are not offered an opportunity to acquire any interest whatsoever in the Sponsors. Apart from the Sponsors' minimal obligation under the Trust Agreements to designate Securities for liquidation bythe Trustee to the extent necessary to provide funds for redemption (which obligation may be performed by the Trustee or successor Sponsors if not performed by the Sponsors), and certain other contingent supervisory responsibilities, the Sponsors have virtually no discretionary authority relating to the management of the Fund. Applicant states that the Sponsors thus function primarily as underwriters of the Fund. Applicants assert that there is no legitimate interest on the part of investors in the public disclosure of the profit and loss statements of the Sponsors acting as underwriters from whom the Units are purchased.

In addition, Applicants submit that to the extent that the Sponsors' solvency may conveivably be thought relevant to the maintenance of the secondary market, the Sponsors' financial information which appears in the prospectus, contains adequate information in this regard. Moreover, there is clear disclosure in the prospectus of the Sponsors' right to terminate secondary market activities in a Fund at any time. Even in the absence of a secondary market, Unitholders nevertheless retain the protection of their right under the Trust Agreements to the redemption of their Units upon presentation of such Units to the Trustee. Upon such redemption, the Unitholders receive cash equal to the "Unit Value" of the Units computed with regard to the underlying assets of the Fund. The soundness of the investors' interests in the Funds, it is stated, is solely a function of the value of the underlying Securities, the payment of principal of and interest on which is guaranteed by Government National Mortgage Association. Applicants thus represent that the profitability of the Sponsors will in no way enhance or diminish the prospect for an orderly payment of the underlying Securities.

Notice is further given, that any interested person may, not later than August 28, 1973, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the addresses stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73–16934 Filed 8–14–73;8:45 am]

SELECTIVE SERVICE SYSTEM

REGISTRANTS PROCESSING MANUAL

Publication of Certain Provisions

The Registrants Processing Manual is an internal manual of the Selective Service System. The following portions of that Manual are considered to be of sufficient interest to warrant publication in the FEDERAL REGISTER. Therefore these materials are set forth in full as follows:

CHAPTER 623 (Rev. AUG 10, 1973)

CLASSIFICATION PROCEDURE

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CHAPTER 623

CLASSIFICATION PROCEDURE

SECTION 623.1

Commencement of Classification

1. Each registrant shall be administratively assigned to Class 1–H as of the time of his registration and thereafter shall have his classification reopened and considered anew by his local board whenever:

a. His random sequence number (RSN) is equal to or below the administrative processing number (APN) established by the Director of Selective Service for his year-of-birth group, or

b. The local board receives new information which would qualify him for a classification lower than 1–H.

2. The registrant's classification shall be determined on the basis of the official forms of the Selective Service System and other written information in his file, oral statements by the registrant at his personal appearance before the local board, appeal board, or National Selective Service Appeal Board, and oral statements by the registrant's witnesses at his personal appearance before the local board.

No written summary of the oral information presented at a registrant's personal appearance that was prepared by a member of the local board or compensated employee of the Selective Service System will be considered by the local board or placed in the registrant's file folder unless a copy of it has been furnished to the registrant. No information in any other document in the registrant's file shall be considered in classifying the registrant into a class available for military or alternate service unless that docu-

ment was supplied by the registrant or a copy of it or a fair resume of its contents has been furnished him by the Selective Service System.

SECTION 623.2

Consideration of Classes

Every registrant other than a registrant eligible for classification in Class 1–AM shall be placed in Class 1–A; except that when grounds are established to place a registrant in any one of the classes listed in the following table, the registrant shall be classified in the lowest class for which he is determined to be eligible, with Class 1–A–O considered the highest class and Class 4–A considered the lowest class:

Class 1–A–O	*Class 4–C*
1–A–OM	4–D
1–O	1–H
1–OM	4–G
2–AM	4–F
2–S	4–W
2–D	1–D
2–M	1–W
3–A	1–C
4–B	4–A

SECTION 623.3

Action to be Taken When Classification Determined

1. Within ten working days after the local board has classified or reclassified a registrant (except a registrant who is classified in Class 1–C because of his entry into active service in the armed forces, or in Class 1–W because of his entry into alternate service), it shall mail him a Status Card (SSS Form 7). When a registrant is classified in Class 2–AM, 2–S, 2–D, 2–M, or 3–A, the date of termination of the deferment shall be entered on the Status Card. When mailing a Status Card to a registrant classified in Class 1–O, the local board shall include a Conscientious Objector Skills Questionnaire (SSS Form 152) together with a return envelope preaddressed to the local board.

2. The effective date of the classification, the class, and the date of termination if applicable, will be entered on page 1 of the Registrant File Folder (SSS Form 101). The date of classification, the class, the vote, and the date of mailing the Status Card, will be entered on page 8 of the Classification Questionnaire (SSS Form 100), if present in the file folder, or on page 2 of the Registrant File Folder. The class and the date of mailing of the Status Card will also be entered on the Classification Record (SSS Form 102).

3. A notice of all classification actions, including administrative assignments to Class 1–H, for each local board will be posted in a conspicuous place in the local board office for a period of 60 days. The posting requirement for administrative assignments to Class 1–H will be met by use of the administrative assignment to Class 1–H section of the latest RIB output report, *List of Classifications*, (LOC), a copy of which should be posted on the local board bulletin board as soon as practicable following verification. For showing all classifications resulting from local board action, the Minutes of Local Board Meeting Continuation Sheet (SSS Form 112–A) will be used and the third copy of this form will be posted on the local board bulletin board together with the copy of the administrative assignment to Class 1–H section of the most current LOC. Minutes of Local Board Meeting Continuation Sheet should be posted as soon as prepared following the local board meeting.

4. When a person is unable to ascertain the current classification of a specific registrant from these posted notices, an employee of the local board, upon request, shall consult the Classification Record and shall furnish the person making the inquiry the current classification of such registrant.

5. In the event the local board classifies a registrant in a class other than that which he requested, it shall record its reasons on a Report of Information (SSS Form 119) which shall be prepared in an an original and one copy and signed by a local board member or compensated employee who was present at the meeting at which the registrant was classified, and the copy filed in the registrant's file. The local board shall inform the registrant of such reasons at the time it mails him a Status Card by enclosing the original of the Report of Information. (Sample letter for this purpose is Attachment 623–1 to this Chapter).

SECTION 623.4

Issuing a Replacement Status Card (SSS Form 7)

The Status Card shall be issued to a registrant by the local board with which he is registered, upon his written request, as a replacement for the Registration Certificate, the Notice of Classification, or the Status Card, which has been lost, destroyed, mislaid, stolen, or surrendered to the armed forces upon his entry on active duty. (See Chapter 613)

SECTION 623.5

Registrants Transferred for Classification

1. After completing the Registration Card (SSS Form 1), and before the local board of record (the registrant's own local board) has undertaken the classification of a registrant, other than his initial assignment into Class 1–H, he may be transferred to another local board by the State Director for classification if he is so far from his local board as to make complying with notices a hardship.

2. After completing the Registration Card, a registrant may be transferred to another local board by the Director or State Director for classification at any time (1) when the local board cannot act on his case because of disqualification, or (2) when a majority of the members of the local board, or a majority of the members of every panel thereof if the board has separate panels, withdraws from consideration of the registrant's classification because of any conflicting interest, bias, or other reason, or (3) when the State Director deems such transfer to be necessary in order to assure equitable administration of the selective service law.

SECTION 623.6

Procedure Upon Transfer for Classification

1. The local board from which the registrant is transferred shall prepare, in triplicate, an Order for Transfer for Classification (SSS Form 114), shall send one copy thereof to the registrant, and shall transmit the original to the local board to which the registrant is transferred, together with all papers pertaining to the registrant except the Registration Card and the remaining copy of the Order for Transfer for Classification. The local board from which the registrant is transferred shall, with red ink, note the transfer in the "Remarks" column of the Classification Record.

2. The local board to which the registrant is transferred shall classify the registrant. It shall follow the same procedure as in the case of one of its own registrants if a request for a personal appearance, a request for reopening, or an appeal is filed. It shall give the same notices and maintain the same records as are sent and maintained for its own registrants, except that it shall use a separate page in its Classification Record for transferred registrants and shall make all entries on that page in red ink. The local board to which the registrant is transferred shall prepare a duplicate Registrant File Folder. After the classification, after the personal appearance, when requested, and after the determination on appeal, when taken, the local board to which the registrant is transferred shall return to the local board of record all papers pertaining to the registrant except the duplicate Registrant File Folder and the Order for Transfer for Classification, and file the duplicate Registrant File Folder as instructed in Section 603.1. In the proper column of the Classification Record the local board to which the registrant is transferred shall note the date of the returning of the papers.

3. The classification made by the local board to which a registrant is transferred shall be appealed through that local board only. The local board of record shall accept and enter on the Classification Record and the Minutes of Local Board Meeting (SSS Form 112), without any change, the classification reported by the board which classified the registrant. If the local board of record receives new information that might affect the registrant's classification, the board shall send the information and the registrant's file to the board to which he was transferred, for further consideration; provided, that if the reason for the disqualification of the local board or other reason for the original transfer for classification no longer exists, the local board of record may consider the new information and classify the registrant in the same manner as if he had never been transferred for classification.

SAMPLE LETTER REGARDING DENIAL OF REQUESTED CLASSIFICATION AND REASONS THEREFOR

(Local Board Stamp)

TO:---------- ----------
Date of Mailing

SSN:----------
Dear----------,

This is to advise you that the classification you requested has been denied by the local board. A new Status Card (SSS Form 7) reflecting your classification is enclosed.

The reason(s) for denial of the requested classification is set forth on the enclosed Report of Information (SSS Form 119) which you may wish to retain for your personal records.

Authorized Signature

Enclosure(s)

CHAPTER 612 (REV. AUG. 10, 1973)

DUTIES IN REGISTRATION

INDEX

CHAPTER 612

DUTIES IN REGISTRATION

SECTION 612.1

Responsibility of State Director of Selective Service

The State Director of Selective Service shall supervise the registration processes within his state. Each State Director of Selective Service may, with the approval of the Director of Selective Service, make such modifications of the procedures contained in this chapter as may be necessary in order to properly effect a complete registration.

SECTION 612.2

Registrars

1. Any member of a local board or compensated employee of the Selective Service System may perform the duties of registrar without special appointment. The State Director shall appoint as registrar within his state responsible persons whose services can be secured without compensation. Officers assigned to Selective Service Reserve Units and National Guard Sections are not compensated employees of the System (except during periods of active duty), but may be appointed by the State Director to serve as registrars. When the services of registrars cannot be secured without compensation, the State Director of Selective Service, with the approval of the Director of Selective Service, may appoint registrars on a compensated basis. Compensated employees of the Selective Service System shall serve as registrars whenever possible in lieu of appointing other persons as registrars to serve with compensation.

2. Each person appointed as an uncompensated registrar shall execute an Oath of Office and Waiver of Pay (SSS Form 400) before undertaking any duties as registrar.

3. For each place of registration having more than one appointed registrar, the State Director shall designate a chief registrar who shall be responsible for the proper conduct of the registration at each such place.

4. The State Director shall be responsible for the training of registrars in their duties, including familiarization with the regulations and procedures governing registration.

SECTION 612.3

Responsibilities of the Local Board

1. The State Director of Selective Service may authorize a local board to supervise one or more registrars in its area of jurisdiction or the State Director may retain this supervisory function.

2. The State Director may designate a local board to furnish registration forms and supplies to individual registrars. These forms and supplies will include: SSS Forms 1, 4, 119, instruction sheet for preparing SSS Form 1, Registrar's Handbook, pre-addressed envelopes, ballpoint pens, posters and brochures.

3. No expense shall be incurred in connection with the registration except upon the prior approval of the State Director of Selective Service.

SECTION 612.4

Interpreters

Whenever the services of interpreters are necessary in conducting the registration, the local board may utilize such interpreters as may be required.

SECTION 612.5

Care and Custody of Registration Cards, Status Cards and Notices of Classification

The chairman of the local board is charged with the care and custody of the Registration Cards (SSS Form 1), Status Cards (SSS Form 7), and Notices of Classification (SSS Form 110), where appropriate, received by him from the State Director of Selective Service. He shall guard against their loss or destruction and shall not permit anyone to tamper with them and shall warn all persons concerned against entrusting them to the custody of unauthorized persons.

BYRON V. PEPITONE,
Director.

AUGUST 9, 1973.

[FR Doc.73-16990 Filed 8-14-73;8:45 am]

TARIFF COMMISSION

[337-33]

CERTAIN DISPOSABLE CATHETERS AND CUFFS THEREFOR

Notice of Investigation and Hearing

A complaint was filed with the U.S. Tariff Commission on June 30, 1972, on behalf of Multi-Med Industries, Inc., Southfield, Michigan, and Martin Mattler, Franklin, Michigan, alleging unfair methods of competition and unfair acts in the importation and sale of certain disposable catheters and cuffs therefor which are embraced within the claims of U.S. Patent No. 3,417,753. Complainant alleges that the effect or tendency of the unfair methods or acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States in violation of the provisions of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The complaint names E-Z-EM Company, Inc., Westbury, New York, as an importer of the subject products. Having conducted, in accordance with § 203.3 of the Commission's rules of practice and procedure (19 CFR 203.3), a preliminary inquiry with respect to the matters alleged in the said complaint, the U.S. Tariff Commission, on August 8, 1973, ordered:

That, for the purposes of section 337 of the Tariff Act of 1930, an investigation be instituted with respect to the alleged violations in the importation and sale in the United States of certain disposable catheters and cuffs therefor made in accordance with the claims of U.S. Patent No. 3,417,753; and that a public hearing be held.

The Commission decided not to recommend at this time that the President issue a temporary exclusion order.

The public hearing will be held on October 9, 1973, at 10 a.m., e.d.t., in the Hearing Room, U.S. Tariff Commission Building, Eighth and E Streets, NW., Washington, D.C. All parties concerned will be afforded an opportunity to be present, to produce evidence, and to be heard concerning the subject matter of the investigation. Interested parties desiring to appear and give testimony at the hearing should notify the Secretary of the Commission in writing at least 5 days in advance of the opening of the hearing.

Public notice of the receipt of the complaint and initiation of the preliminary inquiry was published in the FEDERAL REGISTER on July 13, 1972 (37 FR 13733). Notice of an extension of time for filing written views and expansion of scope of the preliminary inquiry was published in the FEDERAL REGISTER on August 31, 1972 (37 FR 17785). The complaint was served upon the party named in the complaint and upon all known interested parties. The complaint has been available for inspection by interested persons continually since issuance of the notice, at the Office of the Secretary, located in the U.S. Tariff Commission Building, and also in the New York City office of the Commission, located in Room 437 of the Customhouse.

Issued: August 9, 1973.

By order of the Commission.

[SEAL] G. PATRICK HENRY,
Acting Secretary.

[FR Doc.73-16870 Filed 8-14-73;8:45 am]

DEPARTMENT OF LABOR

Office of the Secretary

GENERAL ELECTRIC CO.

Investigation Regarding Certification of Eligibility of Workers To Apply for Adjustment Assistance

After reviewing the Tariff Commission's report on its investigation of the petition for adjustment assistance filed on behalf of workers formerly employed at the Buffalo, N.Y. plant of General Electric Co., New York, N.Y. (TEA-W-196), under section 301(c)(2) of the Trade Expansion Act of 1962, and in which report the Commission being equally divided, made no finding with respect to transistors and diodes, the President decided, under the authority of section 330(d)(1) of the Tariff Act of 1930 as amended, to consider the findings of those Commissioners who found in the affirmative as the finding of the Commission. Accordingly, he has advised the Secretary of Labor that he may certify the group of workers involved as eligible to apply for adjustment assistance.

In view of the Tariff Commission's report, the President's authorization, and the responsibilities delegated to the Secretary of Labor under section 8 of the Executive Order 11075 (28 FR 473), the Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs, has instituted an investigation, as provided in 29 CFR 90.5 and this notice. The investigation relates to the determination of whether any of the group of workers covered by the Tariff Commission report should be certified as eligible to apply for adjustment assistance, provided for under Title III, Chapter 3, of the Trade Expansion Act of 1962, including the determination of related subsidiary subjects and matters, such as the date unemployment or underemployment began or threatened to begin and the subdivision of the firm involved to be specified in any certification to be made, as more specifically provided in subpart B of CFR, part 90.

Interested persons should submit written data, views, or arguments relating to the subjects of investigations to the Director, Office of Foreign Economic Policy, U.S. Department of Labor, Washington, D.C. 20210 on or before August 22, 1973.

Signed at Washington, D.C. this 8th day of August, 1973.

GLORIA G. VERNON,
Director, Office of Foreign Economic Policy.

[FR Doc.73-16997 Filed 8-14-73;8:45 am]

HUBBARD SHOE CO., INC.

Investigation Regarding Certification of Eligibility of Workers to Apply for Adjustment Assistance

The Department of Labor has received a Tariff Commission report containing an affirmative finding under Section 301 (c)(2) of the Trade Expansion Act of 1962 with respect to its investigation of a petition for determination of eligibility to apply for adjustment assistance filed on behalf of the former workers of the Hubbard Shoe Co., Inc., Rochester, N.H. (TEA–W–202). In view of the report and the responsibilities delegated to the Secretary of Labor under Section 8 of Executive Order 11075 (28 FR 473), the Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs, has instituted an investigation, as provided in 29 CFR 90.5 and this notice. The investigation relates to the determination of whether any of the group of workers covered by the Tariff Commission report should be certified as eligible to apply for adjustment assistance, provided for under Title III, Chapter 3, of the Trade Expansion Act of 1962, including the determination of related subsidiary subjects and matters, such as the date unemployment or underemployment began or threatened to begin and the subdivision of the firm involved to be specified in any certification to be made, as more specifically provided in Subpart B of 29 CFR Part 90.

Interested persons should submit written data, views or arguments relating to the subjects of investigation to the Director, Office of Foreign Economic Policy, U.S. Department of Labor, Washington, D.C. on or before August 22, 1973.

Signed at Washington, D.C. this 8th day of August 1973.

GLORIA G. VERNON,
Director, Office of Foreign Economic Policy.

[FR Doc.73-16998 Filed 8-14-73;8:45 am]

DEPARTMENT OF STATE

[Public Notice 396]

TREATIES AND OTHER INTERNATIONAL AGREEMENTS

Notice of Proposed Rulemaking

Consideration is being given by the Department of State to the revision of Chapter 700 of Volume 11 of the Foreign Affairs Manual.

The proposed revision is a codification of Department of State Circular 175 dated December 22, 1955, as amended and issued in Chapter 700 of Volume 11 of the Foreign Affairs Manual. The Foreign Affairs Manual (FAM) is an internal instruction for Department of State personnel. Chapter 700 of Volume 11 has heretofore been available for public inspection and copying in accordance with 5 U.S.C. 552(a)(2). However, revisions thereto have not previously been published for the information of the public and with an opportunity for public comment thereon. The proposed revision is being published because of the public interest in the manner in which treaties and other international agreements are entered into by the United States.

The current revision is a substantive one with respect to the sections regarding the constitutional bases on which treaties and other international agreements are entered into by the United States, the sections regarding consultation with the Congress, and with respect to sections calling upon all officers to cooperate in the application of the Case Act (1 U.S.C. 112(b)) which requires that all international agreements other than treaties be transmitted to the Congress within 60 days after they enter into force. Otherwise, the revision is merely a rearrangement of other existing sections with some editorial improvement.

The purpose of the revised procedures is to ensure (1) that orderly and uniform procedures are followed in the negotiation and signature of treaties and other international agreements; (2) that constitutional bases of authority are followed in the making of treaties and other international agreements by the United States; (3) that timely and otherwise appropriate consultation with the Congress is had with respect to the negotiation of international agreements and the procedure by which they are brought into force; and (4) that the laws regarding the transmission of international agreements other than treaties to the Congress and the publication of treaties and other international agreements are faithfully observed.

Interested persons are invited to submit written comments, or suggestions regarding the proposed revision to the Assistant Legal Adviser for Treaty Affairs, Office of the Legal Adviser, Room 5420, Department of State, Washington, D.C., 20520, not later than September 21, 1973.

700—TREATIES AND OTHER INTERNATIONAL AGREEMENTS

710 *Purpose.* a. The purpose of this chapter is to ensure that orderly and uniform procedures are followed in the negotiation, signature, publication and registration of treaties and other international agreements of the United States. It is also designed to ensure the maintenance of complete and accurate records on treaties and agreements and the publication of authoritative information concerning them.

b. The chapter is not a catalog of all the essential rules or information pertaining to the making and application of international agreements. It is limited to regulations necessary for general guidance.

720 NEGOTIATION AND SIGNATURE

720.1 *Circular 175 Procedure.* This subchapter is a codification of the substance of Department Circular No. 175, December 13, 1955, as amended, on the negotiation and signature of treaties and executive agreements. It may be referred to for convenience and continuity as the "Circular 175 Procedure."

720.2 *General Objectives.* The objectives are to ensure:

a. That the making of treaties and other international agreements for the United States is carried out within constitutional and other appropriate limits;

b. That the objectives to be sought in the negotiation of particular treaties and other international agreements are approved by the Secretary or an officer specifically authorized by him for that purpose;

c. That timely and appropriate consultation is had with congressional leaders and Committees on treaties and other international agreements;

d. That firm positions departing from authorized positions are not undertaken in negotiations without the approval of the Legal Adviser and the interested assistant secretaries or their deputies;

e. That the final texts developed are approved by the Legal Adviser and the interested assistant secretaries or their deputies and, when required, brought a reasonable time before signature to the attention of the Secretary or an officer specifically designated by him for that purpose;

f. That authorization to sign the final text is obtained and appropriate arrangements for signature are made;

g. That there is compliance with the requirements of the Case Act on the transmission of the texts of international agreements other than treaties to the Congress (see section 724); the law on the publication of treaties and other international agreements (see section 725) and treaty provisions on registration (see section 750.2–3).

721 EXERCISE OF THE INTERNATIONAL AGREEMENT POWER

721.1 *Determination of Type of Agreement.* The following principles, considerations, and procedures will be observed in determining whether an international agreement shall be dealt with by the United States as a treaty to be brought into force with the advice and consent of the Senate, or as an executive agreement to be brought into force on some other constitutional basis.

721.2 *Constitutional Requirements.* There are two procedures under the Constitution through which the United States becomes a party to international agreements. Those procedures and the constitutional parameters of each are:

(a) *Treaties:* International agreements (regardless of their title, designation or form) whose entry into force with respect to the United States takes place only after the Senate has given its advice and consent are "treaties". The President, with the advice and consent of two-thirds of the Senators present, may enter into an international agreement on any subject genuinely of concern in foreign relations so long as the agreement does not contravene the United States Constitution; and

(b) *Executive agreements:* International agreements brought into force with respect to the United States on a constitutional basis other than with the advice and consent of the Senate are "executive agreements" (international agreements other than treaties). There

are three constitutional bases for executive agreements as set forth below. An international agreement may be concluded pursuant to one or more of these constitutional bases:

(i) *Executive agreements pursuant to treaty:* The President may conclude an international agreement pursuant to a treaty brought into force with the advice and consent of the Senate, whose provisions constitute authorization for the agreement by the Executive without subsequent action by the Congress;

(ii) *Executive agreements pursuant to legislation:* The President may conclude an international agreement on the basis of existing legislation or subject to legislation to be enacted by the Congress; and

(iii) *Executive agreements pursuant to the constitutional authority of the President:* The President may conclude an international agreement on any subject within his constitutional authority so long as the agreement is not inconsistent with legislation enacted by the Congress in the exercise of its constitutional authority. The constitutional sources of authority for the President to conclude international agreements include:

(1) The President's authority as Chief Executive to represent the nation in foreign affairs;

(2) The President's authority to receive Ambassadors and other public ministers;

(3) The President's authority as "Commander-in-Chief";

(4) The President's authority to "take care that the laws be faithfully executed".

721.3 *Criteria for Selecting Among Constitutionally Authorized Procedures.* In determining a question as to the procedure which should be followed for any particular international agreement due consideration is given to the following factors along with those in section 721.2.

(a) *Domestic factors:* (i) Whether the agreement involves important interests, commitments or risks affecting the nation as a whole;

(ii) Whether the agreement would affect State laws or the powers reserved to the States under the Constitution;

(iii) Whether the agreement can be given effect without the enactment of subsequent legislation by the Congress;

(iv) Past United States practice with respect to similar agreements;

(v) The preference of the Congress with respect to a particular type of agreement.

(b) *International factors:* (i) The degree of formality desired for an agreement;

(ii) The proposed duration of the agreement, the need for prompt conclusion of an agreement and the desirability of concluding a routine or short term agreement;

(iii) The general international practice with respect to similar agreements.

In determining whether any international agreement should be brought into force as a treaty or as an executive agreement the utmost care shall be exercised to avoid any invasion or compromise of the constitutional powers of the Senate, the Congress as a whole, or the President.

721.4 *Questions as to Type of Agreement to be Used; Consultation with Congress.* (a) All legal memorandums accompanying Circular 175 requests (see section 722.3(c)(iii)) will discuss thoroughly the bases for the type of agreement recommended.

(b) When there is any question whether an international agreement should be concluded as a treaty or as an executive agreement, the matter is brought to the attention of the Legal Adviser of the Department. If the Legal Adviser considers the question to be a serious one, he will transmit a memorandum thereon to the Assistant Secretary for Congressional Relations and other officers concerned. Upon receiving their views on the subject he shall, if the matter has not been resolved, transmit a memorandum thereon to the Secretary for his decision. Every practicable effort will be made to identify such questions at the earliest possible date so that consultations may be completed in sufficient time to avoid last-minute consideration.

(c) Consultations on such questions will be held with congressional leaders and committees as may be appropriate. Arrangements for such consultations shall be made by the Assistant Secretary for Congressional Relations and shall be held with the assistance of the Office of the Legal Adviser and such other offices as may be determined. Nothing in this section shall be taken as derogating from the requirement of appropriate consultations with the Congress in accordance with section 723.1e in connection with the initiation of, and developments during, negotiations for international agreements, particularly where the agreements are of special interest to the Congress.

722 Action Required in Negotiation and/or Signature of Treaties and Agreements

722.1 *Authorization Required to Undertake Negotiations.* Negotiations of treaties, or executive agreements, or for their extension or revision are not to be undertaken, nor any exploratory discussions undertaken with representatives of another government, until authorized in writing by the Secretary or an officer specifically authorized by him for that purpose. Notification of termination of any treaty or executive agreement requires similar authorization.

722.2 *Scope of Authorization.* Approval of a request for authorization to negotiate a treaty or other international agreement does not constitute advance approval of the text nor authorization to agree upon a date for signature or to sign the treaty or agreement. Authorization to agree upon a given date for, and to proceed with, signature must be specifically requested in writing, as provided in section 722.3. This applies to treaties and other agreements to be signed abroad as well as those to be signed at Washington. Special instructions may be required, because of the special circumstances involved, with respect to multilateral conventions or agreements to be signed at international conferences.

722.3 *Request for Authorization to Negotiate and/or Sign; Action Memorandum.* (a) A request for authorization to negotiate and/or sign a treaty or other international agreement takes the form of an Action Memorandum addressed to the Secretary and cleared with the Office of the Legal Adviser, the Office of the Assistant Secretary for Congressional Relations, other appropriate bureaus, and any other agency (such as Defense, Commerce, etc.) which has primary responsibility or a substantial interest in the subject matter. It is submitted through the Executive Secretariat.

(b) The Action Memorandum may request one of the following: (i) authority to negotiate, (ii) authority to sign, or (iii) authority to negotiate and sign. The request in each instance states that any substantive changes in the draft text will be cleared with the Office of the Legal Adviser and other specified regional and/or functional bureaus before definitive agreement is reached. Drafting offices consult closely with the Office of the Legal Adviser to ensure that all legal requirements are met.

(c) The Action Memorandum is accompanied by (i) the draft, if available, of any agreement or other instrument intended to be negotiated, (ii) the text of any agreement and related exchange of notes, agreed minutes or other document to be signed, and (iii) a memorandum of law prepared in the Office of the Legal Adviser.

(d) Where it appears that there may be obstacles to the immediate public disclosure of the text upon its entry into force, the Action Memorandum shall include an explanation thereof (see sections 723.2 and 723.3).

722.4 *Separate Authorizations.* When authorization is sought with respect to a particular treaty or other agreement, either multilateral or bilateral, the Action Memorandum for this purpose outlines briefly and clearly the principal features of the proposed treaty or other agreement, indicates any special problems which may be encountered, and, if possible, the contemplated solutions of those problems.

722.5 *Blanket Authorizations.* In general, blanket authorizations are appropriate *only* in those instances where, in carrying out or giving effect to provisions of law or policy decisions, a series of agreements of the same general type is contemplated; that is, a number of agreements to be negotiated according to a more or less standard formula (e.g., P.L. 480 Agricultural Commodities Agreements; Educational Exchange Agreements; Investment Guaranty Agreements; Weather Station Agreements, etc.) or a number of treaties to be negotiated according to a more or less standard formula (e.g., consular conventions; extradition treaties, etc.). Each request for blanket authorization shall specify the officer or officers to whom the authority is to be delegated. The basic precepts under section 722.3 apply equally to requests for blanket authorizations.

722.6 *Certificate on Foreign-Language Text.* (a) Before any treaty or other

agreement containing a foreign-language text is laid before the Secretary (or any person authorized by him) for signature, either in the Department or at a post, a signed memorandum must be obtained from a responsible language officer of the Department certifying that the foreign-language text and the English-language text are in conformity with each other and that both texts have the same meaning in all substantive respects. A similar certification must be obtained for exchanges of notes that set forth the terms of an agreement in two languages.

(b) In exceptional circumstances the Department can authorize the certification to be made at a post.

722.7 *Transmission of Texts to Secretary.* The texts of treaties and other international agreements must be completed and approved in writing by all responsible officers concerned sufficiently in advance to give the Secretary, or the person to whom authority to approve the text has been delegated, adequate time before the date of signing to examine the text and dispose of any questions that arise. Posts must transmit the texts to the Department as expeditiously as feasible to assure adequate time for such consideration. Except as otherwise specifically authorized by the Secretary, a complete text of a treaty or other international agreement must be delivered to the Secretary or the Acting Secretary, or other person authorized to approve the text, before any such text is agreed upon as final or any date is agreed upon for its signature.

723 Responsibility of Office or Officer Conducting Negotiations

723.1 *Conduct of Negotiations.* The office or officer responsible for any negotiations must ensure:

a. That during the negotiations no position is communicated to a foreign government or to an international organization as a United States position that goes beyond any existing authorization or instructions;

b. That no proposal is made or position is agreed to beyond the original authorization without approval by the appropriate assistant secretaries or their deputies, the Legal Adviser's Office, and also, in the case of the treaties or other international agreements which concern responsibilities of AID, the Director of AID, or his Deputy;

c. That all significant policy-determining memorandums and instructions to the field on the subject of the negotiations are submitted to and cleared by the Office of the Legal Adviser, all assistant secretaries concerned or their deputies, and also, in the case of treaties or other international agreements which concern responsibilities of AID, the Director of AID, or his Deputy;

d. That the Secretary is kept informed in writing of important policy decisions and developments, including any particularly significant departures from substantially standard drafts that have been evolved;

e. That with the advice and assistance of the Assistant Secretary for Congressional Relations, the appropriate congressional leaders and committees are advised of the intention to negotiate significant new international agreements, consulted concerning such agreements, and kept informed of developments affecting them, including especially whether any legislation is considered necessary or desirable for the implementation of the new treaty or agreement. Where the proposal for any especially important treaty or other international agreement is contemplated, the Office of the Assistant Secretary for Congressional Relations will be informed as early as possible by the office responsible for the subject;

f. That in no case, after accord has been reached on the substance and wording of the texts to be signed, do the negotiators sign an agreement or exchange notes constituting an agreement until a request under section 722.3 for authorization to sign has been approved and, if at a post abroad, until finally instructed by the Department to do so as stated in section 730.3. If an agreement is to be signed in two languages, each language text must be cleared in full with the Language Services Division or, if at a post abroad, with the Department before signature, as required by section 722.6;

g. That due consideration is given also to the provisions of sections 723.2–723.9, 730.3, and 731 of this Chapter; and

h. That, in any case where any other department or agency is to play a primary or significant role or has a major interest in negotiation of an international agreement, the appropriate official or officials in such department or agency are informed of the necessity of complying with the requirements of this subchapter.

723.2 *Avoiding Obstacles to Publication and Registration.* The necessity of avoiding any commitment incompatible with the law requiring publication (see section 725) and with the treaty provisions requiring registration (see section 750.2–3) should be borne in mind by U.S. negotiators. Although negotiations may be conducted on a confidential basis, every practicable effort must be made to assure that any definitive agreement or commitment entered into will be devoid of any aspect which would prevent the publication and registration of the agreement.

723.3 *Questions on Immediate Public Disclosure.* In any instance where it appears to the U.S. representatives that the immediate public disclosure upon its entry into force of an agreement under negotiation would be prejudicial to the national security of the United States, the pertinent circumstances shall be reported to the Secretary of State and his decision awaited before any further action is taken. Where such circumstances are known before authorization to negotiate or to sign is requested, they shall be included in the request for authorization. All such reports and requests are to be cleared with the Office of the Legal Adviser.

723.4 *Public Statements.* No public statement is to be made indicating that agreement on a text has been reached, or that negotiations have been successfully completed, before authorization is granted to sign the treaty or other agreement. If such authorization has been granted subject to a condition that no substantive change in the proposed text is made without concurrence of the Office of the Legal Adviser and other specified offices, no such public statement is to be made until definitive agreement on the text has been reached with the concurrence of the Office of the Legal Adviser and the other specified offices. Normally, such a public statement is made only at the time a treaty or other agreement is actually signed, inasmuch as it remains possible that last-minute changes will be made in the text. Any such statement prior to that time must have the concurrence of the Office of the Legal Adviser, the Office of the Assistant Secretary for Congressional Relations, and the other specified offices, and the approval of the Secretary or the Department principal who originally approved the Action Memorandum request under "Circular 175 Procedure."

723.5 *English-Language Text.* Negotiators will assure that every bilateral treaty or other international agreement to be signed for the United States contains an English-language text. If the language of the other country concerned is one other than English the text shall be done in English and, if desired by the other country, in the language of that country. A United States note that constitutes part of an international agreement effected by exchange of notes shall always be in the English-language. If it quotes in full a foreign office note the quotation shall be rendered in English translation. A U.S. note shall not be in any language in addition to English unless specifically authorized. The note of the other government concerned may be in whatever language that government desires.

723.6 *Transmission of Signed Texts to Assistant Legal Adviser for Treaty Affairs.* a. The officer responsible for the negotiation of a treaty or other agreement at any post is responsible for ensuring the most expeditious transmission of the signed original text, together with all accompanying papers such as agreed minutes, exchanges of notes, agreed interpretations, plans, etc., to the Department for the attention of the Assistant Legal Adviser for Treaty Affairs: *Provided*, That where originals are not available accurate certified copies are obtained and transmitted as in the case of the original. (See sections 723.7, 723.8 and 723.9). The transmittal is by airgram, not by transmittal slip or Operations Memorandum.

b. Any officer in the Department having in his possession or receiving from any source a signed original or certified copy of a treaty or agreement or of a note or other document constituting a part of

a treaty or agreement must forward such documents immediately to the Assistant Legal Adviser for Treaty Affairs.

723.7 *Transmission of Certified Copies to the Department.* When an exchange of diplomatic notes between the mission and a foreign government constitutes an agreement or has the effect of extending, modifying, or terminating an agreement to which the United States is a party, a properly certified copy of the note from the mission to the foreign government, and the signed original of the note from the foreign government, are sent, as soon as practicable, to the Department for the attention of the Assistant Legal Adviser for Treaty Affairs. The transmittal is by airgram, *not* by transmittal slip or Operations Memorandum.

Likewise, if, in addition to the treaty or other agreement signed, notes related thereto are exchanged (either at the same time, before hand or thereafter), a properly certified copy (copies) of the note(s) from the mission to the foreign government are transmitted with the signed original(s) of the note(s) from the foreign government.

In each instance, the mission retains for its files certified copies of the note exchanged. The United States note is prepared in accordance with the rules prescribed in the Correspondence Handbook. The note of the foreign government is prepared in accordance with the style of the foreign office and usually in the language of that country. Whenever practicable, arrangements are made for the notes to bear the same date.

723.8 *Certification of Copies.* If a copy of a note is a part of an international agreement, such copy is certified by a duly commissioned and qualified Foreign Service officer either (a) by a certification on the document itself, or (b) by a separate certification attached to the document. A certification on the document itself is placed at the end of the document. It indicates, either typed or rubber stamped, that the document is a true copy of the original signed (or initialed) by *(insert full name of signing officer)*, and it is signed by the certifying officer. If a certification is typed on a separate sheet of paper, it briefly describes the document certified and states that it is a true copy of the original signed (or initialed by) *(full name)* and it is signed by the certifying officer. The certification may be stapled to the copy of the note.

723.9 *Preparation of Copies for Certification.* For purposes of accuracy of the Department's records and publication and registration, a certified copy must be an exact copy of the signed original. It must be made either by typewriter (ribbon or carbon copy) or by facsimile reproduction on white durable paper (not by the duplimat method) and must be *clearly legible.* In the case of notes, the copy shows the letterhead, the date and, if signed, an indication of the signature or, if merely initialed, the initials which appear on the original. It is suggested that, in the case of a note from the mission to the foreign government, the copy for certification and transmission to the Department be made at the same time the original is prepared. If the copy is made at the same time, the certificate prescribed in section 723.8 may state that the document is a true and correct copy of the signed original. If it is not possible to make a copy at the same time, the original is prepared, the certificate indicates that the document is a true and correct copy of the copy on file in the mission. The word "(Copy)" is not placed on the document which is being certified; the word "(Signed)" is not placed before the indication of signatures. Moreover, a reference to the transmitting airgram, such as "Enclosure 1 to Airgram No. 18 (etc.)," is not placed on the certified document. The identification of such a document as an enclosure to an airgram may be typed on a separate slip of paper and attached to the document, but in such a manner that it may be easily removed without defacing the document.

724 Transmission of International Agreements Other Than Treaties to the Congress; Compliance With the Case Act

All officers will be especially diligent in cooperating to assure compliance with the Case Act, "An Act To require that international agreements other than treaties, hereafter entered into by the United States, be transmitted to the Congress within sixty days after the execution thereof." That Act, approved August 22, 1972 (86 Stat. 619; 1 U.S.C. 112b), provides as follows:

"The Secretary of State shall transmit to the Congress the text of any international agreement other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter. However, any such agreement the immediate public disclosure of which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President."

725 Publication of Treaties and Other International Agreements of the United States

The attention of all officers is directed to the requirements of the Act of September 23, 1950 (64 Stat. 979; 1 U.S.C. 112(a)) which provides as follows:

The Secretary of State shall cause to be compiled, edited, indexed, and published, beginning as of January 1, 1950, a compilation entitled "United States Treaties and Other International Agreements", which shall contain all treaties to which the United States is a party that have been proclaimed during each calendar year, and all international agreements other than treaties to which the United States is a party that have been signed, proclaimed, or with reference to which any other final formality has been executed, during each calendar year. The said United States Treaties and Other International Agreements shall be legal evidence of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and agreements, therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.

730 Procedures for Concluding International Agreements

730.1 *Method of Concluding Bilateral and Multilateral Agreements.* An agreement may be concluded (entered into) by the process of bilateral negotiations which result either in the signing of a single instrument in duplicate or in exchange of diplomatic notes, or by the process of multilateral negotiations, usually at an international conference to which the governments concerned send official delegations for the purpose of formulating and signing an agreement.

730.2 *Bilateral Treaties and Agreements.* 730.2–1 *Negotiation and Background Assistance.* Whenever the negotiation of a new international agreement is under consideration, the post or the Department office having primary responsibility informs the Legal Adviser and may, if considered necessary, request background material and advice regarding relevant provisions in existing treaties and agreements, the general treaty relations of this Government with the government or governments concerned, and other pertinent information.

730.2–2 *Role of Office of the Legal Adviser.* a. *Legal Review of Draft Agreements.* As soon as tentative provisions for an agreement are considered or drafted, the Office of the Legal Adviser is requested to make available the services of an attorney-adviser to ensure that the agreement is properly drafted and agreed policy is expressed clearly and fully. The Office of the Legal Adviser prepares a draft in the first instance upon the request of another office.

b. *Legal Clearance Required.* Any draft of a proposed treaty or agreement, or any outgoing correspondence regarding the negotiation, signature, and ratification or approval, as well as the existence, status, and application, of any international agreement to which the United States is or may become a party, is cleared with the Office of the Legal Adviser and with other appropriate bureaus or offices.

730.3 *Instructions to Negotiators.* When an agreement is to be concluded at a foreign capital, the Department designates the American negotiator or negotiators, and he or they are given appropriate instructions. If the agreement to be negotiated is a treaty which will be referred to the Senate, the Secretary of State may at some time prior to or during the negotiations issue or request the President to issue a "full power" (see section 732) constituting formal authorization for the American negotiators to sign the agreement. Such

a "full power" is not customary with respect to an executive agreement. The receipt or possession of a "full power" is never to be considered as a final authorization to sign. That authorization is given by the Department by a written or telegraphic instruction, and no signature is affixed in the absence of such instruction. If the proposal for an agreement originates with the United States, the American negotiators as a rule furnish a tentative draft of the proposed agreement for submission to the other government for its consideration. The negotiators submit to the Department any modification of the draft or any counter-proposal made by the other government and await instructions from the Department. If the original proposal emanates from a foreign government, the mission forwards the proposal to the Department and awaits its instructions.

730.47 *Preparation of Texts for Signature.* If an agreement is to be signed at a post abroad as a single instrument (in duplicate), the engrossing is customarily done in the foreign office on paper supplied by it, along with a binding and ribbons to tie the pages in place. However, the mission may lend assistance if the foreign office so desires. There is no universal standard as to the kind or size of paper which must be used (each foreign office has its own "treaty paper"), and the texts may be engrossed either by typing or by printing. For every bilateral agreement there must be two originals, one for each government. Each original must embody the full text of the agreement in all the languages in which the agreement is to be signed, subject only to the principle of the "alternat."

In the case of an agreement effected by exchange of notes, the United States note is prepared in accordance with 5 FAM 220–224 and the rules prescribed in the Correspondence Handbook. The note of the foreign government is prepared in accordance with the style of the foreign office and usually in the language of that country. Whenever practicable, arrangements are made for the notes to bear the same date.

730.5 *Principle of the Alternat.* 730.5–1 *Arrangement of Texts.* When English and a language other than English are both used, the texts in the two languages are placed (a) in parallel, vertical columns on the same page, the columns being approximately of equal width, or (b) on opposite facing pages of the document the entire width of the typed or printed space on the page, or (c) in "tandem" fashion, that is, with one text following the other. The tandem procedure is the most widely used as it is the most expeditious.

If the first-mentioned style is used, the English text is placed in the left column of each page in the original to be retained by the United States, and the foreign text appears in the right column. In the other original, to be retained by the foreign government, the foreign text appears in the left column, and the English text in the right column.

If the two languages are placed on opposite facing pages of the document, the English text occupies the left-hand page and the foreign text the right-hand page in the United States original, and conversely in the foreign government's original.

If the two languages are placed "tandem" fashion, the English text is placed first in the United States original, and conversely in the foreign government's original.

If the parallel column style is used, each representative will sign once in the center of the page of each of two originals. If either the "opposite facing page" or "tandem" style is used, the concluding part (usually beginning "In Faith Whereof," "In Witness Whereof," "Done," etc.) should appear engrossed in paralled columns on the page on which the signature will appear, so that only one set of signatures is required for each separately bound document. If parallel columns are not feasible, the concluding paragraphs can be placed "tandem" fashion on the page on which the signatures appear.

If an oriental text is one which, from the occidental viewpoint, reads from back to front, it may be possible to join the two texts in a single document so that the signatures appear, roughly speaking, in the center of the document. Separate documents for the two languages are not desirable if any of the methods first mentioned is feasible, although extraordinary circumstances may justify exceptions. In the event of exceptional circumstances affecting the engrossing, it would be well for the negotiators to seek instructions from the Department.

730.5–2 *Arrangement of Names and Signatures; Use of Titles.* In the original to be retained by the United States, the United States and the plenipotentiary of the United States are named first in both the English and foreign texts, wherever the names of the countries or of the plenipotentiaries occur together conjunctively or disjunctively; and the signature of the plenipotentiary of the United States appears above the signature of the foreign plenipotentiary. Conversely, throughout both of the language texts of the original to be retained by the foreign government, that government and its plenipotentiary are named first and his signature appears above the signature of the U.S. plenipotentiary. Some countries prefer that the signatures be side by side. Where that procedure is followed, the signature of the United States plenipotentiary appears on the left and that of the foreign plenipotentiary on the right of the original to be retained by the United States; on the original to be retained by the foreign government the signature of the foreign plenipotentiary will appear on the left and the signature of the United States plenipotentiary on the right. The position of full sentences or paragraphs in the text is never transposed in the alternate procedure.

The general practice and preference of the Department of State is not to use titles along with signatures, especially where the President or the Secretary of State signs. However, if preferred by the other party or parties concerned, titles may be typed below the place where each signer will affix his signature.

731 Conformity of Texts

After the documents have been engrossed on the basis of agreed texts, and before the signing of the agreement, the negotiators or other responsible officers on each side make sure that the texts in both originals of the engrossed agreement are in exact conformity with the texts in the drafts agreed to, and especially that where a foreign language text is included it is in conformity in all substantive respects with the English text. Prior to engrossing it should have been determined that the foreign-language text is essentially (i.e., as a matter of substance) in accord with the English text, and that it has received the clearance of the Department as required in section 722.6.

732 Exchange or Exhibition of Full Powers

Each representative who is to sign a treaty is furnished a full power signed by the Head of State, Head of Government, or Minister for Foreign Affairs. More than one representative may be named in a single full power. Formal full powers may be (but customarily are not) issued also for the signing of certain executive agreements. When issued, the full power is formal evidence of the authority of the representative to sign on behalf of his government. It names the representative and shows his title and a clear indication of the particular agreement which he is entitled to sign. If the agreement itself requires the exchange of full powers, they are exchanged. If not, they may be either exchanged or exhibited by the representatives on the occasion of signing the agreement, as may be preferred by the foreign representative. If exchanged, the original full power of the foreign representative is forwarded to the Department with the United States original of the signed agreement. If the representatives retain the original of their respective full powers, the foreign representative is requested to furnish a xerox, other offset copy or a certified copy of his full power.

733 Signature and Sealing

When the engrossing of a treaty or other international agreement which is to be signed as a single instrument has been completed, mutually convenient arrangements for its signature are made by the host government. In the case of treaties, the signatures of the representatives may be accompanied by their respective seals, ribbons being fastened in the seals and binding the document. The same procedure may be followed for other agreements signed as single instruments. It is not essential that seals be affixed unless the agreement specifically so requires. The representative's personal seal, if available, is used when seals ac-

company the signatures, except that if the other government concerned prefers official seals, the seal of the mission may be used.

(*NOTE:* A personal seal may consist of a signet ring with initial(s) or family crest, written initials, etc.)

734 *Exchange of Ratifications.* 734.1 *Time and Place for Exchange.* It is customary for a treaty to contain a simple provision to the effect that the instruments of ratification shall be exchanged at a designated capital, and that the treaty shall enter into force on the date of such exchange or at the expiration of a specified number of days or months following the date of exchange. As all treaties signed on the part of the United States are subject to ratification by and with the advice and consent of the Senate, and as the time required for action on any particular treaty cannot be foreseen, it is preferable that provision is made in the treaty that the instruments of ratification are to be exchanged "as soon as possible" rather than within a specified period.

734.2 *Effecting and Exchange.* In exchanging instruments of ratification the representative of the United States hands to the representative of the foreign government a duplicate original of the President's instrument of ratification. In return, the representative of the foreign government hands to the representative of the United States the instrument of ratification executed by the head or the chief executive of the foreign government. A protocol, sometimes called *proces-verbal* or "Protocol of Exchange of Ratifications" attesting the exchange is signed by the two representatives when the exchange is made. No full power is required for this purpose. The protocol of exchange is signed in duplicat originals, one for each government, and the principle of the alternate is observed as in the treaty. Before making the exchange and signing the protocol of exchange, the diplomatic representative of the United States satisfies himself that the ratification of the foreign government is an unqualified ratification, or subject only to such reservations or understandings as have been agreed to by the two governments.

734.3 *Notification of Date of Exchange.* In all cases, but particularly in those in which the treaty enters into force on the day of the exchange, it is essential that the mission notify the Department by telegram when arrangements have been completed for the exchange, and also when the exchange actually takes place. By the first pouch after the exchange takes place, if possible, the mission forwards to the Department the instrument of ratification of the foreign government and the United States Government's original of the signed protocol of exchange. The Department then will take such steps as may be necessary to have the proclamation of the treaty executed by the President.

740 Multilateral Treaties and Agreements

740.1 *General.* The procedures for the making of multilateral agreements are in many respects the same as those for the making of bilateral agreements, e.g., the general requirements in regard to full powers, ratification, proclamation and publication. This subchapter covers those procedures which are at variance with bilateral procedures.

740.2 *Negotiation.* 740.2–1 *Function of International Conference.* The international conference is the device usually employed for the negotiation of multilateral agreements. The greater the number of countries involved, the greater the necessity for such a conference. If only three or four countries are involved, it may be convenient to carry on the preliminary negotiations through correspondence and have a joint meeting of plenipotentiaries to complete the negotiations and to sign the document.

740.2–2 *Invitation.* Traditionally, the international conference was convened by one government extending to other interested governments an invitation (acceptance usually assured beforehand) to participate, the host government bearing most, if not all, of the expense incident to the physical aspects of the conference. This is still often the practice, but increasing numbers of conferences have been convened under the auspices, and at the call, of international organizations.

740.2–3 *Statement of Purpose.* When a call is made or invitations are extended for a conference for the formulation of a multilateral agreement, it is customary for a precise statement of purpose to accompany the call or the invitations. Sometimes, the invitation is also accompanied by a draft agreement to be used as a basis for negotiations. If the conference is called under the auspices of an international organization, the precise statement of purpose or the draft agreement may be prepared in preliminary sessions of the organization or by the secretariat of the organization.

740.2–4 *Instructions to Negotiators.* The U.S. delegation to a conference may be comprised of one or more representatives. As a rule, the U.S. delegation is furnished written instructions by the Department prior to the conference in the form of a position paper for the U.S. delegation cleared with the Secretary or an officer specifically authorized by him and with other appropriate Department officers, under the procedures described in section 722.3. The Office of the Legal Adviser in all instances reviews drafts of international conventions to be considered in meetings of an international orgaization of which the United States is a member; when necessary, it also provides legal assistance at international conferences and meetings.

740.2–5 *Final Acts of Conference.* The "Final Act" of a conference must not contain international commitments. A Final Act must be limited to such matters as a statement or summary of the proceedings of the conference, the names of the states that participated, the organization of the conference and the committees established, resolutions adopted, the drafts of international agreements formulated for consideration by governments concerned, and the like. If an international agreement is to be opened for signature at the close of the conference, a text thereof may be annexed to the Final Act but must not be incorporated in the body thereof; the text to be signed must be prepared and bound separately for that purpose. Where a Final Act appears to embody international commitments, the United States representative reports the same to the Department and awaits specific instructions before taking any further action.

741 *Official and Working Languages.* a. *General.* The working languages of the conference and the official languages of the conference documents are determined by the conference. A conference does not necessarily adopt all of the same languages for both purposes. It is customary and preferable for all the official languages in which the final document is prepared for signature to be designated as having equal authenticity. It is possible, however, for the conference to determine, because of special circumstances, that in the event of dispute one of the languages is to prevail and to include in the text of the agreement a provision to that effect. Before a United States delegation concurs in any such proposal, it must request instructions from the Department.

b. *English-Language Text.* Negotiators will use every practicable effect to assure that an English-language text is part of the authentic text of any multilateral treaty negotiated for the United States. Where any question exists on this subject the negotiators should seek further instructions.

742 Engrossing

742.1 *Language or Languages Used in Texts.* The multilateral agreement drawn up at an international conference is engrossed for signature in the official language or languages adopted by the conference. (See section 741.) The engrossing ordinarily will be done by the conference secretariat.

742.2 *The Principle of the Alternat.* The principle of the alternat (see section 730.5) does not apply in the case of a multilateral agreement, except in the remote case when an agreement between three or four governments is prepared for signature in the language of all the signatories and each of those governments is to receive a signed original of the agreement. Customarily, a multilateral agreement is prepared for signature in a single original, comprising all the official languages. That original is placed in the custody of a depositary (either a government or an international organization) which furnishes certified copies to all governments concerned.

742.2–1 *Arrangement of Texts.* The arrangement of multilateral agreement texts varies, depending largely on the number of languages used. As in the case of bilateral agreements, however, the basic alternatives in the case of multilateral agreements are parallel-columns, facing-pages, or "tandem," as follows:

a. *Parallel Columns.* If an agreement is to be signed in only two languages, the preferred method of arrangement of the texts is in parallel, vertical columns. This

method may be used also if only three languages are used, but the three columns are necessarily so narrow that the method has been rarely used in such cases. When there are four official languages, however, it is possible to use the parallel-column method by placing two of the language texts on a left-hand page and the other two language texts on the facing right-hand page; this method has been used often and to good advantage in various inter-American agreements with English, Spanish, French, and Portugese. If any of the languages is oriental, the parallel-column method may be inexpedient and one of the other methods may be necessary.

b. *Facing Pages.* If an agreement is to be signed in only two languages, and circumstances make it necessary or desirable, the facing-page method may be used for engrossing the texts for signature, so that one of the language texts will be on a left-hand page and the other will be on the facing right-hand page. When this method is used, it is desirable that at least the concluding part (usually beginning "In Faith Whereof," "In Witness Whereof," "Done," etc.) be engrossed in parallel columns on the page at the end of the texts in both languages so that only one set of signatures is required. If parallel columns are not feasible, the concluding paragraphs can be placed tandem-fashion (one language text after another) on the page at the end of the texts in both languages.

c. *Tandem.* If neither the parallel-column nor the facing-page arrangement is feasible for an agreement to be signed in two languages, and especially if signed in three or more languages, the texts may be arranged in tandem-style, i.e., one complete text following the other. This allows readily for any number of official texts; the tandem-style precedent of the Charter of the United Nations is followed for the preparation of agreements formulated under the auspices of the United Nations. It is desirable, whenever practicable, that the concluding part of each text be placed with the concluding part of each of the other texts in parallel columns on the page on which the first of the signatures appears, although the tandem arrangement described at the end of section 742.2–1b can be used.

742.2–2 *Arrangement of Names and Signatures.* The arrangement of names and signatures, although it may seem a minor matter, sometimes presents difficulties in the case of multilateral agreements. There may be variations of arrangements, depending on particular factors, but the arrangement most generally used is alphabetical according to the names of the countries concerned. An alphabetical listing, however, presents the further question, even when there are only two languages, of what language is to be used in determining the arrangement. It is a common practice to use the language of the host government or for an agreement formulated under the auspices of an international organization, to follow the precedents established by that organization. It is possible, in the event that agreement could not be reached regarding the arrangement of names of countries and signatures of plenipotentiaries, to have a drawing of lots, a device seldom used. In any event, the question is one to be determined by the conference.

742.3 *Conformity of Texts.* It is the primary responsibility of the delegations, acting in conference, to determine the conformity of the agreement texts which are to be signed. However, the conference secretariat has a responsibility for checking the texts carefully to ensure that, when put in final form for signature, the texts are in essential conformity.

743 Full Powers

In the case of a multilateral agreement drawn up at an international conference, this Government customarily (almost invariably, in the case of a treaty) issues to one or more of its representatives at the conference an instrument of full power authorizing signature of the agreement on behalf of the United States. In some instances, issuance of the full power is deferred until it is relatively certain that the agreement formulated is to be signed for the United States (see section 732). Ordinarily, that full power is presented by the representatives to the secretary general of the conference upon arrival of the delegation at the conference site. It may be submitted in advance of arrival, but usually that is not necessary. When the conference has formally convened, it usually appoints a credentials committee, to which all full powers and other evidence of authorization are submitted for examination. The full powers and related documents are retained by the credentials committee or the secretary general until the close of the conference. At the close of the conference, the full powers, related documents, and the signed original of the agreement are turned over to the government or the international organization designated in the agreement as the depositary authority, to be placed in its archives.

744 Signature and Sealing (See Also Section 733)

744.1 *Signature.* Most multilateral agreements are signed. Some, however, are adopted by a conference or organization after which governments become parties by adherence, accession, acceptance or some other method not requiring signature (e.g., conventions drawn up and adopted at sessions of the International Labor Organization). Procedures for the deposit of an instrument of adherence, accession, or acceptance are similar to procedures for the deposit of instruments of ratification. In some cases, accession or approval can be accomplished by formal notice through diplomatic channels.

744.2 *Seals.* Multilateral treaties do not usually provide for the use of seals along with the signatures of representatives. The large number of signatures would make the use of seals difficult and cumbersome.

745 Disposition of Final Documents of Conference

At the close of a conference, the remaining supply of working documents (e.g., records of committee meetings, verbatim minutes, etc.) usually is placed in the custody of the host government or the organization which called the conference for appropriate disposition. It is not proper for definitive commitments constituting part of the agreement to be embodied in such working documents. Definitive commitments must be incorporated only in a final document to be signed or adopted as an international agreement. The final documents of the conference may include a Final Act (see section 740.2–5) and, separately the text(s) of agreement(s). The practice of signing a Final Act is still followed in many cases. In any event, any agreement formulated at the conference must be engrossed as a separate document and signed or adopted. The signed or adopted originals of the final documents of the conference are turned over to the government or international organization designated in such documents as depositary. If the conference is not held under the auspices of an organization, it is customary for the host government to be designated depositary, but it might be appropriate, even in such case, to name an organization, such as the United Nations, as depositary. The decision is made by the conference, with the concurrence of the government or international organization concerned.

746 Procedure Following Signature

746.1 *Understandings or Reservations.* If it is necessary to inform other governments concerned, and perhaps obtain their consent, with respect to an understanding or reservation imposed by the Senate in its advice and consent, this Government communicates with the depositary, which then carries on the necessary correspondence with the other governments concerned.

746.2 *Deposit of Ratification.* When the depositary for a multilateral agreement is a foreign government or an international organization, the United States instrument of ratification (or adherence, accession, acceptance, etc.) is sent by the Department to the appropriate Foreign Service mission or to the United States representative to the organization if there is a permanent representative. The mission or the representative deposits it with the depositary authority in accordance with the terms of the accompanying instruction from the Department concerning the time of deposit. When this Government is depositary for a multilateral agreement, posts are not authorized to accept instruments of ratification of foreign goverments, i.e., the foreign government cannot deposit its instrument with the post. If a post is requested to transmit an instrument of ratification to the Department, it must make clear to the foreign government that the post is acting only as a transmitting agent and that the ratification

cannot be considered as accepted for deposit until received and examined by the Department.

746.3 *Registration (See also section 750.2–3).* It is generally recognized that the depositary for a multilateral agreement has a primary responsibility for such registration. Normally, the depositary has custody not only of the original document of agreement but also of instruments of ratification and other formal documents. Consequently, the depositary is the most authoritative source of information and documentation.

750 PROCEDURAL RESPONSIBILITIES

Carrying out and providing advice and assistance respecting the provisions of this chapter are the responsibility of the Assistant Legal Adviser for Treaty Affairs, who:

a. Makes all arrangements and supervises ceremonies at Washington for the signature of treaties or other international agreements; and prepares or arranges for the preparation of texts of treaties and other agreements to be signed in Washington;

b. Prepares or arranges for preparation of the Secretary of State's reports to the President, and the President's messages to the Senate for transmission of treaties for advice and consent to ratification;

c. Prepares instruments of ratification or adherence, instruments or notifications of acceptance or approval, termination notices, and proclamations with respect to treaties or other international agreements;

d. Makes arrangements for the exchange or deposit of instruments of ratification, the deposit of instruments of adherence, the receipt or deposit of instruments or notifications of acceptance or approval, and termination notices, with respect to treaties or other international agreements;

e. Prepares instructions to posts abroad and notes to foreign diplomatic missions at Washington respecting matters in d;

f. Takes all measures required for the transmission to the Congress of all international agreements other than treaties, as required by the Case Act (see Section 724), and the publication and registration of treaties and other international agreements to which the United States is a party (see sections 725 and 750.2–3).

g. Reviews all drafts of international agreements, proposals by other Governments or international organizations, instructions and position papers, all Circular 175 requests and accompanying Memorandums of Law.

750.1 *Engrossing Documents for Signature.* After the text of a treaty or other agreement is approved in writing in accordance with section 722.7, the document is engrossed for signature in the Department.

Adequate time (normally 7 business days) is allowed for the engrossing (typing on treaty paper), comparing, etc., of the treaty or other agreement to be signed, in order to assure sufficient time for the preparation of accurate texts in duplicate for signature, including, in the case of documents to be signed in a foreign language, sufficient time for the Language Services Division to prepare any translations required, check any existing foreign-language draft, and check the engrossed foreign-language text. The determination of the amount of time required in each instance to complete the engrossing is the responsibility of the Assistant Legal Adviser for Treaty Affairs.

750.2 *Publication and Registration.* 750.2–1 *Publication of Texts.* After the necessary action has been taken to bring into force the treaty or other international agreement concluded by the United States, it is published promptly in the Treaties and Other International Act Series issued by the Department. After publication in that series, the text of the treaty or other agreement is printed in the annual volume (which may consist of two or more bindings) of *United States Treaties and Other International Agreements* as required by law (see section 725). Treaties and other agreements concluded prior to January 1, 1950, were published in the United States Statutes at Large.

750.2–2 *Responsibility for Other Treaty Publications.* The Office of the Assistant Legal Adviser for Treaty Affairs prepares and maintains the annual publication *Treaties in Force*, an authoritative guide to the text and status of treaties and other international agreements currently in force for the United States. It also compiles and has published, in addition to the publication referred to in section 750.2–1, other volumes containing texts of treaties and other agreements as required or authorized by law. The "Treaty Information" part of the Department of State BULLETIN is compiled by that office.

750.2–3 *Registration.*

Article 102 of the United Nations Charter requires that every treaty and every international agreement entered into by a member of the United Nations be registered, as soon as possible, with the Secretariat and published by it. Article 83 of the Chicago Aviation Convention of 1944 requires registration of aviation agreements with the Council of the International Civil Aviation Organization.

750.3 *United States as Depositary.* a. Inquiries from foreign diplomatic missions at Washington and from American diplomatic missions abroad with respect to the preparation or deposit of instruments relating to any multilateral agreement of which the United States is depositary are referred to the Assistant Legal Adviser for Treaty Affairs. That officer is to be notified immediately of the receipt of any such document anywhere in the Department, inasmuch as a depositary is required to ascertain whether those documents are properly executed before accepting them for deposit, to keep accurate records regarding them, and to inform other governments concerned of the order and date of receipt of such documents.

b. Before any arrangements are proposed or agreed to for the United States to serve as depositary for any international agreement the views of the Assistant Legal Adviser for Treaty Affairs will be obtained.

750.4 *Records and Correspondence Custody.* a. The Assistant Legal Adviser for Treaty Affairs compiles and maintains authoritative records regarding the negotiation, signature, transmission to the Senate, and ratification or approval, as well as the existence, status, and application, of all international agreements to which the United States is or may become a party and, so far as information is available, of agreements between other countries to which the United States is not a party. Inquiries on these subjects are addressed to, and outgoing communications cleared with, the Office of the Legal Adviser.

b. To ensure that the records regarding the matters described in this section are complete and up to date, it is important that all relevant papers be referred to the Office of the Legal Adviser.

c. The Assistant Legal Adviser for Treaty Affairs is responsible for the custody of originals of bilateral agreements and certified copies of multilateral agreements pending entry into force and completion of manuscripts for publication. Following publication, such originals and certified copies are transferred to the National Archives. The Assistant Legal Adviser for Treaty Affairs retains custody of signed originals of multilateral agreements for which the United States is depositary, together with relevant instruments of ratification, adherence, acceptance, or approval, as long as those agreements remain active.

[SEAL] CHARLES N. BROWER,
Acting Legal Adviser
Department of State.

July 23, 1973.

[FR Doc.73-16989 Filed 8-14-73;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket Nos. 50-445 and 50-446]

TEXAS UTILITIES GENERATING CO. ET AL.

Notice of Receipt of Application for Construction Permits and Facility Licenses; Availability of Applicants' Environmental Report, etc.

The Texas Utilities Generating Company, Dallas Power and Light Company, Texas Electric Service Company, and Texas Power and Light Company (the applicants), pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, filed an application, which was docketed July 20, 1973, for authorization to construct and operate two generating units utilizing pressurized water reactors. The application was tendered on June 5, 1973. Following a preliminary review for completeness, it was accepted on July 18, 1973, for docketing.

The proposed nuclear facilities, designated by the applicants as the Comanche Peak Steam Electric Station, Units 1 and 2, are located on the applicants' site in Somervell County, Texas, approximately 4½ miles north of Glen Rose, Texas, and approximately 40 miles southwest of Fort Worth in North Central Texas. Each reactor is designated for initial operation at approximately 3411

megawatts (thermal), with a net electrical output of approximately 1159 megawatts.

A Notice of Hearing with opportunity for public participation is being published separately.

Any person who wishes to have his views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Office of Antitrust and Indemnity, Directorate of Licensing, on or before September 30, 1973. The request should be filed in connection with Docket Nos. 50-445-A and 50-446-A.

A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20545, and at the Somervell County Public Library, On the Square, P.O. Box 417, Glen Rose, Texas 76043.

The applicants have also filed, pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in Appendix D to 10 CFR Part 50, an environmental report dated June 5, 1973. The report has been made available for public inspection at the aforementioned locations. The report, which discusses environmental considerations related to the proposed construction of the Comanche Peak Steam Electric Station, Units 1 and 2 is also being made available at the North Central Texas Council of Governments, P.O. Box 5888, Arlington, Texas 76011.

After the report has been analyzed by the Commission's Director of Regulation or his designee, a draft environmental statement will be prepared by the Commission. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft statement, requesting comments from interested persons on the draft statement. The summary notice will also contain a statement to the effect that comments of Federal agencies and State and local officials thereon will be made available when received.

Dated at Bethesda, Maryland, this 24th day of July, 1973.

For the Atomic Energy Commission.

D. B. VASSALLO,
Chief, Pressurized Water Reactors, Branch No. 1, Directorate of Licensing.

Advisory Committee on Reactor Safeguards Working Group on Peaking Factors

Notice of Meeting

AUGUST 13, 1973.

In accordance with the purposes of sections 29 and 182 b. of the Atomic Energy Act (42 USC 2039, 2232 b.), the Advisory Committee on Reactor Safeguards Working Group on Peaking Factors will hold a meeting on August 29, 1973, in Room 1046, at 1717 H Street, NW, Washington, D.C. The purpose of this meeting will be to discuss calculational techniques and plant operating conditions related to peaking factors, with reference to nuclear reactors designed by the General Electric Company.

The following constitutes that portion of the Working Group's agenda for the above meeting which will be open to the public:

WEDNESDAY, AUGUST 29, 1973,
9:000 A.M.-4:00 P.M.

Discussion with the AEC Regulatory Staff and the General Electric Company.

In connection with the above agenda item, the Working Group will hold an executive session at 8:30 a.m., which will involve discussion of its preliminary views, and an executive session at approximately 4:30 p.m. to exchange opinions and formulate recommendations to the ACRS. In addition, prior to the executive session at the end of the day, the Working Group may hold a closed session with the Regulatory Staff and General Electric to discuss privileged information relating to nuclear fuel design, calculational techniques and plant operating conditions related to peaking factors, if necessary.

I have determined, in accordance with subsection 10(d) of Public Law 92-463, that the executive sessions at the beginning and end of the meeting will consist of an exchange of opinions and formulation of recommendations, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b); and that a closed session may be held, if necessary, to discuss certain documents which are privileged, and fall within exemption (4) of 5 U.S.C. 552(b). It is essential to close such portions of the meeting to protect such privileged information and protect the free interchange of internal views and to avoid undue interference with Committee operation.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman of the Working Group is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda item may do so by mailing 25 copies thereof, postmarked no later than August 22, 1973, to the Executive Secretary, Advisory Committee on Reactor Safeguards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Such comments shall be based upon GE topical reports and various other related documents on file and available for public inspection at the Atomic Energy Commission's Public Documents Room, 1717 H Street, NW, Washington, D.C. 20545.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement and shall set forth reasons justifying the need for such oral statement and its usefulness to the Working Group. To the extent that the time available for the meeting permits, the Working Group will receive oral statements during a period of no more than 30 minutes at an appropriate time, chosen by the Chairman of the Working Group, between the hours of 1 p.m. and 3 p.m. on the day of the meeting.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Chairman of the Working Group, who is empowered to apportion the time available among those selected by him to to make oral statements.

(d) Information as to whether the meeting has been cancelled or rescheduled, and in regard to the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted, can be obtained by a prepaid telephone call on August 27, 1973, to the Office of the Executive Secretary of the Committee (telephone: 301-973-5651) between 8:30 a.m. and 5:15 p.m., Eastern Daylight Time.

(e) Questions may be propounded only by members of the Working Group and its consultants.

(f) Seating for the public will be available on a first-come, first-served basis.

(g) A copy of the transcript of the open portions of the meeting will be available for inspection during the following workday at the Atomic Energy Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20545. On request, copies of the minutes of the meeting will be made available for inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20545 on or after October 29, 1973. Copies may be obtained upon payment of appropriate charges.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.73-17118 Filed 8-14-73;10:49 am]

[Docket Nos. 50-352 and 50-353]

PHILADELPHIA ELECTRIC CO.

Notice of Availability of Draft Environmental Statement for the Limerick Generating Station, Units 1 and 2

Pursuant to the National Environmental Policy Act of 1969 and the United States Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that a Draft Environmental Statement prepared by the Commission's Directorate of Licensing, related to the proposed Limerick Generating Station, Units 1 and 2, to be constructed by the Philadelphia Electric Company in Montgomery County, Pennsylvania, is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. and in the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464. The Draft Environmental Statement is also being made available at the Office of Radiological Health, Department of Environmental Resources, P.O. Box 2063,

Harrisburg, Pennsylvania 17105 and at the Delaware Valley Regional Planning Commission, 1317 Filbert Street, Philadelphia, Pennsylvania 19107.

Copies of the Commission's Draft Environmental Statement may be obtained by request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

The Draft Environmental Statement incorporates recent information related to the consequences of the consumptive use of Delaware River water for plant operation and includes consideration of comments received on the December 1972 Draft Environmental Statement. The notice of availability for the Limerick Generating Station, Units 1 and 2, Draft Environmental Statement, dated December 1972, was published in the FEDERAL REGISTER on December 7, 1972 (37 FR 26053).

Pursuant to Appendix D, 10 CFR Part 50, interested persons may, on or before September 14, 1973, submit comments on the Draft Environmental Statement for the Commission's consideration. Federal and State agencies are being provided with copies of the Draft Environmental Statement (local agencies may obtain this document upon request). When comments thereon by Federal, State and local officials are received by the Commission, such comments will be made available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Comments on the AEC's Draft Environmental Statement from interested members of the public should be addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Deputy Director for Reactor Projects, Directorate of Licensing.

Dated at Bethesda, Maryland, this 10th day of August 1973.

For the Atomic Energy Commission.

GEORGE W. KNIGHTON,
Chief Environmental Projects Branhc 1 Direciorate of Licensing.

[FR Doc.73-17119 Filed 8-14-73;10:49 am]

COMMISSION ON CIVIL RIGHTS

ARIZONA

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Civil Rights Act of 1957, 71 Stat. 634, as amended, that a public hearing of the U.S. Commission on Civil Rights will commence on September 17, 1973, and that an executive session, if appropriate, will be convened on September 16, 1973, to be held at the Navajo Civic Center, Window Rock, Arizona.

The purpose of the hearing is to collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex or national origin which affect educational opportunities, or the provision of medical and welfare services, or employment opportunities, or economic development for the Navajo Indians who reside on or near the Navajo Reservation in Arizona, New Mexico, or Utah; to appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution because of race, color, religion, sex or national origin as they affect the educational opportunities, or the provision of medical and welfare services, or employment opportunities, or economic development for Navajo Indians, in the above areas, and to disseminate information with respect to denials of equal protection of the laws because of race, color, religion, sex or national origin in the fields of education, medical and welfare sevices, employment, economic development, and related matters.

Dated at Washington, D.C., August 10, 1973.

STEPHEN HORN,
Acting Chairman.

[FR Doc.73-16964 Filed 8-14-73;8:45 am]

DELAWARE STATE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Delaware State Advisory Committee to this Commission will convene at 12 noon on August 17, 1973, at the Young Women's Christian Association, 908 King Street, Wilmington, Delaware 19801.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Mid-Atlantic Regional Office of the Commission, Room 510, 2120 L Street, NW, Washington, D.C. 20425.

The purpose of this meeting is to discuss a first draft report of the June 1-2, and June 6, factfinding meeting on the Delaware Adult Corrections System and the civil rights of inmates.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., August 9, 1973.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.73-16965 Filed 8-14-73;8:45 am]

LOUISIANA STATE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Louisiana State Advisory Committee to this Commission will convene at 10 a.m. on August 17, 1973, in Gallery No. 3 Meeting Room of the Roadway Inn, at IH-10 and Acadian Throughway, Baton Rouge, Louisiana 70806.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Southwestern Regional Office of the Commission, Room 209, New Moore Building, 106 Broadway, San Antonio, Texas 78205.

The purpose of this meeting shall be to finalize program plans for a State Advisory Committee study of the Administration of Justice in Louisiana Prisons.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., August 9, 1973.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.73-16966 Filed 8-14-73;8:45 am]

MASSACHUSETTS STATE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Massachusetts State Advisory Committee to this Commission will convene at 12 noon on August 15, 1973, at the RKO General Building, Boston, Massachusetts 66109.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Northeastern Regional Office of the Commission, Room 1639, 26 Federal Plaza, New York, New York 10007.

The purpose of this meeting shall be to discuss developments in the Civil Service System as part of a proposed study by the Massachusetts State Advisory Committee's Subcommittee on Employment.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., August 9, 1973.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.73-16967 Filed 8-14-73;8:45 am]

RHODE ISLAND STATE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Rhode Island State Advisory Committee to this Commission will convene at 12:00 noon on August 22, 1973, at the Central Congressional Church, 296 Angell Street, Providence, Rhode Island 02903.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Northeastern Regional Office, Room 1639 26 Federal Plaza, New York, New York 10007.

The purpose of this meeting shall be to review the status of a proposed State Advisory Committee project on Employment in State and local Government, and to consider plans for a factfinding meeting.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., August 9, 1973.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.73-16968 Filed 8-14-73;8:45 am]

CIVIL SERVICE COMMISSION

MEDICAL TECHNOLOGIST, WOOD, WISCONSIN

Establishment of Minimum Rates and Rate Ranges

Under authority of 5 U.S.C. 5303 and Executive Order 11721, the Civil Service Commission has increased special minimum salary rates and rate ranges as follows:

GS-644 MEDICAL TECHNOLOGIST SERIES

Geographic Coverage: Wood, Wisconsin.

Effective Data: First day of the first pay period beginning on or after August 19, 1973.

PER ANNUM RATES

Grade	1	2	3	4	5	6	7	8	9	10
GS-5	$8,979	$9,226	$9,493	$9,750	$10,007	$10,264	$10,521	$10,778	$11,035	$11,292

All new employees in the specified occupational level will be hired at the minimum rates.

As of the effective date, all agencies will process a pay adjustment to increase the pay of employees on the roles in the affected occupational level. An employee who immediately prior to the effective date was receiving basic compensation at one of the prior special rates shall receive basic compensation at the corresponding numbered rate authorized by this notice on or after each date. The pay adjustment will not be considered an equivalent increase within the meaning of 5 U.S.C. 5335.

Under the provisions of section 3-2b, Chapter 571, FPM, agencies may pay the travel and transportation expenses to first post of duty under 5 U.S.C. 5723, of new appointees to positions cited.

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

(This special rate schedule for computer purposes is designated as Table No. 314)

[FR Doc.73-17065 Filed 8-14-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 319]

ASSIGNMENT OF HEARINGS

AUGUST 10, 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 134922 Sub 41, B. J. MCADAMS, INC., now assigned September 10, 1973, will be held in Room 5A15-17, Federal Office Bldg., 1100 Commerce Street, Dallas, Texas.

MCC 8096, The Squaw Transit Company—Investigation and Revocation of Certificates—now assigned September 11, 1973, hearing will be held in Room 5A15-17, Federal Office Building, 1100 Commercial St., Dallas, Texas.

MC-F-11866, Mid-States Trucking Co.—Control and Merger—(A) Govan Express, Inc., and (B) Denton Produce, Inc., now assigned hearing September 13, 1973, will be held in Room 5A15-17, Federal Office Building, Dallas, Tex.

W 536 Sub 13, Hennepin Towing Company, now assigned hearing September 17, 1973, will be held in The Fontainbleau Motor Hotel, 4040 Tulane Ave., New Orleans, La.

MC-F-11827, Joe Hodges Transportation Corp.—Purchase—Toddman Transport Co., and MC 120634 Sub 19, Joe Hodges Transportation Corp., now being assigned hearing September 24, 1973 (1 week), at Dallas, Tex., in Room 5A15-17, Federal Office Bldg., 1100 Commerce Street.

MC 138520, R. Johns Transfer, Inc., now being assigned hearing September 24, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-F-11749, Allegheny Freight Lines, Inc.—Purchase—Murl E. Twigg, DBA Twigg Transfer & General Hauling, is continued to August 16, 1973, (1 day), at the Offices of the Interstate Commerce Commission, Washington, D.C.

I & S M-27070, Increased Class Rates for Short Hauls to and from the South, now being assigned hearing October 2, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

I & S M-27069, Increased Minimum Charges for Capacity Loads, now being assigned hearing October 9, 1973, at the Offices of the Interestate Commerce Commission, Washington, D.C.

MC 113855 Sub 273, International Transport, Inc., now assigned September 10, 1973, MC 129171 Sub 11, Arthur Shelley, Inc., now assigned September 11, 1973, MC 134922 Sub 42, B. J. McAdams, Inc., now assigned September 12, 1973, MC 134460 Sub 8, American Transport System, Inc., now assigned September 13, 1973, No. 35834, Increased Rates, Matson Navigation Company, now assigned September 17, 1973, No. W-1265, Bigge Drayage Co., now assigned September 24, 1973, will be held in Room 13025, 450 Golden Gate Avenue, San Francisco, Calif.

FD 27346, Missouri Pacific Railroad Co., Securities, now assigned August 27, 1973, at Washington, D.C., postponed to September 17, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-16982 Filed 8-14-73;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

AUGUST 10, 1973.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before August 31, 1973.

FSA No. 42731—*Grain, Grain Products and Related Articles from, to and Between Points in Illinois Freight Association, Southwestern and WTL Territories.* Filed by Western Trunk Line Committee, Agent, (No. A-2687), for interested rail carriers. Rates on beet pulp, dried, corn cobs, ground, mill feed and oat hulls, in carloads, as described in the application, from, to and between points in Illinois Freight Association, southwestern and western trunkline territories.

Grounds for relief—Revision in carload minimum weights.

Tariff—Supplement 35 to Western Trunk Line Committee, Agent, tariff 120-L, I.C.C. No. A-4868, and other schedules named in the application. Rates are published to become effective on September 15, 1973.

FSA No. 42732—*Chlorine to Brunswick, Georgia.* Filed by M. B. Hart, Jr., Agent, (No. A6333), for interested rail carriers. Rates on chlorine, in tank-car loads, as described in the application, from McIntosh, Alabama and Charleston, Tennessee, to Brunswick, Georgia.

Grounds for relief—Market competition and rate relationship.

Tariffs—Supplements 135 and 408 to Southern Freight Association, Agent, tariffs 820-E and 821-D, I.C.C. Nos. S-938 and S-484, respectively. Rates are published to become effective on September 20, 1973.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-16983 Filed 8-14-73;8:45 am]

[No. FP-C-51]

FREIGHT FORWARDERS OF HOUSEHOLD GOODS

Extension of Time for Filing Representations

AUGUST 7, 1973.

At the request of Alan F. Wohlstetter, attorneys for Household Goods Forwarders Tariff Bureau and Member Forwarders, the time for filing representations in this proceeding (38 FR 14805) has been extended from August 13, 1973, to September 17, 1973.

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

[FR Doc.73-16986 Filed 8-14-73;8:45 am]

KRUSE TRUCKING CO.

Notice of Filing of Petition

No. MC 72094 and No. MC 72094 (Sub-No. 3) (Notice of filing of petition for modification, clarification, and amendment of certificate), filed July 25, 1973. Petitioner: KRUSE TRUCKING CO. Hillside, N.J. 07205 Petitioner's representative: George A. Olsen 60 Tonnele Avenue Jersey City, N.J. 07306 Petitioner holds irregular-route, motor *common carrier* authority to transport (1) in No. MC 72094: *General commodities* (except those of unusual value, and except household goods as defined in *Practices of Motor Common Carrier of Household Goods*, 17 M.C.C. 467, dangerous explosives, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between points in Morris, Union, and Essex Counties, N.J., on the one hand, and, on the other, points in New York, N.Y.; and (2) in No. MC 72094 (Sub-No. 3): General commodities (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between New York, N.Y., on the one hand, and, on the other, points in Middlesex, Monmouth, and Somerset Counties, N.J. By the instant petition, petitioner requests (a) that an order be entered to amend said certificates by replacing the words "New York, N.Y." with the words "New York, N.Y., commercial zone, as described by the Commission in the report in *New York, N.Y., Commercial Zone*, 1 M.C.C. 665," or (b) that the Commission issue an appropriate order that the petitioner be empowered and permitted to designate as its terminal area, all points within which local operations may be conducted in the New York, N.Y., commercial zone as defined by the Commission.

No oral hearing is contemplated at this time, but anyone wishing to make representations in favor, or against, the relief sought in the petition may do so by the submission of written data, views, or arguments. An original and fifteen copies of such data, views, or arguments shall be filed with the Commission on or before October 8, 1973. A copy of each representation should be served upon petitioner's representative. Written material or suggestions submitted will be available for public inspection at the Offices of the Interstate Commerce Commission, 12th and Constitution, Washington, D.C., during regular business hours. Notice to the general public of the matter herein under consideration will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission.

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

[FR Doc.73-16987 Filed 8-14-73;8:45 am]

[Notice No. 63]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

AUGUST 10, 1973.

The following publications (except as otherwise specifically noted, each applicant (on applications filed after March 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application), are governed by the new Special Rule 1100.247 of the Commission's Rules of Practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable by the Commission.

MOTOR CARRIERS OF PROPERTY

No. MC 868 (Sub-No. 8) (REPUBLICATION) filed July 28, 1970, published in the FR issue of October 8, 1970, and amended in republication on January 21, 1971, and in third publication this issue. Applicant: SIGNAL TRUCKING SERVICE, LTD. 3770 East 26th Street Vernon, CA 90023 Applicant's representative: Ernest D. Salm 3846 Evans Street Los Angeles, CA 90027 A Decision and Order of the Commission, Review Board Number 2, dated July 25, 1973, and served August 2, 1973, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, of (A)(1) *iron and steel articles*, (2) *non-ferrous metals*, and *non-ferrous metal products* (except household appliances and housewares), (3) *clay and clay products*, (4) *heavy machinery and heavy machinery parts*, (5) (a) *machinery, equipment, materials*, and *supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas, petroleum, their products and byproducts, water, and sewage, and (b) *machinery, materials, equipment*, and *supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines used in the transmission of natural gas, petroleum, their products and byproducts, water, and sewage, (6) *contractors', mining, and military equipment, materials* and *supplies*, (7) *power or communications distribution and metal processing equipment, materials* and *supplies*, (8) *commodities* the transportation of which requires by reason of their size or weight the use of special equipment, (9) *electrical cables*, (10) *scrap metals*, and (11) *firefighting equipment, materials* and *supplies*, between points in California; and (B) *general commodities* (except household goods as defined by the Commission, commodities in bulk, classes A and B explosives, commodities requiring special equipment, and commodities of unusual value, and except motor vehicles and commodities in vehicles equipped with mechanical refrigeration), (1) between points in San Francisco, Alameda, San Mateo, and Contra Costa Counties, Calif., and (2) between points in Santa Clara County, Calif., San Mateo, Calif., points in San Mateo County located south of San Mateo on U.S. Highways 101 and 101 By-pass, Hayward, Calif., and points in Alameda County, Calif., located south of Hayward on California State Highways 9 and 17; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 87720 (Sub-No. 133) (REPUBLICATION) filed September 20, 1972, published in the FR issue of October 5, 1972, and republished this issue. Applicant: BASS TRANSPORTATION CO., INC. P.O. Box 391 Flemington, N.J. 08822 Applicant's representative: Bert Collins Suite 5193 5 World Trade Center New York, N.Y. 10048 An Order of the Commission, Review Board Number 2, dated June 15, 1973, and served June 25, 1973, finds that operation by applicant, in interstate or foreign commerce, as a *contract carrier* by motor vehicle, over irregular routes, (1) of *chemicals*, and *plastic materials and*

products from Fords, Garfield, Elizabeth, East Rutherford, Rockaway, Carlstadt, Belleville, Paterson, Moonachie, Piscataway and Linden, N.J., and New York, N.Y., to points in Indiana, Michigan, Ohio, Illinois, Missouri, Minnesota, Wisconsin, Kentucky, Iowa, and Kansas; and (2) of *materials, supplies and equipment*, utilized in the manufacture, sale and distribution of the commodities described in (1) above, from points in the named destination States to the above-described origins restricted in (1) and (2) above against the transportation of commodities in bulk, under a continuing contract, or contracts, with Tenneco, Inc., will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

MC 130533 (NOTICE OF FILING OF PETITION TO ADD AN ADDITIONAL CONTRACTING SHIPPER) filed May 13, 1973. Petitioner: SILVEY & COMPANY a Corporation Highway 275 and Gifford Council Bluffs, Iowa 51501 Petitioner's representative: Donald L. Stern 530 Univac Building 7100 West Center Road Omaha, Nebr. 68106 Petitioner presently hold a motor *contract carrier* permit in No. MC 135033 issued November 19, 1971, authorizing transportation by motor vehicle, over irregular routes, of *such commodities* as are dealt in by retail department stores (except foodstuffs), from points in Alabama, Connecticut, Kentucky, (except Louisville and points in its commercial zone), Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia and Ohio (except Cincinnati, Cleveland, Columbus and Toledo and points in their respective commercial zones), to Omaha, Nebr., under a continuing contract or contracts with J. L. Brandeis & Sons, Inc. By the instant petition, petitioner seeks to add Morris Industries, Inc. as an additional contracting shipper to the authority described above. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the Federal Register.

No. MC 130533 (NOTICE OF FILING OF PETITION TO ADD AN ADDITIONAL CONTRACTING SHIPPER) filed May 16, 1973 Petitioner: SILVEY & COMPANY a Corporation Highway 275 and Gifford Road Council Bluffs, Iowa 51501 Petitioner's representative: Donald L. Stern 530 Univac Building 7100 West Center Road Omaha, Nebr. 68106 Petitioner presently holds a motor *contract carrier* permit in No. MC 135033 issued November 19, 1971, authorizing transportation by motor vehicle, over irregular routes, of *such commodities* as are dealt in by retail department stores (except foodstuffs), from points in Alabama, Connecticut, Kentucky, (except Louisville and points in its commercial zone), Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia and Ohio (except Cincinnati, Cleveland, Columbus and Toledo and points in their respective commercial zones), to Omaha, Nebr., under a continuing contract or contracts with J. L. Brandeis & Sons, Inc. By the instant petition, petitioner seeks to add Westside Supply, Inc. as an additional contracting shipper to the authority described above. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the Federal Register.

No. MC 134270 (NOTICE OF FILING OF PETITION TO MODIFY A RESTRICTION) filed July 18, 1973. Petitioner: M.H.C. MESSENGERS, a Corporation 31 Virginia Avenue Carteret, N.J. 02008 Petitioner's representative: Robert B. Pepper 168 Woodbridge Avenue Highland Park, N.J. 08904 Petitioner presently holds a motor *common carrier* certificate in No. MC 134270, issued May 19, 1972, authorizing transportation, by motor vehicle, over irregular routes, transporting: (1) *Radioactive material (medotopes)*, from New Brunswick, N.J., to points in the boroughs of Queens, Manhattan, Brooklyn, Bronx and Staten Island, N.Y., RESTRICTION: The operations authorized above, shall be limited in point of time to a period expiring 5 years after May 19, 1972; and (2) *vaccines, drugs, and medicines*, from Secaucus, New Brunswick, Bound Brook, Teterboro, and South Hackensack, N.J., to points in the boroughs of Queens, Manhattan, Brooklyn, Bronx and Staten Island, N.Y., RESTRICTION: The operations authorized herein are restricted against the transportation of shipments weighing in the aggregate more than 50 pounds from one consignor to one consignee on any one day. By the instant petition, petitioner seeks to apply its present aggregate weight per shipment restriction of 50 pounds solely to (2) above, and add to the existing restriction in (1) above the following: "operations are further restricted against the transportation of shipments weighing in the aggregate more than 3,000 pounds from one consignor to one consignee on any one day. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the Federal Register.

No. MC 135821 (NOTICE OF FILING OF PETITION TO ADD A SHIPPER) filed March 7, 1973. Petitioner: MADELINE MILESTONE 4233 Leiper St. Philadelphia, Pa. 19124 Petitioner's representative: John W. Frame Box 626, 2207 Old Gettysburg Road Camp Hill, Pa. 17011 Petitioner presently holds a motor *contract carrier* permit in No. MC-135821 issued July 24, 1972, authorizing transportation in interstate or foreign commerce, over irregular routes, of such *merchandise* as is dealt in by wholesale or retail department stores, between points located in that part of New York on and south of a line beginning at the New York-Pennsylvania State line at or near Hale Eddy, N.Y., and extending southeastward along New York Highway 17 to junction Interstate Highway 84, and thence eastward along Interstate Highway 84 to the New York-Connecticut State line; and points in that part of Connecticut on and south of a line beginning at the New York-Connecticut State line, and extending eastward along Interstate Highway 84 to junction Connecticut Highway 34 at or near Sandy Hook, Conn., thence southeastward along Connecticut Highway 34 to New Haven, Conn., and points in that part of Pennsylvania on and east of a line beginning at the New York-Pennsylvania State line at junction U.S. Highway 15 at or near Lawrenceville, Pa., and extending southward along U.S. Highway 15 to junction U.S. Highway 11, at or near Sandbury, Pa., thence southward along combined U.S. Highways 11 and 15 to junction U.S. Highway 11 at or near Camp Hill, Pa., thence southwestward along U.S. Highway 11 to the Pennsylvania-Maryland State line, and points in that part of Maryland on and east of a line beginning at the Pennsylvania-Maryland State line, and extending southward along U S. Highway 15 to junction U.S. Highway 240 at or near Frederick, Md., thence along U.S. Highway 240 to the District of Columbia-Maryland Boundary line, and points in Charles County, Md., and points in New Jersey, Delaware, and the District of Columbia, restricted to the transportation of traffic moving from or to the stores and facilities of Lionel Leisure, Inc., under a continuing contract, or contracts, with Lionel Leisure, Inc., of New York, N.Y. By the instant petition, petitioner seeks to add the additional contracting shipper, Ideal Shoe Company, of Philadelphia, Pa., to the above described authority; and to amend the transportation restriction appropriately. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in sup-

port of or against the petition within 30 days from the date of publication in the Federal Register.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATION UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 17470 (Sub-No. 1) filed June 7, 1973 Applicant: NEW YORK MASSACHUSETTS MOTOR SERVICE, INC. 83 Progress Street Springfield, Mass. 01103 Applicant's representative: Francis E. Barrett, Jr. 10 Industrial Park Road Hingham, Mass. 02043 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular 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 commodities requiring special equipment), between points in Massachusetts. Note: Applicant states that the requested authority can be tacked at Springfield, Mass. with its existing authority to and from the New York City area to serve points in Massachusetts.

Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. The instant application m is a matter directly related to the Section 5 purchase proceeding in MC–F–11007, published in the FR issue of June 30, 1973. If a hearing is deemed necessary, applicant requests it be held at Springfield or Boston, Mass.

No. MC 42405 (Sub-No. 32) filed July 24, 1973 Applicant: MISTLETOE EXPRESS SERVICE, doing business as MISTLETOE EXPRESS, a Corporation P.O. Box 25125 Oklahoma City, Okla. 73125 Applicant's representative: Max G. Morgan 600 Leininger Building Oklahoma City, Okla. 73112 Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General Commodities* (except classes A and B explosives), moving in express service, (1) between Great Bend and Dodge City, Kans., from Great Bend over U.S. Highway 281 to Russell, thence over U.S. Highway 40 and Interstate Highway 70 to Wa Keeney, thence over U.S. Highway 283 to Dodge City, and return over the same route, serving all intermediate points, (2) between Dodge City and Great Bend, Kans., from Dodge City over U.S. Highway 56 to Great Bend, and return over the same route, serving all intermediate points, (3) between Chase and Scott City, Kans., from Chase over U.S. Highway 56 to Great Bend, thence over Kansas Highway 96 to Scott City, and return over the same route, serving all intermediate points and the off-route point of McCracken, Kans., (4) between Kinsley and Stafford, Kans., from Kinsley over U.S. Highway 50 to Stafford, and return over the same route, serving all intermediate points, (5) between the junction of U.S. Highway 50 and U.S. Highway 281 and Great Bend, Kans., from the junction of U.S. Highway 50 and U.S. Highway 281 over U.S. Highway 281 to Great Bend, and return over the same route, serving all intermediate points and the off-route points of Hudson, Radium and Seward, Kans., (6) between Jetmore and Larned, Kans., from Jetmore over U.S. Highway 156 to Larned, and return over the same route, serving all intermediate points, and (7) between Chase and Rush Center, Kans., from Chase over unnumbered Kansas Highway to junction Kansas Highway 4 near Bushton, thence over Kansas Highway 4 to LaCrosse, thence over U.S. Highway 183 to Rush Center, and return over the same route, serving all intermediate points and the off-route points of Beaver, Farhman, Holyrood, Millard, Odin and Susank, Kans. NOTE: The instant application is a matter directly related to MC–F–11944 published in the FR issue of August 1, 1973. If a hearing is deemed necessary, applicant requests it be held at Great Bend or Wichita, Kans.

No. MC 98327 (Sub-No. 7) filed July 13, 1973 Applicant: SYSTEM 99, a Corporation 8001 Capwell Drive Oakland, Calif. 94621 Applicant's representative: Bertram S. Silver 140 Montgomery Street San Francisco, Calif. 94104 Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, and commodities in bulk), between Klamath Falls, Oreg., and Redding, Calif., from Klamath Falls over U.S. Highway 97 to Weed, Calif., thence over U.S. Highway 99 to Redding, and return over the same route, serving no intermediate points, and serving points in Shasta County, Calif., as an off-route points. Note: The instant application is a matter directly related to MC–F–11940 published in the FR issue of August 1, 1973. If a hearing is deemed necessary, applicant requests it be held at San Francisco, Calif.

No. MC 123389 (Sub-No. 16) filed June 28, 1973 Applicant: CROUSE CARTAGE COMPANY, a Corporation P.O. Box 151 Carroll, Iowa 51401 Applicant's representative: William S. Rosen 630 Osborn Building St. Paul, Minn. 55102 Authority sought to operate as a *common carrier*, by motor vehicle, over regular and irregular routes, transporting: *General commodities*, (except commodities in bulk, household goods as defined by the Commission, Classes A and B explosives, commodities of unusual value): REGULAR ROUTES: (A) (1) Between Kansas City, Mo., and Grant City, Mo., serving the intermediate and off-route points of North Star, King City, Stanberry, Carmack Corners, Gentry, Worth, Allendale, Sheridan, Ford City, Albany and Denver; (a) From Kansas City over U.S. Highway 169 to Grant City, and return over the same route; (b) From Kansas City over U.S. Highway 169 to junction Missouri State Highway 31; thence over Missouri State Highway 31 to junction U.S. Highway 169; thence over U.S. Highway 169 to Grant City, and return over the same route; (2) Between St. Joseph, Mo. and Grant City, Mo., serving the intermediate and off-route points of Avenue City, Rochester, Union Star, King City, Carmack Corners, Gentry, Worth, Allendale, Sheridan, Ford City, Albany and Denver; From St. Joseph, Mo., over U.S. Highway 169 to Grant City, and return over the same. IRREGULAR ROUTES: (B) (1) between King City, Mo., and points in Missouri; (2) between Albany, Mo., and points in that part of Missouri on and north of U.S. Highway 50 and on and west of U.S. Highway 65; and (3) between Carmack Corners, Gentry, Worth, Denver, Grant City and Allendale, Mo., and points in Missouri. Note: Applicant states that it will tack this requested authority with the authority held in Certificate No. MC 69036, Sub-No. 8, at common points in northwestern Missouri, if the purchase proceeding in MC–F–11869 is granted. The instant Application is a matter directly related to the Section 5 purchase proceeding in MC–F–11869, published in the FR issue of July 11, 1973. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or Kansas City, Mo.

No. MC–FC–74342. Authority sought by transferee, 160 W. Master St., Inc., 160 W. Master Street, Philadelphia, Pa. 19122, formerly Hilda Pflaumer, 1735 N. 10th St., Philadelphia, Pa. 19122, for purchase of the operating rights of transferor, Trip Transport, Inc., 3301 South Galloway Street, Philadelphia, Pa. 19148. Applicant's representative: James H. Sweeney, 850 Charles St., Gloucester City, N.J. 08030. Operating rights in Certificate No. MC–42087 sought to be transferred: various specified commodities, from, to, or between points in New Jersey, Maryland, Pennsylvania, Delaware, and New York.

The subject application under section 212(b) of the Interstate Commerce Act is to be assigned for hearing at a time and place to be fixed, for the purpose of determining, among other things, whether transferee is the real party in interest and if so, whether it is fit, willing, and able properly to perform operations under the rights sought to be acquired; and whether the application otherwise conforms with the Rules and Regulations Governing Transfers of Rights to Operate as a Motor Carrier in Interstate or Foreign Commerce (49 C.F.R. 1132). Interested parties have 30 days from the date of this publication in which to file petitions for leave to intervene. Such petitions should state the reason or reasons for the intervention, where the petitioner wishes the hearing to be held, the number of witnesses to be presented, and the estimated time required for the presentation of evidence. The Bureau of Enforcement has been directed to participate as a party in the proceeding for the purpose of presenting evidence and otherwise developing the record.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's Special Rules governing notice of filing of applications by motor carriers of property or passengers under

Sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 C.F.R. 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11772 (Sub-No. 4). Application under section 5(1) of the Interstate Commerce Act for approval of an agreement between common carriers for the pooling of traffic. Applicants: T.I.M.E.-DC, INC., P.O. Box 2550, Lubbock, TX 79408 (MC-35320), with five (5) Arkansas carriers, namely: BURNETT TRUCK LINE COMPANY, P.O. Box B, Wynne, AR 72396 (MC-81617); GARRISON MOTOR FREIGHT, INC., P.O. Box 969, Harrison, AR 72601 (MC-109324); C. O. HAY, doing business as HAY TRUCKING CO., (C. LEON HAY, EXECUTOR), 954 So. Barton St., Memphis, TN 38106 (MC-844); HOLT TRUCK LINE, INC., P.O. Box 364, Conway, AR 72032 (MC-67692); and POTEET TRUCK LINES, INC., 1415 W. Broadway, Morrilton, AR 72110 (MC-28892), seeks to enter into an agreement for the pooling of traffic consisting of general commodities moving to and from points in Becks, Bee Branch, Bellefonte, Berryville, Biscoe, Black Fish Lake, Brinkley, Burlington, Busch, Carlisle, Clinton, Conway, Damascus, Dennard, De Valls Bluff, Eureka Springs, Forrest City, Gateway, Goodwin, Green Forest, Harrison, Hazen, Lehi, Leslie, Madison, Marshall, Mayflower, Menifee, Morrilton, Omaha, Palestine, Plumberville, Preston, St. Joe, Valley Springs, Western Grove, and Wheatley, Ark. Attorney: Walter N. Bieneman, Suite 1700—One Woodward Ave., Detroit, MI 48226. T.I.M.E.-DC, INC., is authorized to operate as a common carrier in Texas, Oklahoma, Arkansas, Tennessee, Missouri and Kansas.

No. MC-F-11948. Authority sought for merger by WILLS TRUCKING, INC., Suite 615, 5755 Granger Rd., Cleveland, OH 44131, of the operating rights and property of BULK CARRIERS OF OHIO, INC., also of Cleveland, OH 44131, and for acquisition by PAUL W. WILLS, 2535 Center St., Cleveland, OH 44113, of control of such rights and property through the transaction. Applicants' attorneys: Edward R. Kirk, and Paul F. Berry, both of Suite 1660, 88 E. Broad St., Columbus, OH 43215. Operating rights sought to be merged: *Ferro alloys*, in bulk, in dump vehicles, as a *common carrier* over irregular routes, from Ashtabula, Ohio, and the site of the plant of the Electro-Metallurgical Company (division of the Union Carbide and Carbon Corporation) near Marietta, Ohio, to points in Indiana, Illinois, Kentucky, Maryland, Michigan, Missouri, New York, Pennsylvania and West Virginia. WILLS TRUCKING, INC., is authorized to operate as a *common carrier* in Michigan, Ohio, Indiana, Illinois, Iowa, Kentucky, Missouri, New York, Pennsylvania, Wisconsin, West Virginia, Maryland, Delaware, New Jersey, Virginia and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

NOTE: Pursuant to order dated November 4, 1968 in No. MC-F-10237, transferee acquired control of transferor.

No. MC-F-11949. Authority sought for control and merger by BOSS-LINCO LINES, INC., One Genesee St., Buffalo, NY 14240, of the operating rights and property of VALLETTA MOTOR TRUCKING CO., INC., 200 No. Main St., Vestal, NY 13850, and for acquisition by NOVO CORPORATION, 733 Third Ave., New York, NY 10017, of control of such rights and property through the transaction. Applicants' attorney: Harold G. Hernly, 118 N. St. Asaph St., Alexandria, VA 22314. Operating rights sought to be controlled and merged: *General commodities*, excepting among others, livestock, dangerous explosives, household goods and commodities in bulk, as a *common carrier* over regular routes, between Endicott, N.Y., and Lawrence, Mass., between Endicott, N.Y., and New York, N.Y., between Endicott, N.Y., and Philadelphia, Pa., between New Lebanon, N.Y., and East Lee, Mass., for operating convenience only, serving various intermediate and off-route points, between Brockton, and Lynn, Mass., serving all intermediate points; *general commodities*, excepting among others, classes A and B explosives, household goods, and commodities in bulk, over irregular routes, between Brockton, Holbrook, Braintree, Quincy, Milton, Boston, and Chelsea, Mass. BOSS-LINCO LINES, INC., is authorized to operate as a *common carrier* in Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11950. Authority sought for purchase by ROBCO TRANSPORTATION, INC., 3033 Excelsior Blvd., Minneapolis, MN 55416, of the operating rights of SIZER TRUCKING, INC., P.O. Box 1197, Rochester, MN 55901, and for acquisition by C. H. ROBINSON CO., also of Minneapolis, MN 55416, of control of such rights through the purchase. Applicants' attorneys: Donald A. Morken, 1000 First National Bank Bldg., Minneapolis, MN 55402, and Thomas Wolf, 611 Olmsted Co. Bank Bldg., Rochester, MN 55901. Operating rights sought to be transferred: *Meats, meat products and meat by-products, and etc.*, as a *common carrier* over irregular routes, from the plant site and storage facilities of Geo. A. Hormel & Co. at Austin, Minn., to points in Virginia, West Virginia, Delaware, Maryland, New Jersey, New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont, Maine, Pennsylvania, and the District of Columbia, from the plant site and storage facilities of the Rod Barnes Packing Company at Huron, S. Dak., to points in Virginia, West Virginia, Delaware, Maryland, New Jersey, New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont, Maine, Pennsylvania, and the District of Columbia, from the plant site and storage facilities of George A. Hormel & Co., at Fort Dodge, Iowa and Fremont, Nebr., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia and the District of Columbia, from the plant site and storage facilities of Scottsbluff Packing Company at Scottsbluff, Nebr., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia, from the plant site and storage facilities utilized by Wilson-Sinclair Co., at Albert Lea, Minn., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and the District of Columbia, from Austin, Minn., to points in Cook County, Ill., from Austin, Minn., to Ahoskie, N.C., and points in that part of Tennessee on and east of U.S. Highway 27 and on and north of Tennessee Highway 68, from the facilities of Wilson Certified Foods, Inc., at Cherokee, Iowa, and Omaha, Nebr., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, and the District of Columbia, with restrictions; *frozen horsemeat*, from Jamestown, N. Dak., and Aberdeen, S. Dak., to points in Minnesota, Wisconsin, South Dakota, and the Upper Peninsula of Michigan, other than incorporated cities or towns in the specified destination states; *frozen packinghouse by-products* and *frozen poultry by-products*, not for human consumption, from Richmond, Va., Chicago, Ill., Mitchell, S. Dak., Fremont, Nebr., Iowa City, Dubuque, and Spencer, Iowa, and Fargo, N. Dak., to points in Minnesota, Wisconsin, South Dakota, and the Upper Peninsula of Michigan, other than incorporated cities or towns in the specified destination states, with restriction, from Omaha, Nebr., Sioux City, Waterloo, Council Bluffs, Des Moines, Cedar Rapids, Atlantic, Estherville, and Fort Dodge, Iowa, St. Joseph, Kansas City, and Anderson, Mo., Denver, Colo., South St. Paul, St. Paul, St. James, Austin, and Albert Lea, Minn., to points in Illinois, South Dakota, Minnesota, Wisconsin, and the Upper Peninsula of Michigan, except points which are incorporated cities or towns; *animal and poultry feed, animal and poultry mineral mixtures, insecticides, insect repellents* and *vermin exterminators*, other than agricultural insecticides, and *advertising matter* for said commodities, from Burlington, Wis., to points in North Dakota on and east of a line beginning at the North Dakota-South Dakota State line and extending northerly along U.S. Highway 281 through Ellendale, Jamestown, Carrington, New Rockford, Minnewaukan, and Hansboro, N. Dak., to the United States-Canada Boundary line, from Burlington, Wis., to points in South Dakota, except those within Clay, Lincoln, Turner, and Union Counties, S. Dak.; *animal and poultry feed, animal and poultry min-*

eral mixtures and *advertising matter* for said commodities, from Burlington, Wis., to points in Minnesota; *oat flour*, from St. Joseph, Minn., to Danville, Ill.; *insecticides, insect repellents*, and *vermin exterminators* other than agricultural insecticides, and *advertising matter* therefor, from Burlington, Wis., to points in Minnesota; *horsemeat*, from Estherville, Iowa, to points in Wisconsin; *condensed whey*, from Richland Center and Marshfield, Wis., to points in Iowa; *frozen peas*, from Milwaukee and Fond du Lac, Wis., to Rochester, Minn.; *wool, wool waste*, and *wool imported from a foreign country*, from Philadelphia, Pa., Boston, Mass., and Albany, N.Y., to Reedsburg, Wis.; *meat scrap*, from Howard (Brown County), Wis., to points in Minnesota; *imported wool, wool tops and noils*, and *wool waste* (carded, spun, woven, or knitted), and *domestic wool* when moving in the same vehicle, at the same time, with imported wool, wool tops and noils, and wool waste (carded, spun woven, or knitted), from Philadelphia, Pa., and points in Massachusetts, to Faribault, Minn., and points in Wisconsin, from points in Massachusetts, to Lacon, Ill., from Rochelle, Ill., to Chippewa Falls, Wis.; *fish flour* and *fish meal*, from New Bedford, Mass., to points in Iowa, the Upper Peninsula of Michigan, Minnesota, North Dakota, South Dakota, and Wisconsin; *packing-house products*, not for human consumption (except in bulk, in tank vehicles), from Duluth, Minn., to points, except those which are incorporated cities or towns, in Illinois, Iowa, the Upper Peninsula of Michigan, North Dakota, South Dakota, and Wisconsin, with restriction; *frozen prepared* foods, from Duluth, Minn., to points in North Dakota, South Dakota, Nebraska, Iowa, Missouri, Wisconsin, Illinois, Indiana, Michigan, Ohio, Pennsylvania, West Virginia, Virginia, Maryland, Delaware, New Jersey, New York, Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, Maine, and the District of Columbia, with restriction; (1) *cranberry products* when moving in mixed loads with cranberries, the transportation of which is otherwise exempt from economics regulation, and (2) *cranberries*, the transportation of which is otherwise exempt from economic regulation, when moving in mixed loads with cranberry products, from Kenosha, Wis., to points in Nebraska, Kansas, Colorado, Oklahoma, Texas, Arkansas, Missouri, Iowa, Minnesota, Wisconsin, Illinois, Michigan, Indiana, Kentucky, Tennessee, and Ohio; *frozen foodstuffs*, from St. James, Madelia, and Butterfield, Minn., to points in Connecticut, Delaware, Indiana, Michigan, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and the District of Columbia; *fiber and molded products*, from the plant site and facilities of The Budd Company, Polychem Division at Bridgeport, Pa., to Noblesville, Ind., and Milwaukee, Wis., with restrictions. Vendee is authorized to operate as a *common carrier* in North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Illinois, Nebraska, Iowa, Colorado, Pennsylvania, Massachusetts, New York, Indiana, West Virginia, Virginia, Maryland, Delaware, New Jersey, Connecticut, Rhode Island, Vermont, New Hampshire, Maine, Kansas, Oklahoma, Texas, Arkansas, Missouri, North Carolina, Tennessee, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC-F-11951. Authority sought for control and merger JONES TRUCK LINES, INC., 610 E. Emma Ave., Springdale, AR 72764, of the operating rights and property of (1) M-F EXPRESS, INC., 553 S. Broadway, Greenville, MS 38701, and (2) POPLARVILLE TRUCK LINE, INC., P.O. Box 972, Greenville, MS 38701, and for acquisition by HARVEY JONES, also of Springdale, AR 72764, of control of such rights and property through the transaction. Applicants' attorneys: A. Alvis Layne, 915 Pennsylvania Bldg., Washington, DC 20004, and Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. Operating rights sought to be controlled and merged: (1) *General commodities*, excepting among others, class A and B explosives, household goods and commodities in bulk, as a *common carrier* over regular routes, between New Orleans, La., and Hattiesburg, Miss., between York, Ala., and Hattiesburg, Miss., serving all intermediate points, between Mobile, Ala., and Poplarville, Miss., serving the intermediate point of Wiggins, Miss., between Cleveland, and Hattiesburg, Miss., serving no intermediate points and serving Jackson, Miss., as a point of joinder only, between Jackson, and Meridian, Miss., as an alternate route for operating convenience only, serving no intermediate points, and serving Jackson, Miss., as a point of joinder only; and (2) *Newspapers*, as a *common carrier* over regular routes, from New Orleans, La., to Laurel, Miss.; *household goods* and *emigrant movables, general commodities*, except those of unusual value, and except class A and B explosives, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, irregular routes, between Poplarville, Miss., on the one hand, and, on the other, points in Louisiana and Mississippi within 200 miles of Popularville; *canned goods* and *frozen foods, and advertising, promotional or display material* when moving in the same vehicle at the same time with canned goods and frozen foods, from the plant site and facilities of Delta Food Processing Corporation at Moorhead, Miss., to points in Mississippi, Louisiana, Arkansas, Texas, Oklahoma, Kansas, Missouri, Illinois, Indiana, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, Ohio, Virginia, Maryland, and the District of Columbia; *cans, boxes, cartons, and containers*, from Tampa, Fla., Atlanta, Ga., Birmingham, Ala., New Orleans, La., Dallas, Houston, and Arlington, Tex., Kansas City and St. Louis, Mo., Chicago, Ill., Austin, Ind., Winchester, Va., and Spartanburg, S.C., to the plant site and facilities of Delta Food Processing Corporation at Moorhead, Miss.; *cardboard, fiberboard, paper and composition containers*, from Memphis and Nashville, Tenn., Birmingham, Ala., Atlanta, Ga., Monroe and New Orleans, La., and Dallas and Houston, Tex., to the plant site and facilities of Delta Food Processing Corporation at Moorhead, Miss.; *machinery, parts accessories, equipment, supplies, implements, parts, appliances, and products* usually or customarily used or useful in the processing, manufacture, packing, freezing, or canning of foodstuffs (except in bulk, in tank vehicles), from points in Arkansas, Louisiana, Texas, Oklahoma, Kansas, Missouri, Illinois, Indiana, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, Ohio, Virginia, Maryland, and the District of Columbia, to the plant site and facilities of Delta Food Processing Corporation at Moorhead, Miss., with restriction. JONES TRUCK LINES, INC., is authorized to operate as a *common carrier* in Missouri, Arkansas, Oklahoma, Tennessee, Kansas, Texas, Mississippi, Illinois, Indiana, Nebraska, Iowa, Louisiana, Alabama, Florida, Ohio, Kentucky, Michigan, Wisconsin, Maryland, New Jersey, Pennsylvania, District of Columbia, Colorado, Minnesota, North Dakota, New Mexico, South Dakota, Massachusetts, New York, North Carolina, Virginia, West Virginia, South Carolina, Arizona, California, Georgia, Idaho, Nevada, Oregon, Utah, and Washington. Application has been filed for temporary authority under section 210a(b).

No. MC-F-11952. Authority sought for purchase by PARAMOUNT MOVERS, INC., 231 N. Lancaster St., Dallas, TX 75203, of a portion of the operating rights of BESTWAY VAN LINES, INC., 400 N. Vine St., North Little Rock, AR 72114, and for acquisition by CARL DAVIDSON, 8955 Bower Lane, Lakeside, CA 92040, of control of such rights through the purchase. Applicants' attorney: James W. Hightower, 136 Wynnewood Professional Bldg., Dallas, TX 75224. Operating rights sought to be transferred: *Household goods*, and *emigrant movables*, as a *common carrier* over irregular routes, between points in Kiowa County, Okla., and points within 50 miles of Kiowa County, on the one hand, and, on the other, points in Arkansas, Colorado, and New Mexico, between points in Bradley County, Ark., on the one hand, and, on the other, points in Kansas, Aouisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas; *household goods*, between points in Tillman County, Okla., and those within 50 miles of Tillman County, on the one hand, and, on the other, points in Texas, between points in Delta, Fannin, Lamar, and Red River Counties, Tex., on the one hand, and, on the other, points in Arkansas and Louisiana. Vendee is authorized to operate as a *common carrier* in Missouri, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas,

Oklahoma, Nebraska, Georgia, Ohio, New York, Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, Vermont, Alabama, Florida, Kentucky, Maryland, Michigan, Minnesota, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin, Texas, Louisiana, Montana, Mississippi, North Dakota, South Dakota, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

By the Commission.

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

[FR Doc.73-16988 Filed 8-14-73;8:45 am]

[Notice No. 108]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 8, 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 13764 (Sub-No. 2 TA) filed July 18, 1973 Applicant: SIEGEL & COHEN EXPRESS, INC. 567 So. 11th Street Newark, NJ 07103 Applicant's representative: George A. Olsen 69 Tonnele Avenue Jersey City, NJ Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel on hangers along with wearing apparel in packages, handbags, shoes and related commodities* used in the conduct of retail wearing apparel stores and *return of damaged merchandise* for the account of Robert Hall Clothes, New York, NY, between points in New York, NY Commercial Zone, as defined by the Commission, on the one hand, and, on the other, Portsmouth, Chesapeake, Newport News, Norfolk, and Virginia Beach, VA, for 180 days. SUPPORTING SHIPPER: Robert Hall Clothers, 333 West 34th Street, New York, NY 10001. SEND PROTESTS TO: District Supervisor Robert S. H. Vance, Bureau of Operations; Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102.

No. MC 66462 (Sub-No. 14 TA) filed July 26, 1973 Applicant: THE WILLETT COMPANY 700 South Desplaines St. Chicago, IL 60607 Applicant's representative: Thomas F. McFarland, Jr. 20 North Wacker Drive Chicago, IL 60606 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Acid*, spent, liquid in bulk, in tank vehicles, from Burns Harbor, IN, to points in Wisconsin, for 180 days. SUPPORTING SHIPPER: Mr. P. A. DeWitt, Reiss Envirochem, Inc., P.O. Box 688, Sheboygan, WI 53081. SEND PROTESTS TO: William J. Gray, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

No. MC 109689 (Sub-No. 251 TA) filed July 27, 1973 Applicant: W. S. HATCH CO. Off: 643 South 800 West Woods Cross, UT 84087 and Mail: P.O. Box 1825 Salt Lake City, UT 84111 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sulphuric acid*, in bulk, from Hayden, AZ, to El Segundo, Long Beach and Compton, CA, for 180 days. SUPPORTING SHIPPER: Allied Chemical Corporation, P.O. Box 1139R, Morristown, NJ 07960 (R. G. Thorn, Manager, Distribution, Planning & Analysis). SEND PROTESTS TO: Lyle D. Helfer, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5239 Federal Building, 125 South State St., Salt Lake City, UT 84138.

No. MC 112520 (Sub-No. 272 TA) filed July 27, 1973 Applicant: McKENZIE TANK LINES, INC. P.O. Box 1200 New Quincy Road Tallahassee, FL 32302 Applicant's representative: Norman J. Bolinger 1729 Gulf Life Tower Jacksonville, FL 32207 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Waste liquor*, in bulk, in tank vehicles, between Prattville, AL, on the one hand, and, on the other, Cedar Springs, GA; Moss Point, MS; and Panama City, FL, for 180 days. SUPPORTING SHIPPER: Union Camp Corporation, 1600 Valley Road, Wayne, NY 07470. SEND PROTESTS TO: District Supervisor G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 W. Bay St., Jacksonville, FL 32202.

No. MC 113908 (Sub-No. 276 TA) (CORRECTION) filed June 14, 1973, published in the FEDERAL REGISTER issues of July 5, 1973, and July 20, 1973, and republished as corrected this issue. Applicant: ERICKSON TRANSPORT CORPORATION 2105 East Dale Street P.O. Box 3180 Glenstone Station Springfield, MO 65804 Applicant's representative: B. B. Whitehead (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vinegar and vinegar stock, fermented, quick process and distilled vinegar, vinegar malt naptha* (ethyl acetate), *salt* (calcium acetate), *vinegar acid* (acetic acid), and *vinegar wine*, etc., in bulk, in tank and hopper type vehicles, between the following points and the commercial zone thereof, except that no transportation service shall be provided wholly within the same or one state in Rogers, AR; Delta and Denver, CO; Chicago, IL; Hutchinson and Wichita, KS; Bailey, Belding and Freemont, MI; St. Paul, MN; Kansas City, Marionville and Nixa, MO; Lyndonville and North Rose, NY; Charlotte, NC; Oklahoma City, OK; Memphis, TN; Dallas, Houston and Paris, TX; Wenatchee and Yakima, WA, for 180 days. SUPPORTING SHIPPER: Speas Company, 2400 Nicholson Avenue, Kansas City, MO 64120. SEND PROTESTS TO: John V. Barry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 600 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106. Note: The purpose of this republication is to change the commodity description in the application.

No. MC 114457 (Sub-No. 157 TA) filed July 26, 1973 Applicant: DART TRANSIT COMPANY 780 N. Prior Avenue St. Paul, MN 55104 Applicant's representative: Michael P. Zell (same address as above) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, in cartons, from the plantsite and storage facility of Simmons Company at Kansas City, KS, to St. Louis, MO, restricted to traffic originating at the plantsite and storage facility of Simmons Company at Kansas City, KS, for 180 days. SUPPORTING SHIPPER: Simmons Company, 9200 Calumet Avenue, Munster, IN 46321. SEND PROTESTS TO: District Supervisor Raymond T. Jones, Interstate Commerce Commission, Bureau of Operations, 448 Federal Bldg., 110 S. 4th St., Minneapolis, MN 55401.

No. MC 119669 (Sub-No. 36 TA) filed July 26, 1973 Applicant: TEMPCO TRANSPORTATION, INC. 546 South 31A P.O. Box 886 Columbus, IN 47201 Applicant's reperesentative: Donald McCameron (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products and meat by products*, as described in Section A, Appendix I to the report in *Description in Motor Carrier Certificate*, 61 MCC 209 and 266, from Memphis, TN, to points in Ohio and Pennsylvania, for 180 days. SUPPORTING SHIPPER: Armour Food Company, Greyhound Tower 111 W. Clarendon, Phoenix, AZ 85077. SEND PROTESTS TO: District Supervisor James W. Habermehl, Interstate Commerce Commission, Bureau of Operations, 802 Century Bldg., 36 S. Penn. Street, Indianapolis, IN 46204.

No. MC 123392 (Sub-No. 56 TA) filed July 26, 1973 Applicant: JACK B.

KELLEY, INC. U.S. 66 West at Kelley Dr. P.O. Box 400 Amarillo, TX 79106 Applicant's representative: Weldon M. Teague (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Compressed gases*, in bulk, in tube trailers, and *cryogenic liquids*, in bulk, in cryogenic trailers, between points in Arizona, Colorado, Kansas, South Dakota, Nebraska, Iowa, Missouri, Wyoming, Oregon, Nevada, California, Illinois, Utah, Washington, Montana, Idaho, North Dakota, Minnesota and Wisconsin, for 180 days. Note: Applicant intends to tack with its MC 123392 Sub 29 TA, Sub 30, Sub 34, Sub 35 TA, Sub 38 TA, Sub 39 TA, Sub 43 TA, and Sub 31 now pending before the Commission. SUPPORTING SHIPPERS: F. A. Pettersen, Manager of Transportation, Airco Industrial Gases, 575 Mountain Avenue, Murray Hill, NJ 07974: R. E. Bryant, Manager, Distribution, Liquid Air, Inc., One Embarcadero Center, San Fracisco, CA 94111; and I. V. Kimball, Transportation Manager, Chemetron Corporation, 111 East Wacker Dr., Chicago, IL 60601. SEND PROTESTS TO: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H-4395 Herring Plaza, Amarillo, TX 79101.

No. MC 128030 (Sub-No. 43 TA) filed July 27, 1973 Applicant: THE STOUT TRUCKING CO., INC. R. R. #1-P.O. Box 177 Urbana, IL 61801 Applicant's representative: R. C. Stout (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Artificial christmas trees and accessories thereto*, from Newburgh, NY, to points in Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Maine, Maryland, Massachusetts, New Hampshire, New York, New Jersey, North Carolina, Ohio, Rhode Island, Pennsylvania, South Carolina, Vermont, Virginia, and West Virginia, for 180 days. SUPPORTING SHIPPER: Phillip E. Scull, Administrative Manager, Gordon Industries, Inc., 901 E. 104th St., Chicago, IL 60628. SEND PROTESTS TO: District Supervisor R. G. Anderson, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1086, Chicago, IL 60604.

No. MC 128030 (Sub-No. 44 TA) filed July 27, 1973 Applicant: THE STOUT TRUCKING COMPANY, INC. R.R. #1—P.O. Box 177 Urbana, IL 61801 Applicant's representative: R. C. Stout (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from La Crosse, WI, Sheboygan, WI and Detroit, MI, to Champaign, IL, for 180 days. SUPPORTING SHIPPER: Martin Maus, President, Van-Pickerell—Champaign, Inc., 606 East Kenyon Road, Champaign, IL 61820. SEND PROTESTS TO: District Supervisor R. G. Anderson, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1086, Chicago, IL 60604.

No. MC 128030 (Sub-No. 45 TA) filed July 27, 1972 Applicant: THE STOUT TRUCKING CO., INC. R.R. #1—P.O. Box 177 Urbana, IL 61801 Applicant's representative: R. C. Stout (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from La Crosse and Sheboygan, WI, to Champaign and Paris, IL, for 180 days. SUPPORTING SHIPPERS: Mr. Donald L. Hiatt, Hiatt Distributing Company, 1713 South Main Street, Paris, IL 61944 and Martin Maus, President, Van-Pickerell—Champaign, Inc., 606 East Kenyon Road, Champaign, IL 61820. SEND PROTESTS TO: R. G. Anderson, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1086, Chicago, IL 60604.

No. MC 128878 (Sub-No. 31 TA) filed July 26, 1973 Applicant: SERVICE TRUCK LINE, INC. P.O. Box 3904 Shreveport, LA 71103 and 2001 Highway 80 East Bossier City, LA 71010 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum coke*, in bulk, in dump vehicles, from Port Arthur, TX, to Harbour, LA, for 180 days. SUPPORTING SHIPPER: Great Lakes Carbon Corporation, 299 Park Avenue, New York, NY 10017. Mr. G. R. Gunter, Vice President. SEND PROTESTS TO: District Supervisor Ray C. Armstrong, Jr., Bureau of Operations, Interstate Commerce Commission, Room T-9038 U.S. Postal Service Building, 701 Loyola Ave., New Orleans, LA 70113.

No. MC 129191 (Sub-No. 3 TA) filed July 27, 1973 Applicant: RICHARD T. PLATTNER doing business as JANS MOTOR SERVICE 4640 West 120th Street Alsip, IL 60658 Applicant's representative: Albert A. Andrin 29 South LaSalle St. Chicago, IL 60603 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron, steel and aluminum metal plate structures, erection equipment and parts thereof; and materials and supplies* used in the erection of metal plate structures, in self-unloading equipment, from Indian Oaks, IL, to Fort Wayne, Clinton, Princeton, Petersburg, Martinsville, Indianapolis, Kokomo, Anderson, Lapel and Marshall, IN; Lewiston, Menominee, Alpena, Parchment, Elberta, Richmond, Alma, Hillsdale, Kawkavalin, Marquette, Dowagiac, Mendon, Romeo, Essexville, Ecorse and Bad Axe, MI; Sioux City, Glenwood, Iowa City, Anita and Waterloo, IA; Green Bay, Granville, Verona, Galesville, Milwaukee, Genoa, Shawano Lake, Portage, Cumberland, Prairie du Chien and Oshkosh, WI; Moscow, Toledo, Dayton, Chillicothe, Oak Harbor, Oregon, Cincinnati and North Bend, OH; Warrenton, Nevada, Kennett, Kansas City, Eureka, Jefferson City, St. Louis, Sedalia and Columbia, MO; and Ottawa and Louisburg, KS, for 180 days. SUPPORTING SHIPPER: Mr. William Hrad, Assistant Traffic Manager, Chicago Bridge & Iron Company, P.O. Box 774, Kankakee, IL 60901. SEND PROTESTS TO: District Supervisor R. G. Anderson, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1086, Chicago, IL 60604.

No. MC 129350 (Sub-No. 27 TA) filed July 20, 1973 Applicant: CHARLES E. WOLFE doing business as EVERGREEN EXPRESS 410 N. 10th Street P.O. Box 212 (Box zip 59103) Billings, MT 59101 Applicant's representative: Clayton Brown (same address as above) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Chemicals*, from Chicago and the commercial zone thereof, Ringwood, IL; Minneapolis and St. Paul, MN; Rapid City and Sioux Falls, SD; Midland and Ludington, MI; Madison, Hudson and Janesville, WI; Painesville, OH and Westvaco, WY, to Helena, Butte and Billings, MT; (2) *empty containers*, from Helena, MT, to Chicago and the commercial zone thereof; Illinois; Madison and Hudson, WI and Minneapolis, MN; (3) *dry cleaning and janitorial supplies*, from Chicago and the commercial zone thereof and Peoria, IL; Madison WI; Sioux Falls and Rapid City, SD, to Billings and Helena, MT; and (4) *dry cleaning, janitorial supplies*, from Helena, MT, to Sioux Falls and Rapid City, SD; Champaign and Clinton, IL, for 180 days. SUPPORTING SHIPPER: Columbia Chemical Co., Inc., 1216 Bozeman Avenue, Helena, MT 59601. SEND PROTESTS TO: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, RM. 222 U.S. Post Office Bldg., Billings, MT 59101.

No. MC 129516 (Sub-No. 20 TA) filed July 19, 1973 Applicant: PATTONS, INC. 2300 Canyon Road Ellensburg, WA 98926 Applicant's representative: James T. Johnson 1610 IBM Bldg. Seattle, WA 98101 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen pet food ingredients*, from Edmonds, WA, to points in California, for 180 days. SUPPORTING SHIPPER: Northwest Fur Breeders Coop, P.O. Box 399, Edmonds, WA 98020. SEND PROTESTS TO: District Supervisor W. J. Huetig, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Bldg., 319 S.W. Pine St., Portland, OR 97204.

No. MC 133315 (Sub-No. 3 TA) filed July 27, 1973 Applicant: ASBURY SYSTEM 2222 East 38th Street Los Angeles (Vernon), CA 90058 Applicant's representative: Howard D. Clark (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum fuel oils*, in bulk, in tank vehicles, from points in Los Angeles County, CA, to Glendale, Tempe, and Kyrene (or Helena), AZ, for 180 days. SUPPORTING SHIPPER: Salt River

Project, P.O. Box 1980, Phoenix, AZ 85001. SEND PROTESTS TO: Walter W. Strakosch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 7708 Federal Bldg., 300 North Los Angeles St., Los Angeles, CA 90012.

No. MC 134145 (Sub-No. 37 TA) filed July 17, 1973 Applicant: NORTH STAR TRANSPORT, INC. P.O. Box 51 Thief River Falls, MN 56701 Applicant's representative: Robert P. Sack P.O. Box 6010 West St. Paul, MN 55118 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Machines, computing and parts, materials and supplies* used in the manufacturing thereof, (1) between Campton, Ky. and Nashville, TN, on the one hand, and Rochester and Mt. Clemens, MI, on the other hand; and (2) between Campton, KY and Lexington, KY, for 180 days. SUPPORTING SHIPPER: Computer Peripherals, Inc., 6800 France Avenue, Edina, MN 55400. SEND PROTESTS TO: J. H. Ambs, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, ND 58102.

No. MC 134400 (Sub-No. 8 TA) filed July 18, 1973 Applicant: MILLER'S TRUCKING AND RENTAL, INC. 200 Southern Avenue Dubuque, IA 52001 Applicant's representative: Carl E. Munson 469 Fischer Bldg. Dubuque, IA 52001 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Ornamental iron products; cement compounds; gates; lamps; plastic articles; posts* (lamp and mailbox); *and promotional materials*, from Mt. Carroll, IL, to points in Arkansas, Colorado, Kansas, Iowa, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Wisconsin and Wyoming, for 180 days. SUPPORTING SHIPPER: Leslie-Locke Building Products Co., Ohio Street, Lodi, OH 44254. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 875 Federal Building, Des Moines, IA 50309.

No. MC 135065 (Sub-No. 6 TA) filed July 26, 1973. Applicant: DUBOSE TRUCKING COMPANY, INC., Rt. 1 Box 257, Denham Springs, LA 70726. Applicant's representative: Cordell H. Haymond, Suite 301, Baton Rouge Savings & Loan Building, 101 St. Ferdinand Street, Baton Rouge, LA 70801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Book pages*, folded or unfolded, from Versailles, KY, to Chicago, IL and its Commercial Zone, and from Hammond, IN, to Versailles, KY, restricted to traffic moving from the plant sites of Rand McNally & Company, located at or near Versailles, KY, or Hammond, IN. for 180 days. SUPPORTING SHIPPER: Rand McNally & Company, 8255 North Central Park Ave., Skokie, IL, Mr. J. Ronald Rager, General Traffic Manager. SEND PROTESTS TO: District Supervisor Ray C. Armstrong, Bureau of Operations, Interstate Commerce Commission, T-9038 U.S. Postal Service Bldg., 701 Loyola Avenue, New Orleans, LA 70113.

No. MC 135633 (Sub-No. 8 TA) filed July 19, 1973. Applicant: NATIONWIDE AUTO TRANSPORTERS, INC., 2175 Lemoine Avenue, Ft. Lee, NJ 07024. Applicant's representative: Harold G. Hernly, Jr., 118 North St. Asaph St., Alexandria, VA 22314. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor homes*, in driveway service, from points in Denton County, TX and Kossuth County, IA, to points in the United States east of the boundaries of Montana, Wyoming, Colorado, and New Mexico, for 180 days. SUPPORTING SHIPPER: Brougham Industries, Inc., P.O. Box 768, Sanger, TX 76266. SEND PROTESTS TO: District Supervisor Joel Morrows, Bureau of Operations, Interstate Commerce Commission, 9 Clinton St., Newark, NJ 07102.

No. MC 135725 (Sub-No. 9 TA) filed July 25, 1973. Applicant: FRY TRUCKING, INC., 507 W. 5th St., Wilton, IA 52778. Applicant's representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printed matter, printed forms, coupons, premiums and salvage*, between Wilton, IA, on the one hand, and, on the other, points in the United States, for 180 days. SUPPORTING SHIPPER: Misco, 1419 West Fifth Street, Wilton, IA 52778. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 875 Federal Building, Des Moines, IA 50309.

No. MC 136343 (Sub-No. 17 TA) filed July 25, 1973 Applicant: MILTON TRANSPORTATION, INC. RD 1, Box 207 Milton, PA 17847 Applicant's representative: George A. Olsen 69 Tonnele Avenue Jersey City, NJ 07306 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood pulp*, from West Point, VA, to the facilities of Howard Paper Mills, Inc., at Dayton and Urbana, OH, for 180 days. SUPPORTING SHIPPER: Howard Paper Mills, Inc., P.O. Box 151, Urbana, OH 43078. SEND PROTESTS TO: Robert W. Ritenour, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 508 Federal Bldg., 228 Walnut Street, P.O. Box 869, Harrisburg, PA 17108.

No. MC 138867 (Sub-No. 1 TA) filed July 18, 1973 Applicant: RALPH W. SCOTT doing business as CENTRAL VAN & STORAGE CO. Route 3 Davenport, IA 52804 Applicant's representative: Robert R. Rydell 900 Savings and Loan Bldg. Des Moines, IA 50309 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 general mercantile establishments, (except commodities in bulk) and in connection therewith *materials and supplies* used in the conduct of such business, between all municipalities and points within the Davenport, IA; Rock Island and Moline, IL Commercial Zone, on the one hand, and, on the other, points in Carroll, Whiteside, Henry, Bureau, Rock Island, Mercer, Stark, Knox, Warren and Henderson Counties, IL; and Jackson, Clinton, Scott, Jones, Cedar, Muscatine, Des Moines, Louisa, Washington and Johnson Counties, IA, for 180 days. SUPPORTING SHIPPER: Montgomery Ward & Co., 140 S. State St., P. O. Box 7337, Chicago, IL 60680. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 875 Federal Bldg., Des Moines, IA 50309.

No. MC 138902 (Sub-No. 1 TA) filed July 23, 1973. Applicant: ERB TRANSPORTATION COMPANY, INC., P.O. Box 65, Crozet, VA 22932. Applicant's representative: Harry C. Ames, Jr., 666 Eleventh Street, N.W., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Crozet, VA, to points in Kentucky, Maryland, North Carolina, Pennsylvania, Virginia, West Virginia and the District of Columbia, for 180 days. SUPPORTING SHIPPER: Morton Frozen Food Division, Continental Baking Co., Inc., P.O. Box 731, Rye, NY 10580. SEND PROTESTS TO: District Supervisor Robert W. Waldron, Bureau of Operations, Interstate Commerce Commission, 10-502 Federal Bldg., Richmond, VA.

No. MC 138930 TA filed July 19, 1973. Applicant: CONWAY GUITEAU LUMBER COMPANY, INC., P.O. Box 818, Amite, LA 70422. Applicant's representative: W. Hugh Sibley, P.O. Box 24, Greensburg, LA 70441. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, from Fluker and Pine Grove, LA, to points in Texas and Mississippi and Louisiana (for subsequent movement by water), for 180 days. SUPPORTING SHIPPER: Edward Hines Lumber Co. of Louisiana, P.O. Box 638, Pine Grove, LA 70453, Mr. Edward M. Crim, Manager. SEND PROTESTS TO: Ray C. Armstrong, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, T-9038 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113.

By The Commission.

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

[FR Doc.73-16984 Filed 8-14-73;8:45 am]

[Notice No. 109]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 9, 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 re-

sulting 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 107295 (Sub-No. 654 TA) filed July 26, 1973. Applicant: PRE-FAB TRANSIT CO., 100 South Main Street, P.O. Box 146, Farmer City, IL 61842. Applicant's representative: Bruce J. Kinnee (same address as above. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Buildings*, complete, knocked down, or in sections; (2) *building sections and building panels;* and (3) *metal prefabricated structural components*, from the plantsite of American Buildings Company at Atlantic, IA, to points in Arizona, California, Colorado, Idaho, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming, for 180 days. SUPPORTING SHIPPER: H. T. Holley, Traffic Manager, American Buildings Company, Atlantic, IA 50022. SEND PROTESTS TO: Harold C. Jolliff, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Leland Office Bldg., 527 East Capitol Avenue, Room 414, Springfield, IL 62701.

No. MC 113678 (Sub-No. 505 TA) filed July 24, 1973 Applicant: CURTIS, INC. Off: 4810 Pontiac Street Commerce City, CO 80022 and Mail: P.O. Box 16004 Stockyards Station Denver, CO 80216 Applicant's representative: David L. Metzler (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packinghouses*, from the plantsite and storage facilities of Yankton Sioux Industries at Wagner, SD, to points in Washington, Oregon, California, Idaho, Nevada, Utah, Arizona, Montana, Wyoming, New Mexico and Colorado, for 180 days. SUPPORTING SHIPPER: Yankton Sioux Industries, 301 North Fifth Street, Minneapolis, MN 55403. SEND PROTESTS TO: District Supervisor Herbert C. Ruoff, Interstate Commerce Commission, Bureau of Operations, 2022 Federal Building, Denver, CO 80202.

No. MC 113678 (Sub-No. 506 TA) filed July 24, 1973 Applicant: CURTIS, INC. Off: 4810 Pontiac Street Commerce City, CO 80022 and Mail: P.O. Box 16004 Stockyards Station Denver, CO 80216 Applicant's representative: David L. Metzler (same address as applicant) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods, and those requiring special equipment), which are at the same time moving on bills of lading of freight forwarders under Part IV of the Interstate Commerce Act, from New York, NY; Elizabeth, North Bergen and Newark, NJ; and the points in their commercial zone, to Denver, CO and points in its commercial zone, for 180 days. SUPPORTING SHIPPER: ABC Freight Forwarding Corp., Midland Forwarding Corp. and Trans National Transport (Division of National Carloading), New York, NY. SEND PROTESTS TO: District Supervisor Herbert C. Ruoff, Interstate Commerce Commission, Bureau of Operations, 2022 Federal Building, Denver, CO 80202.

No. MC 119654 (Sub-No. 22 TA) filed July 27, 1973 Applicant: HI-WAY DISPATCH INC. 1401 W. 26 Street Marion, IN 46952 Applicant's representative: Alki E. Scopelitis 815 Merchants Bank Building Indianapolis, IN Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, caps, covers and tops therefor and paper cartons*, from the plantsite and the warehouse of Metro Containers, an operation of Kraftco Corporation, at Dalton and Chicago, IL, to Croswell, Deckerville, Edmore, Flint, Lansing, Lexington, New Baltimore, Saginaw and Vassar, MI; Bloomdale, OH; and Bonduel, Green Bay and Oconto, WI, for 180 days. SUPPORTING SHIPPER: Metro Containers, 138 Cottage Grove, Dolton, IL 60419. SEND PROTESTS TO: William S. Ennis, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, Century Building, Eighth Floor, 36 South Pennsylvania St., Indianapolis, IN 46802.

No. MC 133751 (Sub-No. 3 TA) filed July 23, 1973 Applicant: RENO-LOYALTON-CALPINE STAGE LINES, INC. P.O. Box 2728 Sacramento, CA 95812 Applicant's representative: Michael J. Stecher 140 Montgomery Street San Francisco, CA 94104 Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, from, to, or between the following points or described areas: between Hallelujah Junction and Greenville, CA, serving all intermediate points as follows: from the junction of California Highway 70 and U.S. Highway 395 known as Hallelujah Junction over U.S. Highway 395 to Susanville, CA, thence over California Highway 36 to its junction with California Highway 89, thence over California Highway 89 to Greenville, CA and return over the same route; from the junction of California Highway 36 and California Highway 147 over California Highway 147 to its junction with California Highway 89, service is authorized at the off route points of Herlong, the California Conservation Center and Milford, CA, for 180 days. Note: Applicant intends to tack with MC 133751 (Sub 2). SUPPORTING SHIPPERS: There are approximately 30 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: A. J. Rodriguez, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, CA 94102.

No. MC 138143 (Sub-No. 2 TA) filed July 26, 1973 Applicant: SPECIALIZED CARTAGE, INC. 1400 East Anaheim Street Wilmington, CA 90744 Applicant's representative: Donald Murchison Suite 400 Glendale Federal Bldg. 9454 Wilshire Boulevard Beverly Hills, CA 90212 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel beams and accessorial parts* incidental thereto, from points in Los Angeles County, CA, to points in Ada, Canyon, Payette and Washington Counties, ID, for 180 days. SUPPORTING SHIPPER: Crest Steel Corporation, Marcrest-Pacific Co., Inc., 24724 Wilmington Ave., Wilmington, CA 90744. SEND PROTESTS TO: District Supervisor Philip Yallowitz, Interstate Commerce Commission, Bureau of Operations, 300 North Los Angeles Street, Room 7708, Los Angeles, CA 90012.

No. MC 138838 (Sub-No. 1 TA) filed July 20, 1973 Applicant: JOHN T. MARONEY doing business as L & J TRANSPORTING & TOWING 36-15 Queens Blvd. Long Island City, N.Y. 11101 Applicant's representative: John P. Tynan 65-12 69th Place Middle Village, N.Y. 11379 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Automobiles*, between New York, NY and Boston, MA; Fairfield, NJ and Philadelphia, PA, for 180 days. SUPPORTING SHIPPER: Transportation Vehicles, Inc., 1133 York Avenue, New York, NY 10021. SEND PROTESTS TO: Paul W. Assenza, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

No. MC 138893 (Sub-No. 1 TA) filed July 19, 1973 Applicant: GENE ECKHARDT doing business as GENE ECKHARDT TRUCKING P.O. Box 603 Lander, WY 82520 Applicant's representative: A. Eugene Eckhardt (same address as above) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Beer, newsprint, paper, building*

materials, ammonium nitrate, aluminum granules, sodium nitrate, having prior movement by rail, from the rail heads at Riverton and Shoshoni, WY, to points in Fremont County, WY, for 180 days. SUPPORTING SHIPPERS: Tweed's Wholesale, 150 South 4th Street, Lander, WY 82520; Wyoming State Journal, P.O. Box J, Lander, WY 82520; McKinney Roofing, Incorporated, 410 Market, Lander, WY 82520; and Hercules Incorporated, Box 607, Lander, WY 82520. SEND PROTESTS TO: District Supervisor Paul A. Naughton, Bureau of Operations, Interstate Commerce Commission, Rm 1006 Federal Bldg. & Post Office, 100 East "B" Street, Casper, WY 82601.

No. MC 138914 (Sub-No. 1 TA) filed July 19, 1973 Applicant: GLENARD N. BLANK 908 Allen Avenue McHenry, IL 60050 Applicant's representative: Rolfe E. Hanson 121 W. Doty Street Madison, WI 53703 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products* (except in bulk), from Sheboygan, WI, to distributors of Lake to Lake Dairy Cooperative located on and north of U.S. Highway 30 and on and east of U.S. Highway 51 in Illinois, restricted to service to be provided under continuing contract with Lake to Lake Dairy Cooperative, for 180 days. SUPPORTING SHIPPER: Attn: Harry Flottman, Director of Marketing, Lake to Lake Dairy Cooperative, 1606 Erie Avenue, Sheboygan, WI 53081. SEND PROTESTS TO: William J. Gray, Jr, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 219 South Dearborn St., Room 1086, Chicago, IL 60604.

No. MC 138934 TA filed July 20, 1973. Applicant: D. A. DEMERITT, 702 East Main, Chanute, KS 66720. Applicant's representative: C. Zimmerman, 413 Brown Bldg., Wichita, KS 67202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Smectite vermiculite*, in bulk, bags or containers, between the plant sites of Micro-Lite, Inc., at or near Chanute and Buffalo, KS; and points in Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Texas, and Wisconsin, for 180 days. SUPPORTING SHIPPER: Micro-Lite, Inc., 1100 S. Katy St., Chanute, KS 66720. SEND PROTESTS TO: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 501 Petroleum Building, Wichita, KS 67202.

No. MC 138935 TA filed July 23, 1973. Applicant: A. C. NIELSEN P.O. Box 445 Kanab, UT 84741. Applicant's representative: Ramona Nielsen (same address as above) Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* (except freight carrying vehicles, but including double wide trailers), between points in Kane, Washington, Iron, Garfield, and Sevier Counties, UT; Clark County, NV; and points in Coconino County, AZ, for 180 days. SUPPORTING SHIPPERS: Duke Aiken Trailer Sales (Duke Aiken, Owner), Box 70, Kanab, UT; Allens Ford Sales, Inc. (Sam E. Allen), Panguitch, UT; Lake Powell Homes, Inc. (K. M. Flake, President), P.O. Box 1206, Page, AZ 86040; Grand Canyon Mobile Home Sale (Mr. James R. Bartorelli, Sales Manager), P.O. Box 752, Kanab, UT; Pugh Mobile Home Park (Mrs. Donald L. Pugh, Owner), Box 51, Kanab, UT; and Chefs Palace Rentals (Carol D. Barnson, Owner), 151 West Center, Kanab, UT. SEND PROTESTS TO: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5239 Federal Building, 125 South State Street, Salt Lake City, Utah 84138.

No. MC 138936 TA filed July 26, 1973 Applicant: DONALD F. OWENS 2504 South 8th Street Manitowoc, WI 54220 Applicant's representative: Thomas A. Weir 761 North Forest Road Suite B Buffalo, NY 14221 Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Games and toys*, in boxes and packages, and *aluminum articles*, including *housewares and kitchen appliances*, in boxes and packages, from Manitowoc, Seymour and Burlington, WI, to points in Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington and West Virginia, for 180 days. SUPPORTING SHIPPER: Aluminum Specialty Company, 1616 Wollmer Street, Manitowoc, WI 54220 (Mr. Steven K. Sedgwick, Traffic Manager). SEND PROTESTS TO: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, WI 53203.

No. MC 138937 TA filed July 27, 1973 Applicant: CMR PARCEL SERVICE, INC. Route 3, Box 516 Imperial, MO 63052 Applicant's representative: Clarence M. Robnett, Jr. (same address as applicant) Authority sought to operate as a *contract carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except explosives, commodities in bulk and commodities in tank vehicles), from Famous-Barr service building, 3728 Market St., St. Louis, MO, via Highway 40 and Poplar Street Bridge across Mississippi River, to East St. Louis and U.S. Highway 50 to Famous-Barr department store at St. Clair Square in Fairview Heights, IL, and return via same route, for 180 days. SUPPORTING SHIPPER: Famous-Barr Company, 601 Olive Street, St. Louis, MO. SEND PROTESTS TO: District Supervisor J. P. Werthmann, Bureau of Operations, Interstate Commerce Commission, Room 1465, 210 N. 12th Street, St. Louis, MO 63101.

No. MC 138938 TA filed July 30, 1973 Applicant: MID AMERICAN MOVERS, INC. a Corporation 225 South Franklin Junction City, KS 66441 Applicant's representative: Paul V. Dugan 2707 West Douglas Wichita, KS 67213 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods, unaccompanied luggage*, restricted to the transportation of traffic having a prior or subsequent movement in containers, beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating and decontainerization of such traffic, from Junction City, KS, on the one hand, and Fort Riley, KS and points in Clay, Geary, Dickinson, Marshall, Pottawatomie, Washington, Riley and Morris Counties, KS, on the other hand, for 180 days. SUPPORTING SHIPPER: Department of the Army, Procurement Office, Fort Riley, KS 66442. SEND PROTESTS TO: Thomas P. O'Hara, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 234 Federal Building, Topeka, KS 66603.

By the Commission.

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

[FR Doc.73-16985 Filed 8-14-73;8:45 am]

NOTICE OF FILING OF MOTOR CARRIER

AUGUST 3, 1973.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by § 1.245 of the Commission's rules of Practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

California Docket No. 54181 filed July 18, 1973 Applicant: McLAUGHLIN DRAYING CO. P.O. Box 1797 Sacramento, Calif. 95808 Applicant's representative: Raymond A. Greene, Jr. 100 Pine Street, Suite 2550 San Francisco, Calif. 94111 Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities*, except as hereinafter provided: Part I: (1) Between all points and places in the San Francisco Territory as described in Part II. (2) Between all points and places on or within 20 miles of the following routes: (a) Interstate Highway 80 between Roseville

and San Francisco, inclusive; (b) State Highway 21 between its intersection with Interstate Highway 80 and its intersection with Interstate Highway 680; inclusive; (c) Interstate Highway 680 between its intersection with Interstate Highway 80 and its intersection with State Highway 17, inclusive; (d) State Highway 24 between Oakland and its intersection with Interstate Highway 680, inclusive; (e) Interstate Highway 580 between Oakland and its intersection with Interstate Highway 205, inclusive; (f) Interstate Highway 205 between its intersection with Interstate Highway 580 and U.S. Highway 50, inclusive; (g) U.S. Highway 50 between its intersection with Interstate Highway 205 and Sacramento, inclusive; (h) State Highway 4 between its intersection with Interstate Highway 80 and Stockton, inclusive. In performing the service herein authorized, applicant may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

Part II: SAN FRANCISCO TERRITORY includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U.S. Highway 101 to its intersection with Southern Pacific Company right of way at Arastradero Road; southeasterly along the Southern Pacific Company right of way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way; southerly along the Southern Pacific Company right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U.S. Highway 40 (San Pablo Avenue); northerly along U.S. Highway 40 to and including the City of Richmond; southwesterly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.

EXCEPT THAT applicant shall not transport any shipments of: (1) Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A. (2) Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis. (3) Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine. (4) Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers, or a combination of such highway vehicles. (5) Commodities when transported in bulk in dump trucks or in hopper-type trucks. (6) Commodities when transported in motor vehicles equipped for mechanical mixing in transit. (7) Cement. (8) Logs. (9) Commodities of unusual or extraordinary value. Intrastate, interstate and foreign commerce authority sought.

HEARING: Date, time and place not shown. Requests for procedural information should be addressed to the California Public Utilities Commission, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, Calif., 94102, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-17106 Filed 8-14-73;8:45 am]

CUMULATIVE LISTS OF PARTS AFFECTED—AUGUST

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during August.

FEDERAL REGISTER PAGES AND DATES—AUGUST

Pages	*Date*
20423–20601	Aug. 1
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